THE HLP REPORT

A Simplification of the AU/UNECA High Level Panel Report on Illicit Financial Flows from Africa

MARCH 2020

FINANCIAL TRANSPARENCY COALITION

Pan African Lawyers Union

TAX JUSTICE NETWORK AFRICA

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INTRODUCTION

The Tax Justice Network Africa (TJNA) is a Pan-African organisation and a member of the Global Alliance for Tax Justice. Launched in January 2007 during the World Social Forum (WSF) held in Nairobi, TJNA promotes socially- just, accountable and progressive taxation systems in Africa. It advocates for tax policies with pro-poor outcomes and tax systems that curb public resource leakages and enhance domestic resource mobilisation.

PALU is a continental membership forum for African lawyers and lawyers' associations, founded in 2002 by African bar leaders and eminent lawyers to reflect the aspirations and concerns of the African people as well as to promote and defend their shared interests, with a particular focus on activities and programmes aimed at mainstreaming human rights, good governance, socio-economic development and the just rule of law in Africa.

The Financial Transparency Coalition (FTC) was founded in 2009 under the name of the Task Force on Financial Integrity and Economic Development. Since its inception, the FTC and its members have successfully mobilized governments and citizens to take action against illicit financial flows, while advocating for a more transparent financial system that better serves for financing development. It uses its wide reach and deep expertise to influence global norms and standards for financial transparency, and close loopholes in the global financial system.

In February 2012, the 4th Joint African Union Commission (AU)/ United Nations Economic Commission for Africa Conference (UNECA) of African Ministers of Finance, Planning and Economic Development established the AU/UNECA High Level Panel on Illicit Financial Flows (HLP) which set out to ensure that Africa's development relies as much as possible on its own resources.

The HLP published a report in January 2015 which reflects its work to assess the extent and causes of illicit financial flows (IFFs), to understand how these outflows occur and to make recommendations to stop IFFs.

This booklet aims to simplify the issues covered in the report and to create awareness about the problem of IFFs in general.

While we acknowledge that there have been many developments since 2015 when the report was launched, this simplification focuses on abridging the content of the report at the time and does not add new content except to explain terminologies and to offer links for further information.

AUTHORS AND ACKNOWLEDGEMENTS

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This report was produced through the membership of Tax Justice Network Africa (TJNA), Pan African Lawyers Union (PALU) of the Financial Transparency Coalition, FTC, a global civil society network working to curtail illicit financial flows through the promotion of a transparent, accountable and sustainable financial system that works for everyone. The content of this document is the sole responsibility of TJNA and PALU, and does not necessarily reflect the positions of other members of the FTC nor its donors.

GLOSSARY/TERMINOLOGIES

APRM - AFRICAN PEER REVIEW MECHANISM

The APRM was established in 2003 by the New Partnership for Africa (NEPAD) Heads of State and Government Implementation Committee (HSGIC) as an instrument for self-monitoring performance in governance among Member States. The Mechanism's primary objective is to foster the adoption of policies, values, standards and practices of political and economic governance that lead to political stability, accelerated sub-regional and continental economic integration, economic growth and sustainable development. The APRM was formally integrated into the AU system in June 2014.

http://www.au.int/en/organs/aprm

ATAF – AFRICAN TAX ADMINISTRATION FORUM

The African Tax Administration Forum (ATAF) is an organisation which was established by African revenue authorities in 2009, in order to improve the performance of tax administrations in Africa.

www.ataftax.org

AUTOMATIC EXCHANGE OF INFORMATION

The new global standard on Automatic Exchange of Information (AEOI) reduces the possibility for tax evasion. It provides for the exchange of non-resident financial account information with the tax authorities in the account holders' country of residence. Participating jurisdictions that implement AEOI send and receive pre-agreed information each year, without having to send a specific request.

www.ataftax.org

BIS – BANK FOR INTERNATIONAL SETTLEMENTS

Established on 17 May 1930, BIS is the world's oldest international financial organisation. Its mission is to serve central banks in their pursuit of monetary and financial stability, to foster international cooperation in those areas and to act as a bank for central banks.

https://www.bis.org/about/

BENEFICIAL OWNERSHIP

Here entities are used to disguise the identity of their true owner—the person (or people) who ultimately control or profit from the company.

https://financialtransparency.org/issues/beneficial-ownership/

BEPS - BASE EROSION AND PROFIT SHIFTING -

Tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations.

