

**Comments on The (FACTI) Panel Interim Report on Financial  
Accountability, Transparency and Integrity**

C. Melville

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Disclaimer: The opinions expressed are the views of the author and do not necessarily represent the view of the CARICOM Secretariat

## Introduction

The FACTI Panel was established by General Assembly Resolution 74/206 and was endorsed by the 74<sup>th</sup> President of the UN General Assembly and the 75<sup>th</sup> President of the UN Economic and Social Council. The FACTI Panel aims *to improve the world's chances of achieving sustainable development by making recommendation that both strengthen current efforts to combat illicit financial flows and close the remaining gaps in the international system.*<sup>1</sup> The FACTI Panel published its Interim Report in September 2020. The Report builds on the work of the High-Level African Panel on Corruption. A major concern highlighted in the Interim Report is the impact of corruption, tax evasion and the movement of illicit financial flows on the economy and the achievement of the 2030 Agenda for Sustainable Development Goals. Weakened fiscal positions of advanced countries have also re-energised efforts to close leakages to tax revenue. Consequently, there has been a push to reduce tax evasion especially the use of tax havens.

National and global security concerns have caused the international community to take an aggressive stance against money laundering, illicit flows, terrorist financing and corruption in all its forms. More recently, the outbreak of the COVID-19 pandemic has led to a global economic recession and has increased the demand for government expenditure to protect lives and livelihoods. Against this backdrop of a contracting global economy, dwindling government resources and a widening disparity in health and welfare outcomes, the effective management of domestic resources becomes critical. To this end, governments must seek to effectively mobilise resources and to ensure that they are employed in a transparent, fair and equitable manner. More importantly, governments are tasked with ensuring the integrity of the financial system, providing a conducive environment for legitimate business to flourish and reducing criminal activity including white collar crime.

The Report acknowledges that there are several international initiatives aimed at combating corruption, money laundering, tax evasion and other financial crimes

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<sup>1</sup> UN FACTI Panel's website. [Factipanel.org](http://Factipanel.org)

namely the UN Convention against Transnational Crime (UNTOC), UN Convention against Corruption (UNAC), the Financial Action Task Force (FATF), the OECD Global Forum and the OECD Inclusive Framework. These multilateral frameworks have been complemented by regional and national initiatives, which have in some instances established higher benchmarks/standards. However, these initiatives have not achieved the intended success and the flow of illicit funds through the global financial system continues to pose a significant challenge to both advanced countries and developing countries. More recently, the occurrence of a number of scandals such as the Panama Papers (2016), Paradise Papers (2017), the Danske Bank scandal (2019) and more recently the FinCEN Files (2020) have given greater urgency to the fight to reduce tax evasion and illicit financial flows. The Report reviews the challenges and trends, which mitigate against financial accountability, transparency and integrity and advances recommendations to reduce the gaps and deficiencies in the international system. The proposals will be refined and presented in a final report to be published in February 2021.

The Report notes that corruption and other illicit activity can have deleterious effect on the economy including *inter alia* -

- i. Cause financial damage;
- ii. Erode trust in social contracts and governance systems;
- iii. Enhance inequalities within and between nations; and
- iv. Undermine their ability to respect, protect and fulfil human rights

Corruption also discourages investment in the legitimate economy. The Report also acknowledges the impact of corruption on gender, with women and girls being disproportionately affected through the negative impact on the delivery of social services, for which they are the major beneficiaries. The Panel suggests that one of the major factors behind the lack of progress in combating corruption and reducing illicit financial flows is the lack of action on this front by developing countries. Consequently the Report emphasizes the adoption of a whole of system approach to dealing with what is a global problem.

