

18 April 2018

Original: English

**Human Rights Council**  
**Working Group on the Right to Development**  
**Nineteenth session**  
Geneva, 23 – 27 April 2018  
Item 4 (c) of the provisional agenda  
**Review of progress in the implementation**  
**of the right to development**

## **The Right to Development and Illicit Financial Flows: Realizing the Sustainable Development Goals and Financing for Development**

**Bhumika Muchhala\***

### *Summary*

This paper analyses the phenomenon of illicit financial flows in the international economy through three specific frameworks: The 1986 UN Declaration on the Right to Development; ‘Transforming our world: the 2030 Agenda and Sustainable Development’ and Sustainable Development Goals; and the Addis Ababa Action Agenda, the outcome document of the third International Conference for Financing for Development held in 2015. It considers means to operationalize the normative principles of the Declaration on the Right to Development in implementing the Sustainable Development Goals and the Addis Ababa Action Agenda, to achieve inclusive, equitable and sustainable development in consonance with human rights norms, standards and principles. The right to development makes the prevention and regulation of illicit financial flows a human rights imperative.

While this study considers the intersectionality of development, human rights and taxation, its focus is on illicit financial flows arising from commercial transfer mispricing, trade misinvoicing and tax evasion. The annual reports of Global Financial Integrity (2015-2017) estimate that the developing world as a whole lost approximately \$7.8 trillion in illicit financial flows during the 10-year-period from 2004 to 2013. Since 2011, such flows

\* Ms. Bhumika Muchhala is an Independent Consultant on Finance and Sustainable Development. Previously she worked on finance and development issues for the Third World Network, focusing on the UN Sustainable Development Goals and Financing for Development negotiations and conferences, the international financial system and sustainable development issues. The opinions, findings, interpretations or conclusions expressed in this paper are those of the expert, do not necessarily represent the views of the United Nations and do not commit the United Nations. The designations employed and the presentation of the material in this paper are those of the expert and do not imply the expression of any opinion whatsoever on the part of the United Nations concerning the legal status of any country, territory, city or area of its authorities, or concerning the delimitation of its frontiers or boundaries. The text is reproduced as received.



have surpassed US \$1 trillion per annum and in 2013 reached a new peak of \$1.1 trillion. Approximately 87.4 percent of all illicit flows are related to cross-border transfer pricing. This leads to taxable financial resources being funnelled away from the sites in which those resources are created. As such, these flows challenge the ability of States, particularly developing countries, to mobilise their domestic revenue to finance national sustainable development. Furthermore, illicit financial flows exacerbate pre-existing global inequalities. Addressing the flows that stem from commercial transfer pricing has the potential to make a critical fiscal impact and would enlarge domestic resources available for the realisation of human rights, especially economic, social and cultural rights, and the right to development.

Illicit financial flows have significant impacts on realizing the right to development and sustainable development, the 2030 Agenda and the Sustainable Development Goals, as well as financing for development and the Addis Ababa Action Agenda, especially in developing countries that experience a net outflow of financial resources from the activities of Transnational Corporations in their economies. First, these flows prevent developing countries, and especially Least Developed Countries, from mobilizing and spending significant public financial resources required for inclusive and equitable social and economic development. This constrains the achievement of SDG target 17.1, which calls for strengthening domestic resource mobilization. Second, they constitute a transfer of development finance resources from developing to developed countries and consequently exacerbate inequalities between countries, negatively impacting the prospects of SDG 10 to reduce inequalities within and among countries. Third, the loss of potential public funds through illicit financial flows 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, or in human rights terms, the rights to health and to education.

Transfer mispricing by Transnational Corporations undermine the right to development, which aims to create a national and international enabling environment conducive to development which is just, equitable, inclusive and sustainable for all people. Under Article 2 of the Declaration on the Right to Development, all human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community. States whose business enterprises are responsible for tax evasion and transfer mispricing are obligated under the Declaration to cooperate internationally to address the impacts of their acts on developing countries in which they operate, and to do no harm. The duty of international cooperation is central to the right to development, which looks to a just international economic order for all humanity. The inherently international dimension of this right based on notions of a common humanity, invokes shared global responsibilities of States and accountability of the international community across national boundaries.

Shared responsibilities and mutual accountability underscore the right to development, pursuant to which 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 and implementation of policies extending beyond their jurisdictions; and (c) collectively, through global and regional partnerships. These include global human rights obligations in the context of global finance and trade, which can be applied to the extraterritorial impacts of corporate actors on the countries from which they evade and shift taxes.

States must take resolute steps to eliminate massive and flagrant violations of human rights under Article 5 of the Declaration on the Right to Development, and must co-operate to strengthen universal respect for and observance of all human rights and fundamental freedoms for all without distinctions, under Article 6. Realizing this right requires the generation of sufficient financial resources, for which the recovery of illicit financial flows is imperative. Interdependence and interconnectedness are defining features of a globalized economy, enabling transfer mispricing across national borders. In this context, the right to development calls for shared global responsibilities and mutual accountability.

Financial resource outflows through illicit 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. 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. In the face of the 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.

With regard to the growing momentum for international cooperation to tackle illicit financial flows, the role of the G20 and the Organisation for Economic Cooperation and Development, the International Monetary Fund and the World Bank, as well as the United Nations, are distinct, and provide value in many ways. However, the United Nations can play a unique role in view of its universal membership and the decision-making process of the General Assembly, which is based on the sovereign equality of one-nation, one-vote. This is consonant with the right to development, which is premised on sovereign equality, free, active and meaningful participation, fair and democratic representation and voice for all.

Based on this analysis, this paper concludes with policy recommendations for reforms and actions to prevent and regulate illicit financial flows resulting from transnational commercial activities addressed to four specific categories of key stakeholders - States, international organizations, the private sector and civil society. They include the 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; access to data on illicit financial flows, human rights impact assessments, international and regional cooperation, capacity building for national tax administrations and reassessing the Doing Business Indicators for international organisations; 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.

## Contents

	<i>Page</i>
I. Introduction .....	5
II. Illicit Financial Flows, Transfer Mispricing and Trade Misinvoicing.....	6
III. The Dynamics of Global Tax Competition .....	10
IV. IFFs and Impediments to Domestic Resource Mobilisation for SDGs and FFD ....	13
V. IFFs and Gender Inequality .....	15
VI. IFFs and Structural Obstacles to Realizing the RTD .....	17
A. IFFs, RTD, International Cooperation and Shared Global Responsibilities ...	25
B. IFFs, SDGs, FFD and Common but Differentiated Responsibilities .....	32
C. IFFs, Global Governance & Tax Cooperation .....	33
VII. Policy Recommendations .....	40
VIII. Conclusion .....	47
Annexes .....	49
List of Abbreviations.....	52

## I. Introduction

1. This paper comprises an analytical study of illicit financial flows (IFFs) in the international economy through three specific frameworks: The 1986 United Nations (UN) Declaration on the Right to Development (DRTD);<sup>1</sup> ‘Transforming our world: the 2030 Agenda and Sustainable Development’, (2030 Agenda) and Sustainable Development Goals (SDGs);<sup>2</sup> and the Addis Ababa Action Agenda (AAAA),<sup>3</sup> the outcome document of the third International Conference for Financing for Development (FfD), held in 2015. Its objective is to identify and unpack the key structural obstacles posed by IFFs to realizing the right to development (RTD), the SDGs and the AAAA particularly in developing countries, which are disproportionately affected by them.

2. The 2030 Agenda states in paragraph 10, that ‘it is guided by the purposes and principles of the Charter of the United Nations, including full respect for international law. It is grounded in the Universal Declaration of Human Rights (UDHR), international human rights treaties, the Millennium Declaration and the 2005 World Summit Outcome. It is informed by other instruments such as the Declaration on the Right to Development.’ In paragraph 35, the Agenda recognizes the need to build peaceful, just and inclusive societies that provide equal access to justice and that are based on respect for human rights (including the right to development), on effective rule of law and good governance at all levels and on transparent, effective and accountable institutions.

3. In establishing the Office of the United Nations High Commissioner for Human Rights, the General Assembly requested the High Commissioner<sup>4</sup> to recognize the importance of promoting a balanced and sustainable development for all people and to protect and promote the realization of the RTD along with all other human rights. Achieving inclusive, equitable and sustainable development in line with human rights norms, standards and principles requires the critical review of challenges and obstacles to development through the normative framework of human rights, including the RTD.

4. This study is framed by the normative framework of the DRTD, aimed specifically at creating an enabling national and international environment for development; and the development policy framework of the 2030 Agenda and the AAAA, which together provide guidance on the domestic mobilization of resources for sustainable development. The mobilization of resources, in turn, is essential to strengthening the means of implementation for realizing all the SDGs, and all human rights - civil, political, economic, social and cultural as well as the right to development.

5. Analysis through the RTD<sup>5</sup> lens makes the consideration of all other human rights - civil, political, economic, social and cultural – also inevitable, given the indivisibility and interdependence of all human rights, and the requirement under the DRTD, of a development process which advances all human rights. The scope of this study involves consideration of all human rights through the RTD lens, without embarking on an analysis of IFFs through the human rights framework as a whole, which would entail a much bigger project.

<sup>1</sup> UN General Assembly, Declaration on the Right to Development, A/RES/41/128, 4 December 1986, available at: <http://www.un.org/documents/ga/res/41/a41r128.htm>.

<sup>2</sup> 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](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E).

<sup>3</sup> UN General Assembly, Addis Ababa Action Agenda of the Third International Conference on Financing for Development, A/RES/69/313, 16 July 2015, available at: [http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA\\_Outcome.pdf](http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf).

<sup>4</sup> UN General Assembly, High Commissioner for the promotion and protection of all human rights: resolution adopted by the General Assembly, A/RES/48/141, 20 December 1993, available at: <http://www.un.org/documents/ga/res/48/a48r141.htm>.

<sup>5</sup> See OHCHR, ‘Frequently Asked Questions on the Right to Development’, New York and Geneva, 2016, available at: [http://www.ohchr.org/Documents/Publications/FSheet37\\_RtD\\_EN.pdf](http://www.ohchr.org/Documents/Publications/FSheet37_RtD_EN.pdf), OHCHR (ed.), *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development*, United Nations, 2013.

6. Illicit financial flows pose structural obstacles to mobilization of domestic resources for the implementation of human rights in particular economic, social and cultural rights and the RTD. Moreover, IFFs undermine efforts to mobilize domestic resources for financing development – a vital means of implementation of the SDGs. This study will focus specifically on illicit financial flows generated by the economic and financial activities of transnational corporations (TNCs).

7. The intersectionality of several issues including development, human rights, taxation, corruption and crime, shape the larger picture against which this analysis is posited. Limitations of space intrinsic to a study of this nature, do not however, enable discussion of each and every one of these issues. The study will therefore not address the myriad issues entailed by IFFs, for example, those stemming from corruption, tax evasion and avoidance by high-net wealth persons and politically exposed persons, slavery and trafficking of persons and drugs, illicit arms trade or financing of terrorism, which go beyond the immediate context of the global trade and finance architecture. Despite their obvious interlinkages, they do not align directly with the objective of this analysis, namely, the mobilization of domestic resources for sustainable development. This objective limits the ambit of this study to the issue of IFFs, RTD, SDGs and FfD, while making reference to the interlinked issues when the discussion so requires. The issues of non-repatriation of IFFs to countries of origin, and the return of stolen assets linked to corruption are closely related to the subject of this analysis, and yet distinct. This analytical study will not explore these issues in any degree of depth, but the linkages are acknowledged and references are made to the extent possible.

## **II. Illicit Financial Flows, Transfer Mispricing and Trade Misinvoicing**

8. The international community has identified illicit financial flows as an outstanding systemic problem in the global economy, leading to the outflow of massive sums of financial resources from developing countries with the effect of constraining their ability to mobilise domestic resources for sustainable development. IFFs include tax evasion and tax avoidance by transnational corporations, money laundering and transfer of funds from bribery, corruption and criminal activities. The expression ‘illicit financial flows’ has no single, universally accepted definition. The United Nations has, thus far, not expressly defined the term.<sup>6</sup> A report by the Advisory Committee of the Human Rights Council states that any useful definition of IFFs would necessitate a broader, two-tiered interpretation of the word ‘illicit’. In the first, ‘illicit’ would refer to funds which are illegally earned, transferred or utilized and include all unrecorded private financial outflows that drive the accumulation of foreign assets by residents in breach of relevant national or international legal frameworks.<sup>7</sup> In its second sense, ‘illicit’ would refer to funds from legitimate economic activity that become illicit due to the subsequent contravention or circumvention of laws in how those funds are handled or dealt with. This includes all arrangements designed to circumvent the law or its spirit such as tax evasion, forms of tax avoidance, forms of tax optimization schemes, as well as profit shifting by multinational corporations, trade misinvoicing and transfer mispricing.<sup>8</sup>

---

<sup>6</sup> “Draft progress report on the research-based study on the impact of flow of funds of illicit origin and the non-repatriation thereof to the countries of origin on the enjoyment of human rights”, A/HRC/AC/18/CRP.3, 13 February 2017, available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/Session18/A\\_HRC\\_AC\\_18\\_CRP\\_3.docx](http://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/Session18/A_HRC_AC_18_CRP_3.docx), para 7.

<sup>7</sup> Ibid, para 14.

<sup>8</sup> Ibid, para 15.

9. The annual reports of Global Financial Integrity (2015-2017) estimate that the developing world as a whole lost approximately US \$7.8 trillion during the 10-year-period from 2004 to 2013.<sup>9</sup> Illicit financial outflows have multiplied at an average rate of between 7.2 and 8.1 percent and illicit financial inflows at an average rate of between 9.2 and 11.4 percent. This amounts to a sum of between \$2 and \$3.5 trillion within illicit inflows and outflows globally in the year 2014.<sup>10</sup>

### Estimated Illicit Financial Flows, All Developing Countries, 2005-2014

(Percent of total developing country trade except where noted)

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Average, 2005- 2014	2014	
												Billions of US dollars	Average annual percent change since 2005
<b>A. Total (outflows plus inflows)</b>													
Low estimate	15.7	15.1	14.4	14.3	15.3	14.6	13.0	13.3	13.9	13.8	14.1	2,010	8.5
High estimate	23.5	24.0	23.7	23.4	25.7	24.8	23.8	23.3	24.5	24.0	24.0	3,507	10.4
Midpoint	19.6	19.6	19.0	18.9	20.5	19.7	18.4	18.3	19.2	18.9	19.1	2,759	9.7
<b>B. Outflows</b>													
Low estimate	5.4	4.9	4.8	4.8	5.8	5.1	3.9	4.3	4.2	4.2	4.6	620	7.2
High estimate	7.8	7.4	7.5	7.5	8.9	7.6	6.6	6.7	6.7	6.6	7.2	970	8.1
Midpoint	6.6	6.1	6.1	6.1	7.4	6.4	5.3	5.5	5.4	5.4	5.9	795	7.7
<b>C. Inflows</b>													
Low estimate	10.3	10.3	9.6	9.5	9.5	9.5	9.2	9.0	9.7	9.5	9.5	1,391	9.2
High estimate	15.6	16.6	16.2	15.9	16.8	17.2	17.2	16.6	17.8	17.4	16.8	2,537	11.4
Midpoint	12.9	13.4	12.9	12.7	13.1	13.3	13.2	12.8	13.7	13.4	13.2	1,964	10.6

Source: GFI staff estimates using data from the International Monetary Fund.

Note: Estimates of total trade were calculated as an average of the magnitude reported by each developing country and the magnitude reported by that country's trade partners. Total trade is defined as the total exports plus imports for developing countries as provided by the compilers of the IMF's Direction of Trade Statistics. The low estimates are based on bilateral trade data between developing countries and advanced countries only (details are provided in Appendix II). The high estimates scale up the low estimates country by country to account for misinvoicing between developing countries. The midpoint is the simple average of the low and high estimates.

Source: Global Financial Integrity, "Illicit Financial Flows to and from Developing Countries: 2005-2014", Washington, D.C., April 2017, available at, full report accessible: [http://www.gfintegrity.org/wp-content/uploads/2017/04/GFI-IFF-Report-2017\\_final.pdf](http://www.gfintegrity.org/wp-content/uploads/2017/04/GFI-IFF-Report-2017_final.pdf), (p. vii.)

### Illicit Financial Flows from Developing Countries, by Region, 2004-2013

(in billions of U.S. dollars, nominal)

Region	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Cumulative	Average Share
Sub-Saharan Africa	32.5	51.9	56.4	77.0	78.6	85.0	78.0	74.3	66.7	74.6	675.0	8.6%
Asia	174.6	191.9	209.1	236.5	277.5	277.1	381.7	361.1	456.7	482.0	3,048.3	38.8%
Developing Europe	107.3	118.4	133.8	190.6	233.8	204.9	221.8	295.5	242.5	250.4	1,998.9	25.5%
MENA+AP	29.9	31.0	33.3	57.4	80.3	51.9	53.0	81.1	68.2	70.3	556.5	7.1%
Western Hemisphere	120.9	131.4	111.0	137.7	157.8	128.1	172.0	195.8	201.8	212.8	1,569.3	20.0%
All Developing Countries	465.3	524.6	543.5	699.1	828.0	747.0	906.6	1,007.7	1,035.9	1,090.1	7,847.9	.

Source: Global Financial Integrity, "Illicit Financial Flows from Developing Countries: 2004-2013", Washington, D.C., December 2015, available at, full report accessible: [http://www.gfintegrity.org/wp-content/uploads/2015/12/IFF-Update\\_2015-Final-1.pdf](http://www.gfintegrity.org/wp-content/uploads/2015/12/IFF-Update_2015-Final-1.pdf), (p. vii.)

10. The greater susceptibility of developing countries to IFFs has been highlighted by several organisations. The International Monetary Fund (IMF) states in a Working Paper that developing countries tend to be more reliant on corporate income tax as a share of all tax revenue than are higher income countries, have fewer realistic alternative sources of

<sup>9</sup> Global Financial Integrity, "Illicit Financial Flows from Developing Countries: 2004-2013", Washington, D.C., December 2015, available at: [http://www.gfintegrity.org/wp-content/uploads/2015/12/IFF-Update\\_2015-Final-1.pdf](http://www.gfintegrity.org/wp-content/uploads/2015/12/IFF-Update_2015-Final-1.pdf), p. vii.

<sup>10</sup> Ibid. Global Financial Integrity, "Illicit Financial Flows to and from Developing Countries: 2005-2014", Washington, D.C., April 2017, available at: [http://www.gfintegrity.org/wp-content/uploads/2017/04/GFI-IFF-Report-2017\\_final.pdf](http://www.gfintegrity.org/wp-content/uploads/2017/04/GFI-IFF-Report-2017_final.pdf), p. vii.

revenue, and financial losses they face through corporate tax avoidance are higher proportions of their gross domestic product (GDP).<sup>11</sup> More recently, the 2015 report of the High Level Panel on IFFs from Africa underscores that the African continent is losing more than \$50 billion of domestic revenue on an annual basis through illicit financial outflows, which increased from about \$20 billion in 2001 to \$60 billion in 2010.<sup>12</sup> These sums have implications for development and undermine domestic resource mobilization at a time when aid flows to African countries are either stagnant or decreasing. They have a potential impact on the realization of rights of every man, woman and child on the continent of Africa. According to the World Bank, IFFs together with the underlying activities distort economic and political competition, subvert government institutions, generate conflicts and violence, and undermine the integrity of legal and financial systems.<sup>13</sup>

11. Transfer pricing is the mechanism by which TNCs set prices to value transactions between related legal entities in the same company. When such intrafirm transactions are made at rates other than the market rate in order to take advantage of tax differences between jurisdictions and countries, the term transfer mispricing is applied. These transactions include the purchase and sale of goods or intangible assets, the provision of services and financing and cost allocation and sharing agreements. As long as the price that is set matches the ‘arm’s length’ price at which a transaction would have taken place between unrelated parties, the pricing is not problematic. However, prices within TNC are often distorted with the objective of reducing its aggregate tax bill. This leads to taxable financial resources being funnelled away from the location in which those resources are created. The study by the Independent Expert on foreign debt on the effects of IFFs, underscores that the majority of all IFFs are related to cross-border transfer pricing, such that “curbing tax-related IFFs thus has the potential to make the largest fiscal impact and would enlarge domestic resources available for the realisation of human rights, including social, economic and cultural rights.”<sup>14</sup>

12. Offshore wealth is defined as assets booked in a country where the investor has no legal residence or tax domicile. It includes financial assets such as equities, bonds, mutual fund shares, and bank deposits. Tax revenue losses only include the evasion of personal income taxes on investment income earned offshore and evasion of wealth, inheritance, and estate taxes. Offshore wealth has been steadily increasing, with Western Europe being the most popular destination.<sup>15</sup> Global offshore wealth is estimated to have increased by 28 percent from end-2008 to end-2013.