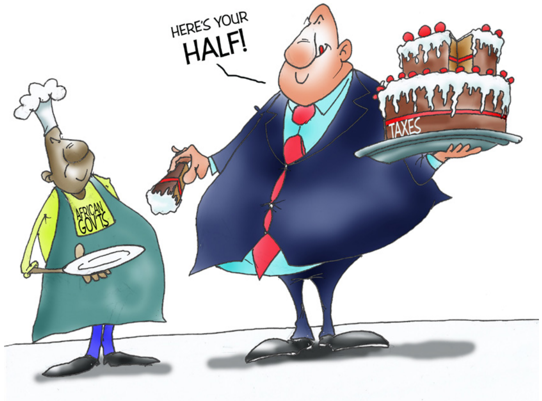
http://www.oecd.org/tax/beps/

CBCR – COUNTRY BY COUNTRY REPORTING

Requires each transnational corporation to provide their annual reports for each country. This includes:

1. The name of each country where it operates;
2. The names of all its subsidiaries and affiliates in these countries;
3. The performance of each subsidiary and affiliate, without exception;
4. The tax charge in its accounts of each subsidiary and affiliate in each country;
5. Details of the cost and net book value of its fixed assets in each country;
6. Details of its gross and net assets for each country.

http://www.taxjustice.net/topics/corporate-tax/country-by-country/



DTA - DOUBLE TAXATION AGREEMENT

The levying of tax by two or more jurisdictions on the same declared income (in the case of income taxes), assets (in the case of capital taxes), or financial transaction (in the case of sales taxes).

http://www.un.org/esa/ffd/documents/UN_Model_2011_Update.pdf

EITI - EXTRACTIVES INDUSTRY TRANSPARENCY INITIATIVE

An international standard for openness around the management of revenues from natural resources. Governments disclose how much they receive from extractive companies operating in their country and these companies disclose how much they pay. Governments sign-up to implement the EITI Standard and must meet seven requirements.

https://eiti.org/

FATF – FINANCIAL ACTION TASK FORCE

An inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a “policy-making body” which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

http://www.fatf-gafi.org/about/

FDI – FOREIGN DIRECT INVESTMENT

Investment made to acquire lasting interest in enterprises operating outside of the economy of the investor. FDI can be made by obtaining a lasting interest or by expanding one’s business into a foreign country. Benefits for businesses include market diversification, tax incentives, lower labour costs, preferential tariffs and subsidies among others. Benefits for the host country include economic stimulation, development of human capital, increase in employment, access to management expertise, skills, and technology. Disadvantages to FDI, however, include displacement of local businesses and profit repatriation among others.

FIU – FINANCIAL INTELLIGENCE UNIT

A type of state authority which receives, analyses and transmits reports of suspicions identified and filed by the private sector. These may include (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and financing of terrorism.

FINANCIAL SECRECY JURISDICTION

Facilities that enable people or entities escape (and frequently undermine) the laws, rules and regulations of other jurisdictions elsewhere, using secrecy as a prime tool. May also be called "tax haven".

http://www.financialsecrecyindex.com/faq/what-is-a-secrecy-jurisdiction

G8 – (NOW G7)

Group of Eight, formerly and subsequently Group of 7 (G7), intergovernmental organization that originated in 1975 through informal summit meetings of the leaders of the world's leading industrialized countries (the United States, the United Kingdom, France, West Germany, Italy, Canada, and Japan). Russia joined the discussions in 1994, and the group became known as the Group of 8 (G8) or the "Political Eight"; Russia officially became the eighth member in 1997 but its membership was indefinitely suspended by the G7 when it annexed Crimea, an autonomous republic of Ukraine, effectively dissolving the larger G8.

G20

Originated in 1999 at the level of Finance Ministers and Central Bank Governors, the G20 gathered for high-level discussions on macro-financial issues. In the wake of the 2008 global financial crisis, the G20 was elevated to include the leaders of member countries. The first G20 Leaders' Summit took place in Washington D.C. in November 2008. Consequently, the G20 agenda expanded beyond macro-financial issues, to include socio-economic and development issues. The Group of Twenty, or the G20, brings together the leaders of both developed and developing countries from every continent, collectively, representing around 80% of the world's economic output, two-thirds of global population and three-quarters of international trade. Throughout the year, representatives from G20 countries gather to discuss financial and socioeconomic issues.

HLP – HIGH LEVEL PANEL

High Level Panel on Illicit Financial Flows was established following a resolution in March 2011 of the 4th Joint Annual Meetings of the UN Economic Commission for Africa (ECA) and AU Conference of Ministers of Finance, Planning and Economic Development to address the debilitating problem of illicit financial outflows from Africa. The Panel brings together eminent personalities from within and outside Africa who share a common concern and expertise in the financial aspects of Africa's

http://www.regionalcommissions.org/hlpiffnote.pdf

IFFS - ILLICIT FINANCIAL FLOWS

(as explained on page 23)

IMF - INTERNATIONAL MONETARY FUND

An organisation of 189 countries, created in 1945, working to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world., the IMF is governed by and accountable to the 189 countries that make up its near-global membership.