The Report recommends further action on the following four broad areas –

- i. **Cross-cutting issues.** Concerted action is needed to deal with issues related to improving governance and capacity building especially in developing countries. Strategies should also seek to engage non-state actors in the fight against corruption and to apply a whole of systems approach involving advanced and developing countries.
- ii. **Co-operation in tax matters.** Focus should be on increased international cooperation and coordination among the standard setting bodies and other stakeholders in building consensus on mutually agreed international standards. In addition, it is important for countries to achieve consensus on the model of taxation for digital companies, financial reporting and the exchange of information standards and data production and publication.
- iii. **Accountability, public reporting and anti-corruption.** The enforcement of laws must become a priority in order to address impunity and discourage enablers. The identification of beneficial owners is necessary to improve the effectiveness of enforcement action. The identity of beneficial owners is often shrouded in secrecy thus causing them not to be held accountable. Countries also need to build the capacity to investigate and prosecute breaches especially in respect to transborder crimes.
- iv. **International cooperation and settling disputes.** Among the key concerns are the weak arbitration mechanisms for settling international tax disputes, non-trial resolutions, the need for robust laws to allow for confiscation of assets, the return and disposal of assets and compensation to victims. Finally the implementation of a system of peer review is critical to achieving compliance with mutually agreed international standards.

## **General Comment**

The Interim Report by the FACTI Panel addresses some key concerns regarding the growth in corruption and illicit financial flows. The Report presents a comprehensive overview of the state of play regarding international initiatives to counter the spread

of corruption and illicit funds from tax evasion, money laundering and other financial crimes. Despite the acknowledgement that corruption is endemic globally, the Report does not address the fact that corruption is perpetrated by those with power and protected by the establishment. Corruption is supported, often, by a wide network of co-opted officials, which may include law enforcement personnel, tax accountants, magistrates, judges and others in authority. Additionally, the very lens, which are used to evaluate the problem of corruption, must be called into question. The Report continues to advance the narrative that developing countries are disproportionately affected by corruption and therefore seems to put the burden on these countries to fix the problem. In fact, corruption is inimical to all societies and has a wealth-reducing effect on the economy. Therefore, advanced countries are negatively impacted by corruption. Further, the problem of illicit flows is a global problem, which is partially driven by the business model that has been imposed by governments, large powerful companies and wealthy individuals in advanced countries. Consequently, advanced countries should take the lead in removing the incentives to corruption within their jurisdictions.

The Report notes that corruption and illicit flows are a major drain on resources globally. It is estimated that globally US\$500 to US\$600 billion in corporate tax revenue is lost annually from profit shifting by multinational enterprises while an estimated US\$7 trillion of private wealth is thought to be held in haven countries. The data also suggests that approximately 10% of World GDP may held in offshore assets. Another driving force in the fight against corruption is the recognition that corruption drains the country of significant government revenue that could be used to invest in economic activity, on mitigating poverty and improving household welfare. The growth in criminal activity also crowds out lawful economic and commercial activity and stymies economic growth, which in turn, causes violence, political and social unrest and underdevelopment. These outcomes are not peculiar to developing countries but impact all countries. However, developing countries are believed to be disproportionately affected by the growth in corruption and the breakdown in law and order.

Several multilateral institutions have launched initiatives to combat corruption including the United Nations through the UNOC and the UNTOC, the OECD and the FATF. While the Report lauds the emergence of these various initiatives, it notes that a key challenge is the lack of coordination among these institutions and agencies. Further, the lack of coordination among the various institutions has led to the duplication of effort. The FATF and the FATF Style Regional Bodies are currently engaged in administering the Fourth Round of Mutual Evaluations. This evaluation process focuses on measuring the effectiveness of domestic AML/CFT Regimes. To date the performance of developing countries in this evaluation process has not been satisfactory due to deficiencies in their AML/CFT regimes, including inter alia, the lack of prosecutions, the absence of legislation for asset forfeiture and the inability to disclose beneficial ownership information. On the international tax front, the OECD have sought to accelerate compliance with standards in respect to the exchange of information upon request (EOIR), the automatic exchange of information (AEOI) and harmful tax practices. The EU has also been aggressively monitoring compliance with the OECD international tax standards as well as the FATF AML/CFT recommendations. The United States has also emerged as a key player in enforcing compliance with AML/CFT standards. It is evident that the multiple multilateral initiatives place an undue burden on developing countries and shift limited resources away from the provision of critical goods and services. Moreover, shifting goalposts means that governments are presented with competing and sometimes conflicting standards.