13. Approximately 87.4 percent of IFFs are caused by transfer mispricing, or the fraudulent misinvoicing of trade in cross-border tax-related transactions.<sup>16</sup> As of 2013,

<sup>11</sup> Crivelli, Ernesto, De Mooij, Ruud and Michael Keen, “Base Erosion, Profit Shifting and Developing Countries,” International Monetary Fund (IMF) Working Papers, WP/15/118, Washington, D.C., May 2015, available at: <https://www.imf.org/external/pubs/ft/wp/2015/wp15118.pdf>, p.4.

<sup>12</sup> African Union and Economic Commission for Africa, Report of the High Level Panel on Illicit Financial Flows from Africa, Addis Ababa, 2 June 2017, available at: [https://www.uneca.org/sites/default/files/PublicationFiles/iff\\_main\\_report\\_26feb\\_en.pdf](https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf), p. 64.

<sup>13</sup> The World Bank, “The World Bank Group’s Response to Illicit Financial Flows: A Stocktaking”, March 2016, available at: <http://documents.worldbank.org/curated/en/502341468179035132/pdf/104568-BR-SecM2016-0112-IDASecM2016-0071-IFC-SecM2016-00423-MIGA-SecM2016-0044-Box394878B-PUBLIC-disclosed-4-5-16.pdf>, p.3.

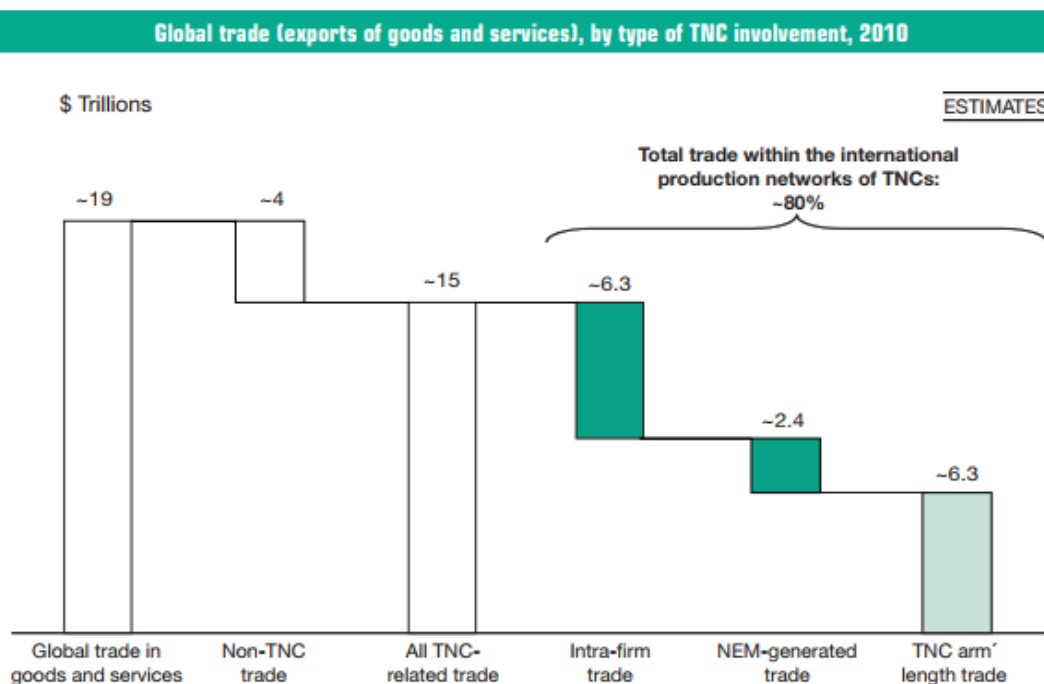
<sup>14</sup> United Nations Human Rights Council, “Final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights,” UN Document A/HRC/31/61, Geneva, 15 January 2016, para 5.

<sup>15</sup> Boston Consulting Group, “Global Wealth 2013: Maintaining Momentum in a Complex World,” London, March 2013, available at [http://image-src.bcg.com/Images/Maintaining\\_Momentum\\_Complex\\_World\\_May\\_2013\\_tcm9-97719.pdf](http://image-src.bcg.com/Images/Maintaining_Momentum_Complex_World_May_2013_tcm9-97719.pdf), p.11.

<sup>16</sup> Global Financial Integrity, “Illicit Financial Flows: The Most Damaging Economic Condition Facing the Developing World”, Washington, D.C., September 2015, available at: <http://www.gfintegrity.org/wp-content/uploads/2015/09/Ford-Book-Final.pdf>, pp. 78 and. 86; and Global Financial Integrity,



UNCTAD estimates that 80 percent of global trade takes place in value chains linked to transnational corporations.<sup>17</sup>



Source: UNCTAD estimates, based on *World Investment Report 2012* (table I.8) and various sources

Source: United Nations Conference on Trade and Development, “Global Value Chains and Development: Investment and Value Added Trade in the Global Economy”, Geneva 2013, available at: [http://unctad.org/en/PublicationsLibrary/diae2013d1\\_en.pdf](http://unctad.org/en/PublicationsLibrary/diae2013d1_en.pdf), p. 16.

14. IFFs constitute a net transfer of resources from developing to developed countries and consequently exacerbate pre-existing global inequalities. The United Nations Conference on Trade and Development (UNCTAD) calculates that some commodity dependent developing countries are losing as much as 67 percent of their export revenue, worth billions of dollars, to trade misinvoicing. Trade misinvoicing is identified to be one of the largest drivers of illicit financial flows from developing countries. The result is that developing countries forego valuable foreign exchange earnings, tax, and income that might otherwise be spent on development.<sup>18</sup> A network of civil society organizations has published a research finding detailing that as of 2015, a net amount of \$41.3 billion<sup>19</sup> leaves the African continent. This sum accounts for 6.1 percent of the continent’s average GDP.<sup>20</sup> While \$161.6 billion was received by African countries in 2015, primarily through loans, personal remittances and aid in the form of grants, about \$203 billion was extracted out of Africa, either directly, primarily through TNCs repatriating profits and illegally moving money out of the continent, or by

“Illicit Financial Flows to and from Developing Countries: 2005-2014”, Washington, D.C., April 2017, available at: [http://www.gfintegrity.org/wp-content/uploads/2017/04/GFI-IFF-Report-2017\\_final.pdf](http://www.gfintegrity.org/wp-content/uploads/2017/04/GFI-IFF-Report-2017_final.pdf), pp. vii and 23.

<sup>17</sup> UNCTAD, “Global Value Chains and Development: Investment and Value Added Trade in the Global Economy”, Geneva, 2013, available at: [http://unctad.org/en/PublicationsLibrary/diae2013d1\\_en.pdf](http://unctad.org/en/PublicationsLibrary/diae2013d1_en.pdf), p. 16.

<sup>18</sup> United Nations Conference on Trade and Development, “Some countries losing up to 67% of commodity exports to misinvoicing,” Geneva, 16 July 2016, available at: <http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1277>.

<sup>19</sup> Global Justice Now, Health Poverty Action, Jubilee Debt Campaign, Uganda Debt Network, Budget Advocacy Network, Integrated Social Development Centre, Zimbabwe Coalition on Debt and Development, GroundWork, People’s Health Movement Kenya, “Honest Accounts 2017: How the world profits from Africa’s wealth,” London, May 2017, available at: <http://jubileedebt.org.uk/wp-content/uploads/2017/05/Honest-Accounts-2017-WEB-FINAL.pdf>, p. 2.

<sup>20</sup> Ibid, p. 4.

costs imposed by climate change.<sup>21</sup> In light of the impact of IFFs on the erosion of the domestic tax base in developing countries, IFFs have become a major obstacle to achieving sustainable development through SDG target 17.1 on the mobilisation of domestic resources. As such, the ability to raise revenue domestically is not only a function of domestic policies and institutions but is also significantly shaped by international tax norms, the global policy environment, and the prevalence of IFFs through international tax avoidance and evasion practices.<sup>22</sup>

### III. The Dynamics of Global Tax Competition

15. The global tax regime facilitates IFFs 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. As research by the European Parliament<sup>23</sup> points out, in the context of globalization and the imperative to trade globally, competition between countries to attract investment capital, and large grey areas created by differences in national tax laws, TNCs pervasively use aggressive tax planning and transfer mispricing in order to minimize or eliminate their tax payments. The larger debate around the complexities and nuances of tax competition and its linkages to IFFs revolves around the argument that tax competition between governments can trim inefficient public spending and lead to better governance. However, the mobility of tax bases across national borders renders the benefits of this argument less clear. The primary 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.<sup>24</sup> 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.<sup>25</sup> While these figures reflect a variety of effects, the World Bank's researchers concede that empirical data confirms that the downward trends of corporate income tax and tax revenue base demonstrate the effects of international tax competition at work.<sup>26</sup>

<sup>21</sup> Ibid, p. 2.

<sup>22</sup> Ziegler, Jean, Okafor, Obiora, Co-rapporteurs of the Advisory Committee, "Draft progress report on the research-based study on the impact of flow of funds of illicit origin and the non-repatriation thereof to the countries of origin on the enjoyment of human rights", A/HRC/AC/18/CRP.3, 13 February 2017, available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/Session18/A\\_HRC\\_AC\\_18\\_CRP\\_3.docx](http://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/Session18/A_HRC_AC_18_CRP_3.docx), para 87-88.

<sup>23</sup> European Parliament, Directorate-General for External Policies, Policy Department, "Tax Revenue Mobilisation in Developing Countries: Issues and Challenges," April 2014, Brussels, <https://www.ids.ac.uk/files/dmfile/TaxRevenueMobilisationinDevelopingCountries.pdf>, p.4.

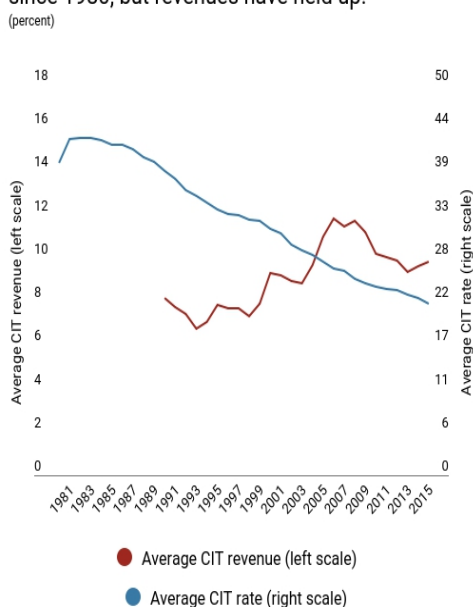
<sup>24</sup> World Bank, "Doing Business 2017: Equal Opportunity for All", (Washington, D.C.: World Bank, 25 October 2016), available at: <http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Report.pdf>.

<sup>25</sup> 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>.

<sup>26</sup> Ibid.

### Tax rates tumble

Corporate income tax (CIT) rates in advanced economies have dropped by almost 20 percent since 1980, but revenues have held up.

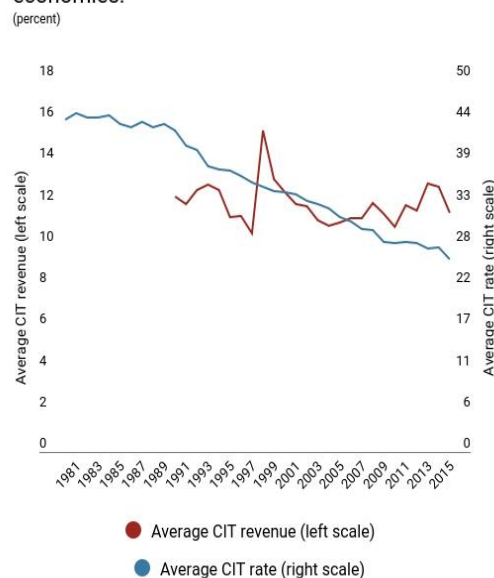


Sources: International Bureau of Fiscal Documentation; KPMG; OECD; University of Michigan World Tax Database; IMF World Revenue Longitudinal Database (WoRLD); and IMF staff calculations.

Note: Advanced economies include high-income and upper middle-income countries as classified by the World Bank.

### Tax rates and revenue

Corporate income tax (CIT) rates have fallen by about 20 percent in developing economies, but revenue has been less buoyant than in advanced economies.



Sources: International Bureau of Fiscal Documentation; KPMG; OECD; University of Michigan World Tax Database; IMF World Revenue Longitudinal Database (WoRLD); and IMF staff calculations.

Note: Developing economies includes low-income and lower middle-income countries as classified by the World Bank.



: Tax competition and developing economies”, 7 November 2017, available at: <http://blogs.worldbank.org/governance/peer-pressure-tax-competition-and-developing-economies>.

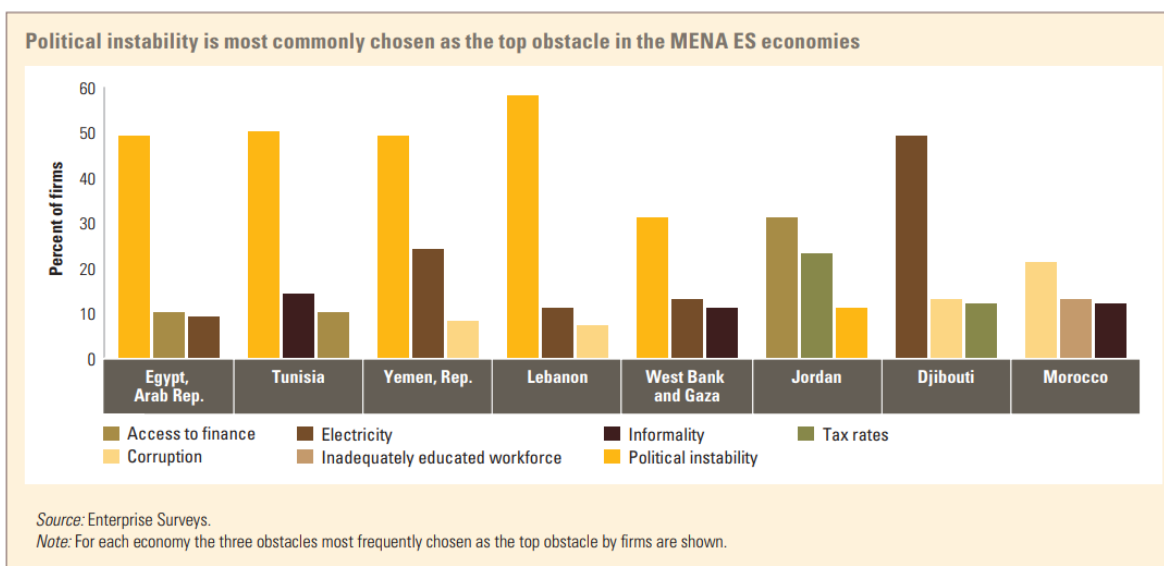
16. In a 2014 policy paper, the IMF notes that the pervasiveness of tax incentives significantly undermine tax revenue in developing countries, and “may to a large extent be a spillover reaction to policies pursued in other countries: a clear instance of tax competition.”<sup>27</sup> The World Bank’s Enterprise Surveys do not identify tax payments to be a significant barrier to foreign investment.<sup>28</sup> In the Middle East and North African regions, the Enterprise Surveys highlighted the role of political instability, corruption, unreliable electricity supply and inadequate access to finance, while taxation rates did not receive comparable attention.<sup>29</sup> However, the World Bank’s annual report on “Paying Taxes” continues to promote the reduction of taxes on businesses as central mechanisms by which to boost foreign investment.<sup>30</sup>

<sup>27</sup> International Monetary Fund (IMF) Policy Paper, “Spillovers in International Corporate Taxation,” 9 May, 2014, Washington, D.C., available at: <http://www.imf.org/external/np/pp/eng/2014/050914.pdf>, p.7.

<sup>28</sup> World Bank Group, “What’s holding back the private sector in MENA? Lessons from the MENA Enterprise Survey,” 2016, Washington, D.C., available at: [http://www.enterprisesurveys.org/reports/~/\\_/media/GIAWB/EnterpriseSurveys/Documents/Misc/MENA-Business-Climate-2016.pdf](http://www.enterprisesurveys.org/reports/~/_/media/GIAWB/EnterpriseSurveys/Documents/Misc/MENA-Business-Climate-2016.pdf), p.2-6.

<sup>29</sup> Ibid.

<sup>30</sup> World Bank Group and PricewaterhouseCoopers, “Paying Taxes 2018,” 2017, Washington, D.C., available at: [http://www.doingbusiness.org/~/\\_/media/WBG/DoingBusiness/Documents/Special-Reports/2018-Paying-Taxes.pdf](http://www.doingbusiness.org/~/_/media/WBG/DoingBusiness/Documents/Special-Reports/2018-Paying-Taxes.pdf), p.17.



Source: What's Holding Back the Private Sector in MENA? Lessons from the Enterprise Survey, European Bank for Reconstruction and Development, the European Investment Bank, and the International Bank for Reconstruction and Development/The World Bank, 2016, p. 21, available at: [http://ebrd-beeps.com/wp-content/uploads/2016/08/mena\\_es\\_r2016.pdf](http://ebrd-beeps.com/wp-content/uploads/2016/08/mena_es_r2016.pdf)

17. The continuing influence of the World Bank's Ease of Doing Business rankings on states, and the promotion of economies around the world that continue to reduce the burden of tax compliance on businesses<sup>31</sup> contribute to the inadequate rise, or stagnation and decrease, of domestic tax revenues in many developing countries. In turn, the suppression of the domestic tax revenue base exacerbates inequalities between developed and developing countries, and limits the possibilities of achieving SDG 10 on reducing inequality within and among states, and delivering on the RTD, ESCRs and eventually all human rights of their populations, through long-term public investments in the social and public sectors. Furthermore, many developing countries, especially LDCs, offer tax incentives to TNCs that are not available to domestic firms, thereby widening the economic and competitive gap between foreign and domestic businesses. Empirical data collated between 2001 and 2011 reveals that 39 African countries experienced tax evasion amounting to approximately 97.7 percent of national healthcare spending, and 12 Latin American countries lost tax revenue equivalent to approximately 138.5 percent of national healthcare spending.<sup>32</sup> Such foregone national revenue violates the principle of equity by which persons with equal financial capacity should pay the equivalent amount in taxes (horizontal equity) and those with greater financial capacity should pay a proportionally greater amount in taxes (vertical equity).<sup>33</sup>

18. The dynamics of global tax competition illustrates that many developing countries, in particular LDCs, do not have the state sovereignty and sovereign equality and consequently the policy space and policy sovereignty, 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 BEPS initiative does not currently address the issue of global tax competition and the ways in which IFFs are exacerbated as a consequence.

<sup>31</sup> World Bank Group, "Doing Business: Measuring Business Regulations," 2017, available at: <http://www.doingbusiness.org/reports/thematic-reports/paying-taxes>.

<sup>32</sup> United Kingdom Parliament, Written evidence submitted by the International Secretariat of the Tax Justice Network, 30 January 2012, available at: <https://publications.parliament.uk/pa/cm201012/cmselect/cmintdev/writev/1821/1821.pdf>, p. 20; Tax Justice Network, "The Cost of Tax Abuse: A Briefing Paper on the Cost of Tax Evasion Worldwide", London and Kenya, 23 November 2011, available at: [http://www.tackletaxhavens.com/Cost\\_of\\_Tax\\_Abuse\\_TJN%20Research\\_23rd\\_Nov\\_2011.pdf](http://www.tackletaxhavens.com/Cost_of_Tax_Abuse_TJN%20Research_23rd_Nov_2011.pdf), p. 5, <https://www.taxjustice.net/wp-content/uploads/2014/04/Cost-of-Tax-Abuse-TJN-2011.pdf>, p.3.

<sup>33</sup> Economic Commission for Latin America and the Caribbean, "Time for Equality. Closing gaps, opening trails," 2010, Available at: [http://www.cepal.org/publicaciones/xml/1/39711/100604\\_2010-115-SES-33-3-Time\\_for\\_equality\\_doc\\_completo.pdf](http://www.cepal.org/publicaciones/xml/1/39711/100604_2010-115-SES-33-3-Time_for_equality_doc_completo.pdf), p.6.

