

Transparency International: input to FACTI panel

Via email to: info@factipanel.org

Dear FACTI Panel Members,

Thank you for the opportunity to provide input to this initiative, which we welcome as an effort to enhance accountability, transparency and integrity in global finance. There is a pressing need for bold political action to bridge the estimated annual SDG funding gap of 2.5 trillion US dollars, as well as to respond in an effective and equitable manner to the challenges of the ongoing Covid-19 crisis.

We also welcome the Panel's current consultation with civil society representatives and other stakeholders, and trust that the Panel will continue with this inclusive approach during the next stages of its work.

Illicit Financial Flows: a major driver of poverty and inequalities worldwide

There is compelling evidence that illicit financial flows exacerbate poverty, inequality and wealth distribution and are a major obstacle to achieving the 2030 agenda. They undermine the implementation of all SDGs, with a particularly detrimental impact on SDG 1 (no poverty), SDG 2 (zero hunger), SDG 16 (Peace, Justice and Strong Institutions) and SDG 8 (Decent Work and Economic Growth)¹.

Corruption, tax evasion and tax avoidance erode domestic revenue mobilisation, depriving governments from much needed resources to provide public services, invest in public infrastructure and finance development programmes and social policies targeting the most disadvantaged groups of society, including women. They act as a form of reverse distribution mechanism - an extraction of wealth from the lower and middle classes to the richest², shift the tax burden towards the middle and lower end of the income distribution spectrum³ and probably constitute one of the largest sources of revenue loss in developing countries⁴. In Africa alone, a report by UN ECA estimates that the continent's capital stock would be 60% larger without illicit outflows, while GDP per capita would be up to 15 per cent more and the rate of investment would increase from 19 percent to 30 percent of GDP⁵. Illicit financial flows undermine economic and development outcomes, hinder poverty reduction and fuel rent-seeking behaviours.

The loss of resources for development caused by illicit financial flows has been linked to high levels of unemployment, poverty and inequality⁶. This has a detrimental impact on the poorest and most marginalised groups, especially women who represent a higher share of the world's poor, undermining the "leave no-one behind agenda". Women are particularly affected by the impact of IFFs on poverty and inequalities, as IFFs

¹ Transnational Alliance to Combat Illicit Trade. 2019. Mapping the impact of illicit trade on the sustainable development goals. https://unctad.org/meetings/en/Contribution/DITC2020_TRACIT_IllicitTradeandSDGs_fullreport_en.pdf

² Kar, D. Schjelderup, G. Salomon, M. Baker, R. 2015. Financial Flows and Tax Havens: Combining to Limit the Lives of Billions of People. Global Financial Integrity and Norwegian School of Economics. <https://gfintegrity.org/report/financial-flows-and-tax-havens-combining-to-limit-the-lives-of-billions-of-people/>

³ Coplin, N. Nwafor, A. 2019. It's not all about the money: Domestic revenue mobilisation, reducing inequality and building trust with citizens. Oxfam. <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620754/bp-its-not-all-about-money-drm-080519-en.pdf>

⁴ OECD. 2014. Fragile States 2014: Domestic Revenue Mobilisation in Fragile States. <https://www.oecd.org/dac/conflict-fragility-resilience/docs/FSR-2014.pdf>

⁵ UN Economic Commission for Africa. 2015. Illicit Financial Flows: Report of the High Level Panel on Illicit Financial Flows from Africa Commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development. https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf

⁶ Herkenrath, M. 2014. Illicit Financial Flows and their Developmental Impacts: An Overview. <https://journals.openedition.org/poldev/1863>

reduce public resources available for programmes focused on promoting gender equality and for public services provision on which women and the poor are more reliant. The origins of illicit flows also differently affect men and women, particularly when considering the impact of corruption (including gender specific forms of corruption such as sextortion⁷) and human trafficking, which are known to disproportionately affect women⁸.

Our input calls for an overarching, Common Core Agenda to tackle secrecy, and proposes two major reforms, namely

- 1) a Global Asset Register, and
- 2) a Multilateral Agreement on Asset Recovery

Thank you for your consideration, and please do not hesitate to contact us on deriksson@transparency.org if we can provide further details on these proposals.

