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INTERSESSIONAL SEMINAR ON THE NEGATIVE IMPACT OF THE NON-REPATRIATION OF FUNDS OF ILLICIT ORIGIN TO THE COUNTRIES OF ORIGIN ON THE ENJOYMENT OF HUMAN RIGHTS

Date and venue: 8 February 2022, 11:00-13:00 and 15:00-17:00,
Conference Room XX/Hybrid, Palais des Nations, Geneva

Dear Excellencies, Delegates, Colleagues, Ladies and Gentlemen,

- I am honored to be here and to present on the global phenomenon of illicit financial flows.

- As the pandemic continues, wreaking havoc on our health and economies, and deeply exacerbating inequality both within and among nations, particularly in the context of the current debt distress being experienced by many developing countries, and as climate change disasters mount in severity and frequency worldwide, we see ever more clearly the need for resilient public systems and services, social protection systems and progressive redistribution of wealth and resources in order to create real opportunities and futures for all are being left behind, as UN reports show that 176 million people will be plunged into extreme poverty by the pandemic. Addressing the new scale and scope of crises in our world will require a significant, serious and wholly transformative scaling up for public financial resources to invest in fulfilling the economic and social rights of people, particularly across developing countries.
- In this context, the estimates of the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda of total global revenue lost to base erosion and profit shifting and tax evasion globally of $427 billion has to be urgently addressed through global, regional and national tax cooperation, accountability, transparency and fairness. Other peer reviewed studies have estimated losses on the order of $500 billion - $600 billion. Since 2003, illicit financial outflows have increased in real terms by about 9.4 percent per annum, according to the latest Global Financial Integrity estimates.
- The premise of connecting illicit financial flows to the 1986 Declaration on the Right to Development is that the right to development makes the prevention, regulation, and eventual elimination of illicit financial flows a human rights imperative. The right to development aims to create an enabling environment for peace, development and human rights, including women's rights, and the mobilization of resources for right are based on notions of a common humanity and invoke shared global responsibilities of States and mutual accountability of the international community across national boundaries, as such it concretely contributes to the pathway to the new social contract.

- Through the lens of the Right to Development, illicit financial flows are taxable financial resources being funnelled away from the sites in which those resources are generated through economic activities.

- My remarks today will focus on the *right to development* as well as the *gendered impacts and implications of illicit financial flows* based on OHCHR paper I produced in 2018 and have updated recently: The Right to Development and Illicit Financial Flows: Realizing the Sustainable Development Goals and Financing for Development, A/HRC/WG.2/19/CRP.3

- States have obligations at three levels: (a) internally, through the formulation of national development policies and programmes affecting persons within their jurisdictions; (b) internationally, through the adoption of policies extending beyond their jurisdictions; and (c) collectively, through global and regional partnerships.

- Three frameworks, in addition to the set of 14 strong recommendations proposed by the FACTI PANEL REPORT of 2021, are central to taking meaningful action on illicit financial flows:

(1) The 1986 UN Declaration on the Right to Development;
(2) The 2030 Agenda on Sustainable Development Goals agreed to and adopted by all UN Member States in September 2015;
(3) and the Addis Ababa Action Agenda, the outcome document of the third International Conference for Financing for Development held in 2015.

- IFFs is addressed in SDG Target 16.4, states have pledged to significantly reduce IFFs by 2030,
- AAAA Paragraph 23 where States have declared they will "redouble efforts to substantially reduce illicit financial flows by 2030, with a view to eventually eliminating them, including by combating tax evasion and corruption through strengthened national regulation and increased international cooperation."
- In the context of Agenda 2030 on Sustainable Development, illicit financial flows are a significant constraint to Domestic Resource Mobilisation for the Sustainable Development Goals and Financing for Development in three key ways:
- *First*, illicit financial flows constrain developing countries from being able to mobilise significant public financial resources required for inclusive and equitable social and economic development. This challenge is even more serious for LDCs. This is a central constraint to the achievement of SDG target 17.1 which calls for strengthening domestic resource mobilisation.
- *Second*, IFFs constitute a transfer of development finance resources from developing countries to developed countries and consequently exacerbate inequalities between countries, negatively impacting the prospects of SDG 10 to reduce inequality within and among countries.
- *Third*, the loss of potential public funds through IFFs and the consequent reductions in public sector investments as well as the amplification of foreign debt burdens reduce and impair the capacity of the state to invest in social sectors vital to sustainable development, particularly health and education, which are also critical in the still ongoing or pending pandemic recovery process across much of the developing world in particular.

GLOBAL TAX COMPETITION

- The global tax regime that facilitates and enables IFFs prioritizes the drive of competition and accumulation without effective penalties, as much of tax evasion and transfer mispricing is, while endemic and problematic, not illegal. An important driver of low or absentee corporate taxation is the entirely legal phenomenon of global tax competition, whereby primarily developing countries offer tax incentives, concessions and exemptions to TNCs as a bid to attract foreign direct investment, particularly in the manufacturing, service and finance sectors.
- A key instrument that promotes global tax competition is the *Doing Business Indicators*, which advises countries to ease the tax burden on businesses and promotes countries that reduce corporate tax rates, raise

the threshold for taxable income or provide tax exemptions and holidays to corporations.[1] While this indicator framework have been terminated by the World Bank in 2021, it is imperative that the framework that replaces them does not repeat its past mistakes.

