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In this article, Latif advocates for a strong, united response by Africa to the debate on international tax policy and suggests steps toward an inclusive and equitable future.

The recent report[1] from the U.N. secretary-general (UNSG) signifies a pivotal shift in the landscape of international tax policy, especially for Africa. This is a long-anticipated reaction to the deep-seated structural disparities inherent in global taxation, many of which find their roots in colonial-era fiscal strategies that favored Western powers.[2]

During colonial times, the fiscal policies of Western imperial powers resulted in the systematic exploitation of Africa's vast resources and wealth.[3] The aftermath of these policies can still be seen in the enduring economic divides present today.[4] While colonization may have ended, the tax norms at the international level remain skewed, reflecting the wishes of developed economies and echoing colonial dominance. Seminal initiatives, like the tax treaties of the League of Nations and successive OECD frameworks, bear witness to this unequal power dynamic. Sadly, African countries had little say in these conversations.[5] The landscape of global tax governance continues to be characterized by the underrepresentation and sidelining of African countries, leading to policies that often disadvantage the African continent and cater to the interests of developed nations and their multinational corporations. One telling example of this inequity is Africa's involvement, or lack thereof, in the OECD base erosion and profit-shifting discussions. The imbalance is stark: The majority of East African nations, bar Kenya, are not part of the BEPS process. How can BEPS pillar 2 reforms be effectively implemented in East Africa when four out of five countries are not even engaged in the conversation? This underscores the lingering fiscal legacy of colonization, highlighting the pressing need for significant reform.

The OECD's approach to international tax reform, notably through its two-pillar solution, underscores the prevalent issue of policy designs being incongruent with the developmental needs and fiscal realities of African and other developing nations.[6] While the OECD's BEPS project seeks to overhaul the global taxation

[1] UNSG, "Promotion of Inclusive and Effective International Tax Cooperation at the United Nations: Report of the Secretary-General," A/78/235 (Aug. 8, 2023).

[2] Okanga Ogbu Okanga and Lyla A. Latif, "Tax Vulnerabilities in Africa: Revisiting Inclusivity in Global Tax Governance," 1(2) *African J. of International Econ. Law* (2021).

[3] Léonce Ndikumana and James K. Boyce, *On the Trail of Capital Flight from Africa* (2022).

[4] Latif, "Imperilled Welfare States of Eastern Africa: A Comparative Analysis of the Policy Legacies of Taxation Politics in Kenya and Uganda," *State Politics and Public Policy in Eastern Africa* (2023).

[5] Nikki J. Teo, *The United Nations in Global Tax Coordination: Hidden History and Politics* (2023).

[6] Niels Johannesen, Thomas Tørsløv, and Ludvig Wier, "Are Less Developed Countries More Exposed to Multinational Tax Avoidance? Method and Evidence from Micro-Data," 34(3) *The World Bank Economic Review* 790-809 (Oct. 2020); Latif, "The Evolving 'Thunder': The Challenges Around Imposing the Digital Tax in Developing African Countries," 4(1) *International J. of Digital Technology & Economy* (2020).

landscape, its current framework, especially with the two-pillar approach, falls short of addressing the inherent asymmetries that disfavor less economically affluent nations.[7] The first pillar, initially envisioned to address the loopholes of the arm's-length principle and advocate for a more equitable distribution of multinational profits based on genuine economic activity, in reality, offers limited reach.[8] It confines its provisions to a select number of large multinationals, essentially leaving the broader segment of the corporate sphere untouched and still tethered to the flawed transfer pricing system.

Moreover, the conditions attached to pillar 1 could force nations into relinquishing their rights to enforce alternative, more beneficial taxation measures. The second pillar, which proposes a global minimum tax rate of 15 percent for multinational entities, not only seems underwhelming but could also prove detrimental for African nations. With the prevalent corporate tax rates in Africa typically ranging from 25 to 35 percent, such a low global baseline might incite tax base erosion, threaten domestic revenue streams, and hamper the allure of foreign direct investment, as corporations might prioritize jurisdictions offering the more favorable global minimum. Further, this proposed rate could inadvertently compromise the fiscal sovereignty of African nations, curtailing their strategic flexibility in tax policy design and potentially undermining their broader economic agendas.

The OECD's current approach to global tax reforms, as encapsulated in the BEPS project, brings to light a systemic problem of exclusionary practices and a disregard for the unique challenges faced by developing nations, especially African countries. Even as African policymakers and various international bodies ardently call for a more equitable and inclusive approach to international tax norms, the prevailing processes, influenced largely by the OECD, remain skewed toward the perspectives and interests of developed nations. The intricacies of international tax laws, combined with the brisk pace set by the OECD for reforms, make it exceedingly challenging for resource-constrained countries to meaningfully participate, understand, and implement proposed changes.[9] This framework does not just pose administrative challenges but also potentially sidelines these nations, deepening the existing power imbalance in global tax governance.