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A Common Core Agenda to tackle secrecy

Existing international frameworks provide a wide range of measures to tackle different angles of the challenge of illicit financial flows: corruption, tax evasion and avoidance, and other criminal activities. All of these activities thrive on the same factor: secrecy.

At the same time, existing counter-measures tend to be dispersed across different frameworks, institutions and policy areas.

For this reason, Transparency International proposes the FACTI Panel to consider launching **a Common Core Agenda for tackling Illicit Flows that focuses on secrecy.**

This Common Core Agenda would seek to convene all relevant actors and encourage them to prioritise the issue of secrecy by taking concrete measures to address it in their respective fields – including anti-corruption, tax transparency, and sustainable development - for a pre-defined period of time. In practice, this could range from reforming reporting standards, placing more emphasis on transparency in country review assessments, or making opacity the focus of policy and research output, among others.

Enhancing transparency and removing anonymity – particularly around company ownership – would significantly improve global chances of arresting the illicit flow of resources out of their countries of origin. It will help prevent corrupt actors from siphoning off development finance into private accounts stashed away in secrecy jurisdictions – and help to detect and return it when they do.

We believe the FACTI Panel can play an important role in advancing the debate around secrecy and anonymity in a way that:

- (i) contributes to the achievement of the goals of existing bodies and frameworks; and
- (ii) fills a gap in the international infrastructure, as there is currently no body or institution with a mandate and reach to explore and coordinate cross-cutting, innovative approaches to this problem.

With only ten years left to achieve the 2030 targets, there is a need for seismic change to ensure that resources intended to build schools, hospitals and other key development infrastructure are not captured by special interests. Existing institutions must play their part in shining a light on secrecy, which includes

⁷ Transparency International 2020. Breaking the silence around sextortion: the links between power, sex and corruption. <https://www.transparency.org/en/publications/breaking-the-silence-around-sextortion>

⁸ Merkle O. 2020. The gendered dimensions of illicit financial flows <https://knowledgehub.transparency.org/helpdesk/the-gendered-dimensions-of-illicit-financial-flows>

establishing a global asset register and accelerating the return of misappropriated assets. Please see below for further details on initiatives to implement these two proposals.

Only in this way can we generate and safeguard the vast resources needed to overcome the immediate COVID-19 crisis as well as the longer term development needs around the world. The Panel has a key role to play in driving forward this ambitious agenda. Transparency International, with its network of more than 100 chapters, stands ready to support measures to disrupt the mechanisms and networks that enable corruption, tax evasion and tax avoidance.

Global Asset Registry

Our second proposal relates to the establishment of a Global Asset Registry, consisting of a database of assets – companies, properties, valuable goods, crypto-assets - and their real owners. Not only would this enable the concentration of capital to be calculated, it is an essential step to allow countries to introduce wealth taxes, a measure now being widely considered as a potential source of revenue to address the economic fallout of the COVID-19 pandemic.⁹

A Global Asset Registry (GAR) would also contribute to the fight against corruption, tax evasion and other sources of illicit financial flows. Hiding and laundering illicit or unreported funds would become much more difficult if tax authorities and law enforcement had the ability to access this data.¹⁰ Naturally, the Registry would also facilitate international cooperation and asset recovery.

A workshop organised in 2019 by the World Inequality Lab, the Independent Commission for the Reform of International Corporate Taxation (ICRICT), Tax Justice Network, Transparency International and the Financial Transparency Coalition with experts from academia, civil society, and multilateral bodies discussed the impact a global asset registry could have in reducing inequality by exposing corruption and tax evasion and analysed concrete alternatives for implementing such a registry.¹¹

Currently, information on asset ownership is compiled in a very scattered manner across countries. Registries of assets such as companies, properties, yachts and private jets as well as bank accounts are under the responsibility of different authorities. It is not uncommon, for instance, to have in one country multiple authorities at the sub-national level compiling this information without the existence of a centralised database. Access to these scattered databases is also limited, particularly in cases where assets are registered in a third country.