## IV. IFFs and Impediments to Domestic Resource Mobilisation for SDGs and FFD

19. IFFs have significant impacts on the RTD and sustainable development, the 2030 Agenda and SDGs, as well as financing for development and the AAAA, especially in developing countries that experience a net outflow of financial resources from TNC activity in their economies.

20. First, IFFs prevent developing countries from mobilising and spending 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.

21. Prevention and control of IFFs and re-directing the large sums of financial resources to states in which the profits are generated would yield critical benefits to both human rights and development, through the increased fiscal revenues that States could potentially allocate to social sector investments inter alia in health, education and public goods such as infrastructure. Alleviating IFFs is essential to achieving the SDGs and realizing the RTD. The aim of reducing IFFs has been incorporated as a common goal in the AAAA and the 2030 Agenda. To this end, in SDG Target 16.4, states have pledged to significantly reduce IFFs by 2030, and to strengthen the recovery and return of stolen assets. This is the first time that two key international development policy frameworks explicitly recognize the harmful effects of IFFs in exacerbating inequality within and between countries, in undermining countries' ability to mobilise domestic resources, and pursue long-term economic development, employment generation, value-creation and industrialisation. IFFs pose a major challenge to realizing SDG 10 which aims on the other hand, to reduce inequalities between and within countries.

### Summary of the figures

INFLOWS	Latest available annual figure	OUTFLOWS	Latest available annual figure
Net private grants	\$11.8 billion	Debt payments by governments	\$18.0 billion
Decrease in international reserve holdings	\$20.7 billion	Debt payments by private sector	\$9.8 billion
Loans to governments	\$32.8 billion	Increase in international reserve holdings	\$0.0 billion
Loans to private sector (FDI and non-FDI)	\$20.6 billion	Multinational company profits	\$32.4 billion
Net portfolio equity	\$7.2 billion	Illicit financial outflows	\$67.6 billion
Net FDI equity	\$15.8 billion	Outward remittances	\$3.8 billion
Inward remittances	\$31.2 billion	'Brain drain'	\$6.0 billion
Official aid from OECD	\$19.1 billion	Illegal logging	\$17.0 billion
Official aid from non-OECD countries	\$0.6 billion	Illegal fishing	\$1.7 billion
Debt interest received	\$1.8 billion	Illegal trade in wildlife/plants and poaching	\$10.0 billion
<b>TOTAL</b>	<b>\$161.6 billion</b>	Climate change adaptation costs	\$10.6 billion
		Climate change mitigation costs	\$26.0 billion
		<b>TOTAL</b>	<b>\$202.9 billion</b>

Source: Global Justice Now, Health Poverty Action, Jubilee Debt Campaign, Uganda Debt Network, Budget Advocacy Network, Integrated Social Development Centre, Zimbabwe Coalition on Debt and Development, GroundWork, People's Health Movement Kenya, "Honest Accounts 2017:

How the world profits from Africa's wealth," London, May 2017, available at: <http://jubileedebt.org.uk/wp-content/uploads/2017/05/Honest-Accounts-2017-WEB-FINAL.pdf>, p. 3.

22. Tax evasion and/or repatriation of profits by transnational companies operating in developing countries, in contrast to national taxation of domestic companies therein, creates an inequality where foreign firms often gain greater competitiveness, profits and financial power than domestic firms. Unlike TNCs, the majority of domestic firms cannot take advantage of cross-border tax haven transactions in order to evade or lower their taxes. This asymmetry, while certainly not a basis to argue for capacity for domestic firms to abuse tax responsibilities, further exacerbates inequalities between industrialized countries and developing countries, undermining SDG 10 which seeks to reduce inequalities within and between nations.

23. The loss of potential public funds through IFFs and the macroeconomic ripple effects they create, such as foreign debt burdens in particular, impair the capacity of the state to invest in social sectors vital to sustainable development, particularly health and education, or in human rights terms, the rights to health and to education. Consequently, social and economic inequality within countries deteriorates, undermining the human rights principles of equality and non-discrimination. These principles are enshrined in all core international human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>34</sup> the Convention on the Elimination of All Forms of Discrimination against Women,<sup>35</sup> as well as the Declaration on the Right to Development. A 2015 study by Global Financial Integrity assessed IFFs from the world's poorest countries in relation to various development indicators, including GDP, Official Development Assistance (ODA), Foreign Direct Investment (FDI) and public expenditure on health and education. The results revealed an explicit correlation between IFFs and lower levels of social and economic development. For example, 31 developing countries incurred IFFs that amounted to a sum greater than their annual national health budgets between 2008 and 2012. In 35 developing countries, IFFs surpassed education spending during the same time period from 2008 to 2012. IFFs outnumbered the combined financial inflow of ODA and FDI in 20 developing countries.<sup>36</sup> These figures draw a clear link between IFFs and the health and education related SDGs, or the rights to health and education. They make it imperative to address IFFs to realize both human rights and development.

24. IFFs also pose a structural obstacle to debt sustainability, outlined in SDG target 17.4. As some developing country governments may need to resort to external borrowing in the face of missing tax revenues, debt burdens accumulate and debt crisis becomes more imminent. In turn, debt crises can aggravate IFFs since debt servicing expenses constrain the public resources available to build national capacity to contain IFFs.<sup>37</sup> Target 17.4 calls for assistance to developing countries in attaining long-term debt sustainability through coordinated policies aimed at fostering debt financing, debt relief and debt restructuring, while also addressing the needs of highly indebted poor countries to reduce debt distress. Addressing IFFs is therefore a critical element in the pursuit of debt sustainability and the

<sup>34</sup> UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

<sup>35</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>.

<sup>36</sup> Global Financial Integrity, "Illicit Financial Flows and Development Indices: 2008–2012", Washington D.C., June 2015, available at: <http://www.gfintegrity.org/wp-content/uploads/2015/05/Illicit-Financial-Flows-and-Development-Indices-2008-2012.pdf>, pp. 30-33.

<sup>37</sup> United Nations Human Rights Council, "Final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights", A/HRC/31/61, Geneva, 15 January 2016, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/006/43/PDF/G1600643.pdf?OpenElement>.

SDGs at large. Meanwhile, the inter-linkages between debt, IFFs, inequalities, and the right to development which paves the path towards achieving the SDGs underscores the vicious cycle by which one systemic injustice adversely affects another.

25. It is vital to recall that raising tax revenue is not an end in itself, but rather a tool for fulfilling all human rights, including the right to development, supporting and promoting socio-economic development and facilitating redistribution, for development and human rights. Prevention and control of IFFs would facilitate the realization of economic, social and cultural rights, and the RTD, as more material resources would become available to deliver such rights. Realizing the RTD entails implementing a development process which advances all human rights - civil and political, economic, social and cultural, and the RTD. Curbing IFFs would facilitate the reduction of inequalities within and between nations as envisaged in SDG 10, facilitate the mobilization of domestic resources by developing countries for sustainable development and contribute to redressing discrimination. Thus combating IFFs is not only a target in its own right but is also a fundamental means for making progress on all 169 targets of the SDGs, most notably SDG 16 and 17 as well as 5 and 10, and the a, b, c targets on the means of implementation in all 17 Goals. It is clear from the above, that addressing IFFs is an imperative for both human rights and development.

26. IFFs constrain developing countries in mobilising significant public financial resources required for fiscal policies that support equitable social and economic development therein. The outflow of financial resources undermines the ability of the state to sustain and boost public expenditure and investment for sustainable development, intrinsically linked to its ability to ensure the realisation of rights, most notably the RTD, and economic, social and cultural rights including to food, water and sanitation, health, education and social security. Some portion of illicit financial outflows from a developing country may correspond to tax revenues lost by that country which would then be unavailable for use by the government toward reducing inequality, eliminating poverty, raising the quality of life for people living in those countries and for sustainable development at large. At the same time, a vital means by which the SDGs are to be financed is encapsulated in target 17.1, which calls for mobilizing additional financial resources for developing countries from multiple sources.

## V. IFFs and Gender Inequality

27. In the context of limited or scarce national financial resources, public funds are often used to pay down external debt rather than fund essential social services that serve to realize human rights. As the Special Rapporteur on Extreme Poverty and Human Rights pointed out, revenue collection is a critical tool through which states can ensure equal access to economic, social and cultural rights and redress structural inequalities, including gender inequalities.<sup>38</sup> Taxation is arguably the most sustainable and predictable source of national revenue for the provision of public goods and social services. It is also a key tool for addressing economic inequality, including gender inequality, through redistribution by way of progressive forms of taxation and allocation of tax revenues towards strengthening human rights, including the right to development. As such, taxation binds government in a social contract with people who pay taxes to it and strengthens democracy by elevating a government's responsibility to its people. When people demand how they want their own tax resources to be spent, the enhanced public participation supports and promotes greater state accountability and transparency.

28. Financial resource outflows through IFFs ultimately narrows 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.

<sup>38</sup> Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, A/HRC/26/28, Geneva, 22 May, 2014, available at: [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A\\_HRC\\_26\\_28\\_ENG.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_28_ENG.doc), para.17.

Indirect and consumption taxes disproportionately affect the income of low income households and their ability to purchase basic goods and public services. Women, in particular, bear the cost of regressive consumption taxes as they use greater proportions of their income on basic goods, in part due to gender norms that relegate caretaking for the young and the old on them.<sup>39</sup> Regressive taxation measures thus undermine the affordability of core goods and services that are essential to the enjoyment of economic and social rights, in particular for the most vulnerable, including women and in particular, rural and lower-income women.

29. Lack of access to essential social services such as healthcare, education, basic infrastructure and sanitation are a defining feature of poverty. Public services, rather than private services, are especially vital in light of the crucial aspect of affordability. Those in vulnerable situations, women and children in particular, rely on public services, especially for healthcare and social protection due to sexual and reproductive health and maternity-related needs. 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. Women's unpaid work plays a crucial role in subsidising the entirety of national economies, while cementing labour and wage inequalities on the basis of gender roles. In the face of the inability of the public sector to finance essential social services, social services may be privatized, posing problems of affordability and accessibility. The result is often multiple and intersecting negative impacts on gender equality, creating barriers to basic human rights like the rights to food and health, including healthcare and medicines. Constraints on the ability of states to mobilise public financial resources for the purpose of sustained investments in public service provision adversely impact access to education, decent work opportunities, employment creation and the agency to make choices about one's own life.<sup>40</sup> Experience from budget monitoring in many parts of the world demonstrates that conducting gender analysis of fiscal and tax policies can help to identify the specific gender bias affecting women, and point to ways to eliminate or minimise this bias.<sup>41</sup>

30. The disproportionate impacts and multiple levels of discrimination relating to women and girls jeopardize the human rights principles of equality and non-discrimination, SDG 5 on gender equality and empowerment, and the call in Article 8 of the DRTD for an active role for women in the development process, ostensibly a form of affirmative action vis-a-vis gender inequality and the marginalization of women. They warrant suitable positive measures in line with Article 8 of the DRTD which also calls for equality of opportunity for all in access to basic resources and services as well as for appropriate economic and social reforms to eradicate social injustice. Feminist economic analysis demonstrates that if corporate taxes decrease and individual income taxes consequently increase, the impact of higher taxation on women, especially poor women, will tend to increase.<sup>42</sup> When economic inequalities result in discriminatory outcomes, they become a human rights issue. High levels of tax abuse through IFFs, undermine the principles of equality and non-discrimination. Recognizing the interface of taxation policies, women's rights and the extraterritorial obligations of states, the Committee on the Elimination of Discrimination against Women recommended in 2016 that Switzerland "Undertake independent, participatory and periodic impact assessments of the extraterritorial effects of its financial secrecy and corporate tax policies on women's rights and substantive equality,

<sup>39</sup> Ibid, para 46.

<sup>40</sup> Grown, Caren, "Taxation and Gender Equality: A conceptual framework," International Development Research Centre, Ottawa, 2010, available at: <http://www20.iadb.org/intal/catalogo/PE/2011/08031.pdf>, p.4-6.

<sup>41</sup> Smith, Terence, "Women and tax in South Africa", 2000, available at: <https://www.internationalbudget.org/wp-content/uploads/Women-and-Tax-in-South-Africa.pdf>, pp. 28-29.

<sup>42</sup> Elson, Diane, "Budgeting for Women's Rights: Monitoring Government Budgets for Compliance with CEDAW," United Nations Women, 2008, available at: <http://www.unwomen.org/-/media/headquarters/media/publications/unifem/budgetingforwomensrightssummaryguideen.pdf?la=en&vs=1006>, p.4.



and ensure that such assessments are conducted in an impartial manner with public disclosure of the methodology and finding".<sup>43</sup>

## VI. IFFs and Structural Obstacles to Realizing the RTD

31. Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights has concluded that, "There is a clear link between illicit financial flows in that such flows diminish the resources available to States for investment in programmes that contribute to the realization of human rights, particularly economic, social and cultural rights. In essence, the failure to counter illicit financial flows and recover stolen assets is a denial of access to basic health care, education, safe water and sanitation, adequate housing and infrastructure, all of which are basic conditions for the enjoyment of human rights."<sup>44</sup>

32. Another way of understanding the link between illicit financial flows and human rights is to examine the link between the availability of resources and the capacity of states to address extreme poverty, which is also a human rights concern. "The imperative to counter illicit financial flows and to ensure recovery of stolen funds derives from the obligation of states to devote their "maximum available resources" to the fulfilment of economic, social and cultural rights."<sup>45</sup> Article 2.1 of the ICESCR, gives to states, an obligation to take steps, individually and through international assistance and co-operation, to the maximum of their available resources, with a view to achieving progressively the full realization of rights enshrined in the Covenant, by all appropriate means, including particularly the adoption of legislative measures. "Difficulties in mobilizing sufficient resources for the realization of economic, social and cultural rights arise at both the domestic and international levels. At the domestic level, obstacles include regressive taxation systems, tax incentive systems, weak tax administrations and tax evasion and avoidance schemes. At the international level, a key obstacle is the volume of funds that countries lose each year through illicit flows."<sup>46</sup> Resource constraints can have impacts on all human rights, including civil and political rights, because they compromise development and governance in their multiple dimensions, including the ability to maintain effective and functioning institutions and the rule of law.

33. According to the Organization for Economic Cooperation and Development (OECD), illicit financial flows have "a damaging impact" on the ability of developing countries to mobilize their own financial resources for investment and "[t]he most immediate impact of such illicit flows is a reduction in domestic public and private expenditure and investment, which means fewer jobs, hospitals, schools, less infrastructure – and ultimately less development."<sup>47</sup> The diversion of resources due to illicit financial outflows and the non-repatriation of these funds reduce the "maximum resources" available to the countries of origin for the progressive realization of economic, social and cultural rights. Put differently, IFFs undermine the ability of States to comply with their obligation to devote the "maximum available resources" to the realization of human rights, particularly economic, social and cultural rights.<sup>48</sup>

34. The World Bank estimates that every US\$100 million in stolen assets recovered could fund first line treatment for over 600,000 persons with HIV/AIDS for a year, or 50,000 million in drugs for the treatment of malaria, or some 250,000 water connections for

<sup>43</sup> CEDAW Concluding Observations on the combined fourth and fifth reports of Switzerland (CEDAW/C/CHE/CO/4-5) (18 November 2016), para. 41.

<sup>44</sup> Final report of Cephias Lumina, Independent Expert on foreign debt, on the negative impact of the non-repatriation of funds of illicit origin on the enjoyment of human rights, A/HRC/25/52, 7 March 2014.

<sup>45</sup> A/HRC/25/52, para.18, p.8.

<sup>46</sup> A/HRC/25/52, para. 23, p.9.

<sup>47</sup> OECD, Measuring OECD responses to illicit financial flows," Issue Paper, DAC Senior Level Meeting, 3-4 April 2013, DCD/DAC(2013)13, p. 3.

<sup>48</sup> A/HRC/25/52, para. 25, p.10.

poor households, or full immunization for 4 million children.<sup>49</sup> The need for a human rights-based approach to combat IFFs and recover stolen assets has been stressed by the IE on Foreign Debt.<sup>50</sup> “Illicit financial flows are a global problem, but success in countering them requires concerted efforts from the international community, complemented by appropriate domestic measures to address corruption, money laundering, corporate tax evasion and avoidance schemes and improve investment codes. This implies a commitment by all States to the principle of international assistance and cooperation.”<sup>51</sup>

35. Development contributes to the enjoyment of human rights, just as human rights contribute to, advance and sustain development. Realizing the RTD supports the realization of all human rights<sup>52</sup> because it calls for an enabling environment for development and human rights, and the mobilization of resources for development.

36. The DRTD affirms “*that the right to development is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations.*” It recognizes “*that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.*” Like all human rights, the RTD upholds the basic principles of equality, non-discrimination, participation, accountability and transparency, and its elements and principles apply both locally and globally. The duty to cooperate is central to the RTD, making international cooperation and assistance also a core principle. While the right of individuals and peoples, and equality of opportunity for nations comprise the central focus of the Declaration, its constituent Articles spell out responsibilities of the state, such as the “*right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals*” in Article 2.3, the primary responsibility of the state “*for the creation of national and international conditions favourable to the realization of the right to development*” in Article 3.1 and the duty of states to “*co-operate with each other in ensuring development and eliminating obstacles to development*” in Article 3.3.

37. The Declaration builds upon the edifice of the UN Charter<sup>53</sup> which calls for international cooperation in solving international problems relating to peace and security, human rights and development; the Universal Declaration of Human Rights,<sup>54</sup> which envisions a social and international order in which all rights and freedoms can be fully realized for everyone; the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>55</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>56</sup> and other international instruments. Significantly, Article 2.1 of the ICESCR, gives to states, an obligation to take steps, individually and through international assistance and co-operation, to the maximum of their available resources, with a view to achieving progressively the full realization of rights enshrined in the Covenant, by all appropriate means, including

<sup>49</sup> World Bank and United Nations Office on Drugs and Crime, Fact Sheet on Asset Recovery, available from [www.unodc.org/pdf/Star\\_Factsheet.pdf](http://www.unodc.org/pdf/Star_Factsheet.pdf); Fact Sheet 5 – The Stolen Assets Recovery (StAR) Initiative, available at [www.unodc.org/documents/treaties/UNCAC/COSP/session2/Factsheets-StARInitiative.pdf](http://www.unodc.org/documents/treaties/UNCAC/COSP/session2/Factsheets-StARInitiative.pdf).

<sup>50</sup> A/HRC/25/52, paras. 29-34.

<sup>51</sup> A/HRC/25/52, para. 35.

<sup>52</sup> UN General Assembly, The right to development: resolution / adopted by the General Assembly, A/RES/72/167, 19 December 2017, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/72/167](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/72/167), para.15.

<sup>53</sup> United Nations, Charter of the United Nations, 1 UNTS XVI, 24 October 1945, available at: <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>.

<sup>54</sup> UN General Assembly, Universal Declaration of Human Rights, 217 A (III), 10 December 1948, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/217\(III\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217(III)).

<sup>55</sup> UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: [https://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch\\_IV\\_03.pdf](https://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch_IV_03.pdf).

<sup>56</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>.

particularly the adoption of legislative measures. Elaborating on this Article, the Committee on Economic, Social and Cultural Rights (CESCR), stated in its General Comment no. 3 of 1990,<sup>57</sup> that international cooperation for development, and thus for the realization of economic, social and cultural rights, is an obligation of all states. In 2016, the CESCR noted in Concluding Observations on the United Kingdom that "financial secrecy legislation (allowing its Overseas Territories and Crown Dependencies to prosper as tax havens) and permissive rules on corporate tax are affecting the ability of the State Party, as well other States, to meet their obligation to mobilize the maximum available resources for the implementation of economic, social and cultural rights". It recommended that the UK "intensify its efforts, in coordination with its Overseas Territories and Crown Dependencies, to address global tax abuse".<sup>58</sup>

38. The Vienna Declaration and Programme of Action (VDPA),<sup>59</sup> the outcome document of the 1993 World Conference on Human Rights, called on the international community to promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development. It recognized that lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level. Both Principle 3 of the Rio Declaration on Environment and Development<sup>60</sup> and paragraph 11 of the VDPA, have long recognized that: "The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations." All the principles of the Rio Declaration are reaffirmed in the 2030 Agenda.<sup>61</sup>

39. The principles and elements of the DRTD make it a directly relevant and arguably effective advocacy tool to address IFFs, not least because it mandates national and international development policies to create an enabling environment for development. The Declaration provides a viable basis for legal cases in the African human rights system where it is justiciable by virtue of its embodiment in Article 22 of the African Charter on Human and Peoples' Rights<sup>62</sup> and related jurisprudence.<sup>63</sup> On the issue of IFFs, human rights and development, the African Commission on Human and Peoples' Rights has recognized that "illicit capital flight undermines the capacity of State Parties to implement the ACHPR and to attain the Millennium Development Goals", and called upon States

<sup>57</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), E/1991/23, 14 December 1990, available at: [http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/1\\_Global/INT\\_CESCR\\_GEC\\_4758\\_E.doc](http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/1_Global/INT_CESCR_GEC_4758_E.doc).

