



## **Response to the FACTI panel from the NGO Committee on Financing for Development,**

### **A substantive Committee of the Conference of NGOs in Consultative Relationship with the UN (CoNGO)**

The NGO Committee on Financing for Development reiterates the concern shared in our intervention at the launch of the FACTI panel that while designing mechanisms to address resources lost to a country through illicit financial flows, it is crucial to conduct simultaneous interrogation of a development model that leads to the unethical growth of inequality and corruption that prevent government outlays from reaching those for whom it is intended. We applaud the Panel's newly designated work area clusters and call for the aggressive pursuit of multilateral reporting mechanisms pertaining to Financing for Development, from both transnational corporations and governments.

Our contribution, prepared in response to the Panel's request for written submissions, provides feedback to the following areas: Cluster - 2- on accountability, public reporting and anti-corruption measures, Cluster -3 on Cooperation and Disputes, and Key Priorities and Concerns of Stakeholders.

#### **Cluster 2- on accountability, public reporting and anti-corruption measures**

Financial Transparency Coalition shared the estimates<sup>1</sup> that trade mispricing led to \$941—1690 billion in capital flight losses (Global Financial Integrity; January 2019), and tax revenue losses of \$158-317 billion (Global Financial Integrity; June 2019), and that offshore wealth led to \$ 3,192 billion in capital stock losses (Zucman 2017) and \$ 58 billion in tax revenue losses. (Zucman, Alstadsæter and Johannesen; 2019) The IMF tells us that corporate tax abuse led to \$200 billion in tax revenue losses (2015).

Over the 38-year time span from 1980-2018, Africa exported an aggregate \$1.3 trillion of illicit financial flows<sup>2</sup>. UN Deputy Secretary General Amina Mohammed states that tax havens cost Governments between \$500 billion and \$600 billion a year in lost corporate tax revenue alone. Low income economies lost about \$200 billion, more than the amount received each year in foreign development assistance<sup>3</sup>.

Institutional behaviors that perpetuate such illicit outflow of resources curtailing a government's ability to meet the needs of its most vulnerable population must change. Unless and until the structures in which accountability and transparency are governed are changed, it would be foolhardy to believe that the institutions will reform themselves voluntarily. The current structures where one finds the highest incidences of corruption and opacity are those in which the government maintains monopolistic control over regulatory processes.

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<sup>1</sup> [https://financialtransparency.org/wp-content/uploads/2020/03/Module\\_1\\_Politics\\_of\\_Defining\\_Illicit\\_Financial\\_Flows-1.pdf](https://financialtransparency.org/wp-content/uploads/2020/03/Module_1_Politics_of_Defining_Illicit_Financial_Flows-1.pdf)

<sup>2</sup> <https://www.brookings.edu/blog/africa-in-focus/2020/03/02/new-trends-in-illicit-financial-flows-from-africa/>

<sup>3</sup> <https://www.un.org/press/en/2019/dsgsm1350.doc.htm>

## **A. Establishing effective asset recovery mechanisms and ensuring recovered assets are allocated to where the need is most**

The World Bank<sup>4</sup> estimates that COVID-19 will push 45 million people into extreme Poverty in 2020. As the world reels from the effects of the pandemic, it is also becoming increasingly evident, based on the rising cases of human rights violations against marginalized communities, especially women, migrants and migrant workers<sup>5</sup>, that development financing has not been successful in upholding the “leaving no one behind” principle or creating a path to meeting SDG 16 in its real sense. As the primary focus of many developing economies and developed (donor) countries will be to bolster their own economies in the aftermath of a pandemic, it is ever more crucial to establish measures such as effective asset recovery mechanisms to reinforce domestic resource mobilization and to allocate these recovered assets to public good measures.

A study by the Justice Initiative<sup>6</sup> shared that an estimated \$20-40 billion are stolen from public treasuries each year in developing countries. A 2011 World Bank estimate shared that \$5 billion have been recovered and returned over the past 15 years. However, there appears to be a lack of coordinated mechanism to monitor, track and report on how these funds are allocated to remediate the budget gaps. Investing in effective monitoring mechanisms, building the capacity of staff and civil society organizations (CSOs) and technology capable of generating credible, reliable and up to date data are crucial to ensure timely, targeted and coordinated strategies. In all the efforts, both in the asset recovery stage and implementation stage, it is important that CSOs be invited to be key partners.

