A STUDY ON THE GLOBAL GOVERNANCE ARCHITECTURE FOR COMBATING ILLICIT FINANCIAL FLOWS

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A study on the global governance architecture for combating illicit financial flows

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Abbreviations

AfDB	African Development Bank
ECA	Economic Commission for Africa
EITI	Extractive Industries Transparency Initiative
EURODAD	European Network on Debt and Development
FATF	Financial Action Task Force
GDP	gross domestic product
IFFs	illicit financial flows
IMF	International Monetary Fund
NEPAD	New Partnership for Africa's Development
NGO	non-governmental organization
OECD	Organisation for Economic Co-operation and Development
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNODC	United Nations Office for Drugs and Crime

Executive summary

The most up-to-date estimates by the Economic Commission for Africa indicate that during the period 2000-2015, net illicit financial flows between Africa and the rest of the world averaged US$73 billion (at 2016 prices) per year from trade misinvoicing alone. Recent exposure of illicit financial flow scandals shows that those involved in such activities have used a range of practices to perpetrate the flows. Furthermore, there are a number of fundamental enablers of illicit financial flows that cut across institutions, sectors and stakeholders, such as: the benefits to the perpetuators, the facilitating infrastructure, the absorptive jurisdictions and the constraints of public authorities.

Since the release of the African Union-Economic Commission for Africa High-Level Panel on Illicit Financial Flows report in 2015, some headway has been made at the global level, but this continues to be in silos of sectors, groups of nations or stakeholders. Moreover, evidence reviewed for this study suggests that illicit financial flows continue to present a serious challenge to development in Africa. Given that illicit financial flows from Africa involve actors from across the globe, and that the laws and policies of non-African jurisdictions have a serious impact on illicit flows from Africa, it has become a priority to review the adequacy of global frameworks in tackling illicit financial flows (High-level Panel on Illicit Financial Flows from Africa, 2015).

In the present study, the global framework or architecture for combating illicit financial flows and its effectiveness in tackling the illicit financial flow problem are examined. Another objective of the study is to identify the gaps in the existing architecture for preventing illicit financial flows, and how Africa should feed into this process to improve its efficiency, effectiveness and inclusiveness. The literature available on the issue was examined, while delving into the framework for tackling illicit financial flows, and analysing actions and their impacts on: (a) the world as a whole; (b) the subregions of Africa; and (c) individual African countries, with a focus on Cameroon, Côte d'Ivoire, Morocco and South Africa, from which primary data were collected to support the study.

The results of the study indicate that a range of different institutions and agreements exist with the aim of tackling the various aspects of illicit financial flows. However, the institutions have different mandates, which often overlap. In addition, there is currently no mechanism covering all relevant organizations and all aspects of illicit financial flow problems at the global level, indicating substantial gaps in the global fight against illicit financial flows from Africa.

Accordingly, as the perpetrators of illicit financial flows have the ability to exploit the different methods of transfer available, a weakness in any part of the global regulatory architecture on such flows could substantially compromise the overall efforts to tackle illicit financial flows. This is because the perpetrators may conduct "regulatory arbitrage" and divert the flows through channels with weak controls. In addition, aside from creating opportunities for regulatory arbitrage, the lack of a comprehensive coordination mechanism for anti-illicit financial flow efforts also risks duplication in the activities of the different organizations trying to tackle those flows. Consequently, in a context characterized by a complex web of actors and issues, the application of the principles of effective governance becomes critical to influence the commitment, coordination, and cooperation of all stakeholders involved in combating illicit financial flows. Accordingly, the study highlights, the urgent need for Africa to play a more active role in addressing the imbalance in global power structures. This requires a concerted continental approach, which includes actions at both the regional and domestic levels.

Based on the analysis above and the gaps identified, some recommendations to improve the performance of the global governance architecture in combating illicit financial flows at the global, regional and national levels are provided in the study.

The main global recommendations include: (a) the development of a global governance framework to mitigate illicit financial flows; (b) publication by the Bank for International Settlements of the data it holds on international banking assets by country of origin and destination for all jurisdictions; (c) support be given for the setting up of and capacitating of transfer pricing units; (d) promotion of global minimum standards for the publication of ownership information; (e) consideration of countermeasures for noncompliant jurisdictions; (f) immediate reciprocity not be considered as to entry requirement to tax information exchange; (g) establishment of global standards in conducting reviews of accounts held by senior government officials, leaders of political parties, executives of State-owned enterprises and others with access to substantial State assets and power to direct them.

Recommendations at the continental level include: (a) piloting of "follow the money" partnerships to curtail trade mispricing globally; (b) setting up of a continental-level data standard for the exchange of tax information; (c) extending the provisions of the African Union Convention on Preventing and Combating Corruption, especially, with regard to the functions of the Advisory Board on Corruption; (d) amending the African Peer Review Mechanism questionnaire to include illicit financial flows; and (e) introducing systems for automatic exchange of tax information among African countries.

Recommendations at the national level include: (a) requiring multinational corporations to provide comprehensive reporting on their operations, indicating disaggregated financial reporting on by-country or by-subsidiary bases; (b) require companies to prepare cost-benefit analyses before allowing them to invest in a country; (c) African countries should join voluntary initiatives, such as the Extractive Industries Transparency Initiative; (d) African Governments should provide training to and empower investigators responsible for combating illicit financial flows; (e) greater coordination should be instituted between revenue authorities and ministries of finance in developing transfer pricing rules and build capacity in this area; (f) ensure transparent procurement procedures and government tenders and build capacity in this area; (g) introduce effective incentives for civil servants with clear documentation; and (h) place politicians' companies into trusts for the duration of their political term and prohibit them from engaging in any government businesses.

Chapter 1. Illicit financial flows: definition, scale and development impact

Over the past 10 years, great strides have been made in uncovering the international financial structure surrounding illicit financial flows (IFFs). This has included global scandals, such as Swiss Leaks (International Consortium of Investigative Journalists, 2017a), where money was legally housed using many accounts and trusts at the HSBC bank in Switzerland; LuxLeaks (International Consortium of Investigative Journalists, 2014), which disclosed similar information on tax avoidance in Luxembourg; and WikiLeaks, which revealed many secret documents, including a database on IFFs. More recent ones include the scandal around the failure of Apple to make tax payments in Ireland (Peter Hamilton, 2017), the Panama Papers (International Consortium of Investigative Journalists, 2017b), which included documents from a law firm in Panama revealing diverse aspects of IFFs that have had a global impact, and a case in which the European Union ordered Amazon to pay back taxes to Luxembourg (Bartunek, 2017). Those scandals showed that the parties involved have used a range of practices to perpetrate IFFs and that corporations, organized crime groups and public officials are all involved in this phenomenon.

In the ensuing debates pertaining to IFFs, one question that is repeatedly being asked is: what is the global framework or architecture for combating those flows, and how effective is it in tackling the problem? From the perspective of developing countries, one can ask: If the existing framework for preventing those flows is not working in developed countries (as evidenced through the series of scandals over the past 10 years, including those listed above), how can it be expected to work in developing countries? Where are the gaps in the existing system for preventing IFFs, and how should Africa feed into the process to improve its efficiency and effectiveness? How robust will the system need to be to respond to ongoing and future changes in the techniques used to carry out IFFs?

The central message of the United Nations Report of the High Level Panel on Illicit Financial Flows is that "IFFs are not only an African problem, but are indeed a matter of global governance that calls for a wide range of actions, including at the level of the global financial architecture" (United Nations, no date, p. 21). In other words, global governance is at the centre of efforts to curb those flows. Indeed, many participants in the debate on IFFs have argued that the current global governance architecture for tackling them is inadequate, and have called for new approaches. For example, EURODAD (2014) and the African Civil Society Circle (2015) argue for African Governments to adopt a global perspective; otherwise initiatives and processes at the national and regional levels will not yield substantial outcomes. A strong and broad-based global and continental financial architecture would not only reverse the problem of IFFs, but it would also mobilize the necessary domestic resources for development financing. In that regard, Ecuador, the 2017 Chair of the Group of 77, is showing the way for other developing countries by leading a call for a global tax body (Deen, 2017).

The aim of the present report is to provide answers to the question of how to reform the global governance architecture for combating illicit financial flows. In particular, in the report, the legal, policy and regulatory activities of international institutions and other global, continental, regional and domestic actors are examined to gain a comprehensive picture of global rules, institutions and cooperation programmes to tackle IFFs. In addition the report includes, an analysis of the weaknesses and gaps within the current global governance architecture and policy recommendations to improve the performance of the global governance architecture in combating those flows at the global, regional (African) and national levels. In addition to a review and analysis of the relevant literature, the analysis is based on four case studies of African countries: Cameroon; Côte d'Ivoire; Morocco; and South Africa. The case studies examine how IFFs work in the selected countries; this information can be used to highlight gaps in the global architecture that allow IFFs to take place in the ways identified through the case studies. Finally, the report also draws on interviews that were conducted with relevant regional organizations.

In the present introductory chapter, discussions on the definition, magnitude and development consequences of illicit financial flows are summarized.

1.1 What are illicit financial flows?

The definition of IFFs is contentious. The most common definition in the literature is the legalistic interpretation, which suggests that the term refers to money that is illegally acquired, transferred or utilized in contravention of existing law. In some cases, this money is earned illegally, for example through organized crime, money laundering, drug trafficking, embezzlement, terrorist financing or bribery (Baker, 2005; Rowe and others, 2014). In other cases, the money could have been earned legally but is transferred out of the country illegally by circumventing currency controls or customs controls. An example of customs fraud is trade misinvoicing, which involves buyers and sellers presenting fraudulent documentation to customs officials. The value of their trade is falsified by under or over invoicing their trade documents to be less or more than the actual market value in order to circumvent the payment of customs duties, to hide transfers or wealth between the importing or exporting countries or to evade controls on foreign exchange (Times Live, 2015). In other cases, money might have been earned legally, but the tax due is evaded through illegal failure to comply with a country's tax laws, for instance, by deliberately falsifying tax returns and books of account (Meyerowitz, 2009). Prosecution is required to apprehend the perpetrators of such illegal activities.

If one adopts a narrow, legalistic interpretation of IFFs, tax evasion, which is illegal, is part of such flows, but much tax avoidance is not classified as IFFs, as tax literature defines tax avoidance as involving the arranging of one's affairs to pay less tax by utilizing loopholes in tax laws and exploiting them within legal parameters (Rapakko, 1989). This interpretation is backed up by earlier British court decisions, such as the Duke v Westminster (51 TIR 467) ruling that "every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Act is less than it otherwise would be" and that no legal or moral obligation rests upon a taxpayer to pay higher taxes than he or she is legally bound to pay under the law (Blankenburg and Khan, 2012). However, it is worth noting that Picciotto (2018) has argued that tax avoidance can sometimes be unlawful, without being tax evasion. The distinction may be that abusive tax practices can constitute unlawful tax avoidance when they are a civil offence, whereas they are called tax evasion when they are a criminal offence (which may be when the intent to reduce tax payments can be proven).

An alternative approach used by many analysts of IFFs is to define them more broadly, on the understanding that "illicit" does not refer only to being illegal. Indeed, the Oxford English Dictionary defines illicit as "not authorized or allowed; improper, irregular; [especially,] not sanctioned by law, rule, or custom; unlawful, forbidden", which is much broader than what is only illegal.[1] On that view, excessive tax avoidance practices should be seen as improper or not sanctioned by custom or both, especially given the backlash against such practices illustrated by the public outrage against illegitimate but legal commercial activities in the wake of the 2008-2009 global financial crisis, during which non-governmental organizations raised concern about companies paying little or no corporation tax in the countries they do business in (Christian Aid, 2008). This prompted investigations by the United Kingdom of Great Britain and Northern Ireland authorities into corporations, such as Google, Amazon, Starbucks, Thames Water, Vodafone and Cadbury (before it was taken over by Kraft) that showed how those companies used aggressive tax avoidance schemes to shift profits to low-tax countries. Because of failure to live up to societal expectations, in line with the definition of "illicit" above, aggressive tax avoidance practices by multinational enterprises were deemed to be illegitimate and thus fall under the broad interpretation of IFFs (Rowe and others, 2014).

1 Taken from the Oxford English Dictionary online. Available at http://www.oed.com/.

While the broader definition of IFFs does seem to be closer to the meaning of “illicit”, an even more powerful argument for including aggressive tax avoidance in IFFs is that it should be considered as harmful, and therefore illicit, because of the negative impacts that it has on development (ECA, no date). Accordingly, it needs to be measured, tracked and stopped. From a practical point of view, given that tax avoidance and tax evasion result from weak tax laws, which are difficult to interpret and enforce, it would seem important to measure tax avoidance along with tax evasion in order to understand completely a country’s losses resulting from weaknesses in its tax system. In addition, in many cases, it is impossible for researchers to determine whether a particular flow constitutes tax evasion or tax avoidance, which is a practical argument for measuring them together.[2] Furthermore, from an African perspective, there is a political advantage in considering IFFs to include aggressive tax avoidance. Considering such activities to be illicit places a stronger moral obligation on governments whose legal regimes facilitate tax revenue losses from African countries to take action to stop such behaviour (the role of such jurisdictions in the problem is covered in more detail in chapter 2). As indicated in the next section of the present chapter, African countries face substantial losses from aggressive tax avoidance, and pressuring other jurisdictions to take action to prevent it would be to the continent’s advantage. In line with this analysis, the broader definition of IFFs is adopted in the subsequent sections of the report.

1.2 The scale of the problems

1.2.1 Estimates of illicit financial flows

The exact level of IFFs is difficult to ascertain owing to the absence of clear data, as those flows remain mostly hidden. However, such challenges should not deter attempts to estimate the volume of those flows. It is very important to estimate IFFs, and to make the estimates of them as disaggregated as possible, for example by country (and if possible by region within the country), industry and sector. This is necessary in order to inform individual countries of the scale of the problem at the national level and how much weight to accord to tackling it in policymaking, and to prioritize the prevention of illicit flows from the regions or sectors that are the main sources of such flows.

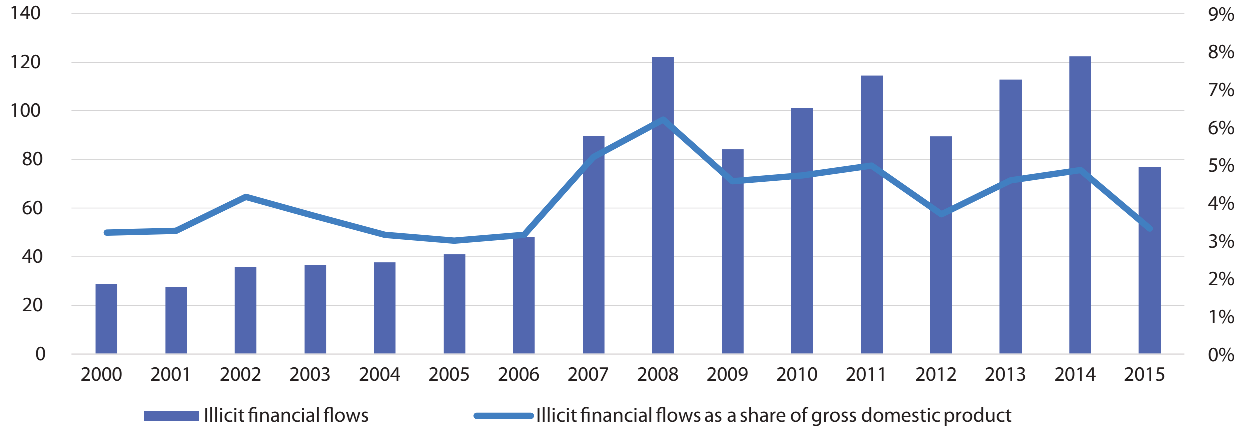
Current data point to mining and the extractive industries and the import-export sector as being among the main sources of IFFs (ECA, 2018). The Organisation for Economic Co-operation and Development (OECD) reached a similar conclusion, although the data supporting this result are not yet publicly available (OECD, 2014).

Given the hidden character of IFFs, most researchers attempt to estimate them by identifying discrepancies in recorded capital and trade flows, assuming that those discrepancies are the result of unrecorded or hidden flows and further assuming that those flows must have been hidden because they were illicit (as this seems to be the most likely reason for concealing them). Though statistical errors by officials compiling the data can contribute to those discrepancies, empirical work suggests that they are likely to account for only a very small share of the data (Spanjers and Salomon; 2017; Mevel, ‘Ofa and Karingi, 2015)”.

Illicit financial flows arranged through trade reinvoicing (when the invoices used for exporting and importing the same shipment differ by more than the cost of insurance and freight) were estimated by ECA on a net basis by examining gross outflows. This was done mainly by looking at detailed trade data retrieved from the United Nations Comtrade database of international statistics and the BACI database. The latest estimates from ECA show that during the period 2000-2015, net IFFs between Africa and the rest of the world averaged $73 billion (at 2016 prices) per year from trade reinvoicing alone. Spanjers and Salomon (2017) estimate that illicit gross financial outflows through trade reinvoicing averaged $87 billion (at 2016 prices) per year over the period 2005-2014.

2 This is because common methods entail estimating the mismatch between indicators of economic activity in a particular jurisdiction and profits reported there, or how economic links with low-tax jurisdictions reduce taxes paid. Neither of these methods can distinguish between tax avoidance and evasion ex ante. See, for example, Cobham and Janský (2017).

Figure 3: Estimates of illicit financial outflows between Africa and the rest of the world (through trade re-invoicing only), 2000 to 2015 ($ billions at 2016 prices and as a percentage of GDP)



Source: ECA calculations based on United Nations Department of Economic and Social Affairs/United Nations Statistics Division, 2017; Gaulier and Zignago, 2010; World Bank (2017a), and US Bureau of Labour Statistics, 2017.

The implication of those estimates of losses through IFFs is that the level is high and a cause for concern. Spanjers and Salomon (2017) also estimate that the amount of financial flows that left Africa by way of other channels averaged $26.7 billion per year over the period 2005-2014. Spanjers and Salomon (2017) and Boyce and Ndikumana (2002) used a different approach for trade mispricing, but reached results similar to those of ECA: $353.5 billion in net IFFs between 2000 and 2010 for 33 African countries. Cobham and Janský (2017) estimate that Africa (excluding North Africa) lost over 2 per cent of its gross domestic product (GDP) through tax avoidance in 2013.

It is worth noting that those estimates are contentious, and critics have a number of concerns related to them, including that inaccuracies in trade statistics or inaccuracies in the estimates used by researchers of the cost of insurance and freight (which is subtracted from the difference between reported imports and reported exports for a given pair of countries and commodity in a given period) which may lead to an illusion of IFFs in situations in which there are none (see, for example, Forstater, 2016). It may be that not all of the flows identified in the estimates are illicit (though there are also illicit flows that are not captured through the methodologies cited above, such as the mispricing of services or intangibles, or in cases in which invoices for a given transaction are falsified at both import and export). Nevertheless, the scale of those estimates is still cause for concern: these are cases of unexplained discrepancies in official statistics, which could potentially be illicit, and this in itself is cause for concern and further investigation.

Other work argues that a fraction of the amount lost in IFFs could have enabled African countries to achieve the Millennium Development Goals by 2015 (Froburg and Waris, 2010; Waris and Kohonen, 2011).

1.2.2 Evidence from the case study countries

The present section contains an overview of the challenges related to such flows in the case study countries, based on information gathered in the course of the studies. The information serves as an illustration of the scale of the problem within the selected States.

South Africa

While the level is unclear because of statistical issues, South Africa may suffer from substantial IFFs. The South African Revenue Service Commissioner indicated in a recent presentation to the parliamentary Standing Committee on Finance that South Africa faces a very high risk of illicit outflows, which can partly be attributed to the country's world-class financial systems, along with Its large extractive industry of mining and resources, the presence of large multinational

Figure 1: Cameroon: Court cases involving offences related to illicit financial flows, 2015

Suspected offence	Percentage of cases	Financial flows identified (CFA francs)
Financing of terrorism	8.00	10 095 170 775
Misuse of corporate funds	1.33	26 238 280
Corruption	1.33	185 000 000
Embezzlement of public funds	12.00	7 459 290 857
Forgery	1.33	-
Scamming	73.33	188 183 242
Sundry trafficking offences	2.67	1 263 430 579

Source: Adapted from Cameroon National Agency for Financial Investigation, Progress Report (2015).

corporations, and its open economy and tradable currency (African Monitor, 2017).

A presentation by the South African Treasury in June 2016 at the inaugural meeting of the Consortium to Stem Illicit Financial Flows from Africa revealed that South Africa has lost significant illicit financial outflows through transfer pricing abuses by multinational corporations. Pervasive tax abuse by multinational corporations was also confirmed in interviews conducted by the authors of the present study with government officials in June 2017, as well as in a number of academic studies (see, for example, Lord, 2014, Oguttu, 2016). It was also reported by Goredema (2007) that in 2001 between $2 billion and $8 billion were laundered through South African institutions every year. The South African real estate market, in particular, is considered to be a major conduit for criminals to launder their funds by purchasing and/or developing properties (Boles, 2017).

Cameroon

The data set out in figure 1 show that in Cameroon, scamming is more common than the misuse of corporate funds as a source of illicit financial flows in the leaked Swiss files, Cameroon was ranked 137 among the countries with large dollar balances (Cameroon, Ministry of Finance, 2017). There is no evidence that Cameroon is pursuing any investigation to determine whether criminal proceedings should be brought against those individuals.

Côte d'Ivoire

Côte d'Ivoire continues to face problems with money laundering by drug traffickers, particularly those trafficking drugs to Burkina Faso. The following techniques are being used to launder money:

Shell companies through which transactions in contraband products are effected;

Investment in property (a rebel leader was reported to have purchased at least two houses in Bouaké, Côte d'Ivoire, and property in Korhogo, Côte d'Ivoire and Burkina Faso);

Small business investments;

Use of the ***hawala*** system of book transfers of debt, by which money is moved to safe locations.

There are no public data available on court cases or on networks involved in IFFs.

Morocco

In 2016, the latest year for which data are available, the country's financial intelligence unit received 437 reports of suspicious transactions related to money laundering and a further 15 related to the financing of terrorism (Unité de Traitement du Renseignement Financier, 2017). Drug trafficking is one of the most important factors behind IFFs in Morocco. Despite the Government's exemplary efforts to tackle drug trafficking and illicit drug production, cannabis resin continues to be produced illicitly in Morocco (International Narcotics Control Board, cited in Davis, 2017). According to the 2016 Annual Report of the

International Narcotics Control Board, the illicit production of cannabis resin in Morocco is one of the major sources of illicit cannabis resin found in Europe, and indeed the world (International Narcotics Control Board, 2017; UNODC, 2016). Cocaine trafficking also takes place in the country. As a result of drug trafficking, the north of the country has become a hub for money laundering (UNODC, personal communication, 17 May 2017). According to the United States, Department of State (2017a), "while some of the narcotics proceeds are laundered in Morocco, most proceeds are thought to be laundered in Europe".

1.3 What are the development consequences of illicit financial flows?

There are several development consequences of illicit financial flows. First, such flows transfer wealth abroad that could otherwise have been invested in the source economy. Boyce and Ndikumana (2012) estimate that the capital stock of Africa would have expanded by more than 60 per cent if funds leaving Africa illicitly had remained in the continent, and GDP per capita would be up to 15 per cent higher. Similarly, the continent's ratio of domestic investment to GDP would probably have increased from 19 per cent to 30 per cent if the stock of capital taken out were available for investment within the continent (AfDB and others, 2012). Those great losses point to great development deficits. Africans would most likely have had much better livelihoods without IFFs from their countries. Even though such flows may in some cases be "round-tripped", (brought back to the source economy), for example, when the purpose of the outflow was money laundering or to hide illicit wealth by not storing it in a domestic bank, there are still negative consequences. This is because a percentage of the funds go to those involved in facilitating the international transfer, and the possibility of hiding illicit wealth through round-tripping means that the illicit activities that generate the funds are more likely to be able to continue unpunished.