<sup>58</sup> CESCR, Concluding Observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland (E/C.12/GBR/CO/6, 14 July 2016), paras. 16-17.

<sup>59</sup> U.N.Doc. UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23, available at: <http://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf>.

<sup>60</sup> UN General Assembly, Rio Declaration on Environment and Development, A/CONF.151/26/Rev.1, 31 I.L.M. 874 (1992), 3-14 June 1992, available at: <http://www.un.org/documents/ga/conf151/aconf15126-1.htm>.

<sup>61</sup> Paragraph 12, 2030 Agenda.

<sup>62</sup> CAB/LEG/67/3 rev. Organization of African Unity, African Charter on Human and Peoples' Rights, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), 27 June 1981, available at: [https://au.int/sites/default/files/treaties/7770-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/7770-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf)

<sup>63</sup> The justiciability of the RTD has been upheld by the African Commission on Human and Peoples' Rights in Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) (ACmHPR, Decision 276/03 of 25 November 2009, available at: [http://www.achpr.org/files/sessions/46th/comunications/276.03/achpr46\\_276\\_03\\_eng.pdf](http://www.achpr.org/files/sessions/46th/comunications/276.03/achpr46_276_03_eng.pdf)) and by the African Court on Human and Peoples' Rights in African Commission on Human and Peoples' Rights v. Republic of Kenya (AfCHPR, Application No. 006/2012, Judgment of 26 May 2017, available at: <http://www.african-court.org/en/images/Cases/Judgment/Application%20006-2012%20-%20African%20Commission%20on%20Human%20and%20Peoples%20Rights%20v.%20the%20Republic%20of%20Kenya.pdf>). For a discussion on the justiciability of the RTD, see OHCHR, "Frequently Asked Questions on the Right to Development", New York and Geneva, 2016, available at: [http://www.ohchr.org/Documents/Publications/FSheet37\\_RtD\\_EN.pdf](http://www.ohchr.org/Documents/Publications/FSheet37_RtD_EN.pdf), pp. 8-9.

parties to the African Charter “to examine their national tax laws and policies towards preventing illicit capital flight in Africa”.<sup>64</sup>

40. Elsewhere, the RTD applies by virtue of the DRTD as well as various regional human rights instruments.<sup>65</sup> While a discussion on the legal status and justiciability of the DRTD specifically or Declarations generally is beyond the scope of this study, suffice it to say that Declarations can and do give rise to rights and obligations in certain instances, and frequently embody general principles and normative frameworks which comprise the progressive development of international law.<sup>66</sup> Moreover, the DRTD contains several obligations which are legally binding by virtue of their integration in binding treaties and customary international law; and Declarations and their contents can with time, themselves crystallize into customary international law.

41. The DRTD is situated at the interface of human rights law on the one hand and the global political economy of development on the other. Its core ethos and paradigm for proactively creating an enabling international environment for development makes it a prerequisite to achieving the SDGs, and a key to realizing rights. In the face of persistent poverty and rising inequalities both locally and globally in an era of ascendant economic globalization, the DRTD addresses the critical need for equality of opportunity for inclusive, equitable and sustainable development for all individuals, communities, peoples and nations.

42. The 17 SDGs and their 169 targets establish transformative shifts that reinforce the need to uphold the right to development, such as the following:

- Interdependence and indivisibility of the three dimensions of sustainable development - economic, social and environmental;
- All human rights and fundamental freedoms;
- Equality within and between nations;
- Gender equality and the empowerment of women and girls;
- Universality of the goals in applying to countries at all levels of development; and,
- Forging a new global partnership through integrating the means of implementation to achieve all the SDGs through structural policy reforms, among others.

43. The 2030 Agenda aims “to leave no one behind” and includes a key commitment to “reaching the furthest behind first” by ensuring that SDGs and targets are met “for all

<sup>64</sup> Resolution 236 adopted by the Commission at its 53rd ordinary session, 23 April 2013. <http://www.achpr.org/sessions/53rd/resolutions/236/>.

<sup>65</sup> For example, 1948 Charter of the Organization of American States Arts. 31-33; 1969 American Convention on Human Rights, Art. 26; 2004 Arab Charter on Human Rights, Art.37; 2012 ASEAN Human Rights Declaration Arts. 35-37; 2016 Abu Dhabi Declaration For example, 1948 Charter of the Organization of American States (OAS, Charter of the Organisation of American States, 30 April 1948, available at: [http://www.oas.org/en/sla/dil/inter\\_american\\_treaties\\_A-41\\_charter\\_OAS.asp](http://www.oas.org/en/sla/dil/inter_american_treaties_A-41_charter_OAS.asp)), Arts. 31-33; 1969 American Convention on Human Rights (Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969, available at: <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>), Art. 26; 2004 Arab Charter on Human Rights (League of Arab States, Arab Charter on Human Rights, 15 September 1994), Art.37; 2012 ASEAN Human Rights Declaration (ASEAN, ASEAN Human Rights Declaration, 18 November 2012, available at: [http://www.asean.org/storage/images/ASEAN\\_RTK\\_2014/6\\_AHRD\\_Booklet.pdf](http://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf)), Arts. 35-37; 2016 Abu Dhabi Declaration, [http://www.oic-iphrc.org/en/data/docs/articles\\_studies/iphrc\\_abu\\_dhabi\\_outcome\\_2016.pdf](http://www.oic-iphrc.org/en/data/docs/articles_studies/iphrc_abu_dhabi_outcome_2016.pdf) ([http://www.intosai.org/fileadmin/downloads/downloads/0\\_news/2016/141216\\_EN\\_AbuDhabiDeclaration.pdf.pdf](http://www.intosai.org/fileadmin/downloads/downloads/0_news/2016/141216_EN_AbuDhabiDeclaration.pdf.pdf)).

<sup>66</sup> Schrijver, N. in “The Role of the United Nations in the Development of International Law”, in Harrod, J., Schrijver, N. (eds.), *The UN Under Attack*, Gower, Aldershot, 1988, pp. 35-56, states that the description of a UNGA resolution as a ‘Declaration’ is in itself a sign that the instrument is a normative resolution with legal value and relevance.

nationals and peoples and for all segments of society”. Operationalizing the normative framework of the RTD is essential to achieving the SDGs in particular in developing countries, which face a disproportionate number of structural obstacles to realizing economic and social development. While relevant to all the goals, the RTD is particularly pertinent to Goal 17 on strengthening the means of implementation and revitalizing the global partnership for sustainable development, which includes structural redress or reforms to the international financial and trade architectures; and Goal 10 on reducing inequalities among countries. SDGs 10 and 17 aim to promote structural transformation, giving to poor countries and communities faced with systemic and structural obstacles, the opportunity to develop their economies with equity. As mentioned earlier, SDG 16 is also of particular relevance to this study, because it addresses IFFs in Target 16.4.

44. In Paragraph 63 of the 2030 Agenda and in SDG 17.15, states commit to respecting each other’s national policy space and leadership to implement policies for poverty eradication and sustainable development. They acknowledge that “national development efforts need to be supported by an enabling international economic environment, including coherent and mutually supporting world trade, monetary and financial systems, and strengthened and enhanced global economic governance,” and commit “to pursuing policy coherence and an enabling environment for sustainable development at all levels and by all actors, and to reinvigorating the global partnership for sustainable development.”

45. In 1992, the then U.N. Special Rapporteur on Economic and Social Rights recognized that “the system of levying tax should be a criteria against which compliance with international obligations is measured, as well as a central means of redressing existing imbalances of income distribution.”<sup>67</sup> Tax abusive practices by TNCs reflect a failure by States to fulfil their obligations of international cooperation for development and human rights, under Articles, 1, 55 and 56 of the UN Charter, the DRTD and other instruments; and their duties to promote an international and social order in which all human rights and fundamental freedoms can be realised, under Article 28 of the UDHR, which entitles all people to such an order. Likewise, in its Article 2, the DRTD calls for an appropriate political, social and economic order for development, and in Article 3, recognizes the primary responsibility of states for the creation of national and international conditions favourable to realizing the RTD.

46. IFFs undermine Articles of the DRTD which establish the link between the human right to development and the right of peoples to self-determination, and the duties of states and the international community to ensure an enabling environment for development at both national and global levels, particularly through international cooperation. Article 1.2 of the DRTD stipulates that the right to development also implies the full realization of the right of peoples to self-determination, which includes, their right to full sovereignty over all their natural wealth and resources. Article 3.3 calls on states to cooperate with each other in ensuring development and eliminating obstacles to development, on the basis of sovereign equality, interdependence, mutual interest and cooperation among States. Article 4.1 calls on states to take steps, individually and collectively, to formulate international development policies that facilitate the full realization of the right to development; and Article 4.2 states that ‘Sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries, effective international co-operation is essential in providing developing countries with appropriate means and facilities to foster their comprehensive development. Article 10 stresses that steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including through policy, legislation and other measures at both national and international levels. The ways in which these provisions can be applied to addressing the global scourge of IFFs are considered below.

47. The right of all peoples to self-determination is a fundamental right in the international human rights system, and is enshrined in Article 1.2 of the DRTD as well as Common Article 1 of the ICESCR and the ICCPR, which states that “All peoples have the

<sup>67</sup> Türk, Danilo, Special Rapporteur, United Nations Commission on Human Rights, “The Realization of Economic Social and Cultural Rights,” E/CN.4/Sub.2/1992/16, 3 July 1992, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G92/126/67/PDF/G9212667.pdf?OpenElement>, U.N. Document E/CN.4/Sub.2, 3 July, 1992, para. 83.

right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Article 1.2 of the DRTD declares that the human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources. The Special Rapporteur on extreme poverty and human rights has underscored that the right of all peoples to self-determination has “clear implications for activities that undermine the ability of other States to raise revenue and fund their own development.”<sup>68</sup>

48. Self-determination is intrinsic to the principle of sovereignty, which lies at the heart of international relations, international cooperation, multilateralism and the mandate of the United Nations, as well as the RTD. In the context of economic and financial globalization, and in particular, the production of goods and exchange of resources by transnational corporations that operate in multiple countries, sovereignty that balances cross-border concerns and cooperation is challenged. Shifting profits between complex networks of subsidiaries in different countries is a significant trend among TNCs. In this process, enterprises choose where to incur costs, where to allocate overheads and locate their assets, where to borrow money and where to make taxable profit. The tendency, at large, is to direct their costs towards states with high tax rates, thereby reducing their taxable profits in those jurisdictions. Profits, on the other hand, are directed to states with minimal tax rates. In this way, the ability of states to collect tax from profit-making economic activity within their borders is adversely impacted. International tax cooperation efforts have been impeded by arguments for tax sovereignty, which is the idea that each country should set its own tax policy without any interference from other countries. However, the reality of the global economy diminishes tax sovereignty for many countries, in particular developing countries where a multitude of external factors shape national tax structures. These include tax competition to attract foreign investment, the lack of tax compliance structures and local economies dominated by the informal sector rather than the formal sector. The informal sector, consisting of unregistered and usually small entrepreneurial businesses, encounters several challenges in taxation, including limited revenue potential, high costs of collection and potentially perverse impacts on small companies.<sup>69</sup> Thereby, many developing countries experience significant challenges in mobilizing tax revenues, which results in a ‘tax gap’ between what they could collect and what they actually collect.<sup>70</sup> Significant contributors to tax gaps include tax evasion and avoidance, tax exemptions, and inequitable rent-sharing in the extractive sector. Currently, developing country governments collect, on average, between 10 to 20 percent of their GDP through tax revenue, whereas developed countries obtain, on average, between 30 to 40 percent.<sup>71</sup>

49. Illicit financial outflows are generated by TNCs in distinct ways and across various sectors. Natural resources and wealth derived from them play a significant role in the profits generated by TNCs that engage in transfer mispricing. Four case studies, two of which include the natural resource commodities of copper and bananas, illustrate how

<sup>68</sup> United Nations Human Rights Council, Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, A/HRC/26/28, Geneva, 22 May, 2014, available at: [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A\\_HRC\\_26\\_28\\_ENG.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_28_ENG.doc), para 19.

<sup>69</sup> Joshi, Anuradha, Prichard, Wilson and Christopher Heady, “Taxing the Informal Economy: Challenges, Possibilities and Remaining Questions, Institute for Development Studies (IDS), Working Paper, August 2013, available at <http://onlinelibrary.wiley.com/store/10.1111/j.2040-0209.2013.00429.x/asset/j.2040-0209.2013.00429.x.pdf;jsessionid=F29B64990132634B6696FBC98BDE3789.f03t03?v=1&t=jees7gbx&s=76d7b4063c895eaab4b15b2e9d2d5ec89fe55ef5>, p. 3.

<sup>70</sup> European Parliament, Directorate-General for External Policies, Policy Department, “Tax Revenue Mobilisation in Developing Countries: Issues and Challenges,” April 2014, Brussels, <https://www.ids.ac.uk/files/dmfile/TaxRevenueMobilisationinDevelopingCountries.pdf>, p.4.

<sup>71</sup> *Ibid.*

financial resources from economic activity are channelled to offshore tax havens rather than the jurisdiction where the economic activity takes place.<sup>72</sup>

### Case Study 1

Multinational banana enterprises Dole, Chiquita and Fresh Del Monte were found in 2007 to be using tax havens to avoid paying taxes on their profits in the UK and in developing countries. These three enterprises account for more than two-thirds of the global market in bananas and source primarily from large industrial plantations in Latin America and West Africa. Fresh Del Monte is registered in the Cayman Islands and has over 30 subsidiaries based on the islands, where the rate of corporate tax is zero.<sup>73</sup> Dole's largest subsidiaries are located in Bermuda, Liberia and Puerto Rico, while Chiquita lists more than 10 subsidiaries in Bermuda.<sup>74</sup> Through locating their subsidiaries in tax havens, these multinational banana enterprises are able to shift their transactions between different countries in order to minimize the tax receipts on their commodity trade and associated activities. Meanwhile, Dole, Chiquita and Fresh Del Monte had combined global sales of over \$50 billion and profitable income of approximately \$1.4 billion between 2002 and 2007. In this time period, the three multinational enterprises paid \$200 million, or 14.3 percent of their profits, in taxes.<sup>75</sup> When United States tax authorities investigated Dole's income tax returns for 1995 to 2001, they decided the company had paid \$175 million too little and imposed interest and penalties.<sup>76</sup> In 2005 Dole received a tax assessment from Honduras, a banana producing country, of \$137 million, which included claimed unpaid tax, penalties and interest.<sup>77</sup> Dole's tax payments for 1988 to 2006 remain subject to examination by tax authorities throughout the world, including in banana producing countries such as Brazil, Costa Rica, Guatemala, and in consuming countries such as the UK, the US, Italy, Japan, South Africa, and South Korea.<sup>78</sup>

### Case Study 2

Many TNCs involved in the extraction of natural resources, in particular through mining, engage in a transfer mispricing of natural resource exports that undermine the sovereignty of the state and people over natural resources and the significant sums of wealth they generate. A 2011 study approximates that extractive sectors comprise 5 percent of global gross domestic product and generate about \$3.5 trillion in annual gross revenue worldwide, while potential net revenues are estimated at about \$1 trillion for LDCs and lower-middle-income countries.<sup>79</sup> In Zambia, copper mining accounts for over 80 percent of the nation's export earnings, 30 percent of total tax revenue and 12 percent of GDP.<sup>80</sup> The multinational enterprises Glencore International AG and First Quantum Mining

<sup>72</sup> Barry, Frank, "Capital Flight, Safe Havens, and Secrecy Jurisdictions", Trinity College Dublin, Ireland, September 2014, available at: [http://aercafrica.org/index.php/publications/doc\\_download/355-capital-flight-safe-havens-and-secrecy-jurisdictions/](http://aercafrica.org/index.php/publications/doc_download/355-capital-flight-safe-havens-and-secrecy-jurisdictions/), p. 18.

<sup>73</sup> Frynas, Jędrzej George, and Kamel Mellahi, *Global Strategic Management*, 3rd ed, Oxford: Oxford University Press, 2015, p. 53.

<sup>74</sup> *Ibid.*, p. 53.

<sup>75</sup> Business and Human Rights, 2007, available at: <https://business-humanrights.org/en/investigation-reveals-extensive-tax-avoidance-by-banana-companies-depriving-govts-of-revenue-for-development-services#c33869>.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

<sup>79</sup> Le Billon, Philippe, "Extractive sectors and illicit financial flows: What role for revenue governance initiatives?" No.13, Chr. Michelsen Institute, November 2011, available at: <https://www.cmi.no/publications/file/4248-extractive-sectors-and-illicit-financial-flows.pdf>, pp.2-3.

<sup>80</sup> Readhead, Alexandra, "Transfer Pricing in the Mining Sector in Zambia," Natural Resource Governance Institute, London, March 2016, available at: [https://resourcegovernance.org/sites/default/files/documents/nrgi\\_zambia\\_transfer-pricing-study.pdf](https://resourcegovernance.org/sites/default/files/documents/nrgi_zambia_transfer-pricing-study.pdf), p.1.

Ltd. own the largest copper mining operation in the country, which operates within a highly attractive fiscal environment. The royalty tax rate is 0.6 percent, corporate tax is limited to 25 percent, exemptions are in place on customs duties and a stability clause for maintaining these advantages is valid for 20 years starting in 2000.<sup>81</sup> However, the Mopani Copper Mines reports no profits in Zambia, thereby reducing its tax obligations. Complaints were brought by non-governmental organizations to the attention of the OECD in Paris that the multinational enterprises were evading taxes in Zambia through transfer mispricing practices.<sup>82</sup> A 2009 audit conducted by international accountants at the request of the Zambian authorities concluded that Mopani employs various techniques in order to avoid paying taxes in Zambia. These techniques include overestimation of operating costs, underestimation of production volumes, transfer pricing manipulation and breach of the "Arms Length" principle.<sup>83</sup> Despite the large and positive impact of mining on government revenue in Zambia, international NGOs and academics have raised concerns that Zambia may be losing as much as \$500 million per year due to IFFs by mining companies.<sup>84</sup> The former vice-president of Zambia, Guy Scott, suggested that this figure might be as high as \$2 billion per year.<sup>85</sup>

### *Case Study 3*

SAB Miller is the world's second largest beer company and has operations across six continents. Although the majority of its breweries and bottling plants are located in the African continent and in India, the TNC is linked to an estimated 65 tax haven companies.<sup>86</sup> Transfer mispricing accounting facilitates SAB Miller to re-route profits from its African and Indian subsidiaries to those in tax havens, a practice that is estimated to reduce tax revenues to African countries by as much as a fifth.<sup>87</sup> SAB Miller's subsidiary in Ghana is Accra Brewery, which, despite being the nation's second largest beer producer, has reported losses in several years.<sup>88</sup> Two distinct tax evasion techniques are used by SAB Miller. The first technique is taking advantage of novel sets of tax rules offered by certain developed countries, which enable SAB Miller to pay little or no taxes on the royalties they earn.<sup>89</sup> In some cases, SAB Miller's African and Indian subsidiaries pay significant 'management service fees' to sister companies in European tax havens where effective tax rates are lower.<sup>90</sup> The second technique is routing the procurement of goods by African subsidiaries from the subsidiary in Mauritius, across the Indian Ocean.<sup>91</sup> The Mauritius company, Mubex, makes a profit on this transaction and is taxed at 3 percent, relevant to a 25 percent tax rate in Ghana.<sup>92</sup> This differential in tax rates creates persistent incentives for SAB Miller to use tax haven islands.

<sup>81</sup> Organisation for Economic Cooperation and Development Watch, "Sherpa et al vs Glencore International AG," 2011, Paris, 2011, available at: [http://oecdwatch.org/cases/Case\\_208](http://oecdwatch.org/cases/Case_208).

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Readhead, Alexandra, "Transfer Pricing in the Mining Sector in Zambia," Natural Resource Governance Institute, London, March 2016, available at: [https://resourcegovernance.org/sites/default/files/documents/nrgi\\_zambia\\_transfer-pricing-study.pdf](https://resourcegovernance.org/sites/default/files/documents/nrgi_zambia_transfer-pricing-study.pdf), p.1.

