

UNFCITC Draft Treaty Language on Stakeholder Participation

Rationale and Language Proposals

Prepared by the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) for the fifth session of the Intergovernmental Negotiating Committee on the United Nations Framework Convention on International Tax Cooperation

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Rationale

The following drafting proposals present two alternative approaches to stakeholder participation under the proposed United Nations Framework Convention on International Tax Cooperation, designed to support advocacy during the current negotiations. The first sets out our preferred full treaty-level guarantee of meaningful stakeholder participation. The second presents a more compact and politically pragmatic fallback that preserves the essential treaty-level safeguards while leaving detailed modalities to the Rules of Procedure.

The proposals are guided by three considerations arising from the current negotiations. First, while the Terms of Reference refer to a Conference of the Parties (COP), the current Zero Draft adopts the term Conference of the States Parties (CoSP). Although there is no inherent legal distinction between these terms, as the powers and participation arrangements ultimately depend on the Convention's substantive provisions and Rules of Procedure, the use of COP remains politically and institutionally consistent with the framework-convention model reflected in the Terms of Reference.

Second, the current negotiating process already provides meaningful opportunities for the participation of civil society and other stakeholders, including written submissions and multistakeholder briefings. The institutional arrangements established under the Convention should preserve and build upon these existing practices rather than become less inclusive once the Convention enters into force. Meaningful stakeholder participation is also justified by the substantive contribution that civil society and other relevant stakeholders make to international tax policymaking. These actors can provide technical expertise, perspectives from affected groups, independent research, public scrutiny and

oversight, thereby strengthening the legitimacy, effectiveness and accountability of the Convention's implementation and further development.

Third, Article 13 closely resembles Article 63 of the United Nations Convention against Corruption (UNCAC) yet omits two important participation safeguards contained in that provision: the requirement to adopt rules governing the admission and participation of observers, and the possibility of considering information submitted by accredited non-governmental organisations. The proposals below therefore do not seek to introduce a new institutional model. Rather, they seek to preserve and strengthen participation safeguards already reflected in the apparent source provision for Article 13 while adapting them to the institutional framework of the proposed Convention. They are also consistent with the broader United Nations practice of consultative engagement with non-governmental organisations and other relevant stakeholders.

The preferred full treaty-level guarantee, inspired by the UNFCCC model, represents the ideal standard for embedding stakeholder participation directly within the Convention and provides language that negotiators may draw upon where broader treaty-level protections are politically achievable. This approach reflects the increasingly important role of international tax cooperation in global governance and recognises the legitimate contribution of civil society and other relevant stakeholders as sources of technical expertise, independent research, perspectives from affected groups, public scrutiny and oversight. As the Convention is expected to evolve into the principal multilateral forum for international tax cooperation, its institutional framework should facilitate broad and meaningful participation throughout its implementation, review and further normative development.

The compact or hybrid proposal is presented as a politically pragmatic fallback. It retains an express treaty-level obligation to provide meaningful stakeholder participation while leaving the detailed modalities of accreditation and participation to the Rules of Procedure. It therefore preserves the essential minimum safeguards while offering negotiators greater procedural flexibility.

I: Preferred Full Treaty-Level Guarantee

Background

This proposal represents the ideal standard for embedding stakeholder participation directly within the Convention. Inspired by the UNFCCC model, it combines a treaty-level admission mechanism with express participation rights while leaving detailed procedural arrangements to the Rules of Procedure. Under this approach, the Convention would establish a treaty-level mechanism permitting the admission of qualified governmental and non-governmental organisations wishing to participate in meetings of the Conference of the Parties, unless a specified proportion of States Parties

object. Once accredited, relevant stakeholders, including civil society organisations, would be afforded opportunities, in accordance with the Rules of Procedure, to:

- attend public or open meetings;
- receive timely access to official non-confidential documents;
- submit written information, recommendations, and proposals;
- make oral statements in accordance with the Rules of Procedure; and
- provide information and expertise concerning the implementation, review, and further development of the Convention.

These opportunities are intended to enable stakeholders to contribute substantively to deliberations and to inform the decisions ultimately adopted by States Parties. They would not, however, confer voting rights or formal decision-making authority, which would remain exclusively with States Parties. The Rules of Procedure should also provide appropriate safeguards concerning conflicts of interest, confidentiality, and other matters necessary to protect the integrity of the Convention's decision-making processes. Such safeguards should be transparent, proportionate and applied only to the extent necessary to protect legitimate interests. They should not be used as general grounds for excluding stakeholders, closing institutional processes or unduly restricting access to non-confidential information.