Beyond those first-order financial effects, there is also need to consider other effects that are not easily measurable in financial or quantitative terms, but are still relevant for development purposes. For example, aside from the direct consequences of IFFs in terms of resource losses, such flows draw the economy's factors of production and resources into the illicit economy, which is both typically untaxed, undermining important social spending or investment programmes (which can add significantly to the economic output – see for example, Mevel, 'Ofa and Karingi, 2013), and more unequal than the licit economy, making income distribution worse than if the illicit activities had not taken place and the resources had stayed in the licit economy (Cobham and others, 2016).

Given the substantial amounts of IFFs and the established empirical links between them and aid inflows and debt and such flows, some stakeholders, such as honest donors and investors, do not trust that transfer of their funds would be used according to pre-determined objectives (Ndikumana and Sarr, 2016; Davis, 2017). This situation probably leads not only to lower inflows of development finance and investment resources, but also to a drain of resources, as part of the transferred resources must be channelled into control mechanisms, rather than the projects that are the focus of the development finance/ investment.

Furthermore, IFFs draw resources from productive activities into unproductive ones. Many large companies, especially multinational corporations, devote considerable efforts towards increasing their profitability through tax evasion and avoidance, instead of focusing on improving operational efficiency. IFFs undermine the quality and accountability of public institutions, helping to keep corrupt elites in power. This situation does not encourage a tax-paying culture (on the part of individuals or corporations) and reduces investor confidence (Sharman, 2012). IFFs from African countries have also been shown to discourage value additionand structural transformation. This is particularly harmful to the continent given the important role that value addition and structural transformation plays in providing sustained, inclusive growth (ECA, African Minerals Development Centre and African

Union Commission, 2017; ECA and African Union Commission, 2014; African Union and ECA, 2015).

In addition, the above consequences in combination help to sustain or even worsen poverty and inequality levels. IFFs tend to be the tools of the already wealthy people, and not of people living in poverty. However, it is the people's resources within the State and government that are being exploited and transformed into IFFs. When large companies, especially multinational corporations, engage in base erosion and profit-shifting activities, the bulk of the tax burden falls on small and medium-sized enterprises and individual taxpayers. This runs counter to the idea of progressive taxation, in which those who earn more income contribute a larger percentage of tax revenue. It also becomes unfair when multinational corporations engaged in substantial economic activities evade or avoid taxes while benefiting from the physical and social infrastructure, most of which is still provided by the public sector in Africa. Another area in which IFFs generate inequalities concerns the reduced level of social services and social protection schemes, given the drainage of public revenue, as mentioned above and as noted in the Association for Women's Rights in Development (2017). In addition, IFFs contribute to additional wealth creation among the already rich, which increases inequality. The African Tax Administration Forum estimates that up to 33 per cent of the wealth of Africa is being held abroad. Through such direct and indirect channels, IFFs help to sustain and widen poverty, inequality and underdevelopment in general (Cobham and others, 2016; Association for Women's Rights in Development, 2017).

The mineral sector is an area of the economy that is worst affected by IFFs. One of the ways in which this occurs is through the reduction in incentives to add value to minerals, frustrating the continent's efforts to industrialize, which is considered to be key for delivering sustained, inclusive growth (ECA, African Minerals Development Centre and African Union Commission, 2017; ECA and African Union Commission, 2014).

Furthermore, the High Level Panel on Illicit Financial Flows (African Union and ECA, 2015) had found that if IFFs were to be translated into sources of finance for African Governments and the economy at large, the dependence on development assistance and other sources of support would be lowered, or disappear entirely. This is a powerful argument in favour of tackling such flows; it shows that to do so would not only bring great financial benefits for Africa, but it would also enable the continent to end its dependence on aid, and thus avoid the governance problems that have shown to be associated with aid dependence. Indeed, the Panel found that successfully combating IFFs would also lead to improvements in governance throughout Africa, which would, in turn, enhance private-sector development and sustainable development in general.

The challenges associated with IFFs are known to generate peace and security concerns and outright wars. A study by Cobham (2014) concludes that IFFs have close linkages to environmental degradation, security concerns and conflicts in Africa. This is because IFFs undermine public institutions and democracy, while strengthening extractive institutions and corrupt officials. In that context, conflicts may arise in the struggle to control the available resources. In fact, IFFs may be used to disturb or subvert legitimate power (IFFs become power). OECD (2018) discusses the impacts of IFFs that go beyond financial concerns in West Africa. The conflicts, in turn, are likely to exacerbate IFFs even further, leading to a vicious circle.

All in all, IFFs have substantial adverse effects on the countries affected in multiple areas. This is also true from a global perspective. For Africa, the continent's image remains tainted, while economic and political power remains at low levels. In short, the continent's chances of rising are reduced when IFFs are increasing, and tackling such flows should be considered a priority for the continent.

1.4 Conclusion

The evidence reviewed in the chapter suggests that IFFs present a serious challenge to development in Africa. Accordingly, tackling such flows should be considered a priority. Given that IFFs from Africa involve actors from across the globe, and the laws and policies of non-African jurisdictions have a serious impact on illicit flows from Africa, reviewing the adequacy of global frameworks to tackle those flows should be a priority (African Union and ECA, 2015). Based on this, in the subsequent chapters, the mechanisms that lie behind IFFs (chapter 2) and the governance arrangements designed to frustrate them (chapter 3) are reviewed. Chapter 4, includes highlights of situations in which it apparent that those governance arrangements are not sufficient to deal with the ways in which IFFs work in practice. In chapter 5 policy recommendations to address these inadequacies and fill in those gaps are presented.

Chapter 2. How illicit financial flows in Africa operate in practice

In the present chapter, how IFFs are able to occur in Africa, and the techniques used to acquire, transfer and store or hide illicit financial flows to or from the continent are laid out.

2.1 The political economy of illicit financial flows in Africa

2.1.1 Weak accountability and perverse incentives

One of the key aspects of IFFs is the weakness of accountability mechanisms, which allow those involved in such flows to perpetrate them unpunished. Actors involved in IFFs in the public, private and criminal sectors are often able to perpetrate such flows from behind a veil of secrecy, or, even when their actions are uncovered, to escape punishment. Indeed, while one might expect electoral competition to drive governments to prosecute those perpetrating such flows, experience shows that this is often not the case. For example, the LuxLeaks scandal in Germany in 2014 did not result in the wholesale prosecution of the perpetrators, but rather in an unpopular tax amnesty under which there was no collection of back taxes despite popular dissent in Germany and Europe (EURODAD, 2014).

This context allows those in the public sector who should be working to prevent IFFs to sometimes exploit their position and become beneficiaries or perpetrators of such flows. This may take the form of public officials receiving bribes in return for not preventing such flows. Officials may be using IFFs themselves to transfer the proceeds of their own illicit activities; or they may have a personal or political association with the persons carrying out the flows. Evidence shows that this phenomenon is or was prevalent in Cameroon and South Africa and in Tunisia under former President Ben Ali , for example Nyaissi (2017), Kellecioglu (2017) and Rijkers, Arouri and Baghdadi (2016), respectively). This phenomenon can be exacerbated if politically influential firms have an interest in IFFs being able to continue, and are able to lobby governments not to take action against them (see for example Rijkers, Arouri, and Baghdadi 2016 for evidence of this in Tunisia under former President Ben Ali).

Personal or political benefit to public officials from policies that encourage IFFs may particularly arise in countries that institute financial secrecy or low tax rates or both . This is because low tax rates and financial secrecy attract IFFs into the country's banks and allow them to benefit from supplying financial and legal services to those perpetrating those flows. Covered in more detail later in the report.

Despite these perverse incentives, it is in the interest of African Governments to stem those flows if they want to maximize the extent to which earnings are reinvested domestically or spent on domestic goods and services, or to increase tax revenue. Preventing or reducing IFFs should also be of interest to them if they wish to prevent State capture, crime and corruption.

Other factors, such as a lack of public fiscal resources to take new action against IFFs, can also contribute to the weakness of government actions against such flows, Furthermore, conflicts of interest in efforts by external partners to strengthen capacity in Africa to tackle IFFs may mean that those efforts are not fully effective. This includes the Tax Inspectors Without Borders initiative, in which some of the "borderless" tax inspectors advising African countries worked for international accounting firms that also advised multinational firms that attempt to find loopholes in African countries' tax laws (ECA, 2018). Private-sector firms with similar conflicts of interest also offer transfer pricing risk assessment tools to African countries.[3] Another key stakeholder that could frustrate IFFs from Africa but often does

3 3Intervention made by T. Shongwe at a meeting on transfer pricing toolkits held at ECA in Addis Ababa on 28 September 2017.

not – the formal financial sector – can also have perverse incentives to look the other way when it receives suspicious transaction requests or suspicious requests to open accounts. The next section of the present chapter includes a discussion on how weak mechanisms for preventing IFFs fail to prevent those flows from taking place.

2.1.2 Weak mechanisms and institutions for preventing illicit financial flows

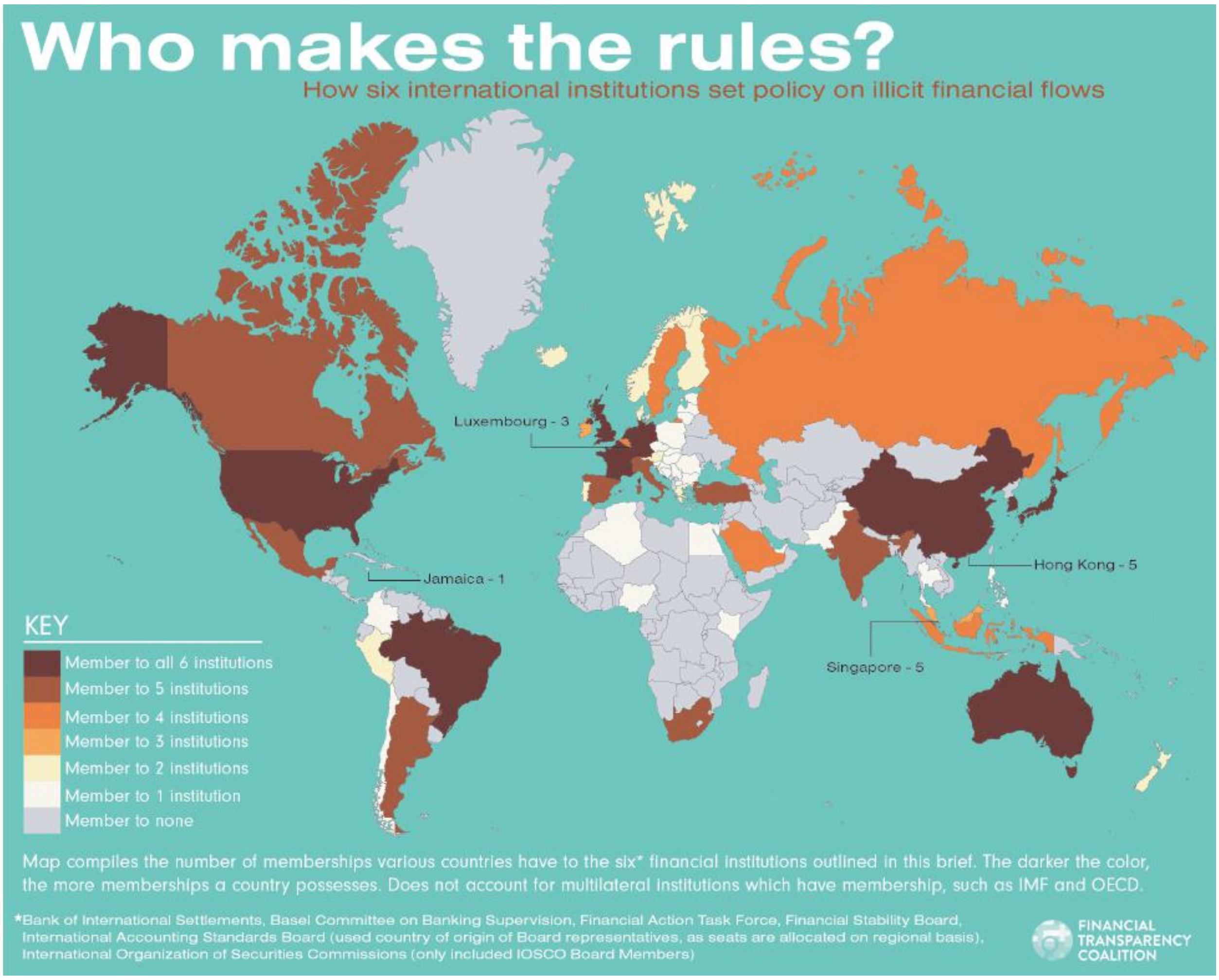
African Governments tend to employ law enforcement and regulatory agencies to prevent or reverse IFFs. Those agencies are the police, financial intelligence units, anti-corruption agencies, public procurement agencies, customs agencies, revenue services and other specialized or general agencies. Unfortunately, preventing IFFs faces significant challenges stemming from lack of knowledge, poor data, corrupt practices, capacity constraints and limitations in enforcement capabilities (African Union and ECA, 2015). One example illustrating the challenges facing agencies that are meant to prevent IFFs is an ongoing court case against two tax auditors in Liberia who had promised to halve a tax bill in exchange for a bribe. Another such example (related to capacity constraints rather than corruption) is that few African countries have institutions that provide instruction on how to recognize and combat abusive transfer pricing, and in countries where such institutions do exist, such institutions are underfunded (see e.g. ECA, 2018 for details). Other public institutions relevant to efforts to combat IFFs also face severe challenges in terms of financial, technological and human resources. For instance, African Governments and research institutions often find it difficult to retain staff who are recruited by the very corporations that are being researched or investigated (African Civil Society Circle, 2015; United Nations, no date). Another case of capacity constraints can be seen in a comparison of African and European countries. For instance, Kenya, with a population of 42 million, employs 3,000 tax and customs officials, while the figures are 140 million and 5,000 for Nigeria, yet there are 30,000 tax officials in the Netherlands for a population of 10 million (AfDB and Global Financial Integrity, 2013). It is worth noting, however, that improving the efficiency, capacity and integrity of tax officials is even more important than increasing their numbers.

International organizations are involved in setting global norms and rules that tackle IFFs. In particular, the World Customs Organization, the United Nations Tax Experts Committee, the United Nations Office on Drugs and Crime (UNODC), the Financial Action Task Force (FATF), G-20, OECD, the World Bank Group, the Bank of International Settlements, the Basel Committee on Banking Supervision, the Financial Stability Board, the International Accounting Standards Board, the International Organization of Securities Commissions and the International Monetary Fund (IMF), are working on various aspects of IFFs and from different perspectives. They provide not only global norms and rules, but also important research, policy advice and direct technical support and improved coordination and coherence to support the continent's efforts to cope with those flows. They also conduct advocacy on the need to tackle the problem and how to do it (Financial Transparency Coalition 2017; United Nations, no date).

African countries tend not to be represented in such organizations. Figure 2 below shows the global distribution of membership of selected international institutions through which States agree on policies to tackle IFFs.

As can be seen in the figure above, certain countries are members of the six key institutions that are leading the process of rule-making, while the only African country that is a member of most of those institutions is South Africa. In addition, OECD is leading efforts to tackle tax avoidance by multinational corporations, but no African country is a member of this organization (though 21 African countries are members of the Inclusive Framework on BEPS, which discusses these issues, but the extent to which this will allow African countries to influence international efforts in this regard remains to be seen) (ECA, 2018). 24 African countries are members of the Global Forum on Transparency and the Exchange of Information and Tax Purposes, but this forum appears to discuss the implementation of standards developed by the OECD on exchange of information, rather than giving African countries a say in the design of those standards (OECD, 2018b and 2016).

Figure 2: The institutional rule makers and their member States



Source: Financial Transparency Coalition (2017).

In other words, some countries make the relevant rules, and the rest of the world simply implements them.

Global rules allow certain jurisdictions to pursue policies that make it easy for them to act as “destination” jurisdictions for IFFs, from which they may benefit (as mentioned above). Those policies include financial secrecy provisions or low tax rates. Even where a country’s rules may not explicitly guarantee financial secrecy, it may have policies that make it difficult for other countries to obtain information on funds held by their nationals. One example is the “upon request” system on tax-pertinent information instituted by the Government of Switzerland, whereby governments must send specific case-by-case requests to access information on potentially illicit tax practices. There are several reasons why this system is barely enforceable in practice. First, African Government officials or employees may have a personal interest in refraining from requesting such information. Second, the requesting institution must make a specific request, which requires prior knowledge that is very difficult to obtain. This is one of the reasons behind the push towards the automatic exchange of tax information between tax authorities – so that tax authorities do not need to know what to ask for in advance Yet participating in the automatic exchange of tax information proposed by the OECD requires new legal frameworks and IT systems to be put in place, which has proven challenging for African countries - it appears that only 3 have so far managed to do so (ECA, 2018).

In addition, African countries technically renounce their right to withhold taxes on financial resources channelled out of their countries when they conclude double-taxation agreements with tax; this provides an incentive for firms and others to exploit cross-border accounting and intra-group transactions to shift their earnings into a form in which taxation rights accrue to the other jurisdiction, if the rate of tax is lower, In this way, tax havens substantially erode the tax bases of African countries (African Civil Society Circle, 2015).

2.1.3 Ability of actors to exploit loopholes, and the feedback loop

The weak response of African countries to IFFs is even more problematic because of the strengths of the private sector and criminal organizations in interpreting, and finding loopholes in laws and rules aimed at preventing such flows, in part because of the legal, accounting and finance assistance they can draw on (ECA 2017; United Nations, no date; ECA, 2013). This was apparent from discussions in the case study countries.

As indicated in chapter 1, IFFs from Africa are estimated to involve sums of upwards of $100 billion per year. This suggests that those benefiting from such flows may have a substantial interest in ensuring that they can continue to perpetrate them. Those behind the flows are incentivized to continue to undermine accountability mechanisms for those involved in the flows, to corrupt public officials to ignore the flows (indeed, public officials in some cases may be those with a principal financial interest in a given flow), to weaken policies to tackle the flows and to maintain their capacities to take advantage of loopholes. They also have access to the financial resources needed to do so, through bribes or political campaign contributions. In that way the illicit revenue made possible by IFFs maintain or strengthen the deficits that made such flows possible in the first place.

2.2 How funds transferred as illicit financial flows are acquired

From a political perspective, there are a number of different methods through which IFFs are acquired, transferred internationally and then stored or hidden. The following sections detail the methods used for this.

2.2.1 Corruption

Corruption provides officials and their counterparts in the private sector with funds that can be transferred out of their countries, which are considered to be illicit financial flows. They may include bribes received and funds embezzled from the State. Embezzlement can be carried out through officials abusing their discretion to award government contracts, subsidies or directed credit to firms belonging to an associate (see, for example, Kane and Rice, 2000). Subsidies and directed credit form an integral part of industrial policies essential to enable Africa to pursue structural transformation, but they should not be abused to benefit the politically connected (ECA and African Union Commission, 2014).

A recently conducted household survey in Cameroon gives the average citizen's perception of corruption. The practice is considered a "plague that hinders the good functioning of institutions … [it] is discredited by 44 per cent of the population and more than half of the urban area". Some 62 to 72 per cent of the population claim that agents of justice, such as police or *gendarmerie*, and the tax administration are engaging in corrupt practices. One in five Cameroonians reported to have been victims of corruption during the period under study. (Cameroon National Institute of Statistics, 2017).

2.2.2 Theft of natural resources

The extractive sector is particularly vulnerable to IFFs, although other sectors can be a source of such flows, including logging, for example, as is frequently the case in Central Africa (African Union and ECA, 2015). Countries, such as the Democratic Republic of the Congo and Nigeria, which have extensive oil, gas and mineral sectors, are vulnerable to that problem (see for example Ndikumana and Sarr, 2016). In addition, the natural resources sector in Cameroon, and in particular the oil and timber industry, is an important conduit of capital flight through trade misinvoicing (Ndikumana and others, 2016). For example, at the port in Douala, timber from Cameroon is declared as being from the Congo, enabling exporters to fraudulently evade paying tax in Cameroon, as it is assumed that tax has already been paid in the Congo. Further, data collected in Cameroon have revealed that $1 billion is lost annually in the artisanal mining sector in the Adamawa region (Mbonteh, 2017).

2.2.3 *Tax evasion and aggressive tax avoidance*

Tax evasion and aggressive tax avoidance are also often carried out through international trade or investment, when an international transaction is mispriced or misinvoiced to reduce tax liability in one jurisdiction (see e.g. the section on South Africa in Chapter 1 of the present report). However, firms may also withhold funds from the tax authorities funds illicitly through aggressive tax avoidance or evasion even before transferring them out of the country. The use of confidential negotiation and tribunals within revenue authorities can also lead to the amounts of tax due being modified without any clear explanation being furnished to the general public.

2.2.4 *Unequal contracts and other forms of illicit financial flows*

Another harmful aspect of commercial IFFs is the use of unequal contracts. Those contracts are particularly common in the resource extraction sector. Basically, they involve the government in which the value of a resource concession awarded is substantially lower than the amount bid, or public procurement in cases in which governments overpay for goods or services. The contracts are often concluded or negotiated secretly and can be motivated by corruption, though it appears that in some cases, particularly with extractive licensing, African Governments may be less well informed than extractive sector corporations with regard to the true value of the resources in question. The disparity in values is often extensive and almost certainly the result of bribes paid to public decision makers (ECA, 2016a; 2017; United Nations, no date).

2.2.5 *Organized crime*

Organized criminal groups obtain illicit wealth through a range of activities that are too extensive to list here. They may wish to transfer funds across borders in order to repatriate illicit funds from a foreign "subsidiary", to invest or spend illegally obtained funds or to make payments to suppliers or employees in their organizations along their supply chains. They may also have an interest in hiding the proceeds of their activities in jurisdictions offering financial secrecy or tax havens, for the same reasons as others that use those jurisdictions (see section 2.4 for further details). Finally, they may also have an interest in laundering their profits through international transactions using otherwise legitimate businesses (The Economist, 2014; United Nations, no date).

One example from the case study countries is that challenges related to border control in Morocco allow contraband goods, human beings, illicit drugs and terrorist materials to be smuggled across the border, allowing those sources of illicit financial flows to continue to exist (Davis, 2017).

2.2.6 *Licit means*

Funds used in IFFs may also be obtained through licit means, but the flow may be illicit because of the way it is transferred or used. This can include the profits of legitimate commercial enterprises and legitimate earnings of individuals who seek to use international transfers to avoid or evade taxes or foreign exchange controls or to finance illicit activities at the other end of the transaction (including terrorism).

2.3 How illicit financial flows are transferred

2.3.1 *Informal transfers*

Although there is a wide network of banks and banking laws globally, a large portion of the world does not use the formal banking system. This includes barter trade, which may be as complex and criminal as the exchange of ivory for small arms. Such trade is not recorded in official trade statistics at either import or export, and its scale is, therefore, difficult to estimate using existing methods for estimating IFFs.

A particular example from Africa is the illicit trade in ivory. The lucrative nature of poaching and the opening up of the ivory trade worldwide has created a source of income for terrorist groups in Africa. The promise of a quick payday at little cost has made this a profitable and powerful enterprise among criminal organizations globally. Poaching, in particular for ivory, destined as trophies for the traditional markets of Asia (China) and the United States of America, skyrocketed over the past two years in Africa. The business continues to be lucrative, with an estimated annual volume of 75 tons of ivory worth $62 million, according to the transnational organized crime threat assessment for East Africa carried out by UNODC.