<sup>85</sup> Ibid, p. 1.

<sup>86</sup> Action Aid, "Calling time: why SAB Miller should stop dodging taxes in Africa", 2012, available at: [https://www.actionaid.org.uk/sites/default/files/doc\\_lib/calling\\_time\\_on\\_tax\\_avoidance.pdf](https://www.actionaid.org.uk/sites/default/files/doc_lib/calling_time_on_tax_avoidance.pdf), p.6.

<sup>87</sup> Ibid, p. 6.

<sup>88</sup> Ibid, p.7.

<sup>89</sup> Ibid, p.8.

<sup>90</sup> Ibid, p. 8.

<sup>91</sup> Ibid, p.9.

<sup>92</sup> Ibid, p. 9.



### Case Study 4

The High-Level Panel on IFFs from Africa identified significant tax avoidance by a TNC in South Africa, where \$2 billion in taxes were evaded by claims that a large part of business operations are conducted in the United Kingdom and Switzerland, which at that time had lower tax rates for businesses. Upon investigation, it was revealed that the subsidiaries of the TNC in Europe were minimally staffed. These subsidiaries did not manage any of the commodities in which the company traded and were not legally entitled to take ownership of those commodities. The company's customers were, for the most part, based in South Africa. However, for each transaction, a paper trail was created that would route the transaction through the Swiss or UK offices to give the impression that these offices were at the center of business operations. The South African authorities were eventually able to reclaim the evaded taxes, as it was clear that the substance of the company's productive and profit-making activities were conducted in South Africa.<sup>93</sup>

50. Policy sovereignty is also compromised through the structural impacts of lost revenue that could otherwise serve as financial resources for advancing sustainable development in economic, social and environmental reforms and initiatives. As the African Network on Debt and Development elucidates, tax revenue “allows the government more policy space and capacity to be responsive and accountable to national objectives that are not tainted by the conditionalities of foreign aid.”<sup>94</sup> As such, there is a greater likelihood that the content of development policy is constructed not with national autonomy but rather through external dependency on creditors and donors. Policy space is called for under the DRTD and the 2030 Agenda and contributes to an enabling environment for development. States need policy space to shape development policies which advance human rights, as required by the DRTD. This is particularly important to the progressive realization of economic, cultural and social rights. Policy space is a facet of self-determination and sovereignty of peoples, central to the RTD.

51. As the High Level Panel on Illicit Financial Flows in Africa noted:

*“Given the well-known dependence of several African countries on significant amounts of official development assistance, the loss of resources through IFFs can only serve to deepen reliance on donors. Such dependence is apparent not only in terms of funds to support the social sector and state institutions, but also in terms of development ideas. It is an established fact that despite assertions of ownership, development policy very often reflects the perspectives of creditors or donors. Thus, when strapped for resources, African countries can often find themselves at the receiving end of externally imposed ideas that might not really be in their own perceived interests.”<sup>95</sup>*

### A. IFFs, RTD, International Cooperation and Shared Global Responsibilities

52. While the issues of non-repatriation and return of stolen assets will not be addressed in this report, the thematic discussions and applicable principles are also relevant to this analysis. Observations of the High Commissioner made in the context of the non-

<sup>93</sup> African Union and Economic Commission for Africa, Report of the High Level Panel on Illicit Financial Flows from Africa, Addis Ababa, 2 June 2017, available at: [https://www.uneca.org/sites/default/files/PublicationFiles/iff\\_main\\_report\\_26feb\\_en.pdf](https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf) , Box 2.1.

<sup>94</sup> African Network on Debt and Development, “What has tax got to do with development? A critical look at Mozambique’s tax system,” Harare, Zimbabwe, 2011, available at: <http://www.afrodad.org/index.php/center-of-excellence/research?download=4:what-has-tax-got-to-do-with-development-mozambique>, p. 7.

<sup>95</sup> African Union and Economic Commission for Africa, Report of the High Level Panel on Illicit Financial Flows from Africa, Addis Ababa, 2 June 2017, available at: [https://www.uneca.org/sites/default/files/PublicationFiles/iff\\_main\\_report\\_26feb\\_en.pdf](https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf), p. 52.

repatriation of IFFs to countries of origin, and the return of stolen assets are equally pertinent to the issue at hand. In 2011, the High Commissioner for Human Rights revealed in a report that “Most of the estimated annual outflow of US\$ 20-40 billion goes undetected, and even less is repatriated to the countries of origin”<sup>96</sup> and that “Despite progress made since the United Nations Convention against Corruption entered into force, only around 2 per cent of the estimated funds of illicit origin annually leaving the developing world are repatriated to their countries of origin.”<sup>97</sup> This report further elaborated that legal barriers are exacerbated by factual and institutional obstacles; the most salient being the lack of will to cooperate.<sup>98</sup> “These obligations apply to both countries of origin and recipient countries of funds of illicit origin due to the principle of international cooperation and assistance towards the realization of human rights, particularly economic, social, and cultural rights.”<sup>99</sup> According to this principle, states’ obligations to respect, protect, and fulfill human rights are not only applicable in relation to their own domestic populations but do have an extraterritorial scope, applying to both countries in a position to assist and countries in need of assistance.<sup>100</sup> ‘Mutual responsibility’ explained by OHCHR is also very pertinent to the issue at hand: “As with other forms of international cooperation, such as international cooperation for development and for the realization of economic, social, and cultural rights, mutual legal assistance implies a mutual responsibility. “Therefore, a human rights-based approach<sup>101</sup> to the asset-recovery process not only demands that countries of origin make every effort to achieve the recovery and repatriation of proceeds of corruption for implementation of their international human rights obligations, it also demands that recipient countries understand repatriation not as a discretionary measure but also as a duty derived from the obligations of international cooperation and assistance.”<sup>102</sup> The negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, in particular economic, social and cultural rights has been further elaborated by OHCHR as follows:<sup>103</sup> “Beyond the relationship between available economic resources and human rights obligations, the non-repatriation of funds of illicit origin has an impact on the rule of law in the country of origin.”<sup>104</sup>

53. In Human Rights Council resolution A/HRC/RES/31/22,<sup>105</sup> the Council requested its Advisory Committee to conduct a comprehensive research-based study on the impact of the

<sup>96</sup> A/HRC/19/42, 14 December 2011, para.7. Human Rights Council, “Comprehensive study on the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, in particular economic, social and cultural rights”, A/HRC/19/42, 14 December 2011, available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-42\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-42_en.pdf), para.7.

<sup>97</sup> Ibid, para.8.

<sup>98</sup> Ibid, para.15.

<sup>99</sup> Charter of the United Nations, Arts. 55 and 56; International Covenant on Economic, Social, and Cultural Rights, art. 2, para. 1; Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, principles 28 and 29; Convention on the Rights of the Child, art. 4; Declaration on the Right to Development, arts. 3.1, 3.2, 3.3 and 4.2; Vienna Declaration and Programme of Action, arts. 1, 4, 10, and 11.

<sup>100</sup> Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 13; general comment No. 14, para. 45; general comment No. 15, paras. 37-38; general comment No. 17, paras. 36-38; general comment No. 18, paras. 29-30; Limburg Principles, principle 26.

<sup>101</sup> Office of the United Nations High Commissioner for Human Rights, “Frequently asked questions on a human rights-based approach to development cooperation”, United Nations, New York and Geneva, 2006.

<sup>102</sup> A/HRC/19/42, para. 26. Human Rights Council, “Comprehensive study on the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, in particular economic, social and cultural rights”, A/HRC/19/42, 14 December 2011, available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-42\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-42_en.pdf), para. 26.

<sup>103</sup> Ibid, paras. 27-34.

<sup>104</sup> Ibid, paras. 35-37.

<sup>105</sup> A/HRC/31/22, 20 April 2016, para. 30. Human Rights Council, “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”, A/HRC/31/22, 20 April 2016, available at:

flow of funds of illicit origin and the non-repatriation thereof to the countries of origin on the enjoyment of human rights, including economic, social and cultural rights, with a special emphasis on the right to development. Human Rights Council resolution A/HRC/34/11<sup>106</sup> 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, calls inter alia for a study by the Advisory Committee, on the possibility of utilizing non-repatriated illicit funds, to support the SDGs and human rights. These are just two examples of a series of related resolutions by the General Assembly<sup>107</sup> and the Human Rights Council,<sup>108</sup> and reflect the concerted political will of a majority of countries to address this challenge including through the vital medium of international cooperation.

54. With regard to the right to development more specifically, the RTD makes development a human right, so that obstacles to realizing the RTD, including underdevelopment, poverty, inequalities, corruption, poor governance and weak institutions also pose obstacles to realizing human rights more generally. The RTD promotes an environment enabling peace, human rights and development, so that an obstacle to the RTD would likewise jeopardize all human rights. In both developing and developed countries, development policy including planning and budgeting in line with RTD principles would make for better human rights outcomes. RTD principles include all human rights principles as well as others such as the fair distribution of the benefits of development and the fair distribution of income, which can serve to advance human rights of individuals and peoples and to reduce inequalities among nations, as envisioned in the 2030 Agenda.

55. The right to development has the normative potential to address contemporary disparities of the international political economy, and offers ‘a legal framework with the potential to humanise the global marketplace...’<sup>109</sup> Among the significant elements provided for in the UN Declaration on the Right to Development (1986) is its ‘responsibilities approach’: rather than establishing a new substantive right its provisions advance a system of international duties that might give better effect to existing socioeconomic rights. It challenges the classical reading of international human rights law that assigns merely secondary responsibility to developed states in fulfilling human rights elsewhere, in its place affirming a principle of complementary or shared human rights responsibility with developing states. While the Declaration articulates some unconventional demands for a human rights instrument the ways in which it frames the nature and scope of human rights duties is fitting under current conditions of economic globalisation. It is concerned with structural disadvantage that engenders the poverty

---

<https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/062/57/PDF/G1606257.pdf?OpenElement>, para. 30.

<sup>106</sup> A/HRC/34/11, 10 April 2017, para. 31. Human Rights Council, “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”, A/HRC/34/11, 10 April 2017, available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G17/073/18/PDF/G1707318.pdf?OpenElement>, para. 31.

<sup>107</sup> UN General Assembly, Resolution adopted by the General Assembly on 20 December 2017, “Promotion of international cooperation to combat illicit financial flows in order to foster sustainable development”, A/RES/71/213, 18 January 2017

[http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/71/213](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/71/213) □ □

A/RES/72/207, 17 January 2018

[http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/72/207](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/72/207) □ □

UN General Assembly, Second Committee, “Macroeconomic policy questions: promotion of international cooperation to combat illicit financial flows in order to foster sustainable development, Report of the Second Committee”, A/72/418/Add.6, 8 December 2017

[http://www.un.org/ga/search/view\\_doc.asp?symbol=A/72/418/Add.6](http://www.un.org/ga/search/view_doc.asp?symbol=A/72/418/Add.6).

<sup>108</sup> See A/HRC/RES/22/12, 10 April 2-13, A/HRC/RES/25/9, 15 April 2014, A/HRC/RES/31/22, 20 April 2016, A/HRC/RES/28/5, 10 April 2-15,

<http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/Resolutions.aspx#resolutions>.

<sup>109</sup> Margot E. Salomen, “Legal Cosmopolitanism and the Normative Contribution of the Right to Development” LSE Law, Society and Economy Working Papers 16/2008, available at: [http://eprints.lse.ac.uk/24586/1/WPS2008-16\\_Salomon.pdf](http://eprints.lse.ac.uk/24586/1/WPS2008-16_Salomon.pdf), p.2.

afflicting half the global population today, and is preoccupied not with a state's duties to its own nationals, but with its duties to people in far off places.... this legal cosmopolitanism is critical to the realisation of human rights in the 21st century.<sup>110</sup>

56. Transfer mispricing by TNCs undermines the aim of the DRTD to create a national and international enabling environment conducive to development which is just, equitable, inclusive and sustainable for all people. Under Article 2 of the DRTD, all human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community. Rooted in states' human rights commitments, the states whose business enterprises are responsible for the global phenomena of tax evasion and transfer mispricing are obligated under the DRTD to cooperate internationally to address the impacts of their acts on developing countries in which they operate, and to do no harm. The duty of international cooperation is central to the DRTD, which looks to a just international economic order for all humanity. The inherently international dimension of the RTD based on notions of a common humanity, invokes shared global responsibilities of states and the international community across national boundaries.

57. States must take resolute steps to eliminate massive and flagrant violations of human rights under Article 5 of the DRTD, and must co-operate to strengthen universal respect for and observance of all human rights and fundamental freedoms for all without distinctions, under Article 6. In an overt acknowledgment of the indivisibility and interdependence of all human rights and fundamental freedoms, and their integral link to development, Article 6 also calls on states to give equal attention and urgent consideration to all human rights and to eliminate obstacles to development, and Article 9 stresses the indivisibility and interdependence of all aspects of the RTD. Realizing the right to development requires the generation of sufficient financial resources, for which the recovery of illicit financial outflows is imperative. Interdependence and interconnectedness are defining features of a globalized economy, enabling transfer mispricing and other far-reaching consequences across national borders. In this context, human rights cannot and do not end at national borders, and the innate international dimension of the RTD calls for shared global responsibilities.

58. The high-level task force on the implementation of the right to development,<sup>111</sup> the expert mechanism which supported the Working Group on the Right to Development<sup>112</sup> from 2004-2010, found that joint and shared responsibilities and mutual accountability underscore the RTD.<sup>113</sup> The task force determined that under the DRTD, 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 and implementation of policies extending beyond their jurisdictions; and (c) collectively, through global and regional partnerships.<sup>114</sup> On this basis, the task force developed draft criteria and operational sub-criteria to help policymakers and development practitioners measure and assess whether government conduct is contributing to—or contravening—their domestic and extraterritorial (“internal, external and collective”) responsibilities under the DRTD.<sup>115</sup> Premised on human rights principles, they seek to provide the foundation for a multidimensional monitoring system which can effectively make all states more responsible, answerable and ultimately accountable for the consequences of their conduct on sustainable development and human rights of people within and beyond borders. This includes global human rights obligations in the context of global finance and trade, which can be applied to the extraterritorial impacts of corporate actors on the countries from which they evade and shift taxes. The draft criteria and sub-criteria are under consideration by the Working Group on the Right to Development, in a process which is yet ongoing.

<sup>110</sup> Ibid., p. 1.

<sup>111</sup> <http://www.ohchr.org/EN/Issues/Development/Pages/WGRightToDevelopment.aspx>.

<sup>112</sup> <http://www.ohchr.org/EN/Issues/Development/Pages/HighLevelTaskForce.aspx>.

<sup>113</sup> A/HRC/15/WG.2/TF/2/Add.1, paras. 66 and 69.

<sup>114</sup> A/HRC/15/WG.2/TF/2/Add.2, annex.

<sup>115</sup> UN Human Rights Council, “Report of the high-level task force on the implementation of the right to development on its sixth session”, A/HRC/15/WG.2/TF/2/ Add.2, Geneva, 2010, available at: <http://www2.ohchr.org/english/issues/development/right/docs/A-HRC-15-WG2-TF-2.doc>, paras 62-69.

59. The ability of states to take steps, individually and collectively, to uphold their duty to formulate international development policies with a view to facilitating the full realization of the right to development, as articulated in Article 4.1 of the DRTD, is highly uneven. The prospect of collective action to address IFFs, as illustrated above with regard to the challenges faced in international cooperation between countries to ensure an enabling international environment for development, as required by Article 3.3 of the DRTD, relies on the political will of all member states of the UN. On an individual basis, the ability of a country to address IFFs relates to several factors, including its global economic power and capacity in finance and trade structures and the degree to which it benefits or is adversely affected by the cross-border scourge of IFFs.<sup>116</sup> Realizing the RTD requires a supranational institutional design within which states can cooperate to curb financial outflows from developing countries, reduce poverty and advance both human rights and sustainable development.

60. Beyond the DRTD, various other human rights instruments and tools could play a potentially complimentary and mutually reinforcing role in the face of IFFs. The UN Guiding Principles on Extreme Poverty also reinforce the importance of international cooperation to addressing global challenges as required by the UN Charter. They note that, “States must take deliberate, specific and targeted steps, individually and jointly, to create an international enabling environment conducive to poverty reduction, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection and development cooperation.”<sup>117</sup> This ‘*conducive international enabling environment*’ is the core of the RTD.

61. The UN Guiding Principles on Business and Human Rights<sup>118</sup> could play a significant role in curbing IFFs. These principles rest on a framework of three pillars - the State’s duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights, requiring business to act with due diligence;<sup>119</sup> and the need for greater access to effective remedies. Of particular note, Principle 2 states that “There are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses.” “Examples include requirements on ‘parent’ companies to report on the global operations of the entire enterprise; multilateral soft-law instruments such as the OECD Guidelines for Multinational Enterprises; and performance standards required by institutions that support overseas investments. Other approaches amount to direct extraterritorial legislation and enforcement. This includes criminal regimes that allow for prosecutions based on the nationality of the perpetrator no matter where the offence occurs.”

62. Other salient principles include Principle 8 on ensuring policy coherence. This provides that ‘a State should support and equip departments and agencies, at both the national and subnational levels, that shape business practices – including those responsible for corporate law and securities regulation, investment, export credit and insurance, trade and labour – to be informed of and act in a manner compatible with the Governments’ human rights obligations.<sup>120</sup> Furthermore, Principle 13 states that the ‘responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when

<sup>116</sup> Salomon, Margot E., *Global Responsibility for Human Rights: World Poverty and the Development of International Law*, (Oxford: Oxford Publishing Online, 10 January 2008.).

<sup>117</sup> Office of the United Nations High Commissioner for Human Rights, “Guiding Principles on Extreme Poverty and Human Rights”, adopted by the Human Rights Council by consensus on 27 September 2012, in resolution 21/11, available at: [http://www.ohchr.org/Documents/Publications/OHCHR\\_ExtremePovertyandHumanRights\\_EN.pdf](http://www.ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf), p. 33, para. 96.

<sup>118</sup> [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>119</sup> The term “due diligence” was used in the *Guiding Principles on Business and Human Rights* to mean the steps and processes by which a company understands, monitors and mitigates its human rights impacts, including Human Rights Impact Assessments.

<sup>120</sup> *Ibid.*, pp.10-11.

they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

63. Principle 21 provides that “Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholders, and formal public reports. Formal reporting is itself evolving, from traditional annual reports and corporate responsibility/sustainability reports, to include online updates and integrated financial and non-financial reports.”<sup>121</sup> “Formal reporting by enterprises is expected where risks of severe human rights impacts exist, whether this is due to the nature of the business operations or operating contexts. The reporting should cover topics and indicators concerning how enterprises identify and address adverse impacts on human rights. Independent verification of human rights reporting can strengthen its content and credibility. Sector-specific indicators can provide helpful additional detail.”<sup>122</sup>

64. The Guiding Principles on Business and Human Rights contain several references to “Human rights impacts” and “adverse human rights impacts”. “Human Rights Due Diligence” is a core concept of the principles, contained inter alia in Principles 17 - 24, in particular, 17, 18, 19, 20, 21, in Pillar II, relating specifically to the obligations of business. Notably, Principle 17 provides that in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.<sup>123</sup> Under Principle 18, “In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. “The assessment of human rights impacts informs subsequent steps in the human rights due diligence process.”<sup>124</sup>

65. It has been commented in this context, that corporate responsibility exists independently of states’ duties,<sup>125</sup> and ‘doing no harm’ may entail positive steps, not only passive ones.<sup>126</sup> The Guiding Principles are also being integrated into other key international standards that are relevant to business enterprises, including the UN Global Compact, the OECD Guidelines for Multinational Enterprises, the International Finance Corporation Performance Standards 247 and ISO 26000, Guidance for Social Responsibility.<sup>127</sup> Such integration into these other standards relating to corporate social responsibility will facilitate the linkages between human rights, corporate taxation and other financial contributions to sustainable development. These global standards often have further guidance and responsibilities related to disclosure and transparency about financial and non-financial information – which can support better reporting of tax information on a country-by-country basis.

66. In particular, the OECD Guidelines include the most specific guidance for TNCs on taxation in Chapter XI: It is important that companies contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, companies should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate. Complying with the spirit of the law means discerning and following the intention of the legislature. It does not require an enterprise to make payment in excess of the amount legally required pursuant to such an interpretation. Tax compliance includes such measures as providing to the relevant authorities timely information that is relevant or required by law for purposes of the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm’s

<sup>121</sup> Ibid, p.24.