MNC - MULTINATIONAL CORPORATION

A worldwide enterprise or corporate organization that owns or controls production of goods or services in at least one country other than its home country.

OECD - ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT

The Organisation for Economic Co-operation and Development (OECD) was officially established on 30 September 1961, when the OECD Convention entered into force. Its predecessor, the Organisation for European Economic Cooperation (OEEC) was established in 1948 to run the US-financed Marshall Plan for reconstruction following the second world war. The OECD currently comprises 36 member countries and seeks to address the challenges facing the world economy.

OPEN CONTRACTING

Publishing and using open, accessible and timely information on government contracting to engage citizens and businesses in identifying and fixing problems.

http://www.open-contracting.org/why-open-contracting/

PEPS – POLITICALLY EXPOSED PERSONS

A politically exposed person (PEP) is an individual who is or has been entrusted with a prominent public function. PEPs are higher-risk customers for financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs) because they have more opportunities than ordinary citizens to acquire assets through unlawful means like embezzlement and bribe-taking and thus are more likely to launder money. That said, being a PEP does not in itself equate to being a criminal or suggest a link to abuse of the financial system.

POST-2015 AGENDA

Process led by the United Nations that aims to help define the future global development framework that will succeed the Millennium Development Goals.

http://www.un.org/en/ecosoc/about/mdg.shtml

RECS - REGIONAL ECONOMIC COMMUNITIES

The Regional Economic Communities (RECs) in Africa group together individual countries in subregions for the purposes of achieving greater economic integration. They are described as the 'building blocks' of the African Union

REGRESSIVE TAX POLICIES/SYSTEMS

Tax policies/systems where the poor are paying more than the rich, in proportion to their incomes.

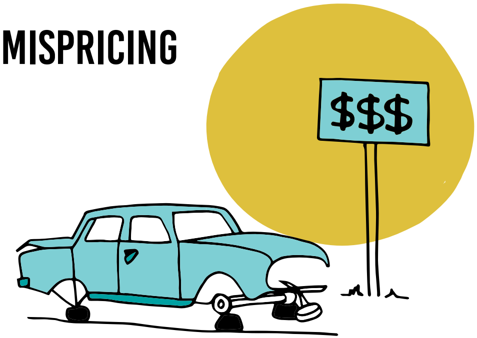
RENT-SEEKING

Rent-seeking is the use of the resources of a company, an organization or an individual to obtain economic gain from others without reciprocating any benefits to society through wealth creation. An example of rent-seeking is when a company lobbies the government for loan subsidies, grants or tariff protection. Corruption: limited to public sector. Three traditional elements: monopoly on rent size, motivation for supplying preferential treatment, involves narrow array of interests.

TAX INCENTIVES

Policy measures that allow deductions, exclusions and exemptions that reduce the tax liability of selected economic entities with the intention of influencing cross-border investment behaviours, decisions or activities. These may also be called Tax Holidays, Investment Allowances, Tax Rate Deductions, Administrative Discretions.

TRANSFER MISPRICING



Transfer pricing manipulation or fraudulent transfer pricing, refers to trade between related parties at prices meant to manipulate markets or to deceive tax authorities.

TRADE MISINVOICING

After-tax returns – a method for moving money illicitly across borders which involves deliberately misreporting the value of a commercial transaction on an invoice submitted to customs.

http://www.gfintegrity.org/issue/trade-misinvoicing/

TRIANGULATED ACTIONS FOR MONEY LAUNDERING

Subverting official routes, avoiding, shortcuts to official routes for money laundering

UNCTAD – UN CONFERENCE ON TRADE AND DEVELOPMENT

A permanent intergovernmental body established by the United Nations General Assembly in 1964 to support developing countries to access the benefits of a globalized economy more fairly and effectively by equipping them to deal with the potential drawbacks of greater economic integration through analysis, consensus-building, and technical assistance. This helps them to use trade,

investment, finance, and technology as vehicles for inclusive and sustainable development.