According to a source within a militant group, between one to three tons of ivory, fetching a price of roughly $200 per kilogramme, pass through the ports in southern Somalia every month. A quick calculation puts Shabaab's monthly income from ivory at between $200,000 and 600,000. Maintaining an army of about 5,000 men, each earning $300, demands at least $1,500,000 a month, of which the ivory trade could supply a big chunk.

Indeed, increased poaching has opened up not only the legal but also the illegal ivory trade. Middlemen and women can now legally acquire and sell ivory. For criminal enterprises globally, this provides a quick and secure source of funds to promote their various agendas. This form of barter and cash is almost completely unmonitored unless and until elements of it enter into the formal banking system or the formal economy for laundering of the proceeds. Consequently, this remains a global unresolved challenge.

One of the most significant problems with transnational crime facing Africa is the trafficking of small arms and light weapons. Using money-laundering techniques, arms traffickers exchange money for small arms. These are exchanged for drugs or ivory, and the exchanges continue as barter, with only periodic engagement with actual money or banks, until finally there is movement from one account to another for what is perceived to be a legitimate exchange of goods or services against monetary payment, completely shrouding the diverse web of illegal and criminal transactions that have taken place.

There are also other forms of money transfer that may be considered as semi-formal, as they may avoid regulations but involve service providers in the formal sector. Among them are transfer through Internet money transfer firms or "mobile money", and postal money transfer.

Box 1: Informal methods of transfer and laundering

Informal methods of transfer today include:

1. Financial wire transfer to relatives or friends or with deliberately falsified details
2. Trade-based money laundering in which a higher amount is paid across borders for goods or services than is declared either to a relative or friend or through an undisclosed intermediary
3. Misuse of money or value transfer services using hawala and mobile technology
4. Cash smuggling across borders

The money being made from this is being used and or invested and laundered through:

5. Trade in khat
6. Real estate often within rather than outside borders
7. Local business to finance and ease the logistics of the criminal activity being engaged in, for example, truck transport, petroleum, farming and other criminal activities, such as smuggling people across borders.

Source: International Bank for Reconstruction and Development (2013).

The informal systems of cross-border transfer discussed above do not make use of the formal banking system but, instead, form part of a predominantly cash-and-barter-based economy unregulated by the global system. However, very often segments of the transaction take place through the formal system and elements of a particular system that are not well regulated or are regulated in such a way as to allow for protection of criminal activity are used. For example, a criminal may use the same tax havens or secrecy jurisdictions, discussed below, or corporations may use banks or cash or store jewels or other valuables in a safe deposit box. The protection that is afforded to all users of those forms of domestic banking is secrecy.

2.3.2 Formal transfers

Funds that pass through the formal system to cross borders are subject to international or global institutions and rules. Secrecy is the main means used to circumvent those processes, and continues to be the greatest impediment to untangling the web of IFFs (African Union and ECA, 2015). It should be noted that even participants in the formal system may also periodically resort to informal forms of transfer using minerals or agricultural raw materials, and then access secret banking and finance systems. In the next section, which covers formal methods of transfer, various methods of effecting IFFs internationally through the formal financial system are explored.

2.3.2.1 Money laundering

Money laundering is generally defined as "transferring illegally obtained money or investments through an outside party to conceal the true source".[4] This activity may prevent law enforcement authorities from uncovering or confiscating the proceeds from a criminal activity, or using the proceeds as evidence in a criminal prosecution. Such processing may involve disguising the beneficial owner of either the actual criminal proceeds or other property that might be subject to confiscation. Money laundering can be carried out with or without the knowledge of the financial institution or counterparty to financial transactions, although to be guilty of the crime of money-laundering, actual or implied knowledge is required. The number and variety of transactions used to launder money has become increasingly complex, often involving numerous financial institutions from many jurisdictions, and increasingly using non-bank financial institutions, such as bureaux de change, cheque-cashing services, insurers, brokers and traders. Proceeds from money laundering may take the form not only of cash but also of other financial instruments. In addition, the use of non-financial businesses and markets for laundering appears to be increasing, including not only shell companies created as laundering instrumentalities, but also for businesses in the formal sector with actual operations from which illicit funds are intermingled with legitimate funds (The Economist, 2014). Money laundering methods are diverse and constantly evolving. They range from trade-related operations to online banking. Money launderers may also operate outside financial systems, for example, through alternative remittance systems and the methods detailed above in the section on informal transfer methods.

Other financial crimes can be associated with, or exist in parallel with, money laundering, for example corruption, fraud or the control of a financial institution by organized crime. This may include a series of fraudulent activities, such as counterfeiting invoices and the corrupting of bank employees. Accordingly, a whole chain of criminal or illegal activities may culminate in the flow of illicit money through the financial system.

2.3.2.2 Base erosion and profit-shifting

Within base erosion and profit-shifting, two main practices are notable in Africa: abusive transfer pricing; and thin capitalization.

Abusive transfer pricing takes place when a multinational corporation takes advantage of its multiple structures to shift profit across different tax jurisdictions. The High Level Panel had attained evidence that abusive transfer pricing was occurring on a substantial scale in Africa. For instance, it had found corporations that for years and decades had reported making losses in African countries. This was almost certainly the case because of profit-shifting, as no business entity could remain in operation if it were making losses for a long time; it was made possible by using paperwork to create a picture showing that operations are largely conducted outside the country of the real operations, such as in a tax haven. This in turn, is made possible by overinflated invoicing, under which the tax havens receive high consultancy and service fees. Those costs are added to the operational costs in the real country, in amounts to eliminate operational revenue, and thereby avoid profit taxes and often other taxes. Because the inflated invoices are transferred to the operating corporation's own subsidiary or branch, the profits from the invoices are kept within the corporate entity. However, as the profits made on those invoices are registered in the tax haven, little or no tax is paid (ECA, 2018; United Nations, no date; ECA, 2013).

4 Definitions of money-laundering have been adopted in everyday language – see the Oxford University Press database (http://global.oup.com). With the exception of what constitutes a specified unlawful activity, there are no significant differences in the definition of money laundering across institutions. The Financial Action Task Force defines money laundering as "the processing of … criminal proceeds to disguise their illegal origin"; the International Organization of Securities Commissions as "a wide range of activities and processes intended to obscure the source of illegally obtained money and to create the appearance that it has originated from a legitimate source" (FATF, 2017), and IOSCO Technical Committee, 1992, Report on Money Laundering, October, No. 25, which is available at www.iosco.org/library/pubdocs/pdf/IOSCOPD25.pdf.

As noted by officials in Morocco, abusive transfer pricing related to services and intellectual property can be particularly challenging for tax authorities to combat.[5] However, African countries have employed techniques to tackle this problem, for example the registration of management fees, or the imposition of a ceiling on certain service fees as a percentage of turnover (ECA, 2018; United Nations, no date; ECA, 2013).

Thin capitalization (a low ratio of capital to debt in a company's funding) becomes a means of effecting IFFs when loans between subsidiaries of the same multinational group are used to artificially reduce tax liability, as interest payments are tax-deductible. Under this practice, a subsidiary in a lower-tax jurisdiction lends (sometimes at inflated interest rates) to a subsidiary in a higher-tax jurisdiction. The taxable earnings of the subsidiary in the higher-tax jurisdiction are reduced through the loan repayments, while those of the subsidiary in the lower-tax jurisdiction are increased. In theory, thin capitalization can also be used to transfer funds between countries for purposes other than tax evasion or avoidance (especially where the interest rate charged is artificially high and the capitalization is a means to affect a net transfer of funds from the thinly capitalized firm to another company).

Another practice that can be abused to reduce tax liability is tax inversion. This involves a large company undertaking a cross-border merger with a smaller one in a more tax-friendly jurisdiction. In that manner, the tax burden of the large company is substantially reduced. There are many other forms of aggressive tax avoidance, including the abuse of double taxation treaties to avoid paying taxes on activities that were not intended to qualify for tax relief (see e.g. ECA, 2018).

2.3.2.3 Trade misinvoicing

As part of or in addition to those means of effecting IFFs, otherwise licit trade in goods and services, including financial services such as cross-border loans, can be misinvoiced, mispriced or otherwise manipulated to transfer wealth secretly between different jurisdictions or to evade foreign exchange controls or both. There is empirical evidence of substantial IFFs through each of those channels (ECA, 2013; United Nations, no date; South African Revenue Service, 2014).

In particular, overinvoicing of imports and underinvoicing of exports are used frequently, which has prompted several African countries to introduce pre-shipment inspection to detect such practices. Trade mispricing is extremely common in the natural resource sector. Most African countries lack the means to verify the correct price, quality and quantities of natural resources produced. Instead, self-regulation is the rule and African authorities have to rely on corporate declarations. A number of African countries are trying to overcome this challenge by resorting to a variety of incentives to encourage accurate reporting, such as a partial refund of tax expenses on reported trade flows (ECA, 2018; United Nations, no date; ECA, 2013).

Another variant of trade mispricing concerns the misinvoicing of services and intangibles, such as intellectual property fees, management fees or payments for overseas education, medical tours and foreign insurance. Information and communication technologies are making it possible to transfer large sums of money swiftly and easily. It is very difficult for authorities to monitor those transactions or to determine their validity and legality in terms of price, quality and quantity. Unfortunately, in this area, Governments of Africa also lack adequate tools, information and staff (ECA, 2018; United Nations, no date; ECA, 2013).

Data on trade between firms in Latin America and counterparts that are part of the same multinational group in the United States of America also shows substantial mis-invoicing of trade between different parts of the same multinational enterprise. Vicard (2015) also finds evidence of this using data on related-party trade transactions for France.

2.4 Where illicit financial flows are stored

Financial secrecy jurisdictions and tax havens

5 Interview with the Ministry of Economy and Finance of Morocco, 19 May 2017.

It appears that tax havens and secrecy jurisdictions are central enablers in facilitating IFFs from Africa (Tax Justice Network, no date; United Nations, no date). As most financial secrecy jurisdictions are also tax havens, and vice versa, no distinction is made between them in the present report.

Some degree of customer confidentiality is normally guaranteed by law for bank customers. It embodies some level of protection of confidentiality of information on individual and business affairs from others, including from government. Bank supervisors normally have access to such information but cannot share it with government agencies. Banks separately provide information on interest income to tax authorities. Financial secrecy jurisdictions make it more difficult for the authorities to obtain such information for law enforcement purposes beyond bank regulation and supervision.

Such rules are abused by the perpetrators of IFFs to avoid detection and punishment. The opacity of the information they hold prevents public authorities from obtaining the data needed to collect full taxes owed to them by individuals and multinational corporations. Although recent reforms under the OECD's BEPS process have succeeded in making it easier to access information stored in many such jurisdictions, which have agreed to exchange information on request and automatically. However, there remain challenges for African countries to access such information. First, there remain loopholes in the regime for the international automatic exchange of tax information, meaning that individuals may be able to avoid having their information exchanged (Cotorceanu, 2015; Omartian, 2017). Moreover, it can be difficult for countries to access such information from certain jurisdictions, despite their agreement to provide it, for a number of reasons. First, some jurisdictions often take a long time to provide information to developing countries. Second, African countries often do not know which taxpayers to request information about, complicating the process of requesting tax information from other jurisdictions. Third, though automatic exchange of tax information would seem to solve the problem identified in the previous sentence as it provides for jurisdictions to send tax information for all taxpayers that are residents of the counterpart country (and meet certain other requirements), in order to receive information under the relevant international agreements for automatic exchange, jurisdictions need to put in place sophisticated software and legal guarantees to ensure that the information exchanged remains secure. Very few African countries have these measures in place (as of 5 April 2018, only Mauritius, Seychelles and South Africa were benefiting from the automatic exchange of tax information) (Organization for Economic Cooperation and Development, cited from ECA, 2018). Even in cases in which double taxation treaties exist with a tax haven, there is often no provision for the automatic exchange of tax information, and no actions have been taken to address the many tax avoidance schemes that exist. In addition, double taxation agreements may not help to prevent the transfer to such jurisdictions of funds obtained through criminal activities, including corruption, unless the perpetrators are also violating tax laws and can be prosecuted on that count. As a result, tax havens and secrecy jurisdictions are problematic not only because they host offices of multinationals which can use them to evade taxes, but also because they serve other purposes, such as hiding money generated by crime or corruption. Strengthening the implementation of financial transparency could help resolve both issues (tax and criminal matters).

Despite this, steps are already being taken in some African States to set up banking secrecy centres. For example, Kenya appears to have been discussing such a move (Waris, 2013; Tax Justice Network –Africa, 2017).

Chapter 3. Current global regulatory frameworks and initiatives to resolve the problem of illicit financial flows

The various international agreements and efforts to promote cooperation to restrict IFFs are covered in the present chapter, ahead of an appraisal in chapter 4, which highlights the gaps in this architecture.

3.1 Implementation of the High Level Panel's recommendations

Since the release of the High Level Panel report in 2015, there has been a lot of movement forward. The Addis Tax Initiative resulted from the Third Conference on Financing for Development, held in Addis Ababa in 2015, and Sustainable Development Goal 1 contains a specific target (16.4) to reduce the level of illicit financial and arms flows. In addition, many national activities organized under the Extractive Industries Transparency Initiative have been effective in strengthening public debate and promoting policy options around signature bonuses, unpaid royalties, fuel subsidies and the theft of crude oil and refined products. In addition, the inclusion of the notion of "real property" (roughly equivalent to beneficial ownership) in the Extractive Industries Transparency Initiative (EITI) Standard, in theory will have strengthened the power of the Initiative to help to prevent IFFs in the extractive sector.[6] Several African countries are trying to implement this with country assessments under the guidance of UNODC. The failure to implement article 9 of the United Nations Convention against Corruption is a weakness in those countries.

Action is being taken by some countries to improve financial transparency. For example, some countries have taken steps to create public registries of information on the 'beneficial owners' of all firms, namely those who have the right to receive the profits generated from the firm (Global Financial Integrity, Trust Africa, the Tax Justice Network – Africa, the Pan African Lawyers' Union, CRADEC and Civil Society Legislative Advocacy Centre, 2017). However, as noted in chapter 2 of the present report, the actions related to tax havens and financial secrecy jurisdictions continue to undermine those efforts by providing a weak link in global cooperation against IFFs, which can be used to transfer illicit funds free of transparency. Though the OECD list of non-cooperative jurisdictions has been reduced to just one jurisdiction, in practice, many jurisdictions continue to operate in ways which make it very difficult for African countries to obtain the information needed to pursue prosecutions or asset recovery or both. Nevertheless, the UNODC-World Bank Group Stolen Asset Recovery initiative and laws in specific countries, such as the Lex Duvalier laws in Switzerland allow for the repatriation of proceeds from criminal or corrupt activity, and there have been a number of cases in which assets have been returned. For example, action is ongoing to repatriate stolen assets to the Ukraine.

As can be seen from this limited list of areas of progress, limited progress has been made in implementing the Panel's recommendations cited in box 2, at least according to information available. Many of the other recommendations are continuing to be implemented at the global and national levels, though progress in that regard varies from country to country. The next section and chapters include discussions on the global governance architecture for tackling illicit financial flows that is currently in place and the extent to

6 On 23 February 2016 in Lima, the EITI Board adopted the Second EITI Standard, replacing the first issued in May 2013. The innovation of this Standard is the disclosure of "real property" of mining companies. According to EITI Requirement 2 (f), "a real owner (s) of a business is the physical person (s) who, directly or indirectly, owns or ultimately exercises the right of ownership or control of the legal entity. Thus, according to EITI Requirement 2 (c), effective 1 January 2020, it is required that EITI implementing countries require - and disclose - information about real property in their inclusion in the EITI Report. This applies to companies bidding, operating, or investing in extractive assets, and this should include the identity of their beneficial owners, their degree of participation, and the terms and conditions for the exercise of such participation or the control of such enterprises.

which the Panel's recommendations have been implemented since the release of the report of the High Level Panel in 2015.

Within the global framework within which IFFs occur, there is a system of institutions, some of which have tasks that overlap and contradict each other, and a system of international laws that both allow and impede illicit financial flows. In this section those elements within the global system are reviewed.

Box 2: Recommendations by the High Level Panel on Illicit Financial Flows from Africa (2015)

- Combating IFFs requires Africa to engage intergovernmental bodies and governments outside the continent.
- African countries should make sure that they have laws against intentionally mispricing exports or imports of goods or services.
- African countries should ensure that it is mandatory for all companies to be registered for tax purposes. Relevant government agencies should be given the capacity to administer these processes.
- African States' customs authorities should use available databases on prices of traded goods to identify trades that require additional scrutiny. They should also collect trade transaction data and create searchable databases with that information.
- National and multilateral agencies should make fully and freely available, and in a timely manner, data on pricing of goods and services in international transactions, using accepted coding categories.
- African countries should establish transfer pricing units in national revenue authorities.
- African States should require multinational corporations operating in their territories to provide their transfer pricing units with country-by-country or subsidiary-by-subsidiary financial reports. African countries should also push for project-by-project reporting in the near term. Non-African countries should also require multinational corporations that are organized, regulated or incorporated in their jurisdictions to publish country-by-country financial information.
- African countries should support the OECD project on base erosion and profit-shifting. In addition, there should be automatic exchanges of tax information between African countries, and Africa should call for automatic exchanges of tax information globally, subject to national capacity and to maintaining the confidentiality of price-sensitive business information.
- All countries should require that beneficial ownership information is provided when companies are incorporated or trusts registered; that such information is updated regularly; and that it is placed on the public record. Beneficial ownership declarations should also be required of all parties entering into government contracts. Those making false declarations should be punished.
- African countries should review their current and prospective double taxation conventions, giving consideration to the Model Double Taxation Agreement developed by the African Tax Administration Forum.
- Regional integration arrangements should be used to introduce standards governing tax incentives so as to prevent harmful tax competition.
- African countries, as well as companies operating in extractive industries in Africa, should join voluntary initiatives, such as the Extractive Industries Transparency Initiative. Africa should also push for mandatory country-by-country and project-by-project reporting requirements immediately in the extractive sectors.
- African States should establish or strengthen independent institutions responsible for preventing IFFs, including, among others, financial intelligence units, anti-fraud agencies, customs and border agencies, revenue agencies, anti-corruption agencies and financial crime agencies. All such agencies should render regular reports on their activities and findings to national legislatures.
- African States should create methods and mechanisms for information-sharing and coordination among the various government institutions and agencies responsible for preventing IFFs.
- Robust regimes should be put in place by central banks and financial supervision agencies for the supervision of banks and non-bank financial institutions. Such regimes must require mandatory reporting of transactions that may be tainted with illicit activity.
- African Governments should ensure that investigators responsible for identifying those engaged in crimes that generate earnings are also required, trained and empowered to investigate the financial aspects of these cases, and that those who facilitate the movement and laundering of the proceeds of these crimes are prosecuted. Each African country's financial intelligence unit should share information with other African financial intelligence units about cases of individuals and companies being prosecuted for facilitating the movement and laundering of the proceeds of these crimes.
- UNODC should extend its work on transnational organized crime in Eastern and West Africa to cover the whole of Africa. The work should include estimates of the financial magnitude of various types of criminal activity affecting the continent.

- IFFs should be integrated as a specific component in the African Union Convention on Preventing and Combating Corruption.
- African States should ensure that the public can access national and subnational budget information, 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.
- African Governments should publish lists of politically exposed persons, asset declarations filed by them and information about whether the country's laws prohibit or restrict the ability of their politically exposed persons to hold financial accounts abroad.
- African countries should adopt a declaration under which they commit to combating IFFs and should urge similar actions at the global level.
- Civil society organizations should be given the operating space and legal freedoms required for advocacy, activism and research on IFFs.
- The functions of the Advisory Board on Corruption listed in article 22, paragraph 5 of the African Union Convention on Preventing and Combating Corruption should be expanded along the following lines: "To develop methodologies for analysing the nature and extent of illicit financial flows from Africa, and disseminate information and sensitize the public on the negative effects of illicit financial flows from Africa."
- The African Peer Review Mechanism should incorporate IFF-related issues in its questionnaires for the country review process.
- A study should be conducted of potential methodologies and reforms available to facilitate taxation of multinational corporations in accordance with where their economic activities occur.
- ECA should be mandated to undertake research on the cost-benefit analysis of tax incentives for African countries.
- ECA should produce a practical document available to all African countries on operational measures for the adoption of policies to combat IFFs, and should support advocacy actions detailing the dangers to the economic, social and political lives of African countries.
- African countries must become involved with the work of OECD on base erosion and profit-shifting in order to ensure that global rules being discussed and agreed on do not result in increased IFFs from Africa. African countries should consider coordinating their efforts and presenting regional or broader unified positions in response to OECD consultations and meetings. In cases in which OECD adopts measures that African countries determine will hurt their countries or the continent as a whole, the African Governments should recommend and publish measures that all African countries can take to counter profit-shifting practices detrimental to African countries.
- ECA should be mandated to assess the impact of financial transparency initiatives on African economies, including the relevant provisions in the United States Dodd-Frank Act and comparable legislation elsewhere on Africa, and make appropriate recommendations.
- The Bank for International Settlements should publish its data on international banking assets by country of origin and destination in a matrix format, along the lines of the data published by IMF for bilateral trade.
- The global community in all of its institutions should eliminate secrecy jurisdictions, introduce transparency in financial transfers and crack down on money laundering. The African Union, the G-20, IMF and OECD should provide the required leadership in these efforts.
- Stronger collaboration and consistent engagement is needed between Africa and global players, such as the United States, the European Union, the G-8 and the G-20, to help ensure greater transparency in the international banking system, and banks should be required to ascertain the identity, source of wealth and country of origin of their depositors and their deposits.
- The African Union should engage with partner institutions to elaborate a global governance framework that will determine the conditions under which assets are frozen, managed and repatriated. The framework should include the creation of escrow accounts managed by regional development banks that will serve as custodians of the assets determined to be of illicit origin.
- Existing laws that have proved successful in combating IFFs should be replicated, including the Lacey Act in the United States and the South African tax laws that enabled the country to reclaim $2 billion of unpaid taxes.
- IMF, the United Nations and the World Bank should play a more coherent and visible role in tackling illicit financial flows.

Source: Based on United Nations (no date).

3.2 Regulations on illicit financial flows through the formal financial system

There are a number of international agreements and standards related to IFFs in the formal financial system. However, it is worth noting that those agreements or standards may not be applied to transfers of funds obtained through aggressive tax avoidance, or transfers that themselves constitute aggressive tax avoidance; and as noted in chapter 2, IFFs also frequently pass through informal channels. The relevant agreements or standards are detailed below.

3.2.1 Globally applicable rules

Currently, the formalized international financial system involves two sets of cross-border activities: cross-border financial transactions and associated payments; and the cross-border establishment of premises. There is a web of international agreements on cross-border finance. Those relevant to IFFs are codes of conduct.

Codes of conduct[7] established by members of 30 trade associations[8] commonly define "best practice" in such areas as the financial resources of participants (their adequacy to support the risks being borne, policies and procedures related to transactions, such as control and compliance and valuation procedures, relationships among participants, such as fair dealing, the mechanics of transactions, such as documentation and settlements of differences, and acceptable standards, such as manipulation, bribes and rumours. Those codes of conduct are voluntary and, as such, have no legal authority. Nevertheless, they establish a set of standards by which participants are judged in the marketplace, potentially to their cost on a significant scale. The official sector is often involved in an informal way in meetings of market participants designed to review recent developments in this area. According to Passas (2016), collective action of this sort can work against IFFs.