Drawing on the UNFCCC's broad recognition of qualified governmental and non-governmental bodies, the proposed language refers to "relevant stakeholders, including civil society organizations", rather than expressly identifying the private sector. This preserves flexibility for the Rules of Procedure to determine the participation of additional stakeholder categories while avoiding the creation of an explicit treaty-level entitlement for corporate actors in the absence of appropriate conflict-of-interest safeguards.

For purposes of this proposal, "relevant stakeholders" is intended as a broad and non-exhaustive category. Depending on the accreditation criteria established in the Rules of Procedure, it may encompass civil society organisations, academic and research institutions, trade unions, professional associations, organisations representing affected communities, media organizations and other bodies with relevant expertise or a legitimate interest in the matters covered by the Convention.

Proposed Treaty Language

Revised Article 13(3)

3. The Conference of the Parties shall adopt Rules of Procedure and rules governing the activities set forth in this Article, including transparent rules governing the accreditation and meaningful participation of relevant stakeholders, including civil society organizations. Any body or organization, whether national or international, governmental or non-governmental, that is qualified in matters covered by this Convention and has informed the

Secretariat of its wish to participate in a session of the Conference of the Parties may be admitted unless at least one third of the States Parties present object. The Rules of Procedure shall regulate the modalities of accreditation and participation.

Revised Article 13(5)

5. The Conference of the Parties shall examine the most effective way of receiving and acting upon information, including, inter alia, information received from States Parties in accordance with Article [15], competent international organizations and relevant stakeholders, including civil society organizations. Accredited stakeholders shall, in accordance with the Rules of Procedure, have meaningful opportunities to attend public or open meetings, receive timely access to official non-confidential documents, submit written information, recommendations and proposals, make oral statements, and provide information and expertise concerning the implementation, review and further development of this Convention. Such participation shall not confer voting rights or formal decision-making authority. Where meetings or portions thereof are closed, the Rules of Procedure shall provide for the timely publication of non-confidential summaries of the matters considered and outcomes reached, subject to the protection of taxpayer-specific and other legitimately confidential information.

Revised Article 14(3)

3. The Conference of the Parties shall determine the Rules of Procedure for the subsidiary body established pursuant to paragraph 1 and for the mechanisms and bodies established pursuant to paragraph 2 of this Article, including technical working groups. Such rules shall provide meaningful opportunities for relevant stakeholders accredited pursuant to Article 13 to participate in their work relating to this Framework Convention and its protocols and to submit information and expertise relevant to their respective mandates. Such participation shall not confer voting rights or formal decision-making authority. The Rules of Procedure may establish transparent and proportionate safeguards concerning conflicts of interest and the protection of confidential information, provided that such safeguards are not applied in a manner that unduly restricts meaningful participation. In determining the composition of standing bodies, the Conference of the Parties shall ensure equitable geographical representation.

II. Alternative Compact or Hybrid Proposal

Background

This proposal is presented as an alternative recommendation. It guarantees meaningful stakeholder participation through treaty text while leaving the detailed modalities of accreditation and participation to the Rules of Procedure. By combining treaty-level recognition with procedural flexibility, it offers a balanced and politically pragmatic approach that is more likely to attract support during negotiations.

Proposed Treaty Language

Revised Article 13(3)

3. The Conference of the States Parties shall adopt Rules of Procedure and rules governing the activities set forth in this Article, including transparent rules concerning the accreditation and meaningful participation of relevant stakeholders, including civil society organizations. Such rules shall provide appropriate opportunities to attend public or open meetings, access official non-confidential documents, submit written information and recommendations, make oral statements and contribute relevant information and expertise. Such participation shall not confer voting rights or formal decision-making authority.

Revised Article 13(5)

5. The Conference of the States Parties shall examine the most effective way of receiving and acting upon information, including, inter alia, information received from States Parties in accordance with Article [15], competent international organizations and relevant stakeholders, including civil society organizations.

Revised Article 14(3)

3. The Conference of the States Parties shall determine the Rules of Procedure for the subsidiary body established pursuant to paragraph 1 and for the mechanisms and bodies established pursuant to paragraph 2 of this Article. Such rules shall provide appropriate opportunities for relevant stakeholders accredited pursuant to Article 13 to participate in their work relating to this Framework Convention and its protocols and to submit information and expertise relevant to their respective mandates. Such participation shall not confer voting rights or formal decision-making authority. In determining the composition of standing bodies, the Conference of the States Parties shall ensure equitable geographical representation.