The Report does not appear to adequately address the underlying factors driving corruption and illicit activity. However, corruption and white collar crime have flourished because of the coincidence of three factors – **private gain/profit, opportunity and the low accountability as evidenced in low detection and prosecution for breaches of the law.** For example, the legitimizing of tax avoidance measures creates a demand for tax vehicles, which may in turn, drive the growth in tax evasion. After all, why should persons (legal and natural) pay taxes if they can be avoided and such action is regarded as lawful? Further, countries should be encouraged to reassess domestic policies and the incentive they provide to individuals to pursue illicit action. The need for tax vehicles is fueled by the imposition

of relatively high corporate tax rates in the domestic environment in advanced countries. Therefore it is the rationale demand for these legal vehicles to reduce tax liability, which have led to the growth of the offshore/onshore financial centres and created the opportunity for tax avoidance and evasion. Finally, the low rate of detection and prosecution despite numerous scandals provides further incentives to wealthy firms and individuals to pursue such action. Therefore to successfully combat corruption, the recommendations should be comprehensive and encompass national and global solutions. Stronger enforcement action should also be encouraged but small states often do not have the resources to combat the power wielded by these transborder “criminal networks”.

Historically, the business model which has been exported by multinational enterprises (MNEs) has focused on extracting wealth from developing countries by allowing the MNEs to openly benefit from a raft of incentives including low royalties, tax holidays and zero/low tax regimes. In the wake of the 2008 global financial crisis, advanced countries have tried to claw back tax revenues by closing the loopholes to tax evasion (specifically the use of tax havens to hide income/revenue). The Report does not address the fact that despite the paradigm shift away from embracing tax havens, the business model of MNE/MNCs has not changed. This business model, which is based on the extraction/expatriation of wealth from developing countries does not provide a win-win situation. Further, foreign direct investment is pursued where there is ready access to raw materials and low-cost labour. As such the business and production model of advanced countries magnify the inequities in developing countries. The analysis of the roots of corruption should incorporate an assessment of the appropriateness of the development models.

The Panel should also interrogate the role played by development models on income distribution and equity. A development model which is based on the use of sweat shops or on the negotiation of unfair contracts that allow the extraction of resources from developing countries is not sustainable. Advanced countries’ engagement with developing countries must be on more equitable terms and should not lead to the further underdevelopment of the developing country. Outsourcing of production to

labour rich countries where subsistence wages can be paid has not brought sustainable development to these countries. The FACTI Panel should assess the extent to which the environment for corruption to flourish is impacted by the development model, the lack of economic opportunities and growing poverty.

The focus on controlling the supply of legal vehicles from select “tax havens” will not reduce corruption by any significant level. The emphasis must be placed on eliminating the incentives to engage in illegal or criminal activity. To the extent that domestic taxes continue to be high and the use of tax vehicles are legal, persons in advanced countries will utilize these vehicles to minimize their tax liability. Tax avoidance is a step away from tax evasion and would only be deterred by strong enforcement action. In summary the FACTI Panel should seek to address the underlying factors contributing to endemic corruption in advanced countries as well as developing countries. In addition, the issue of fair treatment of all countries is critical to rebuilding trust and promoting international cooperation. The skewed treatment of developing countries vis-à-vis advanced countries has eroded much of the public trust and confidence in the work of the international anti-corruption agencies.

### **Specific Comments**

- i. **The Report states that “*governments in haven countries, most frequently developed countries, have little incentive to block the inflow resulting from tax abuses, corrupt practices and other crimes*”.** This statement is not strictly true since all governments are concerned about tax abuses and corruption and have taken action to strengthen domestic regimes to deal with white collar crime including money laundering and tax evasion. The perceived lack of action by haven countries may largely be due to the fact that the international tax standards are relatively new and the overhaul of the offshore financial centre, which is a key sector, has significant economic and fiscal implications for developing countries. Moreover, developing countries have limited capacity to undertake the raft of reforms.