- The World Bank's own data demonstrates reductions in corporate income tax by an average of 20 percent in both developed and developing countries at large between 1980 and 2015; the difference being that tax revenues maintained stability in developed countries while in developing countries the tax revenue base decreased.[2]
- The dynamics of global tax competition illustrates that many developing countries, in particular LDCs, experience challenges to their sovereignty and policy space, as envisaged in Article 3.3 of the DRTD, to set national tax policy related to attracting FDI. International tax policy reform under the G20 and OECD does not currently address the issue of global tax competition and the ways in which IFFs are exacerbated as a consequence.

ILLICIT FINANCIAL FLOWS AND GENDER

- Revenue collection is a critical tool through which States can facilitate equal access to economic, social and cultural rights and redress structural inequalities, including gender inequalities. Taxation is arguably the most sustainable and predictable source of national revenue for the provision of social services, as well as for redistribution by way of progressive forms of taxation and allocation of tax revenues towards public social goods, services and systems that fulfill and protect human rights and reduce inequalities.
- Illicit financial flows prevent all countries, but low-income countries in particular, from mobilizing the resources required for inclusive and equitable development. Moreover, the resulting financial resource outflows ultimately narrow the national tax base. In order to compensate for revenue shortfalls, regressive tax measures such as consumption taxes and other indirect taxes are implemented. These taxes raise the price of basic goods, disproportionately affecting the poorest households, in particular, rural women and women living in urban informal settlements as they are often in charge of the household.
- Women living in poverty and marginalised women rely both disproportionately and extensively on public services. When policymakers retrench public financing for public services or when the services provided are inadequate, authorities essentially expect women, girls and marginalized communities to deliver the services, through carrying out labor that was formerly provided by the State. For instance, women and girls are responsible for water collection in 80% of households without access to clean water and sanitation services. Wells are often located far away and the time taken to fetch water reduces the time women can spend in participating in income generating or other activities. Women's unpaid work plays a crucial role in subsidising the entirety of national economies, while cementing labour and wage inequalities on the basis

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1 World Bank, "Doing Business 2017: Equal Opportunity for All", (Washington, D.C.: World Bank, 25 October 2016), available at: http://www.doingbusiness.org/~/media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Report.pdf.

2 Keen, Michael and Jim Brumby, "Peer Pressure: Tax competition and developing economies," World Bank Group Blog, 11 July 2017, available at: http://blogs.worldbank.org/governance/peer-pressure-tax-competition-and-developing-economies.

of gender roles. Besides the violation of economic, labour and social rights, the earning capacity, education, health and other outcomes are diminished.

- The result is multiple and intersecting negative impacts on gender equality, creating barriers to women's economic and social human rights, as enshrined in both the Committee on the Elimination of Discrimination Against Women as well as the Beijing+25 platform. The disproportionate impacts of illicit financial flows and the multiple levels of discrimination with intergenerational consequences they create against women and girls jeopardize the human rights principles of equality and non-discrimination and the achievement of Sustainable Development Goal 5 on gender equality and empowerment.
- Article 8 of the Declaration on the Right to Development calls for a full and equal inclusion of women in policy and governance fora. Empowering women as agents of change and leaders at all levels are vital steps to realizing the right to development. For instance, research shows that higher levels of female participation in politics are linked to lower levels of corruption, an important contributing factor to illicit financial flows.
- Importantly, financial resource outflows through illicit financial flows ultimately narrow the national tax base, which in turn impairs the ability of the State to fund social protection or adequate and accessible public services. In order to compensate for revenue shortfalls, regressive tax measures such as consumption taxes and other forms of indirect taxes are implemented. Indirect and consumption taxes disproportionately affect the income of low-income households and their ability to purchase basic goods and public services and derail the progressive redistribution of wealth and resources in society from rich to poor, and toward equality and opportunity for all in line with the UN Declaration of Human Rights.
- When public services are absent or inadequate, the additional costs and labour of unpaid care work as well as informal sector work are often placed on women and girls, who then de facto deliver public services and provisions that should be provided by the state. In this way, regressive policies that generate inequality are done so on the expectation or assumption that women's free labor will fill the gaps. In the face of the fiscal and financial inability of the public sector to finance essential social services, social services may be privatized, posing problems of affordability and accessibility. Often the results are multiple and intersecting adverse impacts on gender equality, creating barriers to basic human rights like the rights to food and health, including healthcare and medicines.

Global tax cooperation among States within International Organisations – policy recommendations or the way forward

- Given the fundamentally global and interconnected nature of illicit financial flows, it is clear that any effort to prevent and regulate them cannot be done by individual countries alone. As such, the institutional environment for global tax cooperation sets the stage for effective and meaningful action to address outflows resulting from transfer mispricing and tax evasion. Article 4.1 of the DRTD calls upon states to take steps, individually and collectively, to formulate international development policies that facilitate the full realization of the right to development. The FACTI panel has reaffirmed that a systemic problem such as illicit financial flows requires a systemic solution; and has set forth three types of actions: reinforcing **values** for integrity, strengthening **policy** frameworks and redesigning **institutions**.