Key recommendations are as follows:

1. CSOs should be at the decision making tables to ensure transparency around the funds recovered, on how best to allocate these funds, and **to** be key partners in the implementation process, tapping into their capabilities, ease of access and flexibility to reach marginalized communities.
2. Collect data and develop measures to assess which models of repatriation have been impactful in alleviating poverty and empowering marginalized communities.
3. Identify best practices in ensuring greater transparency in acquiring, managing, and distributing recovered and abandoned assets.
4. Donor countries and donor agencies should play crucial role in ensuring that the assets returned to their aid-recipient countries are being allocated to remedying the gaps in the public budget and not filling the coffers of corrupt politicians and public officials.
5. Entrust the primary responsibility for managing and distributing funds to transparent nonprofit entities whose boards include stakeholders from all three sectors in order to ensure that public, private, and societal priorities are all represented in the process.

## **B. Prevention of Corruption**

The 2030 Agenda for sustainable development calls all countries to build peaceful, just and inclusive societies that provide equal access to justice and development based on human rights, on effective rule of law and good governance at all levels and on transparent, effective and accountable institutions. Responsibility for the implementation of the 2030 Agenda lies primarily on each country through collaboration and partnerships that equally engage all relevant stakeholders through independent domestic nonprofit organizations.

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<sup>4</sup> <https://blogs.worldbank.org/opendata/impact-covid-19-coronavirus-global-poverty-why-sub-saharan-africa-might-be-region-hardest>

<sup>5</sup> <https://www.businessinsider.com/india-unprecedented-economic-recession-coronavirus-hits-unhygienic-densely-populated-slums-2020-5>

<sup>6</sup> <https://www.justiceinitiative.org/uploads/59e79b54-69fa-46fd-a9d7-7699729ed8c4/repatriating-stolen-assets-background-20150727.pdf>

The call “to leave no one behind” demands that governments take steps to end poverty and hunger, provide quality education and healthcare; water and sanitation; affordable energy and decent jobs ‘to reach the furthest behind first.’ In many countries, these basic services are provided by the government through state owned enterprises. Most of the services provided to the vulnerable are sub-standard or non-existent due to corruption at all levels and lack of accountability and transparency. The vulnerable are forced to bribe the institutions funded by their taxes, to receive services that are rightfully theirs. Lack of and often denial of access to basic services, justice and participation in governance leads to the widening of inequalities.

While the immediate impact burden of corruption falls most heavily on the most vulnerable and disenfranchised, all of society are victims through lost economic opportunities, lower levels of economic and social efficiency, lower levels of investment and innovation, less productive workforces, smaller tax bases, and general public distrust in public authority and hostility against even legitimate political processes. Corruption is also the root cause of human rights violations. There is utter lack of accountability to the stakeholders through transparency and public reporting.

To stem the tide of corruption and to be accountable and transparent, the institutional vision, mission and policies are to be rooted in ethical and moral principles. The “10 Anti-corruption Principles for State-Owned Enterprises” from Transparency International can serve as a guide for countries. The Addis Ababa Action Agenda (#25) had committed to make the UN Convention against Corruption an effective instrument to deter, detect, prevent and counter corruption and bribery. Most of the regulatory frameworks that govern the financial institutions and corporate sector are not binding, thus a way forward is to promote mandatory due diligence reporting on prevention of corruption.

According to Paolo Mouro, a leading anti-corruption authority, a primary driver of corruption is simply the opportunity to demand a bribe<sup>7</sup>. Bribery is one of the most common forms of corruption, especially related to access to public services. When the government functions as a monopoly over all of the responsibility and authority for ensuring accountability and transparency, it will act as all monopolists do to seek economic rents, in this case, in the form of bribery, embezzlement, and patronage. The Corruption Perception Index reports that at least two out of three survey respondents paid a bribe within the past year in several developing countries. Whereas, in developed countries, only one in one hundred or fewer reported paying a bribe. These bribes often act as regressive tax, since they disproportionately affects the poor.