- ii. The Report notes that **the Panel calls for a common approach and shared understanding about problems and solutions; lack of financial accountability, transparency and integrity is a global problem that needs global solutions, while taking into account the specific country contexts.** The Report also acknowledges that the shortcomings are systemic and require systemic responses and notes that success calls for a legitimate and coherent ecosystem of instruments and institutions dedicated to financial accountability, transparency and integrity. Nonetheless, the burden seems to disproportionately fall on developing countries because advanced economies have not done enough to deter the use of legal vehicles by their citizens. The use of legal vehicles remains a legitimate and viable option for corporations and wealthy individuals to reduce tax liability (i.e. tax avoidance) and to achieve anonymity. Despite the numerous scandals such as the HSBC scandal, the Panama Papers, the Paradise Papers and more recently FINCEN Files, prosecutions of persons associated with these scandals appear to be low.
- iii. **One of the major challenges to compliance is the proliferation of international standards outside the multilateral framework.** In addition to the multilateral initiatives, unilateral action by the EU and nation states has increased legal uncertainty and has led to the duplication of effort by countries with limited resources. In addition, the EU seems to have established a higher bar for compliance with international standards. While the FATF has identified 20 jurisdictions with weak AML/CFT regimes that require ongoing monitoring, it has only blacklisted 2 jurisdictions that are subject to a call for action by the FATF membership to protect their financial system. On May 7, 2020 the EU issued a blacklist of 22 jurisdictions, mainly small states, deemed to be high risk jurisdictions with AML/CFT deficiencies. As at June 2020, the FATF identified 3 CARICOM States – The Bahamas, Barbados and Jamaica - on its grey list of jurisdictions with deficiencies in their AML/CFT regimes.<sup>2</sup> However, the EU has blacklisted these 3 CARICOM States as well as Trinidad and Tobago for perceived deficiencies in their AML/CFT regime although

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<sup>2</sup> AS at October 2020, the FATF grey list was comprised of 18 jurisdictions including 3 CARICOM Member States – Barbados, The Bahamas and Jamaica.

Trinidad and Tobago has been removed from the FATF's grey list in February 2020. Since December 2017, the EU has also published a "blacklist" of non-cooperative jurisdictions for tax purposes that conflicts with the assessment done by the OECD, which is the standard setting body for international tax standards.

- iv. The blacklisting action by the EU threatens to derail the economies of blacklisted countries, curtail FDI flows and potentially lead to the marginalization of these countries from the global financial system. The blacklisting action by the EU and to a lesser extent the US, can cause significant reputational risk to named countries. Some countries which have already established an Action Plan with the FATF may still find themselves blacklisted by the EU, which have established EU top-up benchmarks to be satisfied. This unilateral action by the EU is frustrating efforts to comply with international standards as the EU process is not aligned with the FATF peer review process. In addition, the proliferation of standards and reform agendas outside the agreed multilateral framework can retard progress made by developing countries on existing reform agenda and contribute to the duplication of effort, thereby depleting limited resources. The international community has to take a decision to advance a common set of standards on the AML/CFT front and for dealing with harmful taxation practices and corruption.
- v. **Inclusion and governance arrangements.** The Report acknowledged that developing countries are [being] held to international standards set by the G20 and OECD, which they have not set and which do not take account of their particular circumstances. *International governance systems are undermined by corruption but also by the lack of effective action and the perception that the system is not fair.* The FATF and the EU have readily listed small states as tax havens while it appears that a different yardstick is being used for the onshore tax havens in Europe and in the US. Well-known tax havens such as Delaware, Guernsey, Switzerland, Luxembourg, Ireland etc do not appear on blacklists. Therefore the FACTI Panel must recognize that for the multilateral initiatives to be credible and effective, the attack on tax havens must encompass all tax haven jurisdictions. Governance reform must take into account the balance of power between developing countries and advanced economies. The