UNECA – UNITED NATIONS ECONOMIC COMMISSION FOR AFRICA

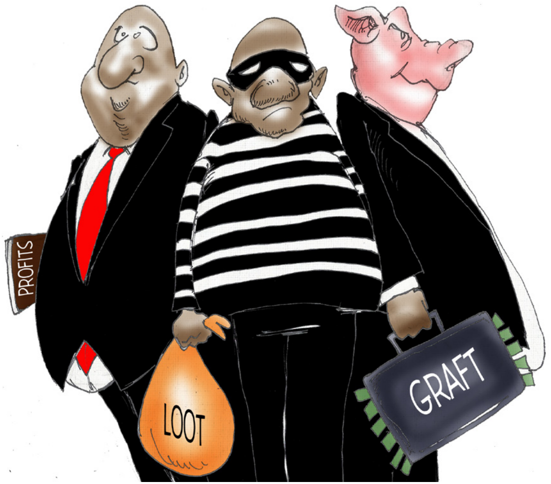
Established by the Economic and Social Council (ECOSOC) of the United Nations (UN) in 1958 as one of the UN's five regional commissions, ECA's mandate is to promote the economic and social development of its member States, foster intra-regional integration, and promote international cooperation for Africa's development. Made up of 54 member States, and playing a dual role as a regional arm of the UN and as a key component of the African institutional landscape, ECA is well positioned to make unique contributions to address the Continent's development challenges.

WORLD BANK

Established in 1944, the World Bank Group comprises five institutions managed by their member countries. It is a vital source of financial and technical assistance to developing countries around the world and a unique partnership to reduce poverty and support development.

WHAT ARE ILLICIT FINANCIAL FLOWS (IFFS)?

IFFs are defined in the report as “money illegally earned, transferred or used” or financial transfers linked to illegal or illicit (wrongful but not necessarily illegal) activity. They are sometimes called “capital flight” but capital flight can be totally licit.



How do IFFs happen?

IFFs can be illegal or illicit:

- Illegal means that they are criminal earnings and/or movements of money including money laundering proceeds of crime or abuse of power.
- Illicit means earnings that are not strictly illegal but are wrongful as they can involve market/regulatory abuse or tax abuse such as individual and corporate tax abuse or conflicts of interest.

About 65% of IFFs happen through legal but illicit commercial activities. 30% happen through criminal activities and 5% through corruption.

WHAT IS THE IMPACT OF IFFS AND FINDINGS OF THE HLP?

FINDING 1:

Illicit financial flows from Africa are large and increasing

FINDING 2:

Ending illicit financial flows is a political issue

FINDING 3:

Transparency is key across all aspects of illicit financial flows

FINDING 4:

Commercial routes of illicit financial flows need closer monitoring

FINDING 5:

The dependence of African countries on natural resources extraction makes them vulnerable to illicit financial flows

FINDING 6:

New and innovative means of generating illicit financial flows are emerging

FINDING 7:

Tax incentives are not usually guided by cost-benefit analyses

FINDING 8:

Corruption and abuse of entrusted power remains a continuing concern

FINDING 9:

More effort needed in asset recovery and repatriation

FINDING 10:

Money laundering continues to require attention

FINDING 11:

Weak national and regional capacities impede efforts to curb illicit financial flows

FINDING 12:

Incomplete global architecture for tackling illicit financial flows

FINDING 13:

Financial secrecy jurisdictions must come under closer scrutiny

FINDING 14:

Development partners have an important role in curbing illicit financial flows from Africa

FINDING 15:

Illicit financial flow issues should be incorporated and better coordinated across United Nations processes and frameworks

IFFs are large and increasing

- IFFs from Africa have increased from about $20bn in 2001 to $60bn in 2010. IFFs from Africa from 2002-2011 grew at over 20.2% per year. [1]
- Shortages in tax revenue make African economies vulnerable to repeated fiscal deficits (or revenue shortages) which means that they have to reduce spending and increase taxes (what we call austerity).
- IFFs help to cause austerity by concealing the real economic performance of African countries. During austerity, there is limited growth and less investment and manufacturing (meaning loss of jobs).
- IFFs undermine aid and development effectiveness.

1 Global Financial Integrity

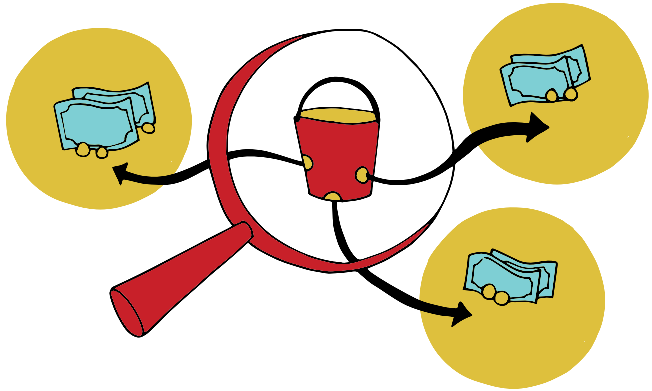
The dependence of African countries on extracting natural resources makes them vulnerable to IFFs