The International Labor Organization reported in its Report titled, Profits and Poverty – The Economics of Forced Labor, that forced labor in the private economy generates US\$ 150 billion in illegal profits per year,<sup>8</sup> A study comparing reports from Transparency International and the U.S. Department of State concluded that “a clear visual connection between corruption and trafficking” in countries sending migrant labor.<sup>9</sup> This unjust social issue of our times should be eradicated through supply chain due diligence, large scale data sharing between all concerned parties, enforcement of legal and regulatory mechanisms, and by ensuring corrupt government officials engaging in transportation, and exploitation of trafficked workers are held accountable and punished.

Corruption is commonly defined as “the abuse of entrusted power for private gain.” Corruption is not limited just to low-income countries, it is prevalent in high income countries as well. Also, many firms from high-income countries engage in bribery in foreign countries, even though it is a crime in their own countries. According to Transparency International, “close to 70% of firms report having been asked for bribes” in some countries.

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<sup>7</sup>Mauro, Paolo, The Effects of Corruption on Growth, Investment, and Government Expenditure, September 1996, IMF Working Paper 96/ 98, International Monetary Fund, <https://www.imf.org/en/Publications/WP/Issues/2016/12/30/The-Effects-of-Corruptionon-Growth-Investment-and-Government-Expenditure-2042>

<sup>8</sup> [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_243391.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf)

<sup>9</sup> *Id.* at 3. See also U.N. Office on Drugs & Crime, The Role of Corruption in Trafficking in Persons 4 (2001), [https://www.unodc.org/documents/human-trafficking/2011/Issue\\_Paper\\_-\\_The\\_Role\\_of\\_Corruption\\_in\\_Trafficking\\_in\\_Persons.pdf](https://www.unodc.org/documents/human-trafficking/2011/Issue_Paper_-_The_Role_of_Corruption_in_Trafficking_in_Persons.pdf) (“there are consistent indications that corruption does play an important role in facilitating and fostering the crime of trafficking in persons”) [hereinafter UNODC Paper]

One accepted measure for controlling corruption is to demand reporting from those entrusted with power – accountability. This could be aided by the existing Global Corruption Index<sup>10</sup>. Additionally, whenever possible, functions most prone to corruption should be moved out of the public sector into more transparent nonprofit providers and public-nonprofit partnerships.

### C. **Civil society organizations - monitoring and reporting**

To successfully address issues of accountability and corruption, CSOs should not be limited only to its watchdog role but also as an equal partner participating directly in the governance process. Examples are offered below in our recommendations. When civil society's only function is as a critic of government policy and action, a distrustful and adversarial relationship with public officials is inevitable.

Alternatively, civil society - in addition to its traditional role of monitoring public sector performance - should serve as an equal partner in managing accountable and transparent functions through collaborative governance practices. In those countries identified in Transparency International's *Corruption Perception Index* as being the most transparent, CSOs are responsible for creating and managing as much as three-quarters of all regulatory functions. Because they rely on the public trust to be effective and generate revenue, these organizations are by nature more transparent, more easily held accountable by the public, and, hence, less prone to corruption.

For example: In order "to increase the volume and effectiveness of indigenous philanthropy," the Pakistan Centre for Philanthropy (PCP) established objective standards for "transparent and accountable" nonprofit organizations that indigenous and Diaspora charities could use "to identify credible partners in development" and a certification for CSOs that met those standards. A transparent certification panel which included representatives of the Federal Board of Revenue (FBR), Pakistan's tax authority, collaborated in creating the standards and the certification process. Because of the trust created from this partnership, the FBR amended the Income Tax Rules to permit CSOs to submit PCP certificates as proof of tax exemption status in place of a government audit. Shifting the authority for assigning tax exemptions from the public to the nonprofit sector eliminated opportunities for bribery within the FBR and reduced fraud by ersatz CSOs, and increased tax revenues. Numerous other examples in other fields can be provided on request.

### **Cluster -3 Cooperation and Disputes**

A more comprehensive approach would emphasize the role of corporations in preventing corruption and achieving the 2030 Development Agenda.