complex tax vehicles, which are utilized by the rich and powerful, are structured by lawyers, tax accountants and financial institutions in advanced countries to meet the needs of their citizens. Additionally, the standards and what is deemed acceptable behavior are determined by groups of powerful countries based largely on their vision of world. Recommendations should include the need to allow developing countries, especially small states, the opportunity to contribute to the formulation of international standards and to register their concerns about unintended consequences. For example, the adoption of AML/CFT risk based supervision has led to derisking action taken primarily by US banks as they seek to reduce their exposure to high risk jurisdictions, sectors and institutions while blacklisting has increased reputational risk.

- vi. **Gendered impact.** While acknowledging that women and girls are negatively affected by reduced provision of social services caused by the resource drain, Corruption can have a devastating impact on the young male through increased delinquency, a higher incidence of incarceration or even death. Corruption also causes citizen insecurity and conflict among the male population. Therefore, the gendered impact of corruption becomes more devastating to men in a situation of worsening economic conditions, which COVID-19 pandemic has precipitated. The Report should address the gendered impact of COVID-19 and how the economic depression and social dislocation are likely to affect men as well as women.
- vii. **The rapid digitalization** of business processes has magnified the challenges to financial integrity, transparency and accountability. In addition, the outbreak of the COVID-19 pandemic and the implementation of social distancing measures and national or partial lockdown will accelerate the pace of digitalization. The use of cryptocurrencies and the emergence of the dark web have provided opportunities for criminal elements to conduct their transactions anonymously. Digitalization has also made it easier to use complex financial transactions and legal vehicles. In order to effectively deal with corruption and the flow of illicit funds the international community must address the use of cryptocurrency and transactions conducted on the dark web. Developing countries face greater risks from increased digitalization because of

weak consumer protection frameworks and because cybersecurity expertise, even among regulators, is lacking.

- viii. **The issue of an equitable approach to international taxation should be prioritized.** The Report highlights the challenges which have arisen with taxing global companies, especially digital companies. The EU has been leading the fight to make large US internet companies pay their fair share of taxes in Europe. However, this action has aroused the concern of the US Government. US companies such as Amazon, Google, Alphabet, eBay, Facebook, have exploited low/zero tax jurisdictions to reduce their tax liability. In June, talks broke down between the EU and the US on the imposition of a global tax on tech companies with revenue over a certain threshold. Despite the various initiatives to discourage tax evasion, there is a persistent demand by wealthy individuals and businesses for tax vehicles to minimize their tax liability. Advanced countries, whose companies and citizens are the main beneficiaries, must adopt a zero tolerance approach to tax evasion and should commit to taking the necessary action to curb the activities of tax havens, whether they are located in Europe, the US, other advanced countries or in developing countries.
- ix. **Absence of adequate protection for whistleblowers and those who seek to enforce relevant laws.** The Report supports the need for countries to enact legislation to protect whistleblowers and others on the frontline dealing with corruption. This group includes investigative journalists, employees of financial institutions and other stakeholders. The present system which uses the employees of financial institutions as “quasi-law enforcement officers” places these ordinary citizens at risk in small societies. The call for greater engagement of non-state actors must be premised on the existence of adequate protection for such citizens who may wish to participate in the fight against corruption.
- x. **Unintended consequences of adopting a “one size fits all approach” to international standards.** The imposition of AML/CFT requirements is leading to the de-risking of high-risk jurisdictions, sectors and clients by US banks. In addition, enhanced due diligence procedures such as KYCC procedures are leading to the de-banking and financial exclusion of persons and

communities. Small states do not always have the resources to update their national ID and passport systems to support KYCC procedures that require uniquely, identifiable forms of ID. Further, many countries do not have public registries that can capture beneficial ownership information nor do they have legislation in place that allow for the public disclosure of this information. The issue of lack of laws, systems and capacity within developing states is a binding constraint on achieving full compliance with international standards.