- In alignment to the RTD framework, international cooperation between economically and politically weak and strong nations must aim toward global governance objectives as laid out by multiple actors, from FACTI to the G77 countries in the UN General Assembly to the Global Alliance for Tax Justice. This involves the primary task of establishing an inclusive and legitimate global coordination mechanism. Central to cooperation is the degree of inclusive membership of states across the relevant international organizations addressing illicit financial flows on a multilateral level. Specific to fulfilling the Right to Development, the equal participation and decision-making of developing countries impacts the potential of the international organization to effectively address IFFs for states across varying levels of development.
- The United Nations has a distinct and unique role in view of its universal membership and the decision-making process of the General Assembly based on the sovereign equality of one-nation, one-vote, which is consonant with the Right to Development and its emphasis on sovereign equality, and free, active and meaningful participation, fair and democratic representation and voice for all.
- Such an intergovernmental tax body in the UN would also address SDG Target 10.6 which seeks "ensure enhanced representation and voice for developing countries in decision-making in glo international economic and financial institutions in order to deliver more effective, credik accountable and legitimate institutions."[3]

Policy recommendations

- The FACTI panel highlights a set of 14 recommendations toward transformative multilateral tax reform rooted in a range of key principles, such as accountability, legitimacy, transparency, fairness, dynamism, international cooperation and global governance, the role of non-state actors, data collection and dissemination. The implementation of appropriate national and international policy measures to ensure development and eliminate obstacles to development in line with the Declaration on the Right to Development, mandates states to cooperate on the basis of their sovereign equality, interdependence and mutual interest.
- Key tax reforms required include, for example, automatic exchange of tax information, beneficial ownership, country-by-country reporting, conducive and gender-sensitive tax policies at the State level, human rights impact assessments and international and regional cooperation for States; capacity building for national tax administrations; mandatory reporting from banks and financial institutions and country-by-country reporting for the private sector, and, strengthening advocacy on enhancing global financial transparency and international cooperation for tax governance for international civil society.

On gender specifically:

[3] UN General Assembly, 'Transforming our world: the 2030 Agenda for Sustainable Development', A/RES/70/1, 25 September 2015, available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.

1. Address IFFs as a violation of human rights and women's rights:

- Illicit financial flows are hindering the fulfillment of the obligation of States to mobilise the maximum available resources for the realisation of human rights, including long agreed commitments on women's rights and gender equality.
- Strengthening corporate accountability is a possibility on the table at the UN Human Rights Council. An open-ended intergovernmental working group is in place to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. This process has the potential to address corporate tax evasion as a violation of human rights, including women's rights, and should be greater supported by countries in the global North and South.

2. Promote transparency and gender-sensitive data gathering:

- Greater efforts must be made at the global level to refine comparable data on tax abuse, for example with gender disaggregated data that shows the gender biases of certain tax systems.
- Countries must ensure a framework for automatic information exchange, which guarantees public and global access to key data that affects the resources available for the realization of human rights.
- Implement country-by-country reporting obligations for multinational corporations to publicly disclose, as part of annual reports, profits made and taxes paid for each country in which they operate.
- Among other financial information, there must be greater cooperation from governments to share their national public registries that disclose beneficial owners of companies, trusts, foundations and similar legal structures.

3. Promote tax justice through progressive fiscal policies at the national level:

- Promote tax justice through progressive fiscal policies. This requires increasing the weight of direct taxes on income capital and highly profitable sectors of society, while reducing and removing the burden on women and poor people. Poor segments of society, of which women are overrepresented, should not end up paying more taxes, in relation to their income, than the richest segments that often benefit from government tax subsidies, tax holidays and reductions.
- Governments must critically review the harmful trade and investment agreements that grant tax incentives and exemptions that perpetuate inequality and gender biases.
- States should undertake independent, participatory and periodic impact assessments of the extraterritorial effects of their financial secrecy and corporate tax policies on women's rights and substantive equality. Ensure that such assessments are conducted in an impartial manner with public disclosure of the methodology and findings.

4. Ensure the free, active and meaningful participation of women in policymaking and decision making processes at all levels, including that of women's rights organisations, social movements and progressive civil society broadly:

- Economic and fiscal policy decisions often lack a gender sensitive perspective. Engagement between the ministries of Gender and Finance, and both with civil society and women human rights defenders, is key to better understand the impact that revenue decisions are having on women's rights and gender equality.
- An enabling environment should be in place to protect women human rights defenders and others (including whistle-blowers, tax justice activists) that expose tax abuse and report corruption.

In a time of heightened economic, financial and gender inequalities on multiple dimensions, a renewed effort to recognize, address and implement policy solutions on the specific interlinkages between gender and illicit financial flows should be channeled through Human Rights Council Resolutions such as the one adopted on 23 March 2021 on "The negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, and the importance of improving international cooperation."