- There is a lot of underreporting of the quantity and quality of natural resources and many countries do not have their own means of checking how much natural resources have been extracted and exported. Instead, they depend on reports filed by the operators who have an incentive to underreport. This worsens poor record keeping and data collection practices which inhibit development planning.
- Value creation is needed for structural transformation in Africa or it will continue to rely on primary activities such as agriculture, natural resource extraction and traditional and basic services.
- Relying on extractive industries for revenue and export earnings where there is a lot of discretionary power and political influence results in secret and unequal contracts between African countries and multi-national corporations (MNCs).
- There is a close relationship between reliance on extractive industries and inequality.
- Undeclared quantities are revenue losses. Other losses include the ability to quantify environmental damage, the negative impact on sustainable development and future losses for future generations.

Corruption and the abuse of entrusted authorities is both a source and enabler of IFFs

- Corruption or the abuse of power for private gain continues to be a concern despite initiatives such as the UN Convention against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AUCPCP)
- Corruption is able to drive and facilitate IFFs especially because IFFs are cross-cutting.
- Not addressing corruption not only enables IFFs but institutionalises it and entrenches impunity
- Corruption's impact on development means debasement of values needed in the development process, misdirection of energies on

"rent-seeking" activities as private gain becomes the framework for all economic activity. Public officers therefore do not carry out their duties effectively or work for the public.



Weak national and regional capacities disrupt efforts to stop IFFs

- Capacity weaknesses affect the ability for African countries to track, stop and return IFFs. This includes lacking accurate data and up-to-date information, not understanding enough about how IFFs happen and absent or ineffective regulatory and institutional frameworks.

- The effort to stop IFFs strains already weak capacities. Increasing the ratio of tax officials to populations would improve this capacity.

- The cost of training revenue authority staff may pay off through increased tax collection but the resources needed to train them need to be found first and revenue will take time to be collected.

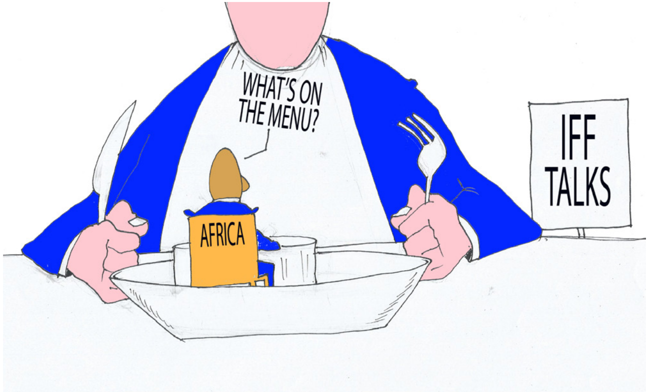
Existing training efforts by actors such as Tax Inspectors without Borders, ATAF and other mutual assistance programmes should be taken advantage of.

No global framework for tackling IFFs

- There are efforts to tackle the commercial and corrupt activities of IFFs (but these are often disparate and handled in separate processes and forums and vary in terms of commitment levels between countries, regions and groupings). There needs to be a global framework for tackling IFFs.

- Many African countries cannot afford to remain outside emerging global frameworks but joining them and meeting their standards to fight tax evasion has a disproportionate burden on many African countries who do not have the capacity to deal with the complexity and cost of compliance. There should be differentiated responsibilities according to capacity.

- It is contradictory for developed countries to provide technical assistance and development aid to Africa while keeping tax rules that enable IFFs. Some development agencies actually make investments in financial secrecy jurisdictions.



HOW DO WE SOLVE THE PROBLEM OF IFFS?

Ending IFFs is a political issue

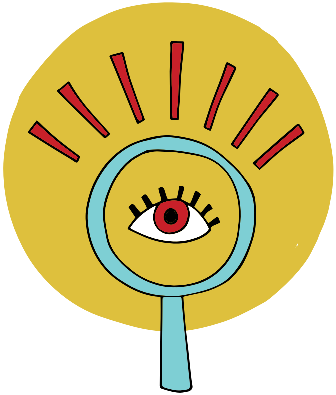
The nature of actors, its cross-border character, the effect of IFFs and the solutions being worked on in various forums show that IFFs are a political issue and political support is really needed at the global level. There is not enough international cooperation on IFFs.

