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Illicit financial flows, human rights and the post-2015 development agenda*

Interim study by 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, Juan Pablo Bohoslavsky

Summary

Illicit financial flows generated from crime, corruption, embezzlement and tax evasion represent a major drain on the resources of developing countries, reducing tax revenues and the scope for progressive taxation, hindering development and the rule of law, exacerbating poverty and inequality, and undermining the enjoyment of human rights. Tax evasion and abuse are considered to be responsible for the majority of all illicit financial outflows, followed by illicit financial flows relating to criminal activities, such as drug and human trafficking, the illicit arms trade, terrorism and corruption-based illicit financial flows. According to some estimations developing countries lost US$ 991 billion in illicit financial outflows in 2012 and those flows increased in real terms at a rate of 9.4 per cent per annum over the period 2003–2012. The annual loss is substantially more than the estimated yearly costs of achieving the Millennium Development Goals.

The present interim study is submitted pursuant to Human Rights Council resolution 25/9, and updates earlier reports by the previous Independent Expert. It outlines how illicit financial flows undermine the enjoyment of economic, social, cultural, civil and political rights and emphasizes the need for due diligence and due process in the fight against illicit financial flows, for better protection of witnesses and whistle-blowers and for incorporating human rights considerations in the management of returned stolen assets. It concludes with recommendations on how the goal of curbing illicit financial flows could be operationalized within the post-2015 development agenda of the United Nations.

* Late submission.

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I. Introduction

1. In its resolution 25/9 the Human Rights Council requested 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, to undertake a further study to analyse the negative impact of illicit financial flows on the enjoyment of human rights in the context of the post-2015 development agenda, and to present an interim study to the Human Rights Council at its twenty-eighth session.

2. The Independent Expert welcomes the request to analyse the human rights implications of illicit financial flows, which may endanger the stability and security of societies, undermine the values of democracy, morality and tax justice, and jeopardize social, economic and political development, especially when an inadequate national and international response leads to impunity. Corruption, the transfer of illicit funds, and legal and other barriers to their repatriation not only divert resources away from activities that are critical for poverty eradication, the fight against hunger and sustainable economic and social development, they also undermine the enjoyment of economic, social, cultural, civil and political rights and the right to development.

3. The present interim study updates earlier reports by the United Nations High Commissioner for Human Rights (A/HRC/19/42) and the previous Independent Expert (A/HRC/22/42 and A/HRC/25/52). It also complements a recent report on taxation policies by the Special Rapporteur on extreme poverty and human rights (A/HRC/26/28).

II. Illicit financial flows and asset recovery

A. Definitions

4. Illicit financial flows in a narrow sense are 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.[1] The illicit nature stems from two distinct but overlapping causes: the first relating to the proceeds of crime, the second, initially deriving from legitimate economic activities that ultimately become illicit owing to the contravention of laws (A/HRC/22/42, para. 5). In a broader sense, illicit financial flows encompass in addition all kinds of artificial arrangements that have been put in place for the essential purpose of circumventing the law or its spirit, including certain legal "tax-optimization" schemes, making use of legal loopholes that allow for example transnational corporations to shift around profits to zero or low corporate tax jurisdictions, without undertaking any real economic activities in those jurisdictions.[2]

5. Activities related to illicit funds can also be clustered according to the illicit motivations involved.[3] Those may be market and regulatory abuse, tax abuse, tax evasion, or abuse of power, including the theft of State funds and assets, and the profit from crime or

[1] Dev Kar and Karly Curcio, "Illicit financial flows from developing countries: 2000–2009" (Global Financial Integrity, Washington, D.C., 2011), p. 3.

[2] United Nations Conference on Trade and Development (UNCTAD), *Trade and Development Report 2014* (Geneva, 2014), p. 173.

[3] Alex Cobham, "The impacts of illicit financial flows on peace and security in Africa: Study for Tana High-Level Forum on Security in Africa" (April 2014), p. 5, available from http://bit.ly/tanastudy.

corruption. Commonly used methods to evade or avoid taxation include trade misinvoicing and transfer mispricing (A/HRC/22/42, paras. 6–7). Transfer mispricing refers to a practice of multinational companies. A subsidiary of a company avoids paying taxes in a relatively high-tax country by selling its products at a loss to a subsidiary in a low-tax country, which then sells the product to final customers at market price and yields the profit. While tax evasion, which breaks national tax laws, is illegal, many tax avoidance schemes comply with existing laws and regulations; or at least, go unchallenged in situations where tax authorities have scarce capacity and information.

6. Three main actors responsible for illicit financial flows may be identified: (a) private actors—individuals, domestic businesses and transnational corporations—committing for example tax and regulatory abuse and the related professional advisers on tax, legal matters and accounts; (b) public officeholders (both elected and employed); and (c) criminal groups.

7. Asset recovery is understood in the present report as the process by which the proceeds of corruption (as defined by articles 15–23 of the United Nations Convention against Corruption) are recovered and returned to a foreign jurisdiction. Asset recovery includes tracing of illicit assets, securing, freezing and returning them through a variety of legal avenues, including criminal confiscation and restitution, non-conviction-based confiscation, civil actions or actions involving the use of mutual legal assistance.

B. Updated estimates

8. There is overwhelming consensus that the volume of illicit financial flows is significant, although estimates vary greatly and are debated. Since illicit financial flows are by definition hidden, it is inevitable that estimates will be subject to substantial uncertainty. Methodologies continue to develop, while data quality and availability remain problematic. In addition, the lack of transparency of financial intermediaries involved in financial transactions renders it difficult to calculate illicit financial flows with a high degree of certainty. However, as stated recently in an Organisation for Economic Co-operation and Development (OECD) report, there is consensus that they exceed aid flows and investment in volume[4] and that the scale of the problem warrants international policy attention (A/HRC/22/42, para. 12).

9. For several years