<sup>122</sup> Ibid, p.24.

<sup>123</sup> Ibid, p.17.

<sup>124</sup> Ibid, p.20.

<sup>125</sup> <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=4A0CF930-A0D1-4784-8D09-F588DCDDFEA4>.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

length principle. Secondly, companies should treat tax governance and tax compliance as important elements of their oversight and broader risk management systems. In particular, corporate boards should adopt tax risk management strategies to ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated. The OECD Guidelines also provide commentary with additional guidance for companies about providing information to tax authorities and for conformity with arm's length transfer pricing.

66. The Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements<sup>128</sup> also have the potential to prevent and curb IFFs. Consequent to these principles, impact assessments must be conducted before approving an investment or trade agreement and continue throughout its implementation.<sup>129</sup> Specific measures must be taken to mitigate negative human rights impacts. These principles guide states in ensuring that their trade and investment agreements are consistent with their obligations under international human rights instruments.<sup>130</sup> Impact assessments can help ensure that states will not make demands or concessions that make it more difficult for them, or for others, to comply with their human rights obligations.<sup>131</sup> They can support companies carrying out human rights due diligence to identify, prevent, mitigate, and account for the human rights impacts of their activities, particularly in the negotiation and conclusion of investment agreements.

68. Addressing IFFs on a meaningful level could benefit from the invocation of extraterritorial obligations (ETOs), in a globalized economy. ETOs are defined as the obligations relating to the acts and omissions of a state, within or beyond its territory, that have effects on the enjoyment of human rights outside of that state's territory.<sup>132</sup> They are articulated inter alia in the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights and grounded in human rights instruments, especially the ICESCR which in Article 2 calls for international cooperation and assistance, further elaborated in CESR General Comment 3 of 1990 referred to above. ETOs are based on the principles articulated in binding human rights instruments. They formulate inter alia the duty of states to "desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially."<sup>133</sup>

69. ETOs have the potential to fill a missing link in human rights protection in the context of globalization and transnational economic and financial activity, in so far as they seek to strengthen the human rights accountability and regulation of transnational corporations, international financial institutions, investment and trade laws, policies and disputes. They could also help to redress the lack of implementation of state duties in relation to economic, social and cultural rights through international cooperation.<sup>134</sup> The Maastricht Principles underscore that states "should cooperate in order to ensure that any victim of the activities of non-state actors that results in a violation of economic, social and cultural rights has access to an effective remedy, preferably of a judicial nature, in order to seek redress."<sup>135</sup> This requirement is of particular relevance to the issue of addressing the negative impacts of tax evasion and avoidance by TNCs.<sup>136</sup>

<sup>128</sup> *Report of the Special Rapporteur on the Right to Food, Olivier de Schutter*, 19 December 2011, A/HRC/19/59/Add.5, Addendum.

<sup>129</sup> *Ibid.*

<sup>130</sup> *Ibid.*, Principle 1.1.

<sup>131</sup> *Ibid.*, Principle 3.

<sup>132</sup> ETO Consortium, *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, January 2013, available at: [http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx\\_drblob\\_pi1%5BdownloadUId%5D=23](http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUId%5D=23), para 8.

<sup>133</sup> *Ibid.*, para 13.

<sup>134</sup> *Ibid.*, Introduction. ETO Consortium, *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, January 2013.

<sup>135</sup> O. De Schutter, A. Eide, A. Khalfan, M. Orellana, M. Salomon and I. Seiderman, "Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights," *Human Rights Quarterly*, vol. 34 (2012), p. 1145.

<sup>136</sup> A/HRC/25/52, para. 41.

## B. IFFs, SDGs, FFD and Common but Differentiated Responsibilities

70. Initial ideas of differentiated responsibilities for countries at different levels of development were already contained in the Declaration on the Right to Development and expanded the ideas of international cooperation in the UN Charter. For example, Article 4 embodies the duty of states to take steps, individually and collectively, to formulate international development policies to facilitate the full realization of the RTD; sustained action for more rapid development of developing countries; and effective international cooperation to provide them with appropriate means and facilities to foster comprehensive development. In similar vein, Article 2 of the ICESCR requires international cooperation and assistance from resource rich countries to resource constrained ones. The case for CBDR was initially incorporated into the proposal for a UN organ on international tax cooperation through language on non-reciprocity for developing countries for suitable periods to ensure that global efforts make a difference on the ground for all participating countries. The non-reciprocity clause for developing countries invokes Principle 7 of the 1992 Rio Declaration on Environment and Development, wherein “developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.”<sup>137</sup>

71. Principle 7 on CBDR is a central tenet of many developing country proposals, in large part because it is the critical link between differentiated responsibility levels stemming from unequal levels of consumption, control and waste of resources by developed countries, and the systemic and structural inequalities between countries, that exist to date. The 2030 Agenda recognizes this reality when it states in paragraph 16 that significant progress has been made in a number of areas, ‘But the progress has been uneven, particularly for Africa, least developed countries, landlocked developing countries, and small island developing states.’ SDG 17 on the means of implementation, the a,b,c targets in all the SDGs, and the whole notion of FfD and the AAAA are based on this historical reality of global inequalities, most notably economic inequalities among countries.

72. The need for the application of CBDR for African countries can be seen when the High-Level Panel on IFFs in Africa highlighted that for African countries to have the same ratio of tax officials to their populations as that of the OECD countries, they would need to hire 650,000 new tax officials. The asymmetry in administrative capacity, and specifically in the human and financial resources and regulatory frameworks, is identified as a major constraint by the African Tax Administration Forum, which also finds that capacity is critical to exchanging tax information among countries, which is indispensable to tackling IFFs.<sup>138</sup>

73. With respect to capacity building for domestic tax administrations, states should fulfill their commitments in the AAAA and in SDG target 17.1 which calls for increasing international support to developing countries in order to improve domestic capacity for tax and other revenue collection. Technical assistance and other forms of support should be provided through various means and directed in particular to lower-income countries that do not yet have tax regulation and oversight, let alone data gathering and processing capacity. The use of policy, legislation and other measures to ensure the full exercise and progressive enhancement of the RTD, as mandated by Article 10 of the DRTD, has not been sufficiently explored through the human rights machinery. The potential of international human rights bodies and mechanisms to address IFFs, towards progressive enhancement of the RTD through the prevention and control of IFFs, can be explored through the following:

- (a) Special Procedures of the Human Rights Council;

<sup>137</sup> UN General Assembly, Rio Declaration on Environment and Development, A/CONF.151/26/Rev.1, 31 I.L.M 874 (1992), 3–14 June 1992, available at: <http://www.un.org/documents/ga/conf151/aconf15126-1.htm>.

<sup>138</sup> African Union and Economic Commission for Africa, Report of the High Level Panel on Illicit Financial Flows from Africa, Addis Ababa, 2 June 2017, available at: [https://www.uneca.org/sites/default/files/PublicationFiles/iff\\_main\\_report\\_26feb\\_en.pdf](https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf), pp. 44 and 59.



- (b) Treaty Bodies;
- (c) Universal Periodic Review;
- (d) Regional human rights mechanisms;
- (e) Guiding Principles on Business and Human Rights;
- (f) Human Rights Impact Assessments.

74. The High-Level Political Forum, held annually in the UN General Assembly in New York, serves as an SDG global review mechanism through the publication of Voluntary National Reviews by States on the status of SDG progress and implementation nationally. The Inter-Agency Task Force builds on and reviews the AAAA of the third FfD conference. Both forums can play an important role in advancing global cooperation on IFFs with a view to how they adversely impact sustainable development, human rights and the ‘global partnership.’ These bodies should also review the contribution and policy coherence of individual member states. These examinations should analyze progress, highlight critical implementation gaps, and develop concrete recommendations for corrective action or improvement needed from all development actors, including states, the private sector and international financial institutions. These bodies could also provide an essential forum to allow communities affected by extraterritorial impacts to air their grievances, and to hold public or private duty-bearers answerable and accountable for cross-border abuses of human rights and sustainable development. The impacts caused by transnational actors should be a core consideration in any monitoring and accountability architecture to track implementation of the SDG targets and FfD commitments at national and regional levels. For example, national review bodies could examine the contribution of relevant actors such as TNCs or donor countries to sustainable development at the country level.<sup>139</sup>

### C. IFFs, Global Governance & Tax Cooperation

75. The imperative of international cooperation to tackle IFFs, to find actionable steps for which states can be held accountable, has gathered momentum in recent years. The Group of 20 (G20), the OECD, the World Bank and the International Monetary Fund (IMF), the UN as well as regional forums have created an array of initiatives, forums and long-term processes to address IFFs.<sup>140</sup> However, different institutions possess varying degrees of inclusivity in country membership, levels of political will expressed by states and mutuality of objectives. Consequently, the momentum to pursue key reforms to address the pervasive nature of IFFs exists at differing levels of effective and actionable steps. 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.

76. Given the fundamentally global and interconnected nature of IFFs, it is clear that any effort to prevent and regulate them cannot be done by individual countries alone. International cooperation is therefore a fundamental necessity to the very modality of addressing IFFs. Central to cooperation is the degree of inclusive membership of states across the relevant international organizations addressing IFFs on a multilateral level. Specific to fulfilling the RTD, 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 G20 was established in 1999; however,

<sup>139</sup> Luisiani, Niko and Muchhala, Bhumika, “Universal Rights, Differentiated Responsibilities: Safeguarding Human Rights Beyond Borders to Achieve the Sustainable Development Goals,” Center for Economic and Social Rights and Third World Network, New York, April 2015, available at: [http://www.cesr.org/sites/default/files/downloads/CESR\\_TWN\\_ETOs\\_briefing.pdf](http://www.cesr.org/sites/default/files/downloads/CESR_TWN_ETOs_briefing.pdf), pp. 7 and 3.

<sup>140</sup> Some of the various efforts created by international organizations include: The Global Forum for Transparency and Exchange of Information for Tax Purposes (OECD), The Multilateral Convention on Mutual Cooperation in Tax Matters (OECD), The Extractive Industries Transparency Initiative (EITI), Base Erosion and Profit Shifting Project (OECD + G20), Automatic Exchange of Information (OECD, G20, G8), Anti-Bribery Convention (OECD), The Recommendations of the Financial Action Task Force.

it became relevant to global policymaking in economics and finance during the 2007-8 global financial crisis. The G20 is defined by a membership comprising the 20 wealthiest countries according to gross domestic product. Its annual agenda includes over 50 meetings of ministers, central bank governors and world leaders, culminating in a Leaders Summit attended by heads of state, where a joint declaration on the year's policy formulations is released.<sup>141</sup>

77. The IMF and the World Bank, comprising the Bretton Woods Institutions, were created in 1944 and are governed by Executive Boards where vote and voice is weighted according to quota contributions of funds to the organizations. In the IMF, the United States has, effectively, sole veto power. European States have one vote each, while groups of as many as 23 developing countries have one vote.<sup>142</sup> Unlike the UN General Assembly, where each country has one vote, decision-making in the IMF and World Bank was designed to reflect the relative positions of its member countries in the global economy. Voting shares are also weighted by quota contributions by States to the IMF, thereby allocating greater voting shares to developed countries that have larger quota contributions. Created in 1960 as an organization dedicated to economic development, the OECD is made up of 35 primarily developed countries that represent key donors of development finance to developing countries.<sup>143</sup> While some middle-income developing countries, such as Chile, Mexico and Turkey, are included as Member States, the majority of developing countries are not members.<sup>144</sup> The OECD works closely with large developing countries such as the People's Republic of China, India and Brazil. However, these countries do not have decision-making power. The U.N. is the only international organization with universal membership of states as well as equal representation in decision-making through a one nation, one vote process.<sup>145</sup> All 193 Member States of the U.N. are represented in the General Assembly to work on a wide array of international issues covered by the U.N. Charter.

#### **The Role of the OECD in Global Tax Cooperation**

78. During the 2007-8 global financial crisis, the G20 mandated the OECD to substantively enhance its work on IFFs, and in particular on tax havens. The OECD consequently formed the Global Forum on Transparency and Exchange of Information for Tax Purposes. In 2012, the G20 requested the OECD to create the Base Erosion and Profit Shifting (BEPS) project to address the tax avoidance strategies practiced by TNCs, where gaps and mismatches in tax rules are exploited to artificially shift profits to low or no-tax locations.<sup>146</sup> The central need that the BEPS project addresses is that of the requisite for increased international financial transparency and access to information in order to address the IFFs of commercial enterprises, which developing countries in particular have underscored.<sup>147</sup> Three key initiatives of direct relevance to IFFs that have been established by the OECD and various partnering organisations are that of the automatic exchange of information, beneficial ownership and country-by-country reporting. The automatic exchange of tax information involves the capacity of national customs agencies to carefully review trade transactions involving tax havens, and is vital to reducing the widespread use of offshore tax havens to hide profits and assets.<sup>148</sup> According to the OECD, automatic

<sup>141</sup> Group of 20, at: "How does the G20 work?", available at: <https://www.g20.org/en/g20/how-it-works>; Heinrich Boell Foundation, "The G7 and G20 in the global governance landscape," Washington, D.C., 30 November 2016, available at: <https://www.boell.de/en/2016/11/30/g7-and-g20-global-governance-landscape>.

<sup>142</sup> International Monetary Fund, Executive Directors and Voting Power, Washington, D.C., 10 November 2017.

<sup>143</sup> Organisation for Economic Cooperation and Development (OECD), "Members and Partners", available at: <http://www.oecd.org/about/membersandpartners/>.

<sup>144</sup> Ibid.

<sup>145</sup> United Nations, "General Assembly of the United Nations", available at: <http://www.un.org/en/ga/>.

<sup>146</sup> Organisation for Economic Cooperation and Development (OECD), "Base Erosion and Profit Shifting (BEPS):", available at: <http://www.oecd.org/tax/beps/>.

<sup>147</sup> Peters, Carmel, "Developing Countries' Reactions to the G20/OECD Action Plan on Base Erosion and Profit Shifting," Bulletin for International Taxation, June/July 2015, available at: [http://www.un.org/esa/ffd/wp-content/uploads/2015/10/11STM\\_G20OecdBeps.pdf](http://www.un.org/esa/ffd/wp-content/uploads/2015/10/11STM_G20OecdBeps.pdf), p. 378.

<sup>148</sup> Organisation for Economic Cooperation and Development (OECD), "Automatic Exchange", available at: [www.oecd.org/tax/automatic-exchange/](http://www.oecd.org/tax/automatic-exchange/).

exchanges of tax information is a key aspect for making tax administrations ready for the challenges of the 21st century by equipping them with the necessary legal, administrative and information technology tools for verifying compliance of their taxpayers.<sup>149</sup> The term ‘beneficial owner’ refers to the person or entity who ultimately owns or controls an entity, enterprise or customer, and/or on whose behalf a transaction is being conducted. Thousands of companies routinely list their beneficial owner as a company with a tax haven address. In doing so, these companies breach UN sanctions, evade taxes and violate national laws. A legal requirement for the public disclosure of beneficial ownership information would create transparency that could potentially facilitate reducing the prevalence of anonymous ownership of companies, trusts and foundations.<sup>150</sup> Country-by-country reporting involves the public disclosure by transnational businesses of their revenues, profits, losses, sales, taxes paid, subsidiaries and staff levels on a country-by-country as well as a project-by-project basis.<sup>151</sup>

79. The OECD states that under the BEPS framework, over 100 countries and jurisdictions are collaborating to implement measures that tackle profit-shifting.<sup>152</sup> However, the distinction between collaboration and agenda-setting is highlighted by a range of actors, including parliamentary bodies, international organizations, and global civil society. The Policy Department of the European Parliament points out that poorer developing countries will benefit less than the countries that are driving the current reform process, especially through G20.<sup>153</sup> In a 2014 policy paper, the IMF notes that current arrangements on tax cooperation seem to contradict broad perceptions of fairness and may give rise to unilateral domestic measures to change them, which would consequently pose the risk of uncoordinated defensive measures that even further undermine the coherence of the international tax system.<sup>154</sup> Many international civil society and research advocates state that the inclusion of most developing countries is not on an equal footing as they are only allowed to participate once the agenda has been set by developed countries.<sup>155</sup> In response to the criticism about the exclusion of developing countries, the OECD invited 14 additional developing countries to its Global Forum in 2015, where decisions are made and implemented by the organization. Advocates for containing IFFs argue that over 100 countries were still missing from the decision-making process. Although developing countries were invited to send comments to public hearings and to participate in regional consultations, this participation does not compensate for the absence of developing countries’ voice in the decision-making process when they are required to implement and adhere to the outcome of the decisions.<sup>156</sup> Free, active and meaningful participation, on the other hand, including voice, space, empowerment and representation, and equality of opportunity including in decision-making, are basic tenets of the RTD, so is justice and equity in global governance.

80. Developing countries have raised concerns over gaps in the BEPS framework during a regional consultation. They stated that the balance between source and residence taxation embodied in bilateral tax treaties is inadequate, and thus emphasized the need to critically

<sup>149</sup> Ibid.

<sup>150</sup> Organisation for Economic Cooperation and Development (OECD), “Clarification of the Meaning of ‘Beneficial Owner’ in the OECD Model Tax Convention Discussion Draft,” 29 April 2011 to 15 July 2011, available at: <http://www.oecd.org/tax/treaties/47643872.pdf>, p.3.

<sup>151</sup> Organisation for Economic Cooperation and Development (OECD), “Country-by-Country Reporting”, available at: <http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/country-by-country-reporting.htm>.

<sup>152</sup> Ibid.

<sup>153</sup> European Parliament, Directorate-General for External Policies, Policy Department, “Tax Revenue Mobilisation in Developing Countries: Issues and Challenges,” April 2014, Brussels, available at: <https://www.ids.ac.uk/files/dmfile/TaxRevenueMobilisationinDevelopingCountries.pdf>, p.5.

<sup>154</sup> European Parliament, Directorate-General for External Policies, Policy Department, “Tax Revenue Mobilisation in Developing Countries: Issues and Challenges,” Brussels, April 2014, available at: <https://www.ids.ac.uk/files/dmfile/TaxRevenueMobilisationinDevelopingCountries.pdf>, p.5.

<sup>155</sup> Financial Transparency Coalition, “Should a problem from everyone be solved by the few?, 2 December 2015, available at: <https://financialtransparency.org/should-a-problem-for-everyone-be-solved-by-the-few/>.

<sup>156</sup> Ibid.

assess the costs and benefits of entering into tax treaties in light of assessing the policy objectives of revenue collection on the one hand and creating an attractive environment for FDI on the other.<sup>157</sup> The OECD's response was that this issue is outside its scope, as tax treaties do not directly give rise to tax avoidance.<sup>158</sup> In another assessment, developing countries stated that the OECD does not address how transfer mispricing distorts competition between small domestic businesses domiciled in their countries and large foreign businesses carrying out economic activities therein, as well as how the tax burden created by TNC tax evasion falls on the domestic population and national economic development prospects of developing countries.<sup>159</sup> Although the OECD takes significant steps in relation to DRTD Article 4.1 and Article 10, both of which stress the need for policy, legislation and national and international steps to be taken both individually and collectively, it does not completely fulfill the needs of developing countries which experience the highest volumes of IFFs out of their domestic economies.

### **The Role of the IMF and World Bank in Global Tax Cooperation**

81. The IMF and the World Bank are increasingly engaged with the challenge of addressing how tax avoidance and evasion affect developing countries. In April 2016 the World Bank coordinated the launching of a joint effort, the Platform for Collaboration on Tax, by the U.N., World Bank Group, IMF and OECD. The Platform is designed to intensify the cooperation between these organizations on tax issues through regular discussions on the design and implementation of international tax standards as well as the provision of capacity-building support to developing countries.<sup>160</sup> The World Bank's primary focus is to address the domestic financial resource mobilization required to achieve the SDGs by 2030, and the strengthening of tax system capacity necessary to achieve this.<sup>161</sup> Key enablers to building tax capacity are identified as a coherent revenue strategy as part of a development financing plan, strong coordination among well-informed and results-oriented providers, regional cooperation and support and strengthened participation of developing countries in international rule setting.<sup>162</sup>

82. In 2011, the World Bank adopted an official policy on the use of Offshore Financial Centres (OFCs), with the objective that OFCs are not used for the purposes of tax evasion. Peer reviews and regular assessments of World Bank investments are conducted by the OECD Global Forum. However, the private sector arm of the World Bank, the International Finance Corporation, has invested in companies that use tax havens.<sup>163</sup> In response, the World Bank has explained that they use intermediary jurisdictions to compensate for shortcomings in the legal systems of the poorest and most capital-scarce countries that would otherwise dissuade private investors from entering these markets. In remediation, international civil society and research institutions advocate that the World Bank Group should define and operationalize measures of tax advantage that can ease a transition from OFCs towards structures that offer legal benefits while avoiding egregious tax

<sup>157</sup> Organisation for Economic Cooperation and Development (OECD), "Two-Part Report to G20 Developing Working Group on the Impact of BEPS in Low-Income Countries," Part I (July 2014) and Part 2 (August 2014.), available at: <http://www.oecd.org/tax/tax-global/report-to-g20-dwg-on-the-impact-of-beps-in-low-income-countries.pdf>, p.13.