Processes need to interrelate to optimise their effectiveness in stopping IFFs and to fit into an overarching global framework such as the UN. Development partners need to ensure that Africa's interests are reflected in regional and global processes for commercial transparency and should continue to provide financial and technical help for national and regional efforts to tackle criminal activities (including money laundering, human/drug/ and arms trafficking and IFF related asset.

a) CSOs

TRANSPARENCY IS KEY ACROSS ALL ASPECTS OF IFFS

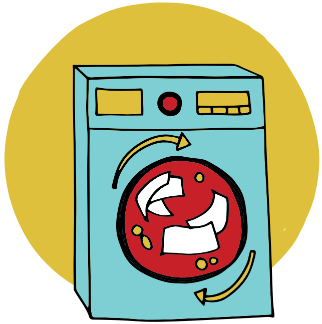
- Transparency underlies all the approaches to tackle IFFs. Solutions such as; automatic exchange of information, country-by-country reporting, project-by-project reporting, disclosure of beneficial ownership, public information about commercial contracts and implementation of recommendations of the Financial Action Task Force all require transparency.



MORE EFFORT IS NEEDED IN ASSET RECOVERY AND REPATRIATION

- Asset recovery efforts have challenges including the need for legal and financial expertise and to align domestic policy and institutional frameworks with global instruments. Asset recovery frameworks mostly only cover the return of proceeds of corruption and illicit enrichment so efforts to repatriate proceeds of tax evasion usually depend on the efforts and abilities of individual countries. Banks and financial establishments should identify and refuse to accept IFFs and there should be rules for this.

- Frozen assets should be placed in escrow accounts of regional development banks instead of allowing banks holding such deposits to benefit from them. Banks accepting tainted funds should be seen as being complicit in the generation of illicit funds and there should be a global asset recovery framework for this.



MONEY LAUNDERING REQUIRES MORE ATTENTION

- To tackle money laundering, many countries have worked to implement the recommendations of the Financial Action Task Force (including setting up financial intelligence units, adopting anti-money laundering and counter-terrorist financing laws, improving banking supervision and raising awareness about these activities).

- New and more obscure ways of money laundering are emerging including cash smuggling and triangulated transactions through Africa and there are delays in implementing anti-money laundering/counter-terrorist financing in some African countries because of political instability, institutional resource constraints and laws restricting the use of tax information for tax purposes only.

Different government bodies also have different interests; revenue bodies are only interested in raising revenue and not in helping law enforcement agencies. Revenue and law enforcement agencies should work together more and share information about money laundering found in the process of tax audits.

FINANCIAL SECRECY JURISDICTIONS SHOULD BE SCRUTINISED MORE

- There are both similarities and differences between financial secrecy jurisdictions and tax havens. They both allow for harmful tax practices, low levels of transparency in financial transactions and enable banking secrecy and shell companies but tax havens are not necessarily secrecy jurisdictions.

Political pressure is needed on jurisdictions which enable financial secrecy, banking secrecy and shell companies. Countries that would like to be financial services centres need help to ensure that they do not become tax havens and financial secrecy jurisdictions which allow for IFFs.

The global community should work together to eliminate secrecy jurisdictions including introducing transparency in financial transfers and cracking down on money laundering under the leadership of the AU, G20, IMF and OECD.

b) Parliamentarians

Foster the enactment and implementation of laws, regulations and policy frameworks aimed facilitating the implementation of the HLP recommendations.

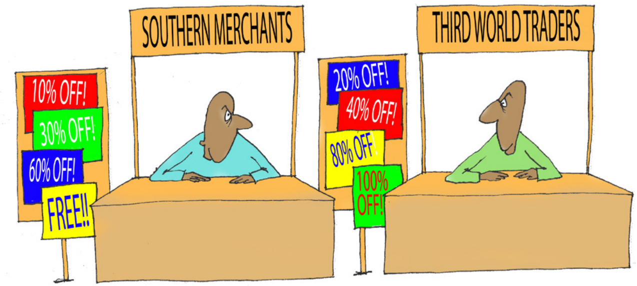
Support advocacy strategies by both Government and Non State actors aimed at curbing IFFs from Africa.

c) Tax Authorities

African tax authorities should work with the OECD on Base Erosion and Profit Shifting (BEPS) to ensure that global rules do not result in increased IFFs from Africa.

COMMERCIAL ROUTES OF IFFS NEED CLOSER MONITORING

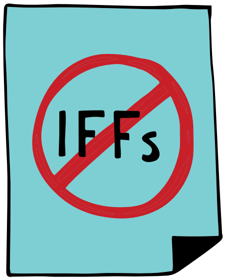
- The commercial sector is a major source of IFFs in Africa but is the least understood because of its technicalities
- The legal process is also difficult for prosecuting corporate tax evasion.