Another common problem is that in most jurisdictions assets can be registered in the name of legal entities or arrangements and the information about the natural persons benefiting from them is not available, making it more difficult for tax and law enforcement authorities to detect wrongdoing. Countries should start collecting asset ownership information at the beneficial ownership level, or beneficial ownership registration laws should expand their scope to cover any foreign or local legal vehicle that owns assets in the country. A GAR should ensure that asset ownership information is available at the beneficial ownership level, meaning that assets registered in the name of a foreign or domestic legal entity would also have to include the name of the beneficial owners.

⁹ Shaxson, N., “Could the wealth in tax havens help us pay for the coronavirus response?”, Tax Justice Network, March 2020, www.taxjustice.net/2020/03/27/could-the-wealth-in-tax-havens-help-us-pay-for-the-coronavirus-response/

¹⁰ Independent Commission for the Reform of International Corporate Taxation (ICRICT), 2019. *A Roadmap for a Global Asset Registry*. <https://www.icrict.com/press-release/2019/3/25/icrictnew-paper-a-roadmap-for-a-global-asset-registry-measuring-and-tackling-inequality-curbing-tax-avoidance-tax-evasion-corruption-and-illicit-financial-flows>

¹¹ World Inequality Lab, ICRICT, Tax Justice Network, Transparency International, Financial Transparency Coalition, 2019. *The 2019 Global Asset Registry Workshop*. <https://www.taxjustice.net/wp-content/uploads/2019/09/Sept-2019-GAR-workshop-brief.pdf>

The GAR would work to break those silos, and allow relevant information to be centralised and accessible, enabling the analysis, cross-checks and red-flagging for all relevant actors in the public and private sectors to conduct due diligence and investigate potential criminal activity.

While ideally the GAR would be a global inventory of asset ownership, its establishment could be done in stages by extending the scope of existing initiatives or building on them. For instance, at least 40 countries have already adopted beneficial ownership of legal entities as the norm.¹²

The requirements for disclosing the real beneficial owners could be expanded to other assets such as real estate and land, private jets and yachts. Another step would be to then combine all this information in one single place at the domestic level that later could be combined with similar initiatives undertaken by other countries.

Considering the relevance of the debate around wealth concentration to mobilise resources to fight the COVID-19 pandemic as well as a source to mobilize resources to achieve the 2030 Agenda, another alternative to start the establishment of a GAR would be to start developing a global inventory focusing on luxury assets commonly known to be related to wealth concentration and money laundering, including high-end real estate, financial wealth, yachts private jets and art.

The FACTI panel could play an important role in discussing the scope and developing the GAR concept building on the work that has been carried out so far.¹³ The panel should also explore how existing initiatives could contribute to a global asset registry and consider the necessary governance and necessary infrastructure to establish such a register.

Multilateral Agreement on Asset Recovery

Our third proposal is for a multilateral agreement on asset recovery to advance justice, human rights and the achievement of the 2030 Sustainable Development Goals (SDGs). This could be a stand-alone General Assembly-approved instrument or declaration or, if limited to proceeds of corruption, a protocol to the UN Convention against Corruption (UNCAC).

Despite UNCAC chapter V, the work of the Stolen Assets Recovery Initiative (StAR), and efforts within the Lausanne process to overcome obstacles, only a small percentage of the roughly estimated US\$ 400 billion proceeds of corruption from developing countries in the last 10 years has been recovered and returned¹. The estimated amounts lost to developing countries rise into the trillions if account is taken of other illicit financial flows and harm to victims, including that caused by embezzlement, foreign bribery and related offences². Moreover, the harm caused by illicit financial flows is not limited to developing countries.

While overcoming some of the barriers to asset recovery requires long-term reform efforts, a multilateral agreement could address some of the legal and process obstacles that would make a difference in the short term, in time to support achievement of the SDGs.

TI's proposal for a multi-lateral agreement takes into account the UNCAC; the 2030 SDGs (in particular SDG 16); UN General Assembly resolutions on asset recovery; the UN General Assembly's Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; the UN Guiding Principles on Business and Human Rights; successive Human Rights Council resolutions on the subject of the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights; as well as UNCAC resolution 7/2 on Preventing and combating corruption involving vast quantities of assets and the Lima and Oslo Statements on Corruption Involving Vast Quantities of Assets.³

It also takes into account the Common African Position on Asset Recovery (2019); the Global Forum on Asset Recovery Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases (GFAR Principles, 2017); and the Lausanne process Guidelines for the Efficient Recovery of Stolen Assets (2014).