<sup>158</sup> Ibid.

<sup>159</sup> Peters, Carmel, "Developing Countries' Reactions to the G20/OECD Action Plan on Base Erosion and Profit Shifting," Bulletin for International Taxation, June/July 2015, available at: [http://www.un.org/esa/ffd/wp-content/uploads/2015/10/11STM\\_G20OecdBeps.pdf](http://www.un.org/esa/ffd/wp-content/uploads/2015/10/11STM_G20OecdBeps.pdf), p.381.

<sup>160</sup> World Bank Group, "The Platform for Collaboration on Tax," 2016, available at: <http://www.worldbank.org/en/programs/platform-for-tax-collaboration>.

<sup>161</sup> World Bank Group, IMF, OECD, UN, "Enhancing the Effectiveness of External Support in Building Tax Capacity in Developing Countries," Washington, D.C., July 2016, available at: <http://pubdocs.worldbank.org/en/858011469113510187/Enhancing-the-Effectiveness-of-External-Support-in-Building-Tax-Capacity.pdf>, pp.3-4.

<sup>162</sup> Ibid.

<sup>163</sup> Carter, Paddy, "Why do Development Finance Institutions use offshore financial centres?," Overseas Development Institute (ODI), October 2017, available at: <https://www.odi.org/sites/odi.org.uk/files/resource-documents/11832.pdf>, ppp.8-9.

implications.<sup>164</sup> A public interest case for enhanced transparency in investments may also hold merit, in particular requiring public declarations of beneficial ownership as a condition of their participation.<sup>165</sup> A crucial area of World Bank engagement in tax matters is the *Doing Business Indicators*, which ranks States based on the ease of doing business in their countries. This is an influential instrument that plays a role in advising 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.<sup>166</sup> It will be discussed below, however, that the *Doing Business Indicators* is a controversial tool, which should be revisited in light of the impact it has on exacerbating IFFs and inequalities within and among countries and constraints to achieving the RTD.

83. The IMF has a long history in research and technical advice to its membership on the fiscal implications of tax policy. In recent years, a perceptible shift in the policy approach to tax issues is evident in IMF policy papers through a greater degree of emphasis placed on the impact of tax avoidance on developing countries' revenues and on questions of income and gender inequality. An IMF policy paper published in 2014<sup>167</sup> states that rising income inequality has coincided with growing public support for income redistribution. The paper describes "options for the reform of expenditure and tax policies to help achieve distributive objects in an efficient manner that is consistent with fiscal sustainability."<sup>168</sup> An earlier policy paper published in 2011 promoted the establishment of a "broad-based corporate income tax" which has significant potential to expand the tax base of LDCs.<sup>169</sup> While such policy papers carry influential messages, they are not approved by the IMF's Executive Board and therefore the policy advice is not implemented by Member States as official policy. In terms of policies that are being implemented by the IMF, a 2016 country report of Thailand<sup>170</sup> reveals that Fund officials are stating that lowering corporate income tax is an efficient policy for enhancing economic growth and competitiveness.

84. While the fundamental problems of international taxation require multilateral action at the intergovernmental level, the Bretton Woods Institutions can potentially strengthen their technical expertise and data collection capacity in order to play a more significant role in enhancing access to data on IFFs. Paragraph 24 of the AAAA calls for the IMF, World Bank and U.N. to "assist both source and destination countries," as well as to "publish estimates of the volume and composition of illicit financial flows."<sup>171</sup> Furthermore, SDG Indicator 16.4.1 states that generating total values of inward and outward IFFs will be a prime indicator to generate data which would enable stakeholders to regularly monitor the implementation of SDG target 16.4 on IFFs, which is to significantly reduce IFFs by 2030.

### **The Role of the United Nations in Global Tax Cooperation**

85. While domestic resource mobilization and cooperation on international tax matters lies at the very foundation of the U.N.'s Financing for Development conferences and outcome documents, as evident in the Monterrey Consensus in 2002 and the Doha

<sup>164</sup> Ibid, pp.8-9.

<sup>165</sup> Ibid, pp.8-9.

<sup>166</sup> 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>.

<sup>167</sup> International Monetary Fund (IMF), "Fiscal Policy and Income Inequality," Fiscal Affairs Department, Washington, D.C., 23 January 2014, available at: <http://www.imf.org/external/np/pp/eng/2014/012314.pdf>, p.1.

<sup>168</sup> Ibid, p. 1.

<sup>169</sup> International Monetary Fund, "Revenue Mobilization in Developing Countries," Fiscal Affairs Department, Washington, D.C., 8 March, 2011, available at: <https://www.imf.org/external/np/pp/eng/2011/030811.pdf>, pp. 4-5.

<sup>170</sup> International Monetary Fund (IMF), "2016 Article IV Consultation – Thailand," IMF Country Report No. 16/139, June 2016, available at: <https://www.imf.org/external/pubs/ft/scr/2016/cr16139.pdf>, p. 25.

<sup>171</sup> UN General Assembly, Addis Ababa Action Agenda of the Third International Conference on Financing for Development, A/RES/69/313, 16 July 2015, available at: [http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA\\_Outcome.pdf](http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf), para 24.

Declaration in 2008, IFFs are addressed more significantly and in greater detail in the AAAAA. In particular, Paragraph 23 declares that states 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.”<sup>172</sup> The role of TNCs is highlighted in the conclusion of Paragraph 23: “We will make sure that all companies, including multinationals, pay taxes to the Governments of countries where economic activity occurs and value is created, in accordance with national and international laws and policies.”<sup>173</sup> Paragraph 18 highlights curbing IFFs as one of many efforts that are integral to the effort of “promoting peaceful and inclusive societies for achieving sustainable development,” along with “good governance, the rule of law, human rights, fundamental freedoms, equal access to fair justice systems and measures to combat corruption.”<sup>174</sup> The AAAAA makes addressing IFFs an explicit priority, emphasises the significant role of companies in IFFs and the need for taxes to be paid in the location of economic activity and value creation, and recognises the redress of IFFs as crucial to promoting peaceful and inclusive societies for achieving sustainable development. The process of the FfD negotiations leading up to the Addis Ababa conference underscored that IFFs systematically undermine the mobilization of domestic resources, and that international cooperation on tax matters is essential to redressing them. Thus, the U.N. system has a clear mandate to address IFFs through the role of TNCs and transfer pricing activities, and all others forms of IFFs.

86. The key forum advancing international tax cooperation in the U.N. is the Committee of Experts on International Cooperation in Tax Matters, which has a mandate to foster international tax cooperation among national tax authorities, consider new and emerging issues in global taxation, and make recommendations on capacity building and the provision of technical assistance to developing countries and economies in transition.<sup>175</sup> The Committee is comprised of 25 members nominated by States and acting in their expert capacity. While the size of the Committee is limited to 25, both developed and developing countries are represented. Committee members meet twice a year for a duration of four working days each, and rely heavily on subcommittees and working groups. The Committee examines a variety of issues pertaining to tax cooperation, including transfer pricing, tax treaty shopping and treaty abuses, interaction of tax, trade and investment, financial taxation and equity market development and capital flight, among others.

87. The proposal for a global tax body with universal country membership under the auspices of the UN during the third FfD conference in 2015 held the promise of an essential institutional design to address these consequences. The absence of such a mechanism compromises the ability of states to cooperate globally as required by the UN Charter, the DRTD and other instruments. They also undermine the possibilities for revitalizing the global partnership for sustainable development and strengthening the means of implementation as required by the 2030 Agenda and the Addis Ababa Action Agenda.

88. During the third FfD conference in 2015, the Group of 77 (G77) negotiating group, comprising 134 developing countries, had proposed the establishment of an intergovernmental organ under the auspices of the U.N. It would have the universal membership of the U.N. and the decision-making process of the General Assembly based on sovereign equality, that of one-nation, one-vote, which is also consonant with the DRTD which is premised on sovereign equality, and free, active and meaningful participation, fair and democratic representation and voice for all. The draft outcome document of 10 February 2015 included this proposal from developing countries, and detailed that such an intergovernmental body would be tasked with “developing policies and attuning them to the needs of developing countries, including: i) internationally agreed standards for public country-by-country reporting by multinational enterprises; ii) the creation of public beneficial ownership registries, and iii) a system for multilateral, automatic exchange of tax

<sup>172</sup> Ibid, para 23.

<sup>173</sup> Ibid.

<sup>174</sup> Ibid, para 18.

<sup>175</sup> See Committee of Experts on International Cooperation in Tax Matters, Terms of Reference, available at: <http://www.un.org/esa/ffd/tax-committee/about-committee-tax-experts.html>.

information, including non-reciprocity for developing countries for suitable periods to ensure that global efforts make a difference on the ground for all participating countries.”<sup>176</sup> Many academics and international civil society supported the proposal for a global tax body under the auspices of the UN, arguing that global representation on tax matters implicates fundamental issues of fairness and integrity of the global social contract.<sup>177</sup> Given the global operations of TNCs, all countries have a stake in the system that taxes TNCs and thereby, should have a voice in shaping global tax rules.<sup>178</sup> International civil society underscored that a global tax cooperation organ under the auspices of the U.N., characterised by universal membership and decision making through the principle of one-nation, one-vote, would serve to reduce the inequality within and among countries as stipulated by SDG 10 on inequality. In particular, target 10.6 which seeks to “ensure enhanced representation and voice for developing countries in decision-making in global international economic and financial institutions in order to deliver more effective, credible, accountable and legitimate institutions”<sup>179</sup> would be duly addressed. As such, the efficacy and functioning of the U.N. as a system may also potentially be strengthened. At the General Assembly in January 2018, Member States called on the next President of the GA to convene “a high-level meeting on international cooperation to combat illicit financial flows and strengthen good practices on assets return to foster sustainable development.”<sup>180</sup> They also noted that building on the FfD Forum, this event could provide a venue for a deeper stocktaking.

### Regional Cooperation on IFFs

89. One of the most significant efforts in regional cooperation in this area is that of the 2015 report of the High Level Panel on IFFs from Africa, which was established by the UN Economic Commission for Africa in 2011 by mandate of the Conference of African Ministers of Finance, Planning and Economic Development.<sup>181</sup>

90. Other African regional policy and institutional frameworks include the African Tax Administration Forum. This forum was established to promote cooperation and collaboration among African revenue services. It has made an important contribution on some tax-related aspects of IFFs by developing model treaties for double taxation agreements and for the exchange of trade information better suited to the needs of African countries. The adoption of an Africa-wide instrument to address corruption, the African Union Convention on Preventing and Combating Corruption,<sup>182</sup> as well as national anti-corruption legislation and institutions have all stimulated attention and efforts.<sup>183</sup>

<sup>176</sup> From unpublished drafts of the initial versions of the outcome document for the 3<sup>rd</sup> International Conference on Financing for Development, New York, January – May 2015.

<sup>177</sup> Ocampo, José Antonio, “A Defeat for International Tax Cooperation,” Columbia University Global Thought, 4 August, 2015, New York, available at: <http://cgt.columbia.edu/news/ocampo-a-defeat-for-international-tax-cooperation/>.

<sup>178</sup> Ibid.

<sup>179</sup> 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](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E).

<sup>180</sup> United Nations, Report of the Inter-agency Task Force on Financing for Development, “Financing for Development: Progress and Prospects 2018,” 13 April, 2018, New York, available at: <https://developmentfinance.un.org/iatf2018/>, p.53.

<sup>181</sup> African Union and Economic Commission for Africa, Report of the High Level Panel on Illicit Financial Flows from Africa, Addis Ababa, 2 June 2017, available at: [https://www.uneca.org/sites/default/files/PublicationFiles/iff\\_main\\_report\\_26feb\\_en.pdf](https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf), The aim of the mandate of the High Level Panel is to “demonstrate Africa’s determination to take global action to end the scourge of IFFs, to ensure Africa’s accelerated and sustained development by relying as much as possible on its own resources and to identify the specific steps that must be taken to radically reduce IFFs, so as to ensure that development resources from the continent stay within it and are directed towards urgent social and economic development needs.”

<sup>182</sup> African Union, African Union Convention on Preventing and Combating Corruption, 11 July 2003, available at: [https://au.int/sites/default/files/treaties/7786-treaty-0028\\_-\\_african\\_union\\_convention\\_on\\_preventing\\_and\\_combating\\_corruption\\_e.pdf](https://au.int/sites/default/files/treaties/7786-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf).

<sup>183</sup> African Union and Economic Commission for Africa, Report of the High Level Panel on Illicit Financial Flows from Africa, Addis Ababa, 2 June 2017, available at: [https://www.uneca.org/sites/default/files/PublicationFiles/iff\\_main\\_report\\_26feb\\_en.pdf](https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf), p. 32.

## VII. Policy Recommendations

91. Analysed through the lens of the Declaration on the Right to Development, the 2030 Agenda and Sustainable Development Goals and the Addis Ababa Action Agenda, illicit financial flows must be addressed, prevented and controlled, to achieve domestic resource mobilization. Domestic resource mobilization in turn, is key to realizing the right to development and all other human rights, the Sustainable Development Goals, and Financing for Development. National and international policymakers in countries across all stages of development must take concrete steps to address the monumental effects of IFFs on human rights, sustainable development and sustained peace. The DRTD requires national and international development policies to create conditions favourable to development - an enabling environment for development, human rights as well as peace. The policy guidance which follows is grounded especially in the RTD and related human rights norms, standards and principles; SDG Target 16.4 wherein states pledge to significantly reduce IFFs by 2030; SDG target 17.1 which entails strengthening domestic resource mobilization; SDG 10 which aims to reduce inequality within and between countries and SDG 5 aimed at advancing gender equality and women's rights.

92. While all countries are affected by IFFs in an age of economic and financial globalization, outflows from developing countries are of particular consequence and entail disproportionate impacts given their resource-constrained settings and as a percentage of their public budgets; and longstanding systemic and structural inequalities and vulnerabilities including in the global trade and finance architecture which undermine equality of opportunity for development for all nations and peoples, as required by the DRTD. The implementation of appropriate national and international policy measures to ensure development and eliminate obstacles to development in line with the DRTD, mandates states to cooperate on the basis of their sovereign equality, interdependence and mutual interest. Such policy measures would significantly increase transparency in the global financial system, to prevent and regulate IFFs and require the effective channels provided by national, regional and international tax cooperation. Due to the inherently global and transnational nature of IFFs, the institutional environment for international tax cooperation is of particular significance. In addition to the seminal principle of international cooperation (including shared global responsibilities and mutual accountability, as well as common but differentiated responsibilities), other principles of the DRTD which apply both locally and globally, include the human rights principles of equality, non-discrimination, participation, accountability and transparency. Relevant DRTD principles and elements in this context include social justice and equity; free, active and meaningful participation; fair distribution of the benefits of development and fair distribution of income; self-determination and permanent sovereignty over all natural wealth and resources; and equality of opportunity for development for all nations and individuals who make up nations.



**The following recommendations for reforms and actions to address IFFs resulting from transnational commercial activities, are addressed to four categories of key stakeholders - States, international organizations, the private sector and civil society:**

## **Recommendations to States**

### **Automatic exchange of tax information**

93. States should ensure that all human rights, including the right to development, are respected and promoted in their national tax regulations as well as tax oversight. These should be underscored by the key principles common to all human rights, in particular, participation, transparency and accountability. Given the critical importance of the duty of international cooperation in the DRTD and its centrality to revitalizing the global partnership and strengthening the means of implementation in the 2030 Agenda and AAAA, states should actively participate in the international efforts on the automatic exchange of tax information, with the objective of preventing the use of offshore tax havens to hide assets and income streams. National customs agencies should treat trade transactions involving a tax haven with the highest level of scrutiny. To this end, states should strengthen the capacity of their customs agencies by equipping and training officers to better detect intentional misinvoicing of trade transactions. Such action would be consonant with the obligations of states under the DRTD, including to people in other countries who are affected by activities within their territories.

### **Beneficial ownership**

94. Legal requirements should be implemented by states for the public disclosure of the beneficial, or actual, owners of companies in order to address the widespread problem of companies, trusts and foundations that have hidden owners. In order to propel the momentum toward global financial transparency, states should ensure that all enterprises are registered for tax purposes. To avoid unnecessary delays in the registration of companies, relevant state agencies must have adequate capacity to process such registrations. The Financial Action Task Force, an intergovernmental body tasked with the development and promotion of policies to combat money laundering and terrorist financing, has issued two key recommendations to increase the transparency of beneficial ownership of legal persons and of legal arrangements.<sup>184</sup> The FATF recommendations require states to take measures to prevent the misuse of legal persons for money laundering or terrorist financing. The duty of international cooperation and assistance under the DRTD as well as human rights treaty obligations require such action.

### **Country-by-country reporting**

95. States should require transnational businesses headquartered in their countries to publish reports of their commercial activities on a country-by-country basis. The transparency on financial and tax information relating to the global allocation of transnational business income and taxes will better ensure that adequate taxes are paid in the jurisdiction where profits are generated.<sup>185</sup> This in turn, will help uphold the human rights principles of transparency and accountability, and constituent principles of the RTD, including the duty of states to create an enabling environment for development, fair distribution of the benefits of development and of income, as well as inclusive and

<sup>184</sup> Financial Action Task Force (FATF), FATF Guidance on Transparency and Beneficial Ownership, October 2014, available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>, pp. 10-12.

<sup>185</sup> The OECD provides a template, called the Country-by-Country Report, for MNCs to report annually and for each tax jurisdiction in which they do business. Approximately 50 countries are moving forward with this reporting legislation, including the UK, Australia, Spain, Mexico, the Netherlands, Poland, South Korea and China, with many more expected to follow suit. See <http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/country-by-country-reporting.htm> for more details.

equitable development. It would further be consonant with the system of responsibilities envisioned by the DRTD, of state obligations to people within their jurisdictions, to people in other places who are affected by actions within their territories, and obligations of states acting collectively through international organizations.

### **Human Rights Impact Assessments**

96. States should carry out Human Rights Impact Assessments of their tax policies in order to identify and respond to the actual and potential human rights impacts of transnational enterprises. They should ensure that HRIAs include all relevant international human rights norms, standards and principles including those of the DRTD, and should complement other impact assessments such as environmental or sustainability impact assessments. HRIAs should be independently verified and include the free, active and meaningful participation of affected communities. If and when negative human rights impacts are found, impact assessments should yield a policy redress where the responsible party is held accountable in a due diligence process appropriate to the legal context of the state.

### **Capacity building for national tax administrations**

97. The DRTD calls for sustained action to promote the rapid development of developing countries, including through effective international co-operation in providing the means and facilities to foster their comprehensive development. Together with SDG 17, Target 17.1, the AAAA and the principle of common but differentiated responsibilities contained in the 2030 Agenda, this calls for capacity building which should be provided for lower-income developing countries that do not yet have tax regulation and oversight, as well as data gathering and processing capacity. Technical assistance and other forms of support should be supported, including through South-South cooperation and meaningful participation in relevant initiatives and programs.

98. In particular, lower-income countries should be able to employ a fixed transition period in which they receive tax information without a requirement for full reciprocity. Such a grace period would enable their domestic tax authorities to build capacity in order to reap the full benefits of tax information exchanges. In order to curb trade misinvoicing, developed countries should contribute toward the production of a global trade-pricing database that would provide customs agencies access to global average prices of products. Strengthening customs agencies in lower-income developing countries should be facilitated through financial and other forms of assistance.

### **Conducive and gender-sensitive tax policies at the state level**

99. States should promote the prevention and control of IFFs through conducive fiscal and tax policies at the state level. Tax policies should attempt to increase the weight of direct taxes on income and profit capital, while reducing the weight of taxes on low-income communities, and in particular, women in such communities. States should promote tax policies that do not foster tax competition through tax holidays, reductions and subsidies for TNCs that are sources of foreign investment. Gender sensitive tax policies should also be prioritised with a view to ensuring that revenue and tax policies are formulated with due consideration to their impacts on women's rights and gender equality.