While developed nations possess the expertise and resources to swiftly navigate these reforms, developing nations risk being marginalized and may struggle to grasp, negotiate, and adopt complex tax changes within a constrained timeline. This urgency could compel them to accept policies ill-suited to their unique economic realities, thereby infringing upon their fiscal sovereignty. These practices sap African nations of essential tax income, exacerbating global economic disparities.[10] The fundamental issue is not merely about technical tax reforms but about ensuring a genuinely democratic and fair process in global tax governance, in which every nation, irrespective of its economic stature, has an equitable say and the necessary resources to contribute effectively. The current expedited approach does not give due consideration for capacity-building or the diverse challenges of different countries and threatens to perpetuate global tax asymmetries. It demands an immediate shift toward a more inclusive and empathetic model.

The Future of International Tax Cooperation

The recent UNSG report provides an opportune moment for a paradigmatic transition toward a U.N.-centric framework, designed to address entrenched fiscal inequities. By fortifying the U.N.'s jurisdiction in formulating global tax directives, it becomes feasible to foreground the African discourse, aligning international tax collaboration more cohesively with the continent's developmental aspirations.

The UNSG report outlines three progressive options:

[7] BEPS Monitoring Group, "The BEPS Proposals and Alternatives," July 6, 2023.

[8] Bill Parks, "Arm's Length: Principle or Cult?" *Tax Notes Int'l*, Oct. 26, 2020, p. 529.

[9] Sissie Fung, "The Questionable Legitimacy of the OECD/G20 BEPS Project," 10(2) *Erasmus L. Rev.* 76-88 (2017).

[10] African Union Economic Commission for Africa, "Illicit Financial Flows: Report of the High-Level Panel on Illicit Financial Flows from Africa" (2015).

- Option 1 on multilateral convention on tax proposes a comprehensive treaty similar to a standard multilateral convention, covering a gamut of tax issues. This "regulatory" treaty establishes enforceable obligations and rules to address tax challenges, including information reporting, exchange, and domestic enabling environments. Monitoring mechanisms and dispute resolution procedures ensure compliance.
- Option 2 on framework convention on international tax cooperation suggests a "constitutive" convention to establish a governance framework, delineating core principles, objectives, and governance structures. Protocols addressing specific regulatory aspects can be added, allowing nations to opt-in based on priorities and capacities. This option balances comprehensive governance with flexibility, enabling incremental progress and coherence.
- Option 3 on framework for international tax cooperation proposes a nonbinding framework for coordinated action at multiple levels to address tax challenges. This approach fosters coordination without imposing legal commitments, recognizing diverse tax environments and enabling tailored solutions.

Option 2 emerges as the most viable. It empowers African countries to redress historical wrongs and actively shape international tax laws. Its binding framework, augmented by an inclusive governance structure, positions African countries in a central role. United in their approach, African nations can champion reforms that address historic shortcomings and pave the way for a just global tax system.

However, the journey forward is not going to be without hurdles. Influential OECD nations might hinder progression. In these instances, the unity and collective strength of African countries, in collaboration with G-77 countries, can prove pivotal. To actualize this ambitious vision, a swift and determined strategy is paramount. The critical first step is to advocate for a U.N. resolution endorsing Option 2 by October. Preceding this, a specialized task force should be convened in September, incorporating representatives from pivotal institutions like the African Union High Level Panel on Illicit Financial Flows, the African Union Commission, the Economic Commission for Africa, and the African Tax Administration Forum, to name a few. Their unified mission? To harmonize efforts, drive research initiatives, and formulate strategies that would bolster international tax cooperation under Option 2. Further, September will be earmarked for extensive consultations, aiming to unify African nations on cardinal tax cooperation paradigms.

2024 should be poised to usher in a season of negotiations, emphasizing Africa's distinctive challenges. The continent, in turn, will articulate bespoke solutions for tax cooperation within the framework of Option 2. Augmenting Africa's negotiation clout will involve cultivating alliances on the international stage — partnering with entities like the G-77 nations and the United Nations Tax Committee. The subsequent year, 2025, should be targeted for draft finalization, which necessitates rallying widespread political endorsement via diplomatic channels and strategic collaborations. Harnessing established alliances, particularly with groups like the G-77, and championing Africa's priorities on the global stage will be paramount.

As 2025 looms, a slew of integral actions should be mapped out to ensure consistent momentum. A key milestone for Africa should be the March 2024 presentation of the proposal on Option 2 at the Conference of African Ministers of Finance, Planning, and Economic Development. Upon endorsement, the proposal should be submitted to the African Union Commission Subcommittee on Tax and Illicit Financial Flows for a comprehensive evaluation. The later review by the African Union Commission subcommittee will bring together technical maestros from African Union member states for an exhaustive assessment, culminating in recommendations for the Sub Tax Committee on finance, monetary affairs, economic planning, and integration — a confluence of African decision-makers pivotal to the continent's developmental arc. After extensive deliberations and aligning the proposal with African growth imperatives, the Sub Tax Committee will propose endorsements to the

African Union Summit of Heads of State and Government. Finally, with Africa's collective voice resonating, member states will champion the tenets of international tax cooperation, as outlined in Option 2, at the United Nations General Assembly, seeking to marshal global endorsement. ■