TAX INCENTIVES ARE NOT USUALLY GUIDED BY COST-BENEFIT ANALYSES

- African countries grant a lot of tax incentives to attract Foreign Direct Investment (FDI) but a lot of these decisions are not based on cost-benefit analyses but outdoing competitors for FDI leading to harmful tax competition and a "race to the bottom". In reality investments are often based on other considerations other than tax incentives including market viability, political stability and infrastructure.
- ***Countries should undertake cost-benefit analyses before granting tax incentives and should coordinate such incentives across Regional Economic Communities (RECs) to develop common standards and prevent a "race to the bottom".***
- ***For tax holidays, rules should be made to prevent the same entity/beneficial owner from continuing to benefit after there is an apparent substantial change in ownership.***
- There is a lack of coordination in many countries between agencies responsible for raising revenue and for granting tax incentives and managing tax incentives is an additional burden.

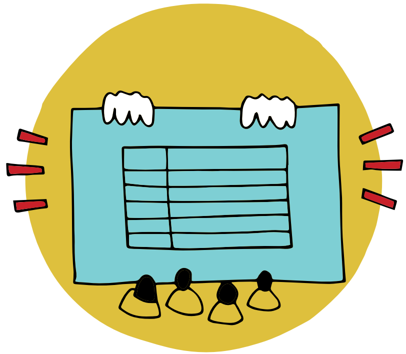
d) Governments



African countries should publish a declaration to commit to stop IFFs and urge similar actions at the global level by setting a standard.

African countries should coordinate efforts to present regional or larger unified positions in response to OECD consultations and meetings.

Africans need to be capacitated to request, process and use information. African countries need to join initiatives to mainstream their transparency requirements nationally and regionally and to develop laws adopting common transparency standards.



- African states should ensure that the national and subnational budget information are public and that processes and procedures for budget development and auditing are open and transparent to the public.
- African governments should adopt best practices in open contracting to reduce IFFs through government procurement processes.
- African governments can help financial institutions to scrutinise and monitor accounts held by prominent persons by publishing lists of PEPs (politically exposed persons) and information about whether the country's laws prohibit or restrict the ability of their PEPs to hold financial accounts abroad.

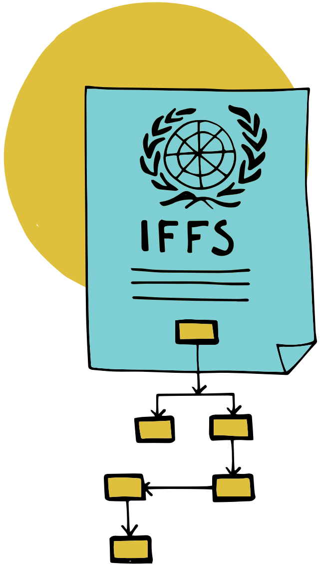
- African governments should require foreign financial institutions to provide account details of their listed PEPs as part of a system of automatic exchange of financial information.

- The African Peer Review Mechanism (APRM) should incorporate IFF issues in its questionnaires for the country review process.

African countries need the capacity and technology to monitor extraction of their natural resources better and to negotiate contracts more effectively. They need to make use of the information and support provided by existing mechanisms promoting transparency in the natural resource sector and to call for mandatory global reporting requirements. African countries also need to diversify their economies so that they rely less on natural resources and more on higher value activities.

New technologies in the digital sector make it difficult to track IFFs. International organisations which maintain data on international trade and financial flows need to consider the new and innovative ways IFFs are being generated in order to stop them.

e) International Bodies



The IMF, WB and Bank for International Settlements (BIS) should play an active role in refining data that will help track IFFs. The BIS should publish data it holds on international banking assets by country of origin and destination in order to get a better understanding of IFFs from Africa.

IFF issues should be incorporated & better coordinated in UN processes and frameworks

IFFs are not firmly in the policy agenda of the UN though there are several bodies working on some elements of IFFs such as:

- UNODC which works on corruption, drugs and crime
- UNDP for IFFs and fragile states
- UN Department of Economic and Social Affairs through its practical guide on transfer pricing
- UN Committee of Experts on International Cooperation on Tax Matters
- UNCTAD through its programme on transnational corporations
- World Customs Organisation and other intergovernmental organisations for related issues

f) Regional Bodies

Africa needs to work with its partners to ensure that the UN plays a more coherent and visible role in stopping IFFs including ensuring that tackling IFFs are in the Post-2015 Agenda, the UN adopts a policy instrument on IFFs so that the IFF issue is firmly on the UN agenda.

- The ECA should undertake research on the cost-benefit analysis of tax incentives to help guide African countries to draw up frameworks to attract FDI.
- The ECA should produce a document for all African countries on operational measures to adopt policies against IFFs and should support advocacy actions to create awareness on the economic, social and political dangers of IFFs
- The ECA should assess the impact of financial transparency initiatives on African economies (for any adverse consequences).

WHAT DOES THE HLP RECOMMEND?