¹² Transparency International, Beneficial Ownership Registers: Progress to Date (Upcoming).

¹³ In addition to the workshop briefing mentioned above, the ICRICT continues conducting relevant research. The commission is undertaking a feasibility study in the UK for the establishment of a local GAR.

The proposal: A multilateral agreement should cover all illicit financial flows and should address three main areas:

- (1) Specific measures to address barriers to international cooperation and expedite the asset recovery process. This should include mutual legal assistance arrangements, as well as frameworks in destination countries for proactive freezing and non-conviction based confiscation
- (2) Standards, legal frameworks and procedures for transparent and accountable asset freezing, confiscation and asset return processes
- (3) Standards, legal frameworks and procedures for ensuring restitution and compensation of state and non-state victims in cases of grand corruption, foreign bribery and money laundering.

In the context of transparent and accountable asset return, the GFAR Principles and the guidance in the Common African Position on Asset Recovery should be followed. Both set out standards that are specific, enforceable, and suitable for most jurisdictions.

With regard to the second and third areas mentioned above, an international agreement could resolve a set of key issues in order to build trust, collaboration and successful outcomes in asset recovery. The following are some of the key principles that should be included in such agreement:

- Transparency
 - *In destination countries:* Publishing up-to-date information on asset management and asset return frameworks and policies, including policies for notifying source/origin countries. Publishing data on freezing, seizure and confiscation processes underway and amount of assets involved, broken down by country of origin.
 - *In source/origin countries:* Publishing up-to-date information on asset management frameworks and policies and data on the status and use of transferred funds or property.
- Accountable structures
 - *In destination countries:* Establishing transparent arrangements for immovable assets. Creating funds, trusts or escrow accounts for confiscated assets, where possible
 - *In source/origin countries:* Creating a returned asset management agency or designating an existing entity for management of returned assets with clear administrative powers and responsibilities for transparency and accountability. Creating a central returned assets account or public budget account under which returned assets are administered. Creating of an asset register, including for physical assets.
- Oversight
 - *In destination and source/origin countries:* Providing for monitoring of the use of frozen, confiscated and returned assets at all stages of the asset recovery process by relevant actors such as parliamentary committees, supreme audit institutions and interested stakeholders, including civil society organisations.
- Use of funds in source/origin countries
 - Creating domestic and regional policies that recognise that in the countries impacted by illicit financial flows, the whole society is the extended victim of the crime and that once direct victims of corruption or other malfeasance have been adequately compensated or cannot be identified, returned assets should be used for development, meeting the SDGs or other social investment projects
 - To that end, in policies and practice providing for the participation of interested stakeholders, including civil society organisations, in decision-making processes about the use of returned assets
- Victims' access to justice in foreign bribery and related money laundering cases⁴
 - Notification of states and other victims: Providing for timely notice to enforcement authorities in affected states about opportunities to participate in foreign bribery cases at different stages, from investigation (where feasible) to final disposition. Likewise, notification of other potential affected parties, such as competitors, shareholders, consumers and others who may have been harmed as a result of foreign bribery – this is especially relevant in very large cases
 - Victims' impact statements: Arranging for such statements by victim states and other victims
 - Compensations of victims: Establishing principles and guidelines with respect to compensation of victims, including a broad definition of victims and recognition of social or collective damages⁵. Allowing the authorities in victim states and other victims to submit claims for restitution or compensation. In foreign bribery cases, disgorged profits could be taken as one estimate of harm, albeit an imperfect one
- Victims' access to justice in grand corruption cases (including foreign bribery cases)⁶

- Standing for non-state actors: Making arrangements for standing for victims and representatives of a broad class of victims in countries other than their own, to present victims impact statements and to make claims. Making arrangements for a victims fund, where appropriate. Appropriate for cases where the justice system in the home country is unable or unwilling to address the corruption due to the corruption in question due to the influence of high level officials benefitting from grand corruption.
- Possible role for regional or international institutions in oversight of asset recovery processes and dispute mediation

A multilateral agreement on asset recovery covering the three areas and the specific issues listed above would serve justice and help return much needed resources to be used for the achievement of the SDGs.

24 May 2020