

Thank you, Madam Co-Lead, for the opportunity to speak. My name is Evelyn Muendo and I speak on behalf of the Tax Justice Network Africa and the African Civil Society Working Group on the UN Tax Convention.

We must take note of the areas within DTAs that shall be affected by the Protocol. Our preliminary review as civil society shows that a significant portion of double taxation agreements would need to be changed. Indeed, the Protocol is tackling fundamental questions of international tax law such as nexus rules and this is what is required if we are to truly transform the international tax system in line with the Terms of Reference. That said, we believe that an MLI style system would not be sufficient to deal with the level of change that is being proposed by the Protocol, especially an MLI style mechanism that includes opt in and opt out mechanisms, this will only lead to increasing the complexity of the legal system and increase the number of instruments needed in order to meet the end goal. A country would have to sign onto the Framework Convention and ratify it, sign onto the Protocol and ratify it and then finally sign onto an MLI like instrument and opt in certain provisions. Administratively, national tax administrations would have to provide additional guidance as with the case with the existing MLI BEPS.

Additionally, this is only the first protocol, considering that there may be more changes to be made within DTAs emanating from the discussions that we will have under workstream 1 on the Framework Convention, we believe that the MLI would be sorely mismatched to tackle the implementation of such provisions. Our position is that this discussion on implementation and the relationship between the protocol and DTAs and other existing instruments is highly related to the discussions under workstream 1 under both article 5 and article 15. We believe that we should not allow provisions that continue to restrict source country taxing rights to continue to exist. A treaty override is necessary to amend and terminate existing DTAs. We also find it important that the Convention includes a joint response to non-cooperative jurisdictions. We take note of the proposal to carry out bilateral negotiations but bilateral negotiations are also inadequate as mentioned before, in an IBFD study undertaken on 741 DTAs only 29% contained article 12A. So it is important to use this multilateral space to negotiate the best outcomes for member states which have suffered the most from existing treaty networks, and not let them fend for themselves.

For these reasons, Madam Co-Lead, we believe that this should be one of the issues that should clearly be earmarked for further discussion pending the finality of discussions on article 15. To conclude, and perhaps one of the most controversial things to say in a room full of treaty negotiators, if the work we are doing under the Framework Convention and the Protocols will largely override DTAs, then we envision that the UN Tax Convention will step by step make DTAs redundant and clearly make the provisions of the Framework Convention

and the Protocols implementable for countries that don't have tax treaties. perhaps this is one of the shifts triggered by this process that we must start making room for.