### **Additional Recommendations**

The Report suggests that the persistence of corrupt activity results from the lack of action on the part of governments in developing countries. This is only a partial analysis of the problem of corruption, which is complex phenomenon. In most countries, the majority of persons are compliant with tax laws and other domestic laws. Only small numbers of persons are engaged in corrupt activity but these persons (individuals and companies) tend to be very wealthy and powerful. More importantly, the incidence of tax evasion seems to be more concentrated in advanced countries than in developing countries. Therefore, the nature of the problem and by extension the solutions, should seek to address the drivers of this phenomenon. It cannot be a one size fits all approach. It is more often the elite who are undermining the social contract, with help from co-opted officials, and not the average person. The reality is that persons that engage in transborder crime are often very powerful and small states may not be able to enforce the law. Further the low level of enforcement action by authorities in the advanced countries against persons associated with the numerous tax scandals will encourage tax evasion. In addition to stronger enforcement action, advanced countries will have to consider the overhaul of their fiscal system in order to reduce the tax burden to economic agents, which will in turn, deter tax evasion.

With respect to enforcing developing countries' compliance with international tax standards, sufficient consideration has not been given to the fact that these countries are being requested to dismantle a key economic sector and overhaul their fiscal system, which can have a profound negative impact on their economy and society. Therefore a whole of system approach should recognize that the global development model should acknowledge that countries should be provided with the policy space to

achieve a minimum level of economic prosperity. The payment of above subsistence wages, the negotiation of fair contract terms and the adoption of global taxation model that is progressive and transparent should be the hallmark of this global development model.

The work of the FACTI may be advanced through the following actions –

- i. Re-framing of the issue of corruption to address legal practices that may be harmful to legitimate economic activity. This may necessitate a more aggressive approach in criminalizing certain behaviours that are deemed to be harmful to the economy;
- ii. A re-thinking of the development model which encourages the expropriation of wealth and the underdevelopment of developing countries;
- iii. Negotiation of fair contracts that provide for a win-win outcome;
- iv. Equal treatment of tax haven jurisdictions, irrespective of where they are domiciled;
- v. Strong enforcement action against perpetrators and more robust action by authorities to address transborder crime perpetrated by powerful players;
- vi. Building capacity in regulatory authorities including law enforcement agencies, financial supervisors, courts etc. to combat corruption;
- vii. Strengthening whistleblowing legislation especially in developing countries; and
- viii. Conducting independent studies on the unintended consequences of international standards on developing countries.

## **Conclusion**

At the domestic level, governments have to arrive at a sustainable model for financing government expenditure. The wealth gap between the super-rich (i.e. the 1%) and the rest of the population, which has widened as a result of the COVID-19 pandemic. Nonetheless the burden of paying taxes continues to fall on the backs of the middle class. The heavy reliance on the middle class and the payment of subsistence wages are causing economic hardship and driving social tensions. A revolutionary and transformational response is needed from governments as well as the international

community to formulate a more sustainable development model for all. The FACTI can drive that process by carefully evaluating the drivers of corruption and evaluating the efficacy of the existing multilateral frameworks.

Corruption flourishes where there is a breakdown of law and order and/or justice is delayed or non-existent. Therefore, advanced countries need to take the lead in criminalising behaviors that they deem to be wealth-reducing such as the use of tax vehicles. Small countries can hardly battle effectively the scourge of corruption and tax evasion with limited technical and financial resources. There is the need for more robust enforcement action on the part of advanced countries. The imposition of heavy fines on banks have not deterred their actions in facilitating illicit flows. More needs to be done to hold powerful institutions accountable.

A more wholistic and balanced approach must be adopted in tackling corruption and other illicit crimes. Further an international dispute settlement system that is globally respected and fair will be a significant boost in the fight against corruption. The interests of developing countries must be equally represented in international courts and asset forfeiture must redound to the benefit of victims whether located in advanced countries or the developing world. Finally there must be agreement on the taxation of global internet companies and other MNCs in order to ensure equity.