Taking note of the available policies put in place, and the cooperation of corporations, trade, growth, and disputes, we call upon the panel to take the necessary steps to identify and strengthen the facilities for access to transparency mechanisms and dispute settlement; as a way to afford governments, CSOs and corporations in countries of the South, the greatest measure of assistance in connection with transparency and dispute settlement, through the effective existing mechanisms established by the UN, which many business organizations are aware of, include UNCITRAL and the United Nations Convention against Corruption, in connection with Goals 8 & 16.

Again, to advance, civil society should be called upon to take more active roles in managing dispute resolution through alternative dispute resolution (ADR) mechanisms. Countries whose judiciaries are overburdened, politicized, insufficiently trained, or otherwise lacking in capacity and transparency should be encouraged to develop extrajudicial capacities in both arbitration and mediation to reduce dependence and demands on the courts.

### **Key priorities and concerns of stakeholders**

1. As governments grapple with addressing the unprecedented consequences of the coronavirus pandemic, we urge the panel to expand its work to propose measures to curb all illicit activities such as bribes, kickbacks and

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<sup>10</sup> <https://risk-indexes.com/global-corruption-index/>

contract malfeasance that could derail outlays for procured resources and services and foreign assistance from reaching community based organizations, micro, small and medium enterprises which are crucial to the economic survival of women and marginalized communities.

2. Establish local, regional and national level bodies to monitor corruption and report, ideally in the country's Voluntary National Reviews, on how the funds recouped have been utilized to finance social protection systems and mechanisms. Representatives from CSOs, especially those from community based organizations should be invited to be part of such bodies. To aid countries in preparing their Voluntary National Reviews, the panel should regularly update best practices regarding the management of repatriated stolen assets and measurements of success.
3. All such monitoring and reporting bodies should be guided by transparency to both government and all interested parties and should share their reports publicly. They will be focused upon those mechanisms which strengthen social and environmental protections.
4. The COVID-19 crisis has exacerbated pre-existing inequalities and crystallized who are among the world's marginalized. In addition, countries have bled monies through illicit financial flows that otherwise might provide housing and supportive services to end the scourge of homelessness, provide full employment, stability to the informal sector, strengthen resilience in food security by helping smallholders in the agricultural sector, and strengthen weak health care systems. Collective losses have further increased the precarious conditions of the most desperate members of society.
5. We would want to see corporations and governments report: 1) on the sources of the funds they receive, 2) who is producing them or doing the actual labor, and 3) how that money makes its way to those who have the least or are most disenfranchised?
6. While executive compensation may not appear to be directly linked to the work of this panel, when it reaches exploitative levels, which is too often the case in the absence of investor transparency, it should be treated as a violation of financial integrity and accountability equal to that of tax evasion, the use of offshore bank accounts to hide wealth and assets, tax avoidance policies that benefit a favored few at the expense of the public good, and other practices undertaken solely to circumvent tax laws.

In these times of economic uncertainty, the panel should assess the profound harm that exorbitant executive compensation places on the economy particularly in exacerbating and perpetuating inequality. Without transparent investor oversight, exorbitant executive compensation that benefits a privileged few siphons from the economy money that could help to raise the poor and the working classes who are left to "pay" for such excess through longer working hours, salaries below a living-wage, and a lack of proper safety provisions, health benefits, and the respite of leisure time.

It needs to be understood that public and nonprofit sectors do not compete for control in the governance process and that the public, private and nonprofit sectors of the economy possesses unique capacities and reach that the others do not. Each also has its own limitations that make it inappropriate for some objectives while most effective for others. That is why one finds public, private and nonprofit providers of public and quasi-public goods in healthcare, education, community development, and all other social service domains. No one sector is the best choice in every situation or for every sector of the population. When developing mechanisms and institutions to address problems of financial exclusion, market opacity, and corruption, we should identify the natural conflicts of interest inherent in each sector and decide how to best redistribute the functions that best achieves the sought after social objective. Therefore, actively engaging the public, private, and nonprofit sectors as equal partners in both creating and delivering solutions is crucial to achieving the ambitious goals set forth in the *Sustainable Development Goals*.