### **International cooperation**

100. International cooperation is a key principle of the DRTD. Participation is a key human rights principle, further fortified in the DRTD principle of free, active and meaningful participation, which would include democratic and inclusive participation, voice and representation for all countries alike in institutions of global governance. International and regional cooperation have the potential to significantly enhance capacity building to redress the systemic problem of IFFs. Under the auspices of the United Nations, international organizations, regional forums and various multi-stakeholder initiatives and efforts, there is a foundation upon which greater political will can be motivated. States already involved in the work of the UN Committee of Experts on International Cooperation in Tax Matters should facilitate the increased representation and participation of lower-

income developing countries so that it can act as a global forum for norm-setting on international tax matters. Developed countries that are active in the OECD's Base Erosion and Profit Shifting initiative should call for the participation of developing countries that are not in the OECD's membership. States that are open to the consideration of the creation of an intergovernmental body on tax matters with universal representation under the auspices of the UN should persist in highlighting the potential of such a body in advancing international cooperation for global tax justice.

101. There are several key UN instruments which establish legal obligations in the field of illicit financial flows. These instruments should be recognized and supported by all states.

*The following is a summary of key U.N. instruments that address IFFs:*

- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention):<sup>186</sup> This includes provisions on money laundering and international cooperation;
- United Nations Convention against Transnational Organized Crime 2000 (Palermo Convention):<sup>187</sup> This requires states to criminalize money laundering and includes language on extradition, mutual legal assistance and law enforcement cooperation;
- International Convention for the Suppression of the Financing of Terrorism 1999:<sup>188</sup> This requires states to criminalize the financing of terrorism, and adopt powers to freeze and seize funds intended to be used for terrorist activities;
- United Nations Convention against Corruption 2003 (Merida Convention):<sup>189</sup> This requires measures to prevent and criminalize corruption, and provide international cooperation and asset recovery on corruption cases;
- A number of UN Security Council Resolutions<sup>190</sup> have also introduced measures to counter illicit financial flows, in particular by establishing targeted financial sanctions regimes applied to terrorist groups.

**Regional cooperation**

102. Regional integration arrangements should be used to introduce accepted standards for tax incentives to prevent harmful competition in the effort to attract foreign direct investment. African countries are encouraged to join the African Tax Administration Forum and to provide it with the necessary support, including giving it political standing in African regional processes such as the African Union and Economic Commission for Africa Conference of Ministers of Finance. Developing countries should establish or strengthen independent institutions and governmental agencies responsible for preventing IFFs. These include, but are not limited to, financial intelligence units, anti-fraud agencies, customs and border agencies, revenue agencies, anti-corruption agencies and financial crime agencies.

<sup>186</sup> UN Economic and Social Council (ECOSOC), United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 19 December 1988, available at: [https://www.unodc.org/pdf/convention\\_1988\\_en.pdf](https://www.unodc.org/pdf/convention_1988_en.pdf).

<sup>187</sup> UN General Assembly, United Nations Convention against Transnational Organized Crime: resolution / adopted by the General Assembly, A/RES/55/25, 8 January 2001, available at: <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

<sup>188</sup> UN General Assembly, International Convention for the Suppression of the Financing of Terrorism, No. 38349, 9 December 1999, available at: <http://www.un.org/law/cod/finterr.htm>.

<sup>189</sup> UN General Assembly, United Nations Convention Against Corruption, A/58/422, 31 October 2003, available at: [https://www.unodc.org/documents/brussels/UN\\_Convention\\_Against\\_Corruption.pdf](https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf).

<sup>190</sup> For example, UN Security Council, Security Council resolution 1373 (2001), S/RES/1373 (2001), 28 September 2001, available at: [http://undocs.org/S/RES/1373\(2001\)](http://undocs.org/S/RES/1373(2001)); UN Security Council, Security Council resolution 2253 (2015), S/RES/2253 (2015), 17 December 2015, available at: [http://undocs.org/S/RES/2253\(2015\)](http://undocs.org/S/RES/2253(2015)); UN Security Council, Security Council resolution 2368 (2017), S/RES/2368 (2017), 8 December 2017, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2368\(2017\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2368(2017)).

All such agencies should produce regular reports on their activities and findings to national legislatures. They will thereby contribute to creating favourable conditions for international development and human rights as required by the DRTD, and to transparency, participation and accountability, essential to all human rights. Such steps would help to increase policy coherence in line with both the DRTD and 2030 Agenda, and are in line with the policy space which all states must have in line with their sovereignty and sovereign equality, explicitly recognized by the DRTD.

### **Cooperation of international organisations**

103. States should ensure that the international organisations in which they are members, are cooperating and contributing to the international and national efforts in tax cooperation, to prevent and curb IFFs. Coherent tax regimes should be established for the supervision of international organisations by financial supervision agencies. Such regimes should require regular reporting of transactions that may involve IFFs. This would be in line with the shared global responsibilities and mutual accountability of states as members of international organizations, in line with the DRTD.

### **Voluntary National Reviews**

104. As part of the follow-up and review mechanism of the 2030 Agenda and SDGs, states are encouraged to conduct regular and inclusive reviews of progress at the national and sub-national levels in order to produce a Voluntary National Review. States should use this opportunity among other things, to review how they are addressing SDG Target 16.4 on IFFs and related paragraphs of the AAAAA, with a view to realizing the right to development and all human rights; promoting peaceful and inclusive societies, providing access to justice for all and building effective, accountable and inclusive institutions at all levels as per SDG 16; strengthening the means of implementation and revitalizing the global partnership as per SDG 17; and reducing inequalities between and among nations, as well as enhancing gender equality and empowerment, as per SDGs 10 and 5.

### **States of Origin**

105. States from which illicit financial outflows originate should:

(a) Have clear laws and regulations that make it illegal to intentionally, incorrectly or inaccurately state the price, quantity, quality or other aspect of trade in goods and services in order to move capital or profits to another jurisdiction or to manipulate, evade or avoid any form of taxation, including customs and excise duties;

(b) Establish transfer pricing units within their revenue authorities;

(c) Require their customs officials to use available databases of information about comparable pricing of world trade in goods to analyze imports and exports and identify transactions that require additional scrutiny;

(d) Review their current and prospective double taxation agreements, particularly those in place with jurisdictions that are significant destinations of illicit financial flows, to ensure that they do not provide opportunities for abuse.

## **Recommendations to International Organizations**

### **Access to data on illicit financial flows**

106. The World Bank and the International Monetary Fund should publish estimates of the volume and composition of IFFs on an annual basis. The availability of this data would enable stakeholders to regularly monitor the implementation of SDG target 16.4 on IFFs. The Bank of International Settlements should make public data on international banking assets by country of origin and country of destination.

### **Country-by-country reporting**

107. The OECD's template to facilitate country-by-country reporting requires TNCs to report annually and for each tax jurisdiction in which they do business. While

approximately 50 countries are moving forward with this reporting legislation, other countries should be encouraged to make progress on reporting practices.

### **Human Rights Impact Assessments**

108. International organizations should do their part to facilitate the conduct of HRIAs by states which may seek to identify and respond to the human rights impacts of TNCs. Relevant data on the volume and composition of IFFs should be made available to states in order to generate the information and analysis that HRIAs may need in order to be effective in seeking redress.

### **National tax administrations**

109. International organisations should contribute toward providing accessible and affordable technical assistance and other forms of support to strengthen the national tax capacity and operating procedures in developing countries. National customs agency officials could be provided with technical workshops organized and funded by international organizations.

### **International and regional cooperation**

110. In light of the prominent role that the OECD currently plays in global tax matters, voice and representation, free, active and meaningful participation of developing countries, and in particular lower-income developing countries, should be encouraged. The UN should continue to support and fund the work of the UN Committee of Experts on International Cooperation in Tax Matters, with a focus on enhancing democratic decision-making and participation by developing countries. The UN should ensure that the reports and analysis resulting from the Committee's proceedings are disseminated and discussed by all member states. The UN must also actively support its key instruments addressing IFFs (listed above).

### **Reassessing the Doing Business Indicators**

111. The World Bank Group should reassess the role that the Doing Business Indicators plays in fostering international tax competition. In particular, the World Bank Group could rethink the advice given to many countries to ease the tax burden on businesses and to promote those countries in its rankings that reduce corporate tax rates, raise the threshold for taxable income or provide tax exemptions and holidays to corporations.

### **Reform investments in Offshore Financial Centres**

112. In the context of the International Finance Corporation's investments in companies that use tax havens, international civil society recommends that the World Bank Group should define and operationalize measures of tax advantage that can ease a transition from Offshore Financial Centers and towards structures that offer legal benefits while avoiding egregious tax implications.<sup>191</sup>

## **Recommendations to the Private Sector**

### **Banks and financial institutions**

113. Commercial banks and financial institutions have a major role in preventing and eliminating IFFs. Robust regimes should be put in place for the supervision of banks and non-bank financial institutions by central banks and financial supervision agencies. Such regimes must require mandatory reporting of transactions that may involve activity regarding IFFs. In particular, banks should know the true beneficial owner(s) of any account in their financial institution. Moreover, commercial banks, financial institutions and service providers, tax lawyers, and accountants should exercise due diligence with their clients by refusing to engage in commercial activities where tax evasion and avoidance are involved.

<sup>191</sup> Ibid.

### **Country-by-country reporting**

114. Private sector actors should comply with regulations of the state they are domiciled within on the data required for the country-by-country reports, which require businesses to report annually and for each tax jurisdiction in which they do business. To this end, business enterprises should strive to publish the taxes they pay to every state in which they operate as part of their corporate social responsibility reporting. The private sector should endeavour to conduct HRIAs, in which information and practices about commercial activities may be required. If redress is sought from the private sector actor, compliance and due diligence should be followed in line with the timelines established by the HRIA.

### **Recommendations to civil society**

#### **Global Financial Transparency**

115. International civil society advocates, activists and organizations, academia and research institutions should continue to play an active role in monitoring, supporting and promoting efforts to significantly strengthen global financial transparency by states, international organizations and the private sector. These efforts include the automatic exchange of tax information, beneficial ownership declarations, country-by-country reporting and other existing processes. Civil society should also continue to monitor and pressure central banks and financial supervision agencies to implement systems that supervise and require mandatory reporting on IFF-related activities by banks and non-bank financial institutions.

#### **Human Rights Impact Assessments**

116. Civil society should support and promote the conduct of HRIAs by states, in particular by facilitating the engagement and meaningful participation of affected communities and by playing an appropriate role toward the independent verification of HRIAs.

#### **Capacity building for national tax administrations**

117. Civil society actors should assist in identifying which states have best practices in national tax administration capacity to prevent and regulate IFFs. These states should be urged to provide technical assistance and capacity building through mutually agreeable partnerships with other states. They should also call on international organisations to employ their expertise, resources, and access toward capacity building.

#### **Conducive and gender-sensitive tax policies at the state level**

118. Civil society should promote the prevention and control of IFFs through conducive fiscal and tax policies at the state level. Tax policies should attempt to increase the weight of direct taxes on income and profit capital, while reducing the weight of taxes on low-income communities, and in particular, women in such communities. Advocates should promote tax policies that do not foster tax competition through tax holidays, reductions and subsidies for TNCs that are sources of foreign investment. Gender sensitive tax policies should also be promoted by civil society advocates, with a view to ensuring that revenue and tax policies are formulated with due consideration to their impacts on women's rights and gender equality.

#### **Enhancing international tax governance and international cooperation**

119. Civil society, and in particular international activists, should continue to play an active role in the monitoring and review process of the 2030 Agenda, the SDGs and the follow-up processes on Financing for Development. They should continue to promote the enhancement of international tax governance by strengthening the UN Committee of Experts on International Cooperation in Tax Matters through increased representation and participation of lower-income developing countries. Also with a view to enhancing democratic decision-making, civil society should promote the participation of developing

countries in the OECD's deliberations on international tax governance. It should also support the establishment of an intergovernmental body on tax matters with universal membership and equal voting rights under the auspices of the UN. The activities of all forums should be urged to include consideration and compliance with human rights including the right to development, women's rights and gender equality. The key UN instruments that address IFFs (listed above) should also be actively supported. The Voluntary National Reviews produced by states in the SDG follow-up and review mechanism should be supported as a process in which states should also address SDG Target 16.4 on IFFs, SDGs 10 and 17, the AAAA and the right to development.

## VIII. Conclusion

120. This study reveals how illicit financial flows undermine the right to development and other human rights - civil, political, economic, social and cultural of individuals and peoples - in particular, those living in developing countries. It makes the case for the operationalization of the Right to Development, to realize the SDGs and the AAAA. The findings on the various constraints imposed by IFFs underscore the importance of enhancing the ability, scope and sustainability of developing countries' efforts to mobilize urgently needed domestic revenues for sustainable development. The DRTD is grounded in precisely these priorities, while also situating the critical importance of the responsibility of states as well as the international community to realise the RTD both nationally and globally through international cooperation to ensure development and eliminate obstacles to development, peace and human rights. In the years to come, it is exactly this cooperation that needs to be amplified, renewed and revitalized against all odds if the SDGs are to manifest in a meaningful and sustainable way for all humanity, including the most impoverished, marginalized and vulnerable communities in a unified global economy.

121. This paper demonstrates how IFFs impede the fulfilment of several key Articles of the DRTD, including Articles 1.1, 1.2, 3.3, 4.1, 4.2, and 10, all spelt out above.

122. The principle of common but differentiated responsibilities is implicit in the DRTD and explicitly integrated in the 2030 Agenda, acknowledging asymmetries between the capacity of developed and developing countries. This also applies to capacity to take action to prevent and regulate IFFs. Shared global responsibilities including through collective action in international organizations as well as extra-territorial obligations, seek to address how actions in a country affect the fulfillment of human rights beyond borders. They comprise a critical link in human rights protection in an age of globalization and can serve to strengthen accountability and regulation of TNCs in the context of transnational economic and financial activity.

123. On policy guidance, the range of reforms required to prevent and regulate IFFs include addressing beneficial ownership, and double taxation agreements, enforcing country-by-country reporting, strengthening access to pricing data and tax information exchange, reinforcing international and regional cooperation and stressing the vital role of banks and financial institutions. There is a critical need for global governance reforms towards creating a global body for international tax cooperation defined by universal membership of all states. Current forums for international tax cooperation, such as the OECD and UN tax committee, are marked by a membership of predominantly developed countries, such as in the former, or only a select group of countries, such as in the latter. At the foundation of all reforms is the sine-qua-non of a shift in the ethos of commercial business and economic activity from that of amassing profits at all costs to people, the environment and economic and social development, to one based on accountability and responsibility, anchored in the right to development and all universal, indivisible, interdependent and inter-related human rights. Likewise, is the need to address glaring gaps in global governance to ensure policy coherence in the global partnership for sustainable development, revitalizing and making it consonant with states' international human rights obligations, in this case most notably, the human right to development.

## **Annex 1**

### **Transforming our world: the 2030 Agenda for Sustainable Development** (extracts)

#### **Paragraph 10**

The new Agenda is guided by the purposes and principles of the Charter of the United Nations, including full respect for international law. It is grounded in the Universal Declaration of Human Rights, international human rights treaties, the Millennium Declaration and the 2005 World Summit Outcome. It is informed by other instruments such as the Declaration on the Right to Development.

#### **Paragraph 35**

Sustainable development cannot be realized without peace and security; and peace and security will be at risk without sustainable development. The new Agenda recognizes the need to build peaceful, just and inclusive societies that provide equal access to justice and that are based on respect for human rights (including the right to development), on effective rule of law and good governance at all levels and on transparent, effective and accountable institutions. Factors which give rise to violence, insecurity and injustice, such as inequality, corruption, poor governance and illicit financial and arms flows, are addressed in the Agenda. We must redouble our efforts to resolve or prevent conflict and to support post-conflict countries, including through ensuring that women have a role in peacebuilding and State-building. We call for further effective measures and actions to be taken, in conformity with international law, to remove the obstacles to the full realization of the right of self-determination of peoples living under colonial and foreign occupation, which continue to adversely affect their economic and social development as well as their environment.



## **Annex 2**

### **Global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development (extracts)**

#### **Goals and targets (from the 2030 Agenda for Sustainable Development):**

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

#### **Indicators:**

16.4.1 Total value of inward and outward illicit financial flows (in current United States dollars)

16.4.2 Proportion of seized, found or surrendered arms whose illicit origin or context has been traced or established by a competent authority in line with international instruments

## Annex 3

### **Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda)**

(extracts)

#### **Paragraph 1:**

We, the Heads of State and Government and High Representatives, gathered in Addis Ababa from 13 to 16 July 2015, affirm our strong political commitment to address the challenge of financing and creating an enabling environment at all levels for sustainable development in the spirit of global partnership and solidarity. We reaffirm and build on the 2002 Monterrey Consensus and the 2008 Doha Declaration. Our goal is to end poverty and hunger and to achieve sustainable development in its three dimensions through promoting inclusive economic growth, protecting the environment and promoting social inclusion. We commit to respecting all human rights, including the right to development. We will ensure gender equality and women's and girls' empowerment. We will promote peaceful and inclusive societies and advance fully towards an equitable global economic system in which no country or person is left behind, enabling decent work and productive livelihoods for all, while preserving the planet for our children and future generations.

#### **Paragraph 18:**

**Promoting peaceful and inclusive societies.** We underline the need to promote peaceful and inclusive societies for achieving sustainable development and to build effective, accountable and inclusive institutions at all levels. Good governance, the rule of law, human rights, fundamental freedoms, equal access to fair justice systems and measures to combat corruption and curb illicit financial flows will be integral to our efforts.

#### **Paragraph 23:**

We 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. We will also reduce opportunities for tax avoidance and consider inserting anti-abuse clauses in all tax treaties. We will enhance disclosure practices and transparency in both source and destination countries, including by seeking to ensure transparency in all financial transactions between Governments and companies to relevant tax authorities. We will make sure that all companies, including multinationals, pay taxes to the Governments of countries where economic activity occurs and value is created, in accordance with national and international laws and policies.

#### **Paragraph 24:**

We note the report of the High-level Panel on Illicit Financial Flows from Africa. We invite other regions to carry out similar exercises. To help to combat illicit flows, we invite the International Monetary Fund (IMF), the World Bank and the United Nations to assist both source and destination countries. We also invite appropriate international institutions and regional organizations to publish estimates of the volume and composition of illicit financial flows. We will identify, assess and act on money-laundering risks, including through effective implementation of the Financial Action Task Force standards on anti-money-laundering/counter-terrorism financing. At the same time, we will encourage information-sharing among financial institutions to mitigate the potential impact of the anti-money-laundering and combating the financing of terrorism standard on reducing access to financial services.

#### **Paragraph 25:**

We urge all countries that have not yet done so to ratify and accede to the United Nations Convention against Corruption, and encourage parties to review its implementation. We commit to making the Convention an effective instrument to deter, detect, prevent and counter corruption and bribery, prosecute those involved in corrupt activities and recover

and return stolen assets to their country of origin. We encourage the international community to develop good practices on asset return. We support the Stolen Asset Recovery Initiative of the United Nations and the World Bank and other international initiatives that support the recovery of stolen assets. We further urge that regional conventions against corruption be updated and ratified. We will strive to eliminate safe havens that create incentives for transfer abroad of stolen assets and illicit financial flows. We will work to strengthen regulatory frameworks at all levels to further increase transparency and accountability of financial institutions and the corporate sector, as well as public administrations. We will strengthen international cooperation and national institutions to combat money-laundering and financing of terrorism.

**List of Abbreviations**

AAAA	Addis Ababa Action Agenda
BEPS	Base Erosion and Profit Shifting
CBDR	Common but Differentiated Responsibilities
DRTD	Declaration on the Right to Development
ETOs	Extraterritorial obligations
EU	European Union
FATF	Financial Action Task Force
FDI	Foreign Direct Investment
FfD	Financing for Development
G20	Group of 20
G77	Group of 77
GA	General Assembly
GDP	Gross Domestic Product
HLP	High Level Panel
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFFs	Illicit Financial Flows
IFIs	International Financial Institutions
IMF	International Monetary Fund
LDCs	Least Developed Countries
MNCs	Multinational corporations
NGOs	Non-governmental organizations
ODA	Official Development Assistance
OECD	Organization for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
RTD	Right to Development
SDGs	Sustainable Development Goals
TNCs	Transnational corporations
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
VDPA	Vienna Declaration and Programme of Action

---