Another area in which the private sector has been the leading agent for change is that of ***harmonized accounting and disclosure standards***. A complication with respect to international transactions is that the accounting standards used by the counterparty may differ from home country standards.

Unquestionably, the most important multilateral agreements affecting international trade in this area have been the OECD Code of Liberalization of Capital Movements and Code of Liberalization of Current Invisible Operations. Those codes provide for the progressive liberalization of capital flows and the provision of financial services on the basis of "national treatment", and they have been revised and updated since their promulgation in December 1961. In spite of the absence of enforcement mechanisms, national legislation has been drastically altered even in non-member States in recent years to comply with the spirit of the codes.

3.2.2 Global governing institutions, jurisdictions and rules

The High Level Panel emphasized that global economic governance in an interconnected world is of critical importance to the success of national efforts for achieving sustainable development. Although efforts have been made over the years, there remains a need to continue to improve global economic governance and to strengthen the role of the United Nations (African Union and ECA, 2015). Economic governance consists of key elements, specifically the institutional framework of government engagement in the implementation of economic policies at both the national and international levels. Even at the global level, the components of economic governance revolve around a number of core elements, which are grouped in three categories: public financial management and accountability; integrity of the monetary and financial system; and regulatory frameworks.

7 For a recent example of the genre, see Federal Reserve Bank of New York (1995). Representatives of the Emerging Markets Traders Association, the Foreign Exchange Committee of the Federal Reserve Bank of New York, the International Swaps and Derivatives Association, the New York Clearing House Association, the Public Securities Association and the Securities Industry Association participated in the preparation of the Principles, whose preparation was coordinated by the Federal Reserve Bank of New York.

8 Perhaps the most important of these are the agreements reached by the International Security Management Association, ACI, International Swaps and Derivatives Association, PSA and London Bullion Market Association.

To date, the global landscape consists of an interlinked network of institutions in the form of groupings, voluntary organizations, regional institutions and collaborative initiatives to address various aspects of IFFs. For instance, the G-20, the World Bank and OECD have jointly spearheaded key initiatives to tackle tax-driven IFFs globally. However, African countries are under-represented in many of these institutions.

United Nations: The United Nations legal and institutional system provides a framework for global economic governance. Through the work of its institutions, conventions and resolutions, the organization has made inroads in this area, setting regulations on different IFF-related issues, such as double taxation, corruption and terrorism financing. Key agencies that have championed this work include ECA, the United Nations Conference on Trade and Development (UNCTAD), the United Nations Development Programme (UNDP), the United Nations Counter-Terrorism Committee Executive Directorate and UNODC. United Nations agencies and bodies are working on various dimensions of IFFs, include UNODC (on corruption, drugs and crime); UNDP (on IFFs and fragile States); the United Nations Department of Economic and Social Affairs, through its practical guide on transfer pricing; and the United Nations Committee of Experts on International Cooperation on Tax Matters. UNCTAD maintains a scaled-down programme on transnational corporations, while various instruments, including the Convention Against Corruption, mentioned above, has set the pace for global action.

The **World Customs Organization** and the **World Trade Organization** are the leading institutions in setting regulations and standards governing the flow of international trade. As outlined in chapter 1 of the present report, trade misinvoicing appears to be responsible for a significant share of IFFs in Africa. The World Customs Organization has implemented various initiatives and programmes to combat customs-related fraud and crime, including the New Counter-Terrorism Initiative for South East Asia and post-clearance audit guidelines. The World Trade Organization, created in 1995, administers international trade instruments that can be relevant to combating IFFs. In particular, the Valuation Agreement aims for a fair, uniform and neutral system for the valuation of goods for customs purposes and prohibits the use of arbitrary or fictitious customs values , such as those used in trade misinvoicing. The Committee on Customs Valuation of the Council for Trade in Goods carries out the Organization's work on customs valuation. UNODC operates the Container Control Programme, which is aimed at preventing smuggling through shipping containers.

Among other global institutions that provide support specifically in asset recovery, the International Criminal Police Organization extends support to the police, while the Camden Assets Recovery Interagency Network, an informal network of law enforcement and judicial practitioners, specializes in asset tracing, freezing, seizure and confiscation. Each member State is represented by a law enforcement officer and a judicial expert prosecutor, investigating judge, depending on the legal system.[9] Other asset recovery interagency networks also exist, including, among them, regional networks in Asia and the Pacific, Southern Africa, Eastern Africa, West Africa, , Western Asia and North Africa and South America. The Egmont Group, which is an informal network of financial intelligence units, has 156 members globally. Support is also provided by the Stolen Asset Recovery Initiative of the World Bank, which also works on stolen assets recovery.

The World Bank and the International Monetary Fund have a strong influence on financial issues at the global, regional and national levels. The IMF Financial Sector Assessment Program provides comprehensive and in-depth assessments of national financial sectors, analysing the quality of the regulatory and supervisory framework. The response of the World Bank to IFFs is threefold: measuring illicit flows; assisting client countries in preventing the underlying behaviours that give rise to illicit funds and supporting country and international efforts to stop the flow of illicit funds and recover stolen assets.

The International Monetary Fund has pressed developing countries to liberalize their economies, including, in particular, their international trade and foreign exchange rate regime. Many countries in the developing world have done so, to the point that there is free exchange of currency in

9 See http://carin-network.org/.

all countries globally except for Angola, Armenia, the Bahamas, Cameroon, Cuba, Ethiopia, Georgia, Ghana, the Islamic Republic of Iran, Libya, Morocco, Myanmar, Mozambique, Nepal, Nigeria, the People's Democratic Republic of Korea, Samoa, South Africa, the Sudan, Tunisia, Ukraine, Uzbekistan, Venezuela and Zimbabwe. This means that 12 out of the 54 African countries still have exchange controls. With globalization of international finance continuing unabated, there is growing pressure for countries to follow this trend (United States, Department of State, 2017b).

The mandate of the **Financial Stability Board** is to promote international financial stability. This is done by coordinating national financial authorities and international standard-setting bodies in developing strong regulatory, supervisory and other financial sector policies. The Board fosters a level playing field by encouraging coherent implementation of those policies across sectors and jurisdictions. One of its functions is to promote implementation of agreed commitments, standards and policy recommendations, through monitoring of implementation, peer review and disclosure. Although membership of the Board only constitutes the G-20 countries, its decisions and recommendations have implications on other countries and the developing world. As a result, participation has been extended to non-G-20 members. African countries have directly engaged with the Board's forums through regional consultative groups. The FSB Regional Consultative Group for sub-Saharan Africa, which involves several African countries, held its eleventh meeting in 2017 (Financial Stability Board, 2017). The Board's Standing Committee on Supervisory and Regulatory Cooperation is charged with undertaking supervisory analysis or developing regulatory or supervisory policy responses. In terms of standard setting, the Board, in partnership with other global institutions, such as the Basel Committee, has developed various standards covering broad policy areas of macroeconomic policy and data transparency, financial regulation and supervision and institutional and market infrastructure.

Group of 20 (G-20). Established in 1999, the G-20 is a major decision-making body on matters relating to the global economy. Issues on its agenda have expanded over the years to address various aspects of IFFs, including their sources and channels. Relevant issues include financial policy and regulation, domestic resource mobilization, tax administration, corruption and illicit capital flows. Several working groups have been established to monitor progress in the implementation of its decisions on specific issues. The Anti-Corruption Working Group, the International Financial Architecture Working Group and the Trade and Investment Working Group are particularly relevant here. The first of those leads the Group's anti-corruption efforts by coordinating collective and national actions taken by its members, working actively with the World Bank, OECD, UNODC, IMF and FATF, as well as with Business 20 and Civil Society 20. The World Bank and UNODC are also working with the Anti-Corruption Working Group to implement the Stolen Asset Recovery Initiative. Achievements include the preparation of the G-20 Asset Recovery Guide.

The **Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development (G-24)** coordinates the position of ministers of finance of developing countries on monetary and development issues in the deliberations and decisions of the Bretton Woods Institutions. In particular, the Group focuses on issues on the agendas of the International Monetary and Financial Committee and Development Committee and other relevant international forums. In April 2017, it released a report in which the authors called for greater focus on developing fair tax rules to guide the taxation of multinational enterprises and international cooperation to prevent harmful international tax competition, negative spillovers from shifts in tax policies in major countries, and IFFs. The Group is also encouraging multilateral support to upgrade the United Nations Tax Committee to the status of an intergovernmental body to enhance the voice of developing countries on international tax policy matters. Currently the membership of the Group includes countries across the developing world. The African members are Algeria, Côte d'Ivoire, the Democratic Republic of the Congo, Egypt, Ethiopia, Gabon, Ghana, Kenya, Morocco, Nigeria and South Africa (Intergovernmental Group of 24, not dated).

The Group of 77 (G-77), an organization comprised of developing countries, is pushing for the creation of a global United Nations tax body. The upgrading of the United Nations Tax Committee would be an important tool for all developing countries. African countries should fully support it.

OECD is a membership-based organization comprised of 35 member countries. It has spearheaded work on tax reforms to address tax-driven IFFs that are of importance to its membership. That work includes Transfer Pricing Guidelines, the Model Tax Convention on Income and Capital and the Convention on Mutual Administrative Assistance in Tax Matters. OECD and G-20 have created a multilateral system for exchanging tax information – the Global Forum on Transparency and Exchange of Information for Tax Purposes. The OECD/G-20 Base Erosion and Profit-Shifting Project now seeks input from non-OECD member countries, and several African countries have become participants of it. This is a welcome initiative, though it would have been preferable if the project's recommendations had been developed with input from African countries. Additionally, the OECD Working Group on Bribery monitors signatories' compliance with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Tax Inspectors Without Borders, a joint initiative of OECD and UNDP based at OECD, aims to help increase developing countries' revenue through practical ways to implement the 2030 Agenda for Sustainable Development. The initiative has also been identified as one of the tools to support developing countries in implementing base erosion and profit shifting actions to improve their ability to effectively tax multinational enterprises (OECD and UNDP, 2017). However, no African States are members of OECD. In addition, the OECD member States themselves are not required to apply the above-mentioned conventions but, instead, select the rules that suit them domestically. Joining in this process may temporarily improve African regulations and staff capacity. However, the rules being implemented always reflect the priorities of the OECD membership, not necessarily those of the non-member African States. For more discussion on OECD tax work, see ECA (2018).

The **Financial Action Task Force** is an intergovernmental body established in 1989 by the G-7 Summit to examine and develop measures to combat money-laundering. Its objectives are to set standards and promote the effective implementation of legal, regulatory and operational measures to combat money laundering, terrorist financing and related threats to the integrity of the international financial system. While FATF does not prescribe national-level legislation, its ability to place jurisdictions on its list of non-cooperative countries and territories gives it the final word in the financial sector and the financial policy arena, as FATF blacklisting can make it nearly impossible for a country to gain access to world markets, receive loans or attract new investment. It has a membership of 37 countries. The Eastern and Southern Africa Anti Money Laundering Group, the Inter-Governmental Action Group Against Money Laundering in West Africa and the Middle East and North Africa Financial Action Task Force are associate members of the organization (Financial Action Task Force, not dated) FATF has developed a series of recommendations that are recognized as the international standard for combating money laundering and the financing of terrorism. They include International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, guidance on correspondent banking services, criminalizing terrorist financing and transparency and beneficial ownership.

The **Bank for International Settlements** was established in 1930 by government central banks and private financial institutions, in the United States, with the original mandate of facilitating the payment of reparations Germany owed after the First World War. The Bank has evolved into a multifunctional player in the financial arena, and also operates on the private market as an asset manager and lender. Referred to as a "bank for central banks", it collects enormous amounts of data on how much money is held offshore. If released, those data would shed critical light on the stability of the global financial system and on where and how money is moving around the world Such data is now published for some countries and territories (see e.g. ECA, 2018).

Basel Committee on Banking Supervision. The regulatory guidelines of the Basel Committee are for assessing banking risks and bank capital requirements. The Committee is very active. It holds meetings of members four times each year, and issues principles of banking supervision intended to improve financial stability. As with many of the other institutions highlighted in this section, those principles have no legal force, and are considered to be soft law. Nevertheless, soft law is often translated into actual law at the national level, as the Committee's standards are rarely subject to domestic legislative scrutiny. The Committee has issued three sets of principles and regulations, known as Basel I (in 1988), Basel II (in 2004) and Basel III, which will go into effect in 2019. Business-20 has expressed concern that the Basel III reforms were "about what Europe and the United States need to do" and would be damaging for developing countries.

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a forum including 150 jurisdictions that works to support the exchange of financial information between jurisdictions. 24 African countries are members of the Forum (Organization for Economic Co-operation and Development, 2018b). As noted in chapter 2 of the present report, it appears that the forum focuses on the implementation of existing standards on exchange of information on request and automatic exchange of tax information (Organization for Economic Co-operation and Development, 2016). Yet African countries appear to find it difficult to implement these standards. They submit few requests for exchange of information on request, and only 3 African countries are participating in the automatic exchange of tax information according to the standard promoted by the Forum; these are Mauritius, Seychelles and South Africa (Organization for Economic Cooperation and Development, cited from ECA, 2018). With regard to the automatic exchange of tax information, Africa's limited use of this standard may be due to the fact that, in order to receive information under the relevant international agreements for automatic exchange, jurisdictions need to put in place sophisticated software and legal guarantees to ensure that the information exchanged remains secure, which may be challenging for many African countries. Moreover, as noted in chapter 2 of the present report, there are concerns regarding loopholes in the system that enable individuals to avoid their information being exchanged. This may be reducing the incentive for African countries of participating in automatic exchange of tax information under the Global Forum.

International Accounting Standards Board. The Board is a global accounting standard setter based in London, whose aim has evolved from setting basic accounting standards to developing global norms on financial reporting. Its standards affect corporate financial disclosure and even financial regulation. Many regions, including Latin America and the Caribbean, have welcomed international standards set by the Board, but there is little regional analysis or national debate on their merits. In its more recent work, the Board has become more subjective on how firms determine what to report and how they report it.

The International Accounting Standards Board is unique among global financial standard setters. Despite its role as gatekeeper in global accounting standards, the Board is not a public institution. It is hosted at the International Financial Reporting Standards Foundation, a private non-for-profit corporation that is governed by a board of individuals. No Board members represent governments, and of the 14 seats, only one is allocated to Africa and one to Latin America. The Board has a budget of about 30 million euros (€), ($36.9 million), made up of voluntary contributions from private firms and government agencies, such as ministries of finance and central banks. The largest contributions come from international accounting firms, with the "big four" (Deloitte, PwC, EY and KPMG) contributing significantly more than any government. This funding model has been scrutinized for potential conflicts of interest, as special considerations for major contributors could affect the outcomes of the standard-setting process. The standards are developed together with the client base of the member institutions, which are private corporations, and as a result do not reflect the needs of States in the control of IFFs.

The **International Organization of Securities Commissions** is the international body that convenes global securities regulators and is recognized as the global standard setter for the securities sector, covering investments such as stocks, bonds, options, collateralized securities and derivatives. It has 127 ordinary members and is responsible for regulating more than 95 per cent of the world's securities markets (International Organization of Securities Commissions, 2018). Its stated aim is to protect investors, instil fairness and transparency in the markets and reduce systemic risk. All publicly traded companies are affected by the reporting and disclosure standards set by securities regulators.

The Organization enjoys global legitimacy through the endorsement of its mandate and standards by the G-20 and the Financial Stability Board, with which it works intensively on the global regulatory reform agenda. Its standards form the basis for the evaluation of the securities sector for the Financial Sector Assessment Program of IMF and the World Bank. This global standard setter is based in Madrid and is governed by a board of 34 national regulators (Ibid.). While regulators in the global South account for 75 per cent of its membership, they have only 44 per cent representation on the Organization's board (which is mostly made up of G-20 countries).

International trade agreements. Under a number of international agreements on trade in services, parties make commitments that their national regulations for particular service sectors (selected by each party) will abide by certain rules, or will be coordinated with those of other parties. The rules to which parties bind themselves are generally "market access" rules (under which foreign services firms are allowed to sell services in the country in question, including by establishing a commercial presence) and "national treatment" rules (from which foreign firms are regulated as if they are domestic firms). In addition, such agreements generally include a commitment by all parties not to discriminate among foreign firms on the basis of the firm's national origin (not to treat firms from one foreign country differently from firms from another). It appears that international trade in services between different branches of the same multinational corporation can be used to conduct abusive transfer pricing. This can be particularly difficult for the authorities to address if, as mentioned previously, the international trade agreement in question restricts how Parties to the agreement can regulate their services sectors, especially if certain regulations to prevent the mispricing of services apply only to foreign services firms, for example, if they apply only to imports of services. Consequently, it would appear that international agreements on trade in services, by facilitating such trade, can open the door to greater IFFs. This is not to say that such agreements should be resisted, as they may bring other economic benefits that outweigh the potential for increased IFFs. Existing agreements that involve African countries include a range of intra-African agreements on trade in services, including notably those among members of the East African Community, and agreements to harmonize regulations on certain services sectors throughout Central, Eastern, Southern and West Africa (see for example, Tumuhimbise and Davis, 2017). Many African countries are also party to the General Agreement on Trade in Services. In addition, the international Trade in Services Agreement and agreements on an African Continental Free Trade Area and a Tripartite Free Trade Area in Africa (covering 27 countries in Eastern and Southern Africa) are all being negotiated and expected to include provisions on trade in services.

3.2.3 Transparency in the extractive and logging sectors

The Extractive Industries Transparency Initiative, a widely implemented multi-stakeholder governance tool, has evolved from a revenue transparency initiative to a wider effort aimed at improving governance across the extractive sector value chain. When the Initiative was conceived, African countries comprised 50 per cent of the pioneering members. African countries still make up almost 50 per cent (24 out of 52) of countries implementing the Initiative, with the remaining countries of the region expected to participate in the initiative at some point (Extractive Industries Transparency Initiative, not dated).

To date, reports prepared under the Initiative have helped to reveal how a mining company in the Democratic Republic of the Congo paid $160 million in royalties due to the Government to a business partner. Further to this revelation, efforts have been made to retrieve lost revenue and help reduce corruption across the continent. In Nigeria, the Government claims that reports prepared under the Initiative have led to the recovery of $2.4 billion of unpaid revenue and identified a further $7 billion, which it expects to recover. Revenue authorities in Ghana have retrieved funds paid to a company in a mispriced gas processing plant deal, while traditional leaders and citizens are using similar reports to hold their local government accountable for development in oil-producing communities.

The directives of the European Union on accounting and transparency are aimed at certain European entities active in the extractive and logging industries, and require various payments to governments to be reported on a country-by-country basis. The country-by-country reporting, introduced in 2013, is intended to improve the transparency of payments made to governments all around the world by the extractive and logging industries.

In conclusion, it can be clearly seen that many of the important rule-making organizations or initiatives listed above have little participation from developing countries, and even less participation from Africa. African countries should, therefore, seek to increase the extent to which they are represented in those bodies, or at least the extent to which the decisions taken by those bodies respect their views and interests.

3.2.4 Global public debate and advocacy on tackling illicit financial flows

A range of governmental, intergovernmental, civil society and media organizations are engaged in advocacy on tackling IFFs. In this discussion, commentators place different emphasis on the roles and responsibilities of the various actors. In general, international financial institutions and wealthier countries are also concerned with holding governments responsible. By contrast, civil society organizations and government officials are more concerned with the operations of the private sector in general, and multinational corporations, in particular, (African Civil Society Circle, 2015).

In particular, civil society organizations have campaigned against IFFs from Africa (and other parts of the world) from the perspective of social justice, development and governance. They have used various means to draw attention to the negative consequences of those flows, ranging from advocacy campaigns and naming and shaming of perpetrators to undertaking research and proposing policy solutions. They are active participants in consultations and country visits, and their research is valuable in providing insights on the IFF phenomenon. Important work has been carried out by Action Aid, Christian Aid, the Chr. Michelsen Institute, the International Centre for Tax and Development, Global Financial Integrity, Oxfam, the Pan African Lawyers Union, the Tax Justice Network and Transparency International (African Union and ECA, 2015).

There are also a number of academic research institutions, including some in Africa such as the Working Group on Fiscal Studies at the School of Law in the University of Nairobi, conducting research in this area but the number of researchers in this field globally and in Africa are limited (Oguttu, 2016). The media also contribute to improving public understanding of IFFs. A recent example is the role played by the International Consortium of Investigative Journalists in unearthing the "Panama Papers".

3.2.5 Regional institutions, jurisdictions and rules in Africa

3.2.5.1 Continental level

African Union Commission and Economic Commission for Africa. ECA was given its mandate on IFFs in 2011 by the fourth Joint Annual Meetings of the African Union Conference of Ministers of Economy and Finance and the ECA Conference of African Ministers of **Finance, Planning and Economic Development.** The Joint Meetings mandated ECA to establish the High Level Panel on Illicit Financial Flows from Africa with the objective of exploring and gaining a better understanding of the nature of IFFs out of Africa and assessing their impact on the region's development. The Panel recommended that ECA carry out further research on some aspects of IFFs (United Nations, no date, pp.84-85). Additionally, the Assembly of Heads of State and Government of the African Union adopted a Special Declaration in January 2015 in which it endorsed the findings and recommendations of the Panel's report and requested ECA and other partners to build the capacities of member States to address IFF-related issues.

Multilateral development banks -- The African Development Bank (AfDB), the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group and the World Bank Group have taken steps to fight against fraud and corruption, including the conclusion of the Agreement for Mutual Enforcement of Debarment Decisions (African Union and ECA, 2015). The focus of the work of AfDB has traditionally been in the areas of money laundering and financial terrorism. However, it has recently revised its 2007 strategy to broaden its focus and include other forms of IFFs.

3.2.5.2 Regional instruments to curtail illicit financial flows

The range of instruments includes:

- African Charter on Democracy, Elections and Governance, 30 January 2007
- African Charter on Values and Principles of Public Service and Administration, 31 January 2011
- African Union Convention on Preventing and Combating Corruption, 11 July 2013.

New Partnership for Africa's Development (NEPAD) and African Peer Review Mechanism. The efforts of NEPAD to combat money laundering and terrorism take the form of data-sharing with such bodies as the Egmont Group, the Inter-Governmental Action Group Against Money Laundering in West Africa, the National Financial Investigation Agency in the Central African Republic and the Task Force on Money-Laundering in Central Africa. The African Peer Review Mechanism, which is part of the African Union, has been given a growing role on issues relating to financing. It would be a good mechanism to use to spearhead improved oversight of IFF issues if teamed up with ECA.

The **African Tax Administration Forum** was established as an African platform for promoting and facilitating cooperation among African tax administrations and other stakeholders with the aim of improving the efficiency of their tax legislation and administration. Its membership comprises 38 countries.

Financial Stability Board Regional Consultative Group for Sub-Saharan Africa. In 2012 the Board established six regional consultative groups to provide a platform for engaging with non-G-20 member countries, particularly in the developing world. The Regional Consultative Group for Sub-Saharan Africa, which held its 11th meeting in 2017, comprises Angola, Botswana, Ghana, Kenya, Mauritius, Namibia, Nigeria, South Africa and the United Republic of Tanzania and the Central Banks of Central and West African States Financial Stability Board, 2017b).

Together with countries outside the African continent, many African countries are members of the Commonwealth and the Organization of Islamic Cooperation. Those groupings of States provide technical support through, for example, the Commonwealth Association of Tax Administrators with the Commonwealth Schemes for International Cooperation in Criminal Matters, such as the London Scheme for Extradition, which has become one of the key international instruments dealing with extradition, and the Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth, the Harare Scheme, and from tax administrators in the member States of the Organization of Islamic Cooperation.