I. The commercial component of IFFs

A. TRADE MISPRICING

- African countries should criminalise misstating the price, quality or other aspect of trade in goods and services.
- All companies should be registered for tax purposes and countries should be required to prove tax registration before they can register as corporates.
- African governments' customs authorities should use available databases for comparable pricing of world trade goods.
- States should begin collecting trade transaction data and creating databases from that which can be searched and shared with other states to create a robust dataset of local and regional comparables.

B. TRANSFER PRICING

African countries should establish transfer pricing units in revenue authorities and require MNCs operating in their countries to provide the transfer pricing units with a report of their financial reporting on a country-by-country or subsidiary-by-subsidiary basis and propose a format for this reporting to be used by other African revenue authorities.

C. BEPS

- African countries should support the OECD-led process for improving access to information for MNCs but also call for an automatic exchange of tax information globally

D. RELATED RECOMMENDATIONS

- African countries should require that beneficial ownership information is provided when companies are incorporated or trusts are registered, that such information is updated regularly and placed on public record. Beneficial ownership declarations should be required of all parties entering into government contracts and false declarations should be heavily punished.

- African countries should review their current and prospective DTAs especially with counties that are destinations for IFFs. The Model DTA developed by ATAF can be used for this.

- Regional integration arrangements should be used to introduce accepted standards for tax incentives.

- African countries should join ATAF for support and to give it political standing in African regional processes such as the AU/ECA Conference of Ministers of Finance.

- African countries and companies operating in extractive industries in Africa should join initiatives such as EITA and Africa should push for mandatory country-by-country and project-by-project reporting requirements in the extractives sector.

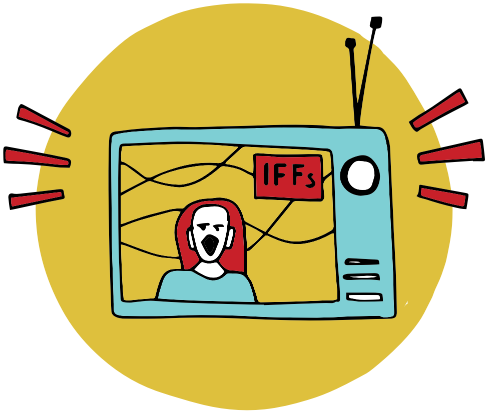
II. The criminal component of IFFs

- Investigators responsible for identifying criminals generating IFFs should be trained and empowered to investigate the financial aspects of these cases

- African states should prosecute those who facilitate the movement and laundering of crime proceeds.

- African country’s financial intelligence units should share information with each other about cases of people and companies being prosecuted for facilitating the movement and laundering of crime proceeds.

- The UNODC should extend its work to cover all of Africa and should include estimates of the financial scope of various types of criminal activity affecting Africa.



III. The corruption component of IFFs

- UNCAC and AUCPCC need to be updated to tackle IFFs and to be domesticated by African countries. IFFs should be integrated in the AUCPCC so that IFFs are a part of the Strategy of the Advisory Board of the Convention and Article 22 of the AUCPCC which is about the functions of the AU Advisory Board on corruption should include "develop methodologies for analysing the nature and extent of IFFs from Africa and disseminate information and sensitise the public on the negative effects of IFFs from Africa".

- Globally, anti-corruption efforts should continue including establishing national anti-corruption agencies (with autonomy, resources and capacities to prevent and prosecute corruption) and they should cooperate regionally.

- African states should establish or strengthen the independent institutions and agencies responsible for preventing IFFs (such as financial intelligence units, anti-fraud agencies, customs and border agencies, revenue agencies, anti-corruption agencies and financial crime agencies).

IV. Further responsibilities

- Existing laws successful in combating IFFs should be replicated as global best practices and standards.

ANNEX 1: SOURCES OF INFORMATION ON IFFS*

- African Tax Administration Forum (ATAF) https://www.ataftax.org/
- African Union https://au.int/
- Extractive Industries Transparency Initiative (EITA) https://eiti.org/
- Financial Transparency Coalition (FTC) https://financialtransparency.org/
- Financial Action Task Force https://www.fatf-gafi.org/
- Global Financial Integrity (GFI) https://gfintegrity.org/
- Global Initiative Against Transnational crime https://globaliniative.org/
- European Union Transparency Directive (p.66)
- Publish what you pay - requires companies in the extractive sector to report their payments to governments and governments to disclose how much revenue they receive. https://www.pwyp.org/
- United Economic Commission for Africa (UNECA)
- Tax Justice Network https://www.taxjustice.net/
- Tax Justice Network Africa https://taxjusticeafrica.net/

* List is non-exhaustive