Consortium to Stem Illicit Financial Flows from Africa. Following the publication of the report of the High Level Panel on Illicit Financial Flows, a coordinating mechanism was established to oversee the implementation of its recommendations. The main purpose of the Consortium is to leverage partnerships, provide strategic direction in tangible efforts to stem IFFs from Africa and serve as a platform for sharing experiences. Membership of the Consortium is open to African organizations engaged in stopping illicit financial flows activities on the continent. Consortium members include the African Capacity Building Foundation, AfDB, the African Union Commission, the African Tax Administration Forum, ECA, the Pan African Lawyers Union, the Tax Justice Network-Africa, the Thabo Mbeki Foundation and other civil society organizations.

3.2.5.3 West Africa

The **Inter-Governmental Action Group Against Money Laundering in West Africa** is an institution of the Economic Community of West African States responsible for facilitating the adoption and implementation of standards aimed at combating money laundering and the financing of terrorism in West Africa. The Group is also tasked with providing technical assistance to member States for the prevention and control of money laundering and the financing of terrorism in the subregion. It conducts evaluations of compliance by member States with international standards based on the revised recommendations issued by FATF (2012), using the revised assessment methodology (2013). The Group is also a "FATF-style regional body", working with its member States to ensure compliance with international standards in this field.

3.2.5.4 Eastern Africa

The **Eastern and Southern Africa Anti-Money Laundering Group** was launched at a meeting of ministers and high-level representatives in Arusha, United Republic of Tanzania, in August 1999. Following the signature of a memorandum of understanding by seven of the potential members, the Group came into formal existence. Its purpose is to combat money-laundering by implementing the FATF recommendations and standards. This effort includes coordinating with other international organizations concerned with combating money-laundering, studying emerging regional typologies, developing institutional and human resource capacities to deal with those issues, and coordinating technical assistance when necessary. The Group enables regional factors to be considered in the implementation of anti-money-laundering measures. Following the events of 11 September 2001, it expanded its scope to include the countering of terrorist financing.

Group members participate in a self-assessment process to evaluate their progress in implementing the FATF 40 Recommendations. The Group's secretariat is based in Dar as Salaam. It became an associate member of FATF in June 2010.

The **East African Association of Anti-Corruption Authorities** was formed on 28 September 2007 in Kampala with the signing of a declaration by the heads of the Kenya Anti-Corruption Commission (now the Ethics and Anti-Corruption Commission), the Inspectorate of the Government of Uganda and the Prevention and Combating of Corruption Bureau of the United Republic of Tanzania. Its objective is to promote regional cooperation in preventing and combating corruption.

3.2.5.5 Central Africa

The **Task Force on Money Laundering in Central Africa (Groupe d'Action contre le blanchiment d'Argent en Afrique Centrale)** was set up by the Central African Economic and Monetary Community in 2000 and became an FATF-style regional body in October 2015. Its member countries are Cameroon, the Central African Republic, Chad, the Congo, Equatorial Guinea and Gabon. Other members are the Governor of the Bank of the States of Central Africa, the President of the Commission of the Community, the President of the Committee of Police Chiefs of Central Africa and the Secretary-General of the Banking Commission of Central Africa.

With regard to illicit transfers, a fictitious company or public contract can be created in one country in the Community (say Cameroon) and another used as the haven (say Chad or Gabon), where money transferred can then be withdrawn.

The proliferation of non-traditional financial institutions has become a major concern in the community. The Banking Commission, however, faces a tough task in regulating those institutions, for which new techniques and laws are required. According to expert opinion, the regulation of IFFs in Cameroon clearly defines sanctions and enables prosecutors to punish crimes within the country. The law is in accordance with a decision adopted at the level of the Community on "Prevention and Suppression of Money Laundering and the Financing of Terrorism and Proliferation in Central Africa".

The regulation confers powers on a range of institutions, stipulating their obligations and also their interactions, including through financial intelligence units in the subregion, which meet three or four times a year to exchange best practices and share knowledge. It cites international instruments and specifies the roles of national institutions including ministries of finance, ministries of security, ministries of justice, ministries of foreign affairs and the national financial investigation agencies of member States, in addition to subregional institutions, including the Bank of Central African States, the Banking Commission of Central Africa and the Task Force, as well as the Organization for the Harmonization of Business Law in Africa and the Conférence Interafricaine des Marchés d'Assurances. It specifies the roles of bodies, including customs agencies, financial institutions, insurance companies, foreign exchange bureaus, casinos and gambling agencies and non-governmental organizations. In the case of France, Gabon and Cameroon, different bilateral agreements could lead to cross-border controlled transactions to distort taxable income.

3.2.5.6 North Africa

The **Middle East and North Africa Financial Action Task Force** was established at a ministerial meeting held in Manama in November 2004, by the Governments of 14 countries as a FATF-style regional body. It is voluntary and cooperative in nature and independent of any other international body or organization. Its objective is to work jointly to identify issues of a regional nature related to money laundering and terrorist financing, and to share relevant experiences and to develop solutions. Its headquarters are in Bahrain.

The **Trans-Sahara Counterterrorism Partnership** is a multifaceted, multi-year effort designed to build the capacity and cooperation of military, law enforcement and civilian actors across North and West Africa to counter terrorism (United States, Department of State, 2017b). Partners include Algeria, Burkina Faso, Cameroon, Chad, Mali, Mauritania, Morocco, the Niger, Nigeria, Senegal and Tunisia.

3.2.5.7 Southern Africa

The **Committee of Central Bank Governors** of the Southern African Development Community was created in July 1995 by a decision of the Ministers of Finance of the Community, approved by the Community's Council. The main reason behind the establishment of this Committee was the need for a specialized body to promote and achieve closer cooperation among central banks in the subregion. The Committee, which consists of 15 central bank governors, deals with the development of financial institutions and markets, cooperation regarding international and regional financial relations, and monetary, investment and foreign exchange policies.

3.3 International business legislation, regulation and institutions and illicit financial flows

3.3.1 Institutions, laws and regulations relating to corporations

In addition to the other international agreements listed in the present chapter that influence how States regulate or tax multinational corporations, there are several sources of non-binding principles that can influence either the actions of multinational corporations directly, or the actions of States in governing multinational corporations. Among them are the United Nations Forum on Business and Human Rights, the United Nations Tax Committee and OECD (whose activities are more regional than global).

3.3.2 International index rankings

The values guiding the Doing Business project of the World Bank and the similar initiatives guided by other multilateral institutions seem to be underpinned by a narrow view of good governance, which essentially confines support to the private sector to the provision of stable, predictable and non-arbitrary State policies to ensure that markets work better (ECA, 2018). This conception of State-market relations raises questions regarding the effective regulation and supervision of private-sector activities, including those related to illicit activities. For example, efforts by government institutions to detect money-laundering and other illicit activities stand in sharp contrast to the ethos of the Doing Business project, which considers, for example, that a short time spent in establishing a business is a major indicator of an improved business environment. It is worth noting that strengthening supervision and regulation alone may not be enough (as the country case studies underlying the present report show) because the private sector knows how to manoeuvre around the rules. It is, therefore, important to engage the private sector by creating awareness of the need to improve their reputation. Additionally, by working with governments and providing incentives, the private sector can play an important role in efforts to curb IFFs, though self-regulation should not be considered sufficient.

3.4 International conventions on transnational crimes related to illicit financial flows

A number of international conventions relating to efforts to stop IFFs exist. The United Nations Convention against Corruption, signed by 183 parties, entered into force in 2005. The Convention encompasses prevention, mutual legal assistance requirements, asset recovery and an implementation review mechanism. However, the implementation of the Convention leaves something to be desired (see chapter 4). UNODC, which provides the secretariat for the Convention, extends assistance with the implementation review mechanism and has given technical support in the development of national anti-corruption strategies and offered online courses on anti-corruption. Together with the International Criminal Police Organization, the European Anti-Fraud Office, the Government of Austria and other stakeholders, it initiated the International Anti-Corruption Academy, from which training is provided to officials and other interested parties.

The Organisation for Economic Co-operation and Development adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 2009. The Convention sets standards to govern the criminalization of bribery of foreign public officials in international business transactions and provides for a host of related measures to make this effective. It is the first and only international anti-corruption instrument focused on the "supply side" of the bribery transaction (OECD, 2017b). In the United States, the Foreign Corrupt Practices Act of 1977 makes it unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business (United States, 2017).

The United Nations Convention against Transnational Organized Crime, adopted in 2000, has 187 parties and contains provisions on the criminalization of membership of crime organizations and extradition and mutual legal assistance. Three supplementary protocols have been adopted: Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; Protocol against the Smuggling of Migrants by Land, Sea and Air and Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

The three major international drug control treaties: Single Convention on Narcotic Drugs of 1961, as amended in 1972; Convention on Psychotropic Substances of 1971; and United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 are mutually supportive and complementary. An important objective of the first two treaties is to codify internationally applicable control measures in order to ensure the availability of narcotic drugs and psychotropic substances for medical and scientific purposes, and to prevent their diversion into illicit channels. The treaties also include general provisions on trafficking and drug abuse.[10] The conventions, which have between 183 and 185 parties, require the criminalization of drug trafficking and the submission of information to track diversion from licit to illicit sectors. UNODC has introduced software tools, such as goTrace, which make it possible to compare data securely with international partners and to identify common subjects of interest. While trafficking in drugs remains a serious problem, the conventions have had success in eliminating the diversion of drugs from licit supply chains to the illicit market during the process of international shipment (though diversion still occurs at the national level).

It should be noted that not all African States are members of those conventions, and that corruption, drug trafficking and organized crime are still major problems worldwide and in Africa (see, for example Organization for Economic Co-operation and Development, 2018).

10 Copies of the treaties are available at https://www.unodc.org/unodc/en/treaties/index.html.

3.5 Other forms of cooperation to combat money-laundering

Since the late 1980s, growing concern about drug trafficking and the uses made of globalization facilitated by advances in communication technology have led to direct and indirect approaches applied by different international institutions and the international community to combat financial crime and money laundering.

Currently, various processes are used to investigate those types of crime. The Intelligence-sharing model uses sources and sharing processes, as illustrated in box 3 below.

Governments seeking intelligence from overseas sources may use any of the channels listed in the left-hand column. However, intelligence-sharing options listed in the right-hand column usually take place domestically through meetings across ministries and departments.

3.6 Tax cooperation

Some of the conventions action plans, acts and directives in the field of transparency and tax cooperation are outlined in this section. The Convention on Mutual Cooperation in Tax Matters, developed jointly by OECD and the Council of Europe in 1988 and amended in 2010, is the most comprehensive multilateral instrument available for all forms of cooperation to tackle tax evasion and avoidance, a top priority for all countries. The Convention has 115 jurisdictions participating, including 15 jurisdictions covered by territorial extension. This represents a wide range of countries including all G-20 countries, the BRICS countries (Brazil, the Russian Federation, India and China), all the OECD countries, major financial centres and an increasing number of developing countries. Participants exchange information and collaborate and assist in the recovery of funds (OECD, 2017a).

The OECD/G-20 Base Erosion and Profit-Shifting Action Plan lists 15 actions designed to equip governments with domestic and international instruments to address tax avoidance, ensuring that profits are taxed where the economic activities generating the profits are performed and where value is created (OECD, 2017a).

3.7 Conclusion

As can be seen from the analysis in this chapter, there is a range of different institutions and agreements intended to tackle various aspects of IFFs. The institutions were established at different times to address different issues, and have different mandates related to part of the IFF problem (though these sometimes overlap). Though some efforts are being made to ensure that the different institutions coordinate their efforts to avoid duplication and ensure that no important areas of the problem are left out (for example, the Consortium to Stem Illicit Financial Flows from Africa, which is working to coordinate African efforts against IFFs, and the United Nations Inter-Agency Task Force on Financing for Development), there is currently no mechanism covering all relevant organizations, and all relevant aspects of the problem, at the global level. This means that there is a risk of gaps in global frameworks to address IFFs, which can be exploited by perpetrators to continue to effect such flows without detection or punishment. As indicated in chapter 4 of the present report, there are indeed substantial gaps in global defences against IFFs that are being exploited, including in Africa; this is reflected in the large volume of such flows from the continent. In addition, as perpetrators can, to some extent, choose between different methods of carrying out such flows, a weakness in any part of the global regulatory architecture to tackle such flows could substantially compromise overall efforts to tackle them, as perpetrators may conduct “regulatory arbitrage” and route flows through channels where the controls are the weakest.

Indeed, it is evident that such regulatory arbitrage is taking place, and that gaps in the global regulatory architecture are undermining efforts to tackle IFFs. It is telling, for example, that estimates of IFFs from Global Financial Integrity highlight trade misinvoicing as the main channel for such flows (Spanjers and Salomon, 2017), while at the same time, controls against trade misinvoicing are considered to be the weak point in anti-money-laundering efforts (The Economist, 2014). Furthermore, as mentioned above, financial secrecy jurisdictions are weak points in global cooperation that allow perpetrators of IFFs to escape detection and punishment, while scandals, such as that of the “Paradise Papers”, and estimates of wealth held offshore indicate the extent to which this facilitates tax avoidance that is often considered to be illicit.

Aside from creating opportunities for regulatory arbitrage, the lack of a comprehensive coordination mechanism for anti-IFF efforts also risks duplication in the activities of the different organizations trying to tackle IFFs.

It is also worth noting that, in such a complex web of actors and issues, the application of principles of good governance becomes even more important in efforts to influence commitment, coordination and cooperation, which are the cornerstones of the effectiveness of any policy choice (World Bank, 2017b).

Box 4: The Sustainable Development Goals – targets relating to illicit financial flows

16.4 By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime

16.5 Substantially reduce corruption and bribery in all their forms

16.6 Develop effective, accountable and transparent institutions at all levels

17.1 Strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection

17.13 Enhance global macroeconomic stability, including through policy coordination and policy coherence

17.14 Enhance policy coherence for sustainable development

17.15 Respect each country’s policy space and leadership to establish and implement policies for poverty eradication and sustainable development.

Source: Inter-Agency Task Force (2016).

Chapter 4. Weaknesses and gaps in the current global governance framework and their impact on selected African States

Using the information presented in the previous chapters, the gaps in the current global governance framework are highlighted and evidence on the importance of addressing those gaps are presented in this chapter.

4.1 Efforts to secure stronger global agreements and institutions designed to combat illicit financial flows

While there is no global consensus on the creation of a global IFF-related institution or mechanism to coordinate efforts, a possible resolution tabled by Ecuador as the Chair of the G-77 is being discussed at the General Assembly.[11]

Positive changes followed the publication of the High Level Panel's report In particular, in the Addis Ababa Agenda and the 2030 Agenda for Sustainable Development, IFFs are explicitly included in the commitments and among the Sustainable Development Goals. Targets for progress in tackling IFFs and related issues in the context of the Goals are set out in box 4 below:

Until a comprehensive global mechanism to coordinate efforts to tackle IFFs is established, it would be important to allow a broader range of countries to participate in the anti-IFF efforts that are being led by international organizations with limited membership, such as OECD. This is particularly the case because the decisions of those bodies tend to have a global impact through economic spillovers and because norms and standards on tackling IFFs established by those bodies tend to be adopted by non-members. Thankfully, efforts are already being made to broaden participation in those efforts to combat IFFs, particularly in OECD. This is already partially taking place through discussions in the OECD Task Force on Tax and Development and through the development of the **Multilateral Convention to Implement Tax-Treaty-Related Measures to Prevent Base Erosion and Profit-Shifting**, which now has 78 signatories, including eleven African countries: Burkina Faso, Cameroon, Côte d'Ivoire, Egypt, Gabon, Mauritius, Nigeria, Senegal, Seychelles, South Africa and Tunisia (OECD , cited from ECA, 2018). The establishment of the OECD Inclusive Forum on BEPS, which seeks to allow non-OECD members (including developing countries) to provide input to efforts to tackle base erosion and profit shifting, and the Global Forum on Transparency and Exchange of Information for Tax Purposes are important positive developments.

In addition, in the absence of a coordinating mechanism for anti-IFF efforts across the board, efforts to strengthen international cooperation in tackling individual aspects of such flows can also be useful. There has been discussion of the need to establish a body to coordinate international cooperation on tax matters, in particular to tackle abusive tax practices and share tax information. One such proposal was to create a "United Nations tax body", with a stronger mandate than the existing United Nations Tax Committee, to fulfil such a function. However, a consensus has yet to be reached on that issue, although the G-77 African States continue to support that proposal, there has not yet been a United Nations resolution to call for the creation of such a body.

It is important to note that none of this amounts to the kind of comprehensive global coordinating mechanism for tackling IFFs needed to ensure a truly effective response to the problem, as argued in the conclusion to chapter 3.

11 See https://www.un.org/en/ga/second/72/l16os.pdf.

4.2 Insufficient action by member countries of the Organisation for Economic Co-operation and Development

There had been little and uneven progress among OECD countries in dealing with IFFs (Inter-Agency Task Force, 2016). In fact, there had been little change compared to two years earlier, when the following key findings were published in a 2014 OECD report:

a. Although 27 out of 34 OECD countries store or require some beneficial ownership information for legal persons, no country is fully compliant (2014);

b. Only 221 individuals and 90 companies were sanctioned for foreign bribery, but about half of all OECD countries had not yet seen a single prosecution (2012);

c. Only $147 million has been returned by OECD countries, and almost $1.4 billion in assets has been frozen (2010-2012);

d. 30 out of 34 OECD countries do not properly regulate and supervise designated non-financial professions and businesses which may pose money-laundering risks (2014);

There have also been some OECD initiatives that affect IFFs, such as efforts to combat counterfeiting and piracy, guidelines for responsible supply chains and work on public procurement.[12] Some of them were conducted in partnership with developing countries, such as work on public procurement and guidelines on conflict minerals.

If those initiatives are to be more successful, there should first of all be better and deeper understanding of the damage caused by IFFs to almost all countries involved. There is a need for a consensus around how stronger and more coherent collaboration should be achieved. In particular, there is the challenge of aligning national and international initiatives, structures, institutions, preferences and perspectives, such as the World Bank Stolen Asset Recovery Initiative. Although progress has been made in building awareness and policy dialogue over the past decade, there is still a long way to go in terms of policy coherence, coordination, enforcement of existing legal frameworks, and not least political commitments at the highest levels (Inter-Agency Task Force, 2016). For the donor community, one of the problems is uncertainty on how to integrate combating IFFs into their support programmes. It is also relevant to note that IFFs may even be seen as beneficial to the donor country, which is why there is reluctance to support action in this regard (Fontana and Hansen-Shino, 2012).

Individual States can also play a key role, for example as lenders. One interesting development on the side of lenders is the plan of the Government of Norway for an independent audit of all its bilateral debt owed by seven developing countries. Norway has been in the forefront of efforts to address issues of odious debt. The countries whose debts to Norway will be audited include Egypt, Somalia, the Sudan and Zimbabwe. The aims of the audit are to promote financial transparency and to test the new United Nations Principles on Promoting Responsible Sovereign Lending and Borrowing, which were launched by UNCTAD in 2012.

4.3 Enhancing transparency and tracking of illicit financial flows

Lack of access to data continues to be a serious impediment to the curbing of IFFs, as it may be difficult for those involved in stopping IFFs to identify those perpetrating or facilitating such flows without the information required to identify such behaviour. Despite the clear role that IFFs play in the economy of South Africa, there are no official estimates of the extent of those financial flows from entities prioritizing the combating of them, which means that estimates may not be reliable. A number of estimates have been made

12 OECD has the following initiatives in this area: The African Development Bank (AfDB) and the Organisation for Economic Co-operation and Development (OECD) Joint Initiative to Support Business Integrity and Anti-Bribery Efforts in Africa; Tax Inspectors Without Borders; The OECD Initiative on Global Value Chains (GVCs); The OECD Social Impact Investment Initiative; OECD Better Life Index. The OECD also published the 2007 report The Economic Impact of Counterfeiting and Piracy – see www.oecd.org/sti/38707619.pdf.

by international organizations and think tanks, such as Global Economic Governance Africa, Global Financial Integrity and UNCTAD. The latter (2016) estimated the volume of IFFs effected through South African gold and platinum exports, but those relating to gold were later revised, as a large part of the apparent total was found to be because of differences between South African trade data reporting practices and those of its trading partners. It may well be that a significant share of the updated estimate of $19 billion worth of misinvoicing of gold from South Africa can be attributed to the re-exports of gold. Furthermore, estimates of IFFs through South African platinum exports may be distorted by underreporting (van Rensburg, 2017). As a result, in a number of reports, it is argued that South African officials need to clarify and update the classification of commodities and report consistently to international databases (UNCTAD, 2016; van Rensburg, 2017). Similarly, Morocco does not seem to produce its own estimates of IFFs to or from the country (Haut Commissariat au Plan, interview, 16 May 2017).

However, in what is a positive development, some of the least developed African countries are leading the way with budget transparency, using what is known as "citizens' budgets". Those documents, while not official government papers, help to translate government fiscal policy into a simple format that ordinary citizens can engage with. One example may be found in Ghana, where the fiscal process is made more understandable to the general public by means of abridged and user-friendly versions of the budget. According to the Open Budget Index, the most comprehensive international budget transparency survey, some of the best improvements in budget transparency reform are happening in the weakest-ranking countries, such as Benin, Burkina Faso, Cameroon and the Democratic Republic of the Congo. In addition, the Open Government Partnership is a global initiative that includes many developing countries in spurring efforts to make more public data transparent and accessible to citizens. African States involved in this process at different levels include Kenya, South Africa, Ghana, Liberia, Malawi, Sierra Leone, Côte d'Ivoire, Burkina Faso, and Nigeria.

4.4 Non-strategic tax incentives

It appears that African countries continue to grant non-strategic tax incentives and do not generally subject tax incentives to cost-benefit analysis, with Morocco being one notable exception (Ministère de l'Economie et des Finances, 17 May 2017, interview). This particular activity does not seem to have taken hold.

ActionAid reported in 2015 that one Australian uranium mining company has potentially avoided paying millions in tax revenue in Malawi – one of the poorest countries in the world. Rather than funding its operations in Malawi through its headquarters in Australia, the mining company chose to fund them through the Netherlands with a large loan. This loan generated a payment of 138.2 million euros (€) ($169.6 million) in interest and management fees back to the Netherlands. As a result of a double taxation treaty between the Netherlands and Malawi, the withholding tax on interest payments and management fees was reduced from 15 per cent to 0 per cent. This routing from Malawi to Australia through the Netherlands reduced the withholding tax payable by an estimated €20.7 million over six years. Malawi cancelled its tax treaty with the Netherlands in 2014, and a new one was signed in April 2015. Although this new treaty includes anti-abuse provisions, concern remains that these provisions will not be effective unless Malawi also gets access to adequate information about the multinational corporations operating in Malawi (Action Aid, 2015).

The United Republic of Tanzania has taken encouraging steps aimed at eliminating harmful tax incentives. Its Parliament enacted a new Value Added Tax Act, 2014 and a Tax Administration Act, 2014, which entered into law in February 2015. Those new laws have provisions under which all multinationals must pay value-added tax; ministers' discretionary powers in granting tax incentives were removed; tax incentives for multinationals are reviewed to ensure compliance with legal tax requirements; no multinationals are granted incentives unless a cost-benefit analysis has been conducted first; and all tax incentives undergo parliamentary scrutiny. Civil society has played a positive role in this law change. The Government has also restructured the revenue authority leadership, including those involved in suspected corruption and theft and deals under which multinational companies paid no tax on their products at the port. Those measures resulted in tax collection from various sources rising from 900 billion Kenyan shillings ($400 million) to 1.7 trillion shillings within a few months. At the same time, the education budget grew from 3.465 trillion shillings in fiscal year 2014/15 to 3.87 trillion shillings in fiscal year 2015/16, an increase of 11.7 per cent (405 million shillings).

Similarly, in Nigeria the Senate and National Assembly raised queries on tax incentives and the granting of "pioneer status" to companies, and one of the country's anti-corruption agencies took a special interest in the processes for granting incentives. The National Assembly issued a directive that new tax treaties must go to Parliament for review.

4.5 Anti-corruption efforts

Fuller implementation of anti-corruption measures, such as the United Nations Convention against Corruption, is also needed. In Morocco, for example, though the country is largely compliant with the provisions of the Convention, to which it is a party, some elements of the Convention appear not to be fully implemented. The Penal Code does not make express reference to bribery committed indirectly or through intermediaries, and an adequate specific provision criminalizing bribery of foreign public officials is not included in Moroccan legislation. The provisions of the Penal Code criminalizing trading in influence do not appear to reflect the elements of the offence fully as envisaged by the Convention, as they do not put emphasis on the influence exerted. In addition, a divergence between the text of the Convention and the relevant provisions of the Moroccan Penal Code is noted with respect to the offences of concealment and abuse of functions. "However, it is important to note that the crime of treachery constitutes a form of abuse of power, which the Moroccan legislation punishes with imprisonment of up to five years" (UNODC, 2016).

In addition, according to UNODC, Morocco does not fully implement the provisions of the Convention on obstruction of justice, as Moroccan legislation criminalizes only obstruction of justice by "governors, pashas, higher caids or administrative official" (Moroccan Penal Code, cited in UNODC, 2016). Furthermore, more specific measures regarding the employment status of public officials involved in corrupt activity are required. The findings of the report indicate that gaps in Moroccan legislation regarding the proceeds of offences under the Convention exist. In addition, it appears that Moroccan law does not adequately provide for mutual legal assistance for the purposes of asset recovery.

In 2012, Côte d'Ivoire created an Anti-Corruption Brigade, and a Code of Ethics and Professional Conduct for Treasury Agents was also adopted. In 2013, the Government ratified the Convention and adopted a National Plan for Good Governance and the Fight against Corruption (2013-2017). Despite this, the capabilities of the country's administration remain weak, at the central and local levels. There are persistent challenges in terms of management and procurement, as well as in the development, implementation, monitoring and evaluation of programmes or projects. The rule of law remains weak, as the capacity of the justice system and security forces to enforce the law is particularly challenged by their lack of independence, problems of corruption and insufficient technical and financial resources. Despite efforts made by the Government to fight corruption, the perception of corruption remains high in the country. In the Transparency International 2016 corruption perception index, Côte d'Ivoire was ranked 108 out of 176 countries, with a score of 34/100.

South Africa is a party to the Convention against Corruption, the Convention against Transnational Organized Crime, the United Nations Model Double Taxation Convention between Developed and Developing Countries, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the Single Convention on Narcotic Drugs. It makes use of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries. It also participates in the work of FATF, the ECA Regional Anti-Corruption Programme for Africa

(2011-2016) and the African Tax Administrative Forum. Data on corruption in South Africa are unavailable. In the Transparency International Index, the country is ranked 64 out of 176 countries, with a score of 45/100.

Other African countries have made considerable progress in tackling corruption, including, among them, Nigeria and the United Republic of Tanzania. What is working in some African countries, why it is working, and how it can be replicated elsewhere on the continent should be noted.

4.6 Cooperation in prosecuting cases related to illicit financial flows, particularly those connected with taxation

International cooperation in the prosecution of IFF cases remains a difficult and lengthy process, and lacks a comprehensive legal framework that brings together all affected countries and all aspects of the problem requiring mutual assistance. For example, a recent investigation in Kenya resulted in the arrest of a former minister for finance and chief executive of a parastatal company and the launching of legal proceedings for corruption and money laundering against him, in a case which involved collaboration with the authorities in different jurisdictions. It emerged that the officials involved had saved the proceeds of a bribe in an account with a financial institution in Jersey. After this came to light during the court proceedings in Kenya, the authorities in Jersey froze the assets in question, but this process required more than 20 arrangements for mutual legal assistance in different jurisdictions, even though Kenya, since 2003, has been a party to the Convention Against Corruption, which includes provision for mutual assistance in the prosecution of corruption cases. After the company had made the payment, it pleaded guilty to bribery in Finland, Jersey and the courts ordered the confiscation and return of the funds to the victim State, Kenya. Clearly, information-sharing is critical for international cooperation in combating tax crimes. A case of this nature might never have progressed in the Kenyan courts were it not for the changes already taking place through the reform of international tax laws. This provides evidence of strong cooperation in tackling various aspects of IFFs, though the complexities of requesting assistance under multiple agreements for mutual legal assistance highlight the need to streamline the procedure, which could be achieved with a single international agreement for assistance in prosecuting cases related to IFFs.

Ghana has also recently been able to prosecute an IFF-related case with international assistance. Its Financial Intelligence Unit received a suspicious transaction report showing five connected Ghanaian accounts. Deposits were made by two people and the money was later withdrawn in foreign jurisdictions. International collaboration showed that those who withdrew the money had subsidiaries in Ghana and were operating in the Ghana Free Zone. Tomato puree was being repackaged and resold domestically in violation of the Ghana Free Zone Act. The suspects were using fake work permits and bribing public officials. They were charged with tax evasion, money-laundering and possession of fake documents. Support was received from the Asset Recovery Interagency Network - Asia Pacific, the Asset Recovery Inter Agency Network for Eastern Africa, the Asset Recovery Inter-Agency Network for Southern Africa, the Asset Recovery Inter-Agency Network for West Africa, the Asset Recovery Network of GAFILAT, the Camden Assets Recovery Interagency Network, the Egmont Group, the International Criminal Police Organization and the Stolen Asset Recovery Initiative.

Those encouraging examples suggest that countries are willing to cooperate with African countries in IFF-related cases. However, it remains unclear how many countries are willing to cooperate in that way; such cooperation should become a globally expected norm, rather than carried out voluntarily. In addition, the complexities of requesting information suggest that a simplified approach involving an international agreement which requires parties to offer mutual legal assistance in cases related to IFFs would be beneficial. Such provisions are already included in the Convention Against Corruption and the Convention against Transnational Organized Crime, but they do not cover other aspects of IFFs, particularly those related to tax evasion (unless it is carried out by organized crime groups or individuals involved in corruption). The Convention on Mutual Administrative Assistance in Tax Matters includes provisions on mutual assistance in recovery, but only 114 jurisdictions had signed the convention as of October 2017, and not all African countries had done so.

In particular, challenges to international cooperation in pursuing suspected cases of tax-related IFFs include delays in responses to requests for information from foreign counterparts, non-disclosure of tax information among countries, differences in legal systems with regard to cross-border transactions, and weak or compromised tax administration regimes. Suggestions for reform and resolution of the challenges include more pressure from the Global Forum on Transparency and Exchange of Information for Tax Purposes, the promotion of effective automatic exchange of tax information, the operationalization of beneficial ownership registers in all jurisdictions, the promotion of parallel (financial) investigations into tax crimes and the strengthening of law enforcement and tax administration regimes. The Convention on Mutual Administrative Assistance in Tax Matters is supposed to address some of those issues, but as noted above, participation in the Convention is not universal, particularly in Africa.

In that regard, as noted in chapter 2, financial secrecy and low-tax jurisdictions continue to facilitate IFFs. In the case of financial secrecy jurisdictions, action to prevent transfers of funds to such jurisdictions, or to require them to share information to aid in prosecuting IFF-related cases, would seem to be necessary. In the case of low-tax jurisdictions, greater efforts to prevent base erosion and profit-shifting towards these jurisdictions would seem to be required. The OECD Base Erosion and Profit-Shifting initiative is a positive step in that regard, though ECA (2017a) recommends a slightly different approach in some aspects for Africa.

4.7 Inadequate anti-money-laundering controls

Recent examples show that banks have continued to facilitate IFFs, whether knowingly or unknowingly. However, the prosecution of banks for such activities also suggests that the net is tightening and that they may be deterred in future from carrying out such activities. The cases have also shown that criminals can often circumvent existing anti-money-laundering regulations using "layering" techniques which are not picked up on by banks, allowing the criminals access to the formal financial system. It could be said that the anti-money-laundering rules are largely adequate, but that the weak links are institutional capacity, human resources, political commitment, national coordination and national supervision. This is illustrated in box 5 with a specific example.

In addition, some criminals are able to transfer funds without detection through other means, avoiding the formal banking system entirely. In Morocco, for example, terrorist financing is carried out between terrorist sympathizers or organizations and terrorist cells or individual terrorist fighters. Terrorist financing, in general, no longer uses transactions through the formal banking system, but instead uses non-governmental organizations or charities to receive the funds sent through the banking system and then transfers them through

Box 5: West African trade-based money-laundering and Lebanese exchange houses

In April 2013, two Lebanese exchange houses became the first non-bank financial institutions to be named as foreign financial institutions of "primary money-laundering concern" under section 311 of the United States "Patriot Act". The institutions were facilitating a money-laundering network previously operated by a bank and two other exchange houses prior to actions taken against those entities in 2011.

One of those institutions provided at least $25 million in payments between 2008 and March 2011 to car dealers and exporters based in the United States who were associated with a narcotics and money-laundering network. Between March 2011 and October 2012, it facilitated the movement of at least $1.7 million for Beninoise and Lebanese money launderers and drug traffickers.

The other institution facilitates transactions for a network of individuals and companies which launder money through the purchase and sale of used cars in the United States for export to West Africa. As of late 2012, Benin-based money launderers were using the institution to transfer money to car suppliers in the United States in support of their trade-based money-laundering scheme. Additionally, the institution has laundered profits from drug trafficking and cocaine-related money-laundering networks for a narcotics trafficker, as well as the institution itself.

Source: FATF and Inter Governmental Action Group against Money Laundering in West Africa (2013).

other means to terrorists. This involves rather small amounts of, for example, around $1,000 through online payment services, ***hawala*** payments or prepaid cards. Such methods have become more feasible for terrorist funders as terrorists are able to operate on very small amounts of money, requiring only an Internet connection, basic rations and in some cases, enough funds for basic materials for improvised explosive devices (UNODC, interview, 17 May 2017).

In future, there will be a need for increased scrutiny of firms in the financial sector, as expected increased competition is likely to lead to more risk-taking to try to enhance profits, if past experience is a guide. Supervisors of financial firms may, therefore, need to rely more on disclosure, internal models and market discipline as a complement to more traditional techniques of oversight. New international agreements may also be required to specify guidelines as to how such disclosure might best be carried out. Increased reliance on market discipline also implies a need for progress in harmonizing accounting standards.

4.8 African public services capacity

In some cases, African public institutions continue to lack the capacity to address IFFs and even though the Tax Inspectors Without Borders initiative has trained many tax auditors on the continent, others in key positions for tackling those flows, such as judges, tribunals, lawyers, accountants and others involved in finance and taxation, are not as aware of these issues; in addition, the initiative has failed to have the desired impact in some African countries and faces challenges of conflict of interest (ECA, 2017). In South Africa, for example, discussions with local finance industry employees showed a lack of awareness of issues surrounding the Base Erosion and Profit-Shifting action plan. Even if an audit is performed well, only a knowledgeable lawyer, judge or other finance professional would be able to act and make a judgment based on the conclusions of such an audit.

4.9 Challenges related to asset recovery

Asset recovery is a long process, but there have been positive developments. In the United Kingdom, money was frozen and repatriated to Nigeria (Vanguard, 2012). Switzerland has passed a law to expedite the process of freezing and repatriating assets from corruption committed in countries that have no capacity to investigate the cases or collect evidence on the ground that can support asset recovery.[13] However, countries continue to allow banks to receive illicit funds and retain them while court cases are ongoing for their recovery, contrary to the recommendation of the High Level Panel that in such cases the funds should be held in escrow with regional development banks. Many banking laws in developed countries (for example in Switzerland) still allow their banks to receive questionable transfers and then hold them during pending court proceedings, which can take 10 years or longer. This continues to have a negative impact on African countries; for example, Egypt is still unable to recover an estimated $11 billion believed to have been transferred illicitly from the public purse during the era of the former President Hosni Mubarak to Switzerland and some member countries of the European Union.

African countries themselves can also strengthen asset recovery efforts, for example by mandating asset disclosure by public officials. This requirement was included in the Cameroon Constitution of 1996, but no such provision has been enacted.

4.10 Failure to prioritize illicit financial flows or conflicts of interest

In South Africa, according to expert opinions and the parliamentary Standing Committee on Finance (2017), the fight against IFFs is not prioritized by some elements within the State. This seems to be the case especially for the South African Police Service, whose leaders have repeatedly refused to attend parliamentary meetings on subjects related to IFFs, or simply refused to answer questions when attending such meetings. The Committee members also have highlighted on several occasions that there has been little, if any, action taken to implement the recommendations

13 See https://www.admin.ch/opc/en/classified-compilation/20100418/201102010000/196.1.pdf.

made by various stakeholders with a view to combating IFFs. The Committee also highlighted the fact that “not one of the 1,700 South African residents identified in the Panama Papers has been prosecuted” (p. 3). This is the case event though the Financial Intelligence Centre has examined the Panama Papers and handed over the case files to the prosecuting institutions. The Police Service has “dealt with” only one out of 31 cases handed over by the South African Reserve Bank on IFF-related matters.[14] Political will and corruption can often be directly related to the ability of developed and developing States not only to update and strengthen laws but also to mandate the enforcement of these laws to rectify and reverse IFFs.

It is worth noting that the international community also needs to prioritize action to tackle IFFs to a greater extent in policy advice given to developing countries. For example, the World Bank Doing Business indicators award higher scores to countries that, all else being equal, make the process of establishing a business more quickly and easier. This, however, may have perverse side effects if countries seeking to improve their performance in those indicators cut corners in terms of the information that they require of new businesses being registered. The High Level Panel (African Union and ECA, 2015) has recommended that countries require all registered companies to be registered for tax purposes and to provide beneficial ownership information, but efforts to make the process of company registration quicker and easier may lead countries to waive such requirements. This may undermine efforts to tackle IFFs through greater use of tax registration and transparency about beneficial ownership.

4.11 Conclusion

In the present chapter, it has been shown that there remain significant gaps in the global response to IFFs and that the gaps are allowing those flows to persist. Areas identified in the chapter in which not enough is being done include the granting of non-strategic tax incentives; difficulties in recovering stolen assets; the lack of a strong, comprehensive and global anti-IFF agreement or a global coordinating mechanism tasked with tackling the problem in all its aspects; insufficient transparency on the part of governments and corporations; insufficient efforts by OECD countries to implement the organization’s own policy recommendations on IFFs; inadequate implementation of anti-money-laundering measures in the formal banking sector and other money transfer mechanisms; difficulties in international cooperation in IFF-related cases, particularly in the field of taxation, and the need for a comprehensive agreement mandating mutual legal assistance in the prosecution of cases related to IFFs; a failure to prioritize efforts to tackle IFFs in some countries; and a lack of capacity among African countries to tackle the problem on the continent. Against this background, in the next chapter, proposals to address those gaps are given.

14 See https://www.parliament.gov.za/group-details/1783#.

Chapter 5. Conclusion and policy recommendations to improve or transform global governance for tackling illicit financial flows from Africa

5.1 Conclusion

The report of the High Level Panel identified three fields of reform at national, regional and global levels. This chapter will conclude the study by providing its main conclusions, policy recommendations and a proposed action plan and monitoring and evaluation framework for tackling IFFs in Africa at each of these three levels.

Though there are a number of international institutions and initiatives involved in tackling IFFs, this has highlighted the fact that important aspects of the IFF problem remain unaddressed (or not adequately addressed) by a global agreement. The recommendations in the chapter identify a range of actions that could address those weaknesses in the global anti-IFF architecture; this includes both new global agreements or initiatives to tackle the problem and actions at the national level to complement such agreements and initiatives, or to substitute for them in the event that they cannot be realized.

Indeed, most of the recommendations listed in the present chapter are focused on actions to be taken at the national level, in terms of new laws and new policies that African countries should introduce and capacity development that they should undertake. They are likely to need the assistance of development partners and international organizations to fill these gaps. When seeking this assistance, African countries should be wary of potential conflicts of interest for some of the initiatives, such as those related to the Tax Inspectors Without Borders initiative, where many of the borderless tax inspectors involved worked for accounting firms that also advise multinational corporations on how to evade or avoid these same taxes (see ECA, 2018).

It is also worth noting that the gaps and recommendations identified in the report focus heavily on addressing tax avoidance or evasion. These are not the only sources of IFFs. The main reason for the focus on tax policy and administration is that in other areas of IFFs, there are already strong international frameworks in place, which the vast majority of the world's countries have joined or are implementing or both. This includes the Convention Against Corruption, the Convention Against Transnational Organized Crime and its protocols and the work of the Financial Action Task Force. Though room for improvement remains in those areas (such as full implementation of the requirements of these conventions by African countries, and the tightening of anti-money-laundering standards), international cooperation against tax abuse has no tools as strong as the agreements against corruption, organized crime, money-laundering and terrorist financing. Tax policy administration appears to be a critical weak point in the global governance architecture for tackling IFFs, and it is for that reason that it features so prominently in the chapters on gaps and policy recommendations.

5.2 Policy recommendations

5.2.1 Global level

The global recommendations set out in the report of the High Level Panel were two-pronged, first to provide Africa with guidance on what stand it should take at international forums and what actions it ought to spearhead, and second with reference to the approach African States should take in their bilateral and multilateral relations with non-African States and their global partners. Accordingly, this section is divided into two subsections in order to reveal the status of the recommended measures and elaborate on them in the light of the findings of this study.

5.2.1.1 A global coordination mechanism

The report of the High Level Panel called for the United Nations to adopt a declaration on the issue of IFFs and for the adoption of a unified policy instrument on IFFs. Such an instrument could create a new, comprehensive approach to intergovernmental cooperation to tackle the problem as well as a division of labour between the various organizations and initiatives designed to tackle various aspects of IFFs. In addition, such a policy instrument could create an intergovernmental coordination mechanism to oversee the problem in all its aspects on an ongoing basis, to discuss and adopt new cooperative approaches between States to tackle the problem, and to organize a division of labour between different international organizations or groups of countries. Such an approach has precedents, for example:

The United Nations Economic and Social Council agreed on international cooperation and set priorities for the work and funding of various United Nations agencies on economic and social issues

The Assembly of Heads of State and Government of the African Union, which is a forum for member States, agreed on collaborative efforts on a range of issues and coordinated work by the African Union Commission, ECA, AfDB and other relevant African organizations.

Such a coordinating mechanism would also present an opportunity to address evolving aspects of the IFF phenomenon that are not addressed by existing arrangements, but focus on tackling various problems related to IFFs, but do not aim to comprehensively tackle such flows per se. This mechanism, however, has to date not seen the light of day, and African States have not moved to draft either a declaration or a policy instrument to be taken forward to the United Nations. Nevertheless, in February 2016, the High Level Panel discussed its findings with United Nations Member States at a special briefing in the Economic and Social Council. An important step at the African level would be to prepare a resolution at the African Union and present it to the United Nations for discussion. The United Nations should adopt a comprehensive international agreement on tackling IFFs to address the remaining gaps in the framework. This would require, among other things, mutual legal assistance among parties in asset recovery. Countries should further lay down principles for coordination among international agencies with mandates relevant to the fight against IFFs. In addition, an intergovernmental coordination mechanism should be created to address challenges related to IFFs on an ongoing basis as they arise and to coordinate the work of international agencies and groups of countries in tackling the problem.

In parallel, African countries should continue their efforts to coordinate measures against IFFs at the continental level. In January 2015, following the release of the report of the High Level Panel, the Heads of State and Government of the African Union passed a special resolution on IFFs in which they requested ECA, AfDB and the regional economic communities to submit annual reports on the progress of measures to counter IFFs. In the resolution, they also requested the African Union Commission, ECA, the African Capacity Building Foundation and other development partners to build the capacities of member States and institutions, particularly in contract negotiation, tax management, regulatory and legal frameworks, policies, money-laundering, asset recovery and repatriation and resource governance for effective and optimal management and governance of African natural resources. In order to coordinate such efforts, in addition to other anti-IFF activities, the Consortium to Stem Illicit Financial Flows, embracing a range of international and regional organizations and civil-society bodies, was set up in 2016. The Consortium should continue to coordinate efforts to build African countries' capacity to stem IFFs. Development partners and organizations that wish to enhance the capacity of African countries to stem such flows should do so through or in coordination with the Consortium.

In the resolution on illicit financial flows, the Heads of State and Government of the African Union also reiterated that the issue of international cooperation in combating IFFs should be raised in the post-2015 development agenda (2030 Agenda for Sustainable Development). Though illicit financial flows were indeed reflected in the 2030 Agenda and Addis Ababa Action Agenda, no agreement has been reached on creating a United Nations tax body. However, Ecuador, as the Chair of the Group of 77 has renewed the call for the creation of a United Nations tax body. African Union member States have already expressed support for such a body, as most of them are members of the Group of 77. A recent report by the Intergovernmental Group of 24 on International Monetary Affairs and Development also added support to proposals to upgrade the United Nations Tax Committee to the status of an intergovernmental body to enhance the voice of emerging markets and developing countries on international tax policy matters.

The High Level Panel also recommended that the international community should eliminate secrecy jurisdictions, introduce transparency in financial transfers and crack down on money-laundering, that stronger international collaboration should be organized to ensure greater transparency in the global financial system and that the United Nations, IMF and the World Bank should play a more coherent and visible role in tackling IFFs. ***These recommendations should be followed.***

The High Level Panel has requested that the Bank for International Settlements publish the data it holds on international banking assets by country of origin and destination in a matrix format, along the lines of the data published by the IMF for bilateral trade, foreign direct investment and portfolio investment, so that they can inform the analysis of IFFs from Africa. It remains unclear whether any attempt has been made to contact the Bank requesting a change in its data matrices. However, a brief analysis of their website in June 2016 showed that the data were not presented in accordance with the parameters outlined in the High Level Panel's report. The Bank for International Settlements should make these data available.

In addition, as indicated in chapter 3, African countries remain underrepresented in certain organizations that coordinate action or decide on norms relevant to IFFs. African countries (and, indeed, other countries that are currently not represented) should be granted greater representation in these organizations, or the role that those organizations have in setting global rules relevant to tackling IFFs should be transferred to organizations with broader membership so that they can take into account the concerns of other affected countries. For organizations, such as the International Accounting Standards Board that are largely controlled by the private sector, discussions should take place as to whether these should be replaced by intergovernmental organizations.

5.2.1.2 Publicly available disaggregated multinational corporation financial information

In relation to States outside Africa, the High Level Panel recommended that partners should require publicly available disaggregated financial information on their multinational corporations, as well as beneficial ownership information. This recommendation is being discussed within the Base Erosion and Profit-Shifting process at OECD and in the United Nations Tax Committee. However, as can be seen from the example of Cameroon and South Africa, African countries are not yet taking the initiative to collect and analyse such data, and reliance on estimates can only undermine the ability of the State to design and implement appropriate policies.

There is a lack of clarity in what types of financial information on multinational corporations can be requested from foreign Governments and how to make a request, as each country still follows a different process in determining whether information should be provided, in accordance with its domestic law. However, there is need for a coherent and single approach to access of information and more work on transparency. Perhaps a template on the exchange of information would be one way to resolve this. A global endeavour to counter some related issues includes the development of a rule on country-by-country reporting under OECD processes. However, the Kenyan experience highlighted earlier in the present report shows that even within European Union States, there is no coherent understanding of what information should be shared, despite the existence of standard reporting forms in OECD. In addition, it is worth noting that the multilateral instrument introduced by OECD (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) does not resolve much for the majority of African States, most of which have not entered into a double taxation agreement. ***As such, African countries should better inform themselves on what information can be requested. At the same time, countries (African and non-African) should better communicate the rules that they apply for requests on information pertaining to multinational corporation financial information from foreign Governments. Finally, countries should consider adopting a new set of internationally harmonized rules for requests made from one Government to another for information on multinational corporations, that should be based on global consultations beyond OECD. African countries may also need to pursue their own efforts at the continental level to create clarity about the exchange of information on multinational corporations between them, and indeed to develop common approaches to tax cooperation. While the African Tax Administration Forum could help in this effort, it does not yet have universal membership within the continent. Ideally, all African countries should join the Forum, if that is not possible then African countries should create a coordination mechanism on tax issues that has a broader membership than the Forum.***

5.2.1.3 Transparency and public debt audits

As mentioned in Section 4.2, one interesting development on the side of lenders is the plan of the Government of Norway to conduct an independent audit of all its bilateral debt owed by seven developing countries. The Parliament of Tunisia has been considering a bill authorizing steps to audit its debts (as debtor) and determine whether they are odious. ***Other States should also review whether their debt (either as creditor or debtor) is odious.***

5.2.1.4 Use of tax havens and secrecy jurisdictions by African countries

No data are available on whether any African countries are actively preventing the use of tax havens. In some countries, such as Kenya, tax audits to detect transfer pricing are prioritized if a particular company has a subsidiary in a tax haven. ***Perhaps, Africa as a continent, subregions and individual countries should consider creating their own blacklists, similar to what has been done by some European States, such as Italy.***

5.2.2 Regional agreements

Continental-level conventions offer a framework to harmonize and coordinate national initiatives. The most comprehensive existing legal agreement is the African Union Convention on Preventing and Combating Corruption (African Union, 2003). The most recent initiative is the work of the High Level Panel.

One area in which subregional groupings could take a lead in cooperating is the use of customs data. First, by sharing trade price data, countries automatically expand the data set against which they can judge and identify abnormal pricing; this can be done in real time. Another area in which subregional groupings can lead joint efforts against illicit financial flows is through "follow the money" partnerships, which involves working with major trading partners to identify abusive pricing happening at each end of the same transactions. Starting such a process on a subregional basis could be powerful in its own right, and could also demonstrate to other trade partners the value of cooperation. The joint audits being spearheaded by the African Tax Administration Forum also need to continue through the sharing of technology and databases at the subregional and continental levels. ***Automatic exchange of tax information and collaboration in tackling abusive tax practices and trade misinvoicing among African countries is needed. Although such exchange is partially being dealt with by the African Tax Administration Forum, it should be broadened beyond the pilot countries currently involved and indeed beyond the Forum's membership.***

5.2.3 National level

5.2.3.1 Technical, legal and policy reforms

Several reforms pertaining to law and policy have been clearly identified as crucial to reducing and preventing IFFs. Those include reforms relating to transfer pricing, beneficial ownership, country-by-country reporting of financial information by multinational corporations and the review of tax treaties.

Only nine African countries have in place laws on transfer pricing. Even if a double taxation agreement is in place to deal with a cross-border tax issue, there is still no possibility of monitoring issues of transfer pricing without a clear legislative framework in place. *African countries where multinational corporations have significant activities should establish laws and policies on cross-border taxation if they do not exist, including laws on transfer pricing and thin capitalization policies. African countries where there are currently no such activities should nonetheless strengthen their tax policy and administration. As part of this reform, multinational corporations operating in African countries should be required to provide the revenue authority with a comprehensive report showing their disaggregated financial reporting on a country-by-country or subsidiary-by-subsidiary basis. The African Governments could consider developing a format for this reporting that would be acceptable to multiple African revenue authorities and which would allow for the cross-border assessment of the growing numbers of African-owned multinational enterprises. At a minimum, debates should be held at the national level to discuss the situation at the national and subregional levels.*

Second, making inaccurate statements of the price, quantity or quality of goods and services or any other aspect of trade in goods and services in order to effect a hidden transfer of wealth across borders or evade taxation should be made illegal by African countries. This could take the form of strengthening the countries' general anti-avoidance rules. As there are differences from one country to another regarding what is considered to be a prosecutable financial offence, this opens avenues for agents to evade taxes, move money illegally across borders and launder through the banking systems. *Stronger regional efforts are needed to close loopholes in legislation that allow for "regulatory arbitrage" across national boundaries.*

Third, national registries of companies should be bolstered and digitized, and there should be a clear and accessible register of companies for use for tax purposes listing domestically registered companies and their foreign related party data. This is currently one of the greatest problems on the continent: forms are not filed or updated, or if filed, are misplaced. Attempts to automate have taken more than 10 years in some countries. *Such registries need to be updated and triangulated with tax data, as well as with stock exchange and even service-based data.*

Fourth, customs services should use available databases to compare prices. This is not possible in many African countries, and customs assessment remains based on an ad hoc and often receipt basis, although the customs officials in some countries do check online prices in making assessments of goods. *The World Customs Organization has a role to play in the collation of customs data that remain unavailable. However, subregional blocs on the continent can also make a start in this area.*

Fifth, national and multilateral agencies should make fully and freely available, and in a timely manner, data on the pricing of goods and services in international transactions, to the extent allowable under confidentiality requirements.

Sixth, all countries should pursue the automatic exchange of tax information globally, subject to national capacity and attention to necessary confidentiality (in particular, even if African countries do not have the capacity to exchange tax information automatically with other countries, they should still receive such information from those countries with the capacity to supply it). African countries, in particular should advocate this. Steps have been taken in several African countries to pass freedom of information legislation which would allow the country's revenue authority in principle to access the necessary data domestically; however, this approach remains untested. In addition, discussions have taken place on the global accessibility of information, for which African States have added a call for this internationally, but there has been no similar pressure domestically. This is possibly because there is a presumption that African countries will mainly be the recipients of information. However, in actuality, several African countries, including Algeria, Egypt, Nigeria, South Africa and Tunisia, will be providers of such information, as they also house domiciled multinational corporations. *This should be negotiated between countries at the subregional and continental level in order to begin to reduce IFFs between African countries as well as flows outside the continent.*

Seventh, beneficial ownership information should be provided when companies are incorporated or

trusts and foundations are registered. The situation in most African countries is that the company registry is not updated and digitization is not complete. In some countries, such as Kenya, this process has been pending for almost 20 years. The result is that the availability of a repository that is reliable, up-to-date and easily accessible becomes a problem, with the added nuance that the structures of a beneficial ownership registry remain uncrystallized and laws enabling the collection of those data have in most cases not even been drafted. The ownership structure of multinational corporations can be verified between the time of registration and the issue of an operating licence, but verification is extremely difficult and can be painstaking. ***This information should be collected at all domestic public company registries.***

Eighth, African countries should hold national-level discussions on country-by-country reporting by multinational corporations and how it will affect them. To date**,** those discussions have only been apparent within the African Tax Administration Forum. In South Africa, following the recommendations of the Davis Tax Committee, regulations to institute implementation of the country-by-country reporting standard have been implemented by the South African Revenue Service , as well as by the authorities in Mauritius (see OECD, cited from ECA, 2018).

Ninth, countries should review current and prospective double taxation conventions, particularly involving jurisdictions that are significant destinations of IFFs, to ensure that they do not provide opportunities for abuse. Since the discussion on treaty review came to the forefront, Mauritius has reviewed its treaty with India. After revoking its treaty with Mauritius, Rwanda signed a revised version which allowed for the taxation of management services in Rwanda before repatriation of the amount to Mauritius. In Mozambique the Government has stopped signing tax treaties and has started reviewing old treaties, beginning with its treaty with Mauritius. ***All double taxation agreements, bilateral investment agreements and any government contracts or agreements offering any tax incentives or exemptions should be required to undergo public and technical scrutiny before being implemented.***

Tenth, African countries can consider using subregional integration arrangements to introduce accepted standards for tax incentives to prevent harmful competition in the effort to attract foreign direct investment. Currently discussions are under way within the subregional blocs – the Arab Maghreb Union, the Common Market for Eastern and Southern Africa, the East African Community, the Economic Community of West African States and the Southern African Development Community - to set up joint sharing of data and a shared model double taxation agreement developed in the East African Community. Many countries are also members of the African Tax Administration Forum. A recent example involves the European Union, in which the European Commission has ruled to be unlawful tax incentives granted by certain European Union member States. This may provide an example that Africa could consider following to prevent harmful tax competition. Furthermore, ***ensuring that loopholes which allow IFFs are closed in every country of the continent will be important to close avenues for "criminal arbitrage" across national boundaries.***

Eleventh, countries should develop policies to combat IFFs, such as national action plans. To date, the only countries in Africa to develop such plans are Burkina Faso, Kenya, Liberia, Mauritius, the Niger, Senegal and Sierra Leone, which are part of the United States-African Partnership on Illicit Finance. ***National, subregional and continental action plans should be developed and implemented to prevent IFFs.***

The International Monetary Fund and the global community could also take part in a "compatibility review" to examine the extent to which various integration and trade treaties conflict with the Fund's Articles of Agreement. IMF and other institutions could then manage a transparent process whereby "Articles-of-Agreement-friendly" exceptions to trade and investment treaties could be framed and inserted into revised and future treaties.

Finally, countries should join such initiatives as FATF and the Extractive Industries Transparency Initiative and ensure the implementation of the relevant commitments. Most African countries are already members of subregional FATF bodies covering Central Africa, Eastern and Southern Africa, the Middle East and North Africa, and West Africa.

Only 17 African countries have met the standards of the Extractive Industries Transparency Initiative, while four are in the process of implementing them and one has suspended its implementation plans.

5.2.3.2 Administrative reforms

The High Level Panel emphasized that there was a need to establish or strengthen the independent institutions and agencies of government responsible for preventing IFFs. These include (but are not limited to) financial intelligence units, anti-fraud agencies, customs and border agencies, revenue agencies, anti-corruption agencies and financial crime agencies. The Panel also stated that all such agencies should report regularly on their activities and findings to national legislatures. They should also create methods for effective information-sharing and coordination among various institutions and agencies and put in place robust mechanisms for the supervision of banks and financial institutions.

First, setting up such institutions and then putting them in close coordination with each other is crucial. The effectiveness of national initiatives in combating financial crimes is often hampered by inadequate coordination, harmonization and cooperation across African countries. Such discrepancies are widespread across the continent. Countries should adopt national frameworks for inter-agency collaboration on IFFs that guide the work of anti-corruption agencies, anti-money laundering agencies, financial intelligence units and specialized offices across other branches of government, including the central bank, the police, customs services, immigration services, mining and trade ministries and company registries. This cross-agency coordination needs to be organized along the entire length of the information-processing chain, from the detection of suspicious activity to investigation, all the way to prosecution. Efficiency is often hampered by rigid specialization and the compartmentalization of responsibilities and agency mandates. This lack of clarity on institutional mandates impedes effective deterrence and prosecution of financial crime.

5.2.3.3 The arm's-length principle and free access to comparables databases

In order to assess whether transfer prices comply with the "arm's length" principle in particular cases, it is important for tax authorities to have access to databases of prices used in the trade of similar items between unrelated parties. To this end, ***national and international agencies should make data on the pricing of goods and services in international transactions, in accordance with accepted coding categories fully and freely available, and in a timely manner.*** In the absence of free access to such databases, several African countries have purchased access to pan-European databases. Kenya purchased a database on comparables in 2011. The initial use was seen to be successful, but is apparently no longer showing results. South Africa has also had access to a comparables database since 2012. The only other countries that have access to such databases in Africa are Algeria and Uganda. The African Tax Administration Forum is, however, looking into the possibility of purchasing a database for collective use.

Use of the information from the pan-European databases continues to be contested. There is a need to build local databases, but it is still unclear what actions are being taken in that regard. ***A better step forward would be to look at the alternative approaches to taxing the corporate income of multinational corporations, such as those adopted in Brazil and India. This could be done by creating an African technical tax committee that could pinpoint African priorities and concerns and begin to resolve them.***

Second, African countries where multinational corporations are engaged in significant activities should create units focused on international tax issues, including transfer pricing. Only a few African countries have transfer pricing units. This is a matter of extreme urgency for countries in which multinational corporations have substantial activities. ***Those units should be located in revenue authorities and should be well trained in transfer pricing regulation and equipped with relevant technological tools and access to relevant databases in accordance with global best practice.*** Establishing transfer pricing units may entail the training of a selection of existing revenue officers in this specialized area.

Third, African countries should build the skills of their staff in government agencies that have the mandate to prevent IFFs. Even in cases in which such agencies have been established, they often face serious financial, technical and human capacity constraints. For example, most African countries lack an adequate stock of qualified forensic statisticians, investigators and financial crime prosecutors. They also lack an adequate supply of specialized technology and equipment for collecting, processing and storing specialized information on financial crime.

Finally, African countries need to improve their economic and financial governance. Ultimately, mechanisms for combating financial crimes must be part of the broader agenda for improving economic and political governance in the continent. The effectiveness of mechanisms for combating IFFs depends on the quality of information and the capacity to generate and manage this information, as well as the accountability of the institutions involved, from the highest level of government to the lowest.

5.3 Action plan and monitoring and evaluation framework for tackling illicit financial flows in Africa

The analysis above highlights the need for the African Union to adopt a road map and action points for the implementation of the key recommendations of the High Level Panel, organized over short-term, medium-term and long-term priorities. This regional road map would bring the differing priorities of national governments together for more effective implementation of the recommendations and provisions to combat IFFs. The recommendations are structured in accordance with the divisions of the Panel's report.

a. Methods used in effecting IFFs;

b. Commercial activities;

c. Criminal activity;

d. Corruption.

The tables set out below show what action should be taken, what institution could or should monitor it and how it should be evaluated.

5.3.1 Global level

Action	Responsibility	Monitoring and evaluation
Develop a global governance framework to mitigate IFFs	United Nations Member States. , with support from relevant regional and international organizations.	Relevant regional and international organizations can evaluate the impacts on their respective regions. At the African level, African Union Commission, the African Tax Administration Forum, ECA, Pan African Lawyers' Union and the Tax Justice Network – Africa could evaluate the suitability of such a framework for Africa
Bank for International Settlements to publish the data it holds on international banking assets by country of origin and destination in a matrix format, so that it can inform the analysis of IFFs from Africa	Individual countries and territories that have not already done so to authorize the publication of data that they have submitted to Bank for International Settlements	Annual review as part of the review by the African Union Assembly of the implementation of the recommendations of the High Level Panel
Support the setting up and capacitating of transfer pricing units	African countries, development partners, capacity-building institutions, including the African Tax Administration Forum, or the African Capacity Building Foundation, AfDB and ECA	ECA, African Union Commission, AfDB, African Tax Administration Forum and national institutions – government, parliament, civil society
Promote a global minimum standard for the publication of ownership information	Global, with agreement through the United Nations. African Union Commission, ECA, the Pan African Lawyers' Union and the African Tax Administration Forum can provide support to African countries in preparing for the negotiations	African Union Assembly, African Union Commission, Tax Justice Network – Africa and ECA
Consider countermeasures for non-compliant jurisdictions	Global, with agreement through the United Nations. The African Union Commission, ECA and the Pan African Lawyers' Union can provide support to African countries in preparing for the negotiations	African Union Assembly, African Union Commission and ECA
Advocate to ensure immediate reciprocity is not an entry requirement to tax information exchange, namely that countries can begin receiving data as long as they are committed to eventual full reciprocity	Global, to be agreed at the United Nations. African Union Commission, ECA, Pan African Lawyers' Union and the African Tax Administration Forum can provide support to African countries in preparing for the negotiations	African Union Assembly, African Tax Administration Forum, African Union Commission and ECA
Consider countermeasures, including potential WTO challenges, for highly opaque trading partners	Global. The African Union Commission, ECA, Pan African Lawyers' Union and African Tax Administration Forum can provide support to African countries in this regard	African Union Assembly, African Union Commission and ECA
Establish global standards in conducting reviews of accounts held by senior government officials, leaders of political parties, executives at State-owned enterprises and others with access to substantial State assets and the power to direct them (often called politically exposed persons, or PEPs). African Governments and other stakeholders should be able to require foreign financial institutions to provide details of accounts held by their listed PEPs, preferably as part of a new system of automatic exchange of financial information (African Union and ECA, 2015). Publish lists of PEPs, as well as any asset declarations filed by PEPs, and information about whether the country's laws prohibit or restrict the ability of their PEPs to hold financial accounts abroad	Global, including African and non-African governments. The African Union Commission, ECA and the Pan African Lawyers' Union can provide support to African countries in preparing for the negotiations	African Union Commission, ECA, Tax Justice Network – Africa and Advisory Board on Corruption

5.3.2 Continental level

Action	Responsibility	Monitoring and evaluation
Pilot "follow the money" partnerships to curtail trade mispricing	Individual countries on a voluntary basis. AfDB, ECA, African Capacity Building Foundation, African Tax Administration Forum and Pan African Lawyers' Union can provide support to African countries	Annual report to the African Union Assembly
Set up a continental-level data standard for the exchange of tax information	African Union and African Tax Administration Forum	African Union Commission, ECA and African Union Assembly
Extend the provisions of the African Union Convention on Preventing and Combating Corruption regarding the functions of the Advisory Board on Corruption along the following lines: "Develop methodologies for analysing the nature and extent of IFFs from Africa, and disseminate information and sensitize the public on the negative effects of such flows"	Advisory Board on Corruption	African Union Assembly
African Peer Review Mechanism should incorporate IFF issues in its country review process	African Peer Review Mechanism	African Peer Review Mechanism, African Union Assembly
Systems of automatic exchange of tax information among African countries. African countries should put in place such systems at the national level as well as pushing for the establishment of such a system at the global level, that will facilitate the automatic exchange of tax information subject to national capacity and to maintaining the confidentiality of price-sensitive business information. Support the assessment of alternatives, including profit allocation methods, and, develop a common African position on tax issues	African countries, using the African Union and/or the African Tax Administration Forum to reach agreement. AfDB, ECA, the African Capacity Building Foundation and the African Tax Administration Forum can provide support to African countries	African Union, African Tax Administration Forum

5.3.3 National level

Action	Responsibility	Monitoring and evaluation
Multinational corporations should be required to provide comprehensive reports about their operations, showing disaggregated financial reporting on a country-by-country, or subsidiary-by-subsidiary basis, as part of annual reports filed at company registries Develop a format for this reporting that would be acceptable to multiple African revenue authorities	Companies registry, tax authorities, financial intelligence unit, central bank, Treasury, Ministry of Finance through a triangulated database. AfDB, African Tax Administration Forum and ECA can provide support	National institutions – government, parliament, civil society; African Union Commission; ECA; African Peer Review Mechanism, Tax Justice Network – Africa, African Tax Administration Forum
African countries and companies operating in extractive industries in Africa should join voluntary initiatives, such as the Extractive Industries Transparency Initiative	Ministry of Mines, revenue office, Ministry of Environment to develop forms. AfDB, African Minerals Development Centre and World Bank can provide support	National institutions – government, parliament, civil society; African Union Commission; ECA; African Peer Review Mechanism, African Minerals Development Centre
African governments to train and empower investigators responsible for combating illicit financial flows related to criminal activities	Governments and development partners; AfDB; Pan African Lawyers' Union; and UNODC can provide support to African countries	National institutions – government, parliament, civil society; African Union Commission; ECA
Build links between revenue authorities and ministries of finance to reform national policies on base erosion and profit shifting and build capacity	National Governments and Parliaments; African Tax Administration Forum; African Capacity Building Foundation; AfDB; and ECA can provide support to African countries	National institutions – government, parliament, civil society; African Union Commission; ECA; African Peer Review Mechanism
Increasing the pay of civil servants; providing clear documentation of incentives and subsidies and placing them in a line in the national budget preparing publicly available cost-benefit analyses of companies before allowing them to invest in a country; using smart technology to triangulate data by updating company registries and triangulating their digitized contents with the tax databases as well as the land registries; changing procurement practices to allow only those not related to government at all to win tenders, which would also allow for a clearer separation of State and business; following the Scandinavian concept of placing a politician's companies in trust for the duration of his/her political term and disallowing it from engaging in any government business.	Domestic legislation changes: National parliaments; African Tax Administration Forum; African Capacity Building Foundation; AfDB and ECA can provide support to African countries	National institutions – Governments; Parliaments, civil society; African Union Commission; ECA; African Peer Review Mechanism

References

Action Aid (2015). An Extractive Affair; How one Australian mining company's tax dealings are costing the world's poorest country millions. Available at www.actionaid.org/sites/files/actionaid/malawi_tax_report_updated_table_16_june.pdf.

African Civil Society Circle (2015). *Tackling Illicit Financial Flows from and within* Africa. Available at http://api.ning.com/files/6IpFLh7xgCnJ4v*2fO2CZgNaEurltOKBzThsQR92aneo6uzAmpWX9DpTMt-9DBYNyXyfUsZNqkvpXWqI*hYjD9CZkBAoo49O/acsc_2015_illicit_financial_flows_paper.pdf.

African Development Bank Group (AfDB) (2016). *Strategic Framework and Action Plan on The Prevention of Illicit Financial Flows in Africa (2016 – 2020)*. August 2016. Available at https://www.afdb.org/fileadmin/uploads/afdb/Documents/Events/IFF/Documents_IFF/Bank_Group_Strategic_Framework_and_Action_Plan_for_the_Prevention_of_Illicit_Financial_Flows_in_Africa__2016-2020.pdf.

African Development Bank (AfDB) and Global Financial Integrity (2013). Illicit Financial Flows and the Problem of Net Resource Transfers from Africa: 1980-2009. Tunis and Washington. Available at

https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Illicit_Financial_Flows_and_the_Problem_of_Net_Resource_Transfers_from_Africa_1980-2009_-_Executive_Summary.pdf.

African Development Bank (AfDB) and others (2012). *African Economic Outlook. Special Theme Promoting Youth Employment*. Paris: OECD.

African Monitor (2017). State of illicit financial flows in South Africa: A scoping exercise. African Monitor. Report 1, April 2017. Available at www.africanmonitor.org/wp-content/uploads/2017/04/IFF-Report-1.pdf.

African Union and ECA (2015). Illicit Financial Flows: Report of the High Level Panel on Illicit Financial Flows from Africa. Available at http://

African Union Commission (2015). Decisions, Declarations and Resolutions, Assembly Special Declaration on Illicit Financial Flows, Assembly of the Union, Twenty-Fourth Ordinary Session, Addis Ababa, 30-31 January 2015, Assemble/AU/17(XXIV).

African Tax Administration Forum (2014). Available at https://www.ataftax.org/en/news-library/publications

Association for Women's Rights in Development (2017). Illicit financial flows: Why we should claim these resources for gender, economic and social justice, 28 July. Available at www.awid.org/publications/illicit-financial-flows-why-we-should-claim-these-resources-gender-economic-and-social.

Baker, R. (2005). *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free Market System.* John Wiley and Sons: Hoboken, New Jersey and Canada.

Bartunek, Robert-Jan (2017). EU orders Amazon to repay $295 million in Luxembourg back taxes. 4 October. Available at https://www.reuters.com/article/us-eu-amazon-taxavoidance/eu-orders-amazon-to-repay-295-million-in-luxembourg-back-taxes-idUSKCN1C913S. Accessed 29 August 2017.

Blankenburg, S. and M. Khan (2012). Governance and illicit flows. In Draining Development? Controlling Flows of Illicit Funds from Developing Countries, Peter Reuter (ed.). Washington, D. C.: World Bank.

Boles, Jeffrey R. (2017). Anti-money laundering initiatives for the South African real estate market. *Journal of Comparative Urban Law and Policy*, vol. 1, issue 1, pp 196-202.

Boyce, James K. and Léonce Ndikumana (2012). Capital flight from sub-Saharan African countries: Updated estimates, 1970 – 2010. Amherst: Political Economy Research Institute, University of Massachusetts. Available at

http://www.peri.umass.edu/fileadmin/pdf/ADP/SSAfrica_capitalflight_Oct23_2012.pdf.

Cameroon, Ministry of Finance (2017), Directorate General of Taxation. Available at www.dgtcfm.cm.

Cameroon National Institute of Statistics (2017), Cameroon Household Survey. Available at http://www.statistics-cameroon.org/.

Cameroon National Agency for Financial Investigation (2015), Progress Report. Available at http://www.anif.cm/.

Christian Aid (2008). Death and taxes: the true toll of tax dodging. Available at https://www.christianaid.org.uk/resources/about-us/death-and-taxes-true-toll-tax-dodging.

Cobham, Alex (2014). The impacts of illicit financial flows on peace and security in Africa. Paper prepared for the Tana High-Level Forum on Security in Africa. Available at https://www.africaportal.org/publications/the-impacts-of-illicit-financial-flows-on-peace-and-security-in-africa/.

Cobham, Alex and others (2016). Hidden inequality: How much difference would adjustment for illicit financial flows make to national income distributions? *Journal of Globalization and Development*, vol. 7, No. 2, pp.1-18.

Cobham, Alex and Petr Janský (2017). Global distribution of revenue loss from tax avoidance: Re-estimation and country results. WIDER Working Paper 2017/55. Helsinki: United Nations University, World Institute for Development Economics Research. Available at https://www.wider.unu.edu/sites/default/files/wp2017-55.pdf.

Cotorceanu, P.A. (2015). Hiding in plain sight: how non-US persons can legally avoid reporting under both FATCA and GATCA. Trusts & Trustees, Volume 21, Issue 10.

Davis, W. (2017). Case study on illicit financial flows in Morocco. New York: Mimeo.

Deen, Thalif (2017). Ecuador revives campaign for inter-governmental UN tax body. *The Wire*, 19 January. Available at https://thewire.in/103436/ecuador-revives-campaign-for-an-inter-governmental-un-tax-body/.

European Network on Debt and Development (EURODAD) (2014), Tax and transparency fact-finding mission. Available at http://eurodad.org/files/pdf/1546264-tax-and-transparency-fact-finding-mission.pdf.

Ernst &Young (2014). South African authorities address transfer pricing and OECD's BEPS Action Plan. Global Tax Alert, 8 December. Available at www.ey.com/Publication/vwLUAssets/South_African_authorities_address_transfer_pricing_and_OECDs_BEPS_Action_Plan/$File/2014G_CM4982_TP_SA%20authorities%20address%20transfer%20pricing%20and%20OECDs%20BEPS%20Action%20Plan.pdf.

Extractive Industries Transparency Initiative (not dated). Implementation status. https://eiti.org/countries

Federal Reserve Bank of New York (1995). *The principle and practices for wholesale financial market transactions*. New York: Federal Reserve Bank of New York.

--- (FATF) (2017). International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations. Paris: FATF and OECD.

Financial Action Task Force (FATF) and Inter Governmental Action Group against Money Laundering in West Africa (2013). *Terrorist Financing in West Africa*. Paris: FATF.

Financial Stability Board (2017a). FSB Regional Consultative Group for Sub-Saharan Africa discusses corporate governance, macroprudential frameworks and shadow banking. Available at http://www.fsb.org/2017/02/fsb-regional-consultative-group-for-sub-saharan-africa-discusses-corporate-governance-macroprudential-frameworks-and-shadow-banking/

_________(2017b). Members of the FSB Regional Consultative Group for Sub-Saharan Africa. Available at http://www.fsb.org/about/organisation-and-governance/list-of-members-of-the-fsb-regional-consultative-group-for-sub-saharan-africa/ .

Financial Transparency Coalition (2017). Who makes the rules on illicit financial flows? Six financial institutions you've never heard of ... Policy brief. Available at https://financialtransparency.org/wp-content/uploads/2017/02/WhoMakestheRules_Final.pdf.

Fontana, Alessandra and Kjetil Hansen-Shino (2012). *Implementing the illicit financial flows agenda: Perspectives from developing countries*. U4 brief 2012:8. Bergen, Chr. Michelsen Institute, 2012. Available at www.u4.no/publications/implementing-the-illicit-financial-flows-agenda-perspectives-from-developing-countries/.

Fontana, Alessandra and Martin Hearson (2012). *Illicit financial flows and measures to counter them: An introduction*. U4 brief 2012:9. Bergen, Chr. Michelsen Institute, 2012. Available at www.u4.no/publications/illicit-financial-flows-and-measures-to-counter-them-an-introduction/.

Forstater, Maya (2016). Illicit flows and trade misinvoicing: Are we looking under the wrong lamppost? Chr. Michelsen Institute. Bergen, Norway: CMI Insight. Available at https://www.cmi.no/publications/5979-illicit-flows-and-trade-misinvoicing.

Foster, Vivien and Cecilia Briceño-Garmendia (2010). *Africa's Infrastructure: A Time for Transformation*. Africa Development Forum. Washington, D.C: World Bank. Available at http://documents.worldbank.org/curated/en/246961468003355256/Africas-infrastructure-a-time-for-transformation.

Fröberg, K. and A. Waris (2010). Bringing the billions back – How Africa and Europe can end illicit capital flight. Global Studies No. 37. Stockholm: Forum Syd förlag.

Gaulier, G. and Zignago, S., (2010). BACI: International Trade Database at the Product-Level. The 1994-2007 Version. CEPII Working Paper 2010- 23, October 2010, CEPII.

Genschel, Philipp and Laura Seelkopf (2016). Did they learn to tax? Taxation trends outside the OECD. *Review of International Political Economy*, vol. 23, No. 2, pp. 316-334.

Genschel, Philipp, Hanna Lierse, and Laura Seelkopf (2016). Dictators don't compete: autocracy, democracy and tax competition. *Review of International Political Economy*, vol. 23, No. 2, pp. 290-315.

Global Financial Integrity (no date). Analytical methodologies utilized by Global Financial Integrity. Available at www.gfintegrity.org/issues/illicit-financial-flows-analytical-methodologies-utilized-global-financial-integrity/. Accessed 3 August 2017.

Global Financial Integrity, Trust Africa, the Tax Justice Network – Africa, the Pan African Lawyers' Union, CRADEC and Civil Society Legislative Advocacy Centre (2017). Accelerating the IFF Agenda for African Countries. Available at http://www.gfintegrity.org/wp-content/uploads/2017/03/Accelerated-IFF-Agenda-Final-Report-English_print.pdf.

Goredema, Charles (ed.) (2007). Confronting the proceeds of crime in Southern Africa: An introspection. Monograph No. 132, May. Institute for Security Studies, South Africa.

__________(2011). Combating illicit financial flows and related corruption in Africa: Towards a more integrated and effective approach. *U4 Issue*, No. 12. Available at www.u4.no/publications/combating-illicit-financial-flows-and-related-corruption-in-africa-towards-a-more-integrated-and-effective-approach/.

Hamilton, Peter (2017). Ireland "taking too long" to collect Apple tax and may face court. ***Irish Times***,19 May. Available at https://www.irishtimes.com/business/technology/ireland-taking-too-long-to-collect-apple-tax-and-may-face-court-1.3089031. Accessed 29 August 2017.

Henderson, J. and others (2011). Economic governance and poverty reduction in Malaysia. Working paper, Manchester Business School. Available at https://www.researchgate.net/publication/265564620_ECONOMIC_GOVERNANCE_AND_POVERTY_REDUCTION_IN_MALAYSIA_by.

Intergovernmental Group of 24 (not dated). Members. Available at https://www.g24.org/members/

Inter-Agency Task Force on Financing for Development (2016). Coherent policies for combatting illicit financial flows. UNODC and OECD, Issue brief. July 2016. Available at www.un.org/esa/ffd/wp-content/uploads/2016/01/Coherent-policies-for-combatting-Illicit-Financial-Flows_UNODC-OECD_IATF-Issue-Brief.pdf.

International Consortium of Investigative Journalists (2014). Explore the documents: Luxembourg Leaks database. 5 November. Available at https://www.icij.org/project/luxembourg-leaks/explore-documents-luxembourg-leaks-database. Accessed 29 August 2017.

__________(2017a). Swiss Leaks: Murky cash sheltered by bank secrecy. Available at https://www.icij.org/investigations/swiss-leaks/. Accessed 29 August 2017.

__________(2017b). The Panama Papers: politicians, criminals and the rogue industry that hides their cash. International Consortium of Investigative Journalists. Available at https://panamapapers.icij.org/. Accessed 23 August 2017.

International Organization of Securities Commissions (2018). Fact Sheet. Available from https://www.iosco.org/about/pdf/IOSCO-Fact-Sheet.pdf .

Kane, Edward J., and Tara Rice (2000). Bank runs and banking policies: lessons for African policymakers. NBER Working Paper 8003. Cambridge, MA: National Bureau of Economic Research.

Kellecigolu, D. (2017). Case study on illicit financial flows in South Africa. New York: Mimeo.

Le Billon, Philippe (2011). Extractive sectors and illicit financial flows: what role for revenue governance initiatives? *U4 Issue*, No. 13. Available at www.u4.no/publications/extractive-sectors-and-illicit-financial-flows-what-role-for-revenue-governance-initiatives/downloadasset/2537.

Li, Quan (2015). Fiscal decentralization and tax incentives in the developing world. *Review of International Political Economy*, vol. 23, No 2.

Lord, T.S. (2014). Transfer pricing in South African income tax law. M.A. thesis, Faculty of Law, University of Cape Town, South Africa.

Mbonteh, Roland (2017). Extractive industries: Cameroon loses over FCFA 12 billion annually. Cameroon Tribune. 20 May. Available at https://www.cameroon-tribune.cm/articles/8886/fr/extractive-industries-cameroon-loses-over-fcfa-12-billion-annually.

Meyerowitz, D. (2009). *Meyerowitz on Income Tax*. Cape Town, South Africa: Taxpayer CC.

Mevel, Simon, Siope, V. 'Ofa and Stephen Karingi (2013). Quantifying illicit financial flows from Africa through trade mispricing and assessing their incidence on African economies. Available at https://www.gtap.agecon.purdue.edu/resources/download/6543.pdf.

_________(2015). Illicit financial flows, trade mispricing, and their impact on African economies. In *Regional Integration and Policy Challenges in Africa*, Adam B. Elhiraika, Allan C. K. Mukungu and Wanjiku Nyoike, eds. London: Palgrave Macmillan, pp 220-252.

Ministère de l'Economie et des Finance - Maroc (2017). Interview conducted on 19 May 2017.

Mo Ibrahim Foundation (2016). A decade of African Governance 2006-2015 index report. Geneva: Mo Ibrahim Foundation. Available at http://s.mo.ibrahim.foundation/u/2016/10/01184917/2016-Index-Report.pdf?_ga=1.65389997.2000251906.1474899830.

Ndikumana, Léonce, and others (2016). Natural resources and capital flight in Cameroon. *African Development Review*, vol. 28, Special issue, pp. 88-99.

Ndikumana, Léonce, and Mare Sarr (2016). Capital flight and foreign direct investment in Africa: an investigation of the role of natural resource endowment. Working paper 58/2016. Available at https://www.wider.unu.edu/publication/capital-flight-and-foreign-direct-investment-africa.

Nyaissi, L. (2017). Intervention at an expert group meeting to review the draft study on the Global Governance Architecture for Tackling Illicit Financial Flows, Addis Ababa, 28 September.

Oguttu, Annet Wanyana (2016). Tax base erosion and profit shifting – Part 2: A critique of some priority OECD action points from an African perspective - Preventing excessive interest deductions and tax treaty abuse. *Comparative and International Law Journal of Southern Africa*, vol. 49, No. 1 (January), pp. 130-163.

Oloruntoba, Samuel (2015). Politics of financialisation and inequality: Transforming global relations for inclusive development. ***Africa Development***, vol. 40, No. 3.

Omartian, J. (2017). Tax Information Exchange and Offshore Entities: Evidence from the Panama Papers. Available from http://taxsymposium.web.unc.edu/files/2017/03/2017-Tax-Information-Exchange-and-off-shore-entities.pdf.

Organisation for Economic Co-operation and Development (OECD) (no date). The Multilateral Convention on Mutual Administrative Assistance in Tax Matters, amended by the 2010 Protocol. Available at www.keepeek.com/Digital-Asset-Management/oecd/taxation/the-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters_9789264115606-en#.WjKJITTLi1s. Accessed 10 November 2017.

_________(2014). *Illicit Financial Flows from Developing Countries: Measuring OECD Responses*. Paris: OECD. Available at https://www1.oecd.org/publications/measuring-oecd-responses-to-illicit-financial-flows-from-developing-countries-9789264203501-en.htm.

_________(2016). Global Forum on Transparency and Exchange ofInformation for Tax Purposes Tbilisi, Georgia 2-4 November 2016 Statement of Outcomes. Available at http://www.oecd.org/tax/transparency/statement-of-outcomes-GF-plenary-2016.pdf.

_________(2017a). BEPS actions: Base erosion and profit shifting. Available at ww.oecd.org/ctp/beps-actions.htm. Accessed 10 November 2017.

_________(2017b). OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Available at www.oecd.org/corruption/oecdantibriberyconvention.htm.

_________(2018a). Illicit Financial Flows The Economy of Illicit Trade in West Africa. Available at https://read.oecd-ilibrary.org/development/illicit-financial-flows_9789264268418-en#page1

_________(2018b). Global Forum members & observers. Available at http://www.oecd.org/tax/transparency/about-the-global-forum/members/

Organisation for Economic Co-operation and Development (OECD) and United Nations Development Programme (UNDP) (2017). Annual Report 2016/17 Tax Inspectors Without Borders. Available at http://www.tiwb.org/resources/publications/tax-inspectors-without-borders-annual-report-2016-2017-WEB.pdf.

Oxford University Press, Oxford English Dictionary online. Available at http://www.oed.com/. Accessed 27 November 2017.

Passas, Nikos (2016). Collective action for trade transparency against financial crime. *Transnational Criminology*, Spring, No. 12. 2016.

Perdriel-Vaissiere, Maud (2012). The accumulation of unexplained wealth by public officials: Making the offence of illicit enrichment enforceable. U4 Brief, January 2012:1. Available at www.u4.no/publications/the-accumulation-of-unexplained-wealth-by-public-officials-making-the-offence-of-illicit-enrichment-enforceable/.

Picciotto, Sol (2018). Illicit financial flows and the tax haven and offshore secrecy system. Available at https://www.taxjustice.net/2018/02/08/illicit-financial-flows-tax-haven-offshore-secrecy-system/.

Reuter, Peter (2017). Illicit financial flows and governance: the importance of disaggregation. Background paper for the World Development

Report 2017. Washington, D.C.: World Bank. Available at https://openknowledge.worldbank.org/bitstream/handle/10986/26210/112973-WP-PUBLIC-WDR17BPIllicitFinancialFlows.pdf?sequence=1&isAllowed=y.

Rapakko, Annamaria (1989). *Base Company Taxation*. Kluwer Law and Taxation Publishers.

Rijkers, Bob, Hassen Arouri, and Leila Baghdadi (2016). Are politically connected firms more likely to evade taxes? Evidence from Tunisia. *World Bank Economic Review*, vol. 30, issue supplement 1, pp. 166-175.

Sharman, Jason (2012). Chasing kleptocrats' loot: narrowing the effectiveness gap. Bergen, Norway: Chr. Michelsen Institute, Anti-Corruption Resource Centre. Available at www.u4.no/publications/chasing-kleptocrats-loot-narrowing-the-effectiveness-gap/.

South African Reserve Bank, Supervision Department (2016). *Annual Report 2015*. Pretoria: South African Reserve Bank. Available at https://www.resbank.co.za/Lists/News%20and%20Publications/Attachments/7309/01%20BankSupAR2015.pdf.

South African Revenue Service (2014). Presentation made at meeting of the High Level Panel on Illicit Financial Flows from Africa in Johannesburg, South Africa.

Spanjers, J. and M. Salomon (2017). IFF_2017-04_WebTables.xlsx. Washington, D.C.: Global Financial Integrity.

Standing Committee on Finance (2017). Meeting Report: Illicit Financial Flows & Base Erosion and Profit Sharing: input by government agencies. Parliament of South Africa. Cape Town.

Tax Justice Network (no date). Capital flight, illicit flows. Available at www.taxjustice.net/topics/inequality-democracy/capital-flight-illicit-flows/.

Tax Justice Network – Africa (2017). Nairobi Tax HavenAStepCloserNegativeramificationsforeseen with enactment of NIFC Bill. Available at http://www.taxjusticeafrica.net/?p=2866&lang=en.

Taylor, Ian (2016). Dependency redux: why Africa is not rising? *Review of African Political Economy*, vol. 43, No. 147, pp. 8-25.

Times Live (2015). Billions of rands leave SA Under the Radar. 11 January. Available at https://www.africanewshub.com/news/2505877-billions-of-rands-leave-sa-under-the-radar.

The Economist (2014). Uncontained: Trade is the weakest link in the fight against dirty money. 3 May.

Tumuhimbise, C., and William Davis (2017). Where do regional markets exist in Africa's services sector? Opportunities for economies of scale in regional investment. Mimeo. Submitted for publication in the *Canadian Foreign Policy Journal*, pending decision.

Unité de Traitement du Renseignement Financier (2017). *Unité Traiteur du Renseignement Financier Rapport Annuel*. Rabat : Unité Traiteur du Renseignement Financier.

__________(2002). Guidelines for enhancing good economic and corporate governance in Africa. Final draft, May 2002. Available at http://unpan1.un.org/intradoc/groups/public/documents/uneca/unpan009243.pdf.

__________(2013). The state of governance in Africa: The dimension of illicit financial flows as a governance challenge. Paper for the ECA Meeting of the Committee on Governance and Popular Participation, Addis Ababa, 20-21 Feb. Available at https://repository.uneca.org/handle/10855/22142.

__________(2016a). *Measuring Corruption in Africa: The International Dimension Matters*. African Governance Report IV. Sales No. E.16.II.K.2.

__________(2016b). *Transformative Industrial Policy for Africa*. Addis Ababa. Available at http://repository.uneca.org/pdfpreview/bitstream/handle/10855/23015/b11560885.pdf?sequence=1.

_________(2018). *Base Erosion and Profit-Shifting in Africa: Reforms to Facilitate Improved Taxation of Multinational Corporations*. Addis Ababa: ECA.

United Nations, Economic Commission for Africa (ECA), African Minerals Development Centre and African Union Commission (2017). *Impact of Illicit Financial Flows on Domestic Resource Mobilization: Optimizing Revenues from the Mineral Sector in Africa*. Addis Ababa. Available at https://repository.uneca.org/handle/10855/23862.

United Nations, Economic Commission for Africa (ECA) and African Union Commission (2014). ***Economic Report on Africa 2014.*** Addis Ababa. Available at https://www.uneca.org/sites/default/files/PublicationFiles/final_era2014_march25_en.pdf.

United Nations, Economic Commission for Africa (ECA) and United Nations Economic and Social Council (2013).

United Nations, Human Rights Council (2016). Final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights. 15 January 2016. A/HRC/31/61.

United Nations Conference on Trade and Development (UNCTAD). Gross domestic product: Total and per capita, current and constant (2005) prices, annual, 1970-2016. UNCTADSTAT database. Available at http://unctadstat.unctad.org/wds/TableViewer/tableView.aspx?ReportId=96. Accessed 17 February 2017.

_________(2016). Trade Misinvoicing in Primary Commodities in Developing Countries: The cases of Chile, Côte d'Ivoire, Nigeria, South Africa and Zambia. Geneva: UNCTAD.

United Nations Department of Economic and Social Affairs/United Nations Statistics Division (2017). United Nations Comtrade database. Available at https://comtrade.un.org/

United Nations Development Programme (UNDP) (2011). Illicit financial flows from the least developed countries: 1990-2008. Discussion paper. New York: UNDP. Available at http://content-ext.undp.org/aplaws_publications/3273649/IFFs_from_LDCs_web.pdf.

United Nations Environment Programme (UNEP), Special Envoy of the Secretary-General for the Great Lakes Region and United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (2015). Experts' background report on illegal exploitation and trade in natural resources benefitting organized criminal groups and recommendations on MONUSCO's role in fostering stability and peace in Eastern DR Congo. 1 April. Available at https://postconflict.unep.ch/publications/UNEP_DRCongo_MONUSCO_OSESG_final_report.pdf.

United Nations Office on Drugs and Crime (2016). World Drug Report 2016. Sales No. E.16.XI.7.

United States, Bureau of Labor Statistics (2017). Bureau of Labor Statistics. Available at https://www.bls.gov/.

United States, Department of State (2017a). Countries/jurisdictions of primary concern – Morocco. Available at www.state.gov/j/inl/rls/nrcrpt/2015/supplemental/239265.htm.

United States, Department of Justice (2017b). Foreign Corrupt Practices Act. Washington. Available at https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act.

Van Rensburg, D. (2017). Why the UNCTAD's gold estimate was wrong. Presentation. Cape Town, South Africa; Alternative Information and Development Centre.

Vanguard (2014). UK to return £6.8m of Ibori loot to Nigeria., Available at https://www.vanguardngr.com/2014/11/uk-return-6-8m-ibori-loot-nigeria/.

Vicard, V. (2015). Document de travail No 555 Profit Shifting through Transfer Pricing: Evidence from French Firm Level Trade Data. Available at https://publications.banque-france.fr/sites/default/files/medias/documents/working-paper_555_2015.pdf

Waris, A., and M. Kohonen (2011). Linking taxation to the realisation of the Millennium Development Goals in Africa. Paper submitted to the Rethinking development in an age of uncertainty: IDS and DSA/EADI Conference Development Studies

Association, University of York, York, U.K., 19-22 September. Available at https://www.eadi.org/gc/2011/2011, http://eadi.org/gc2011/waris-109.pdf.

Wolff, Peter (2014). The reflection of African concerns in the G-20 financial regulation and financial development agenda. South African Institute of International Affairs, Occasional paper No. 176. February 2014. Available at www.saiia.org.za/occasional-papers/the-reflection-of-african-concerns-in-the-g-20-financial-regulation-and-financial-development-agenda.

World Bank (2016). The World Bank Group's response to illicit financial flows: A stocktaking. 22 March. Available at http://documents.worldbank.org/curated/en/502341468179035132/pdf/104568-BR-SecM2016-0112-IDASecM2016-0071-IFC-SecM2016-00423-MIGA-SecM2016-0044-Box394878B-PUBLIC-disclosed-4-5-16.pdf.

__________ (2017a). Doing Business Measuring Business Regulations. Available at: http://www.doingbusiness.org/

__________ (2017b). Governance and the law. World Development Report 2017. Washington, D.C.: World Bank. Available at www.worldbank.org/en/publication/wdr2017.

World Bank, United Nations Office on Drugs and Crime (UNODC) and International Criminal Police Organization (2013). Pirate trails: Tracking the illicit financial flows from pirate activities off the Horn of Africa. Available at https://openknowledge.worldbank.org/handle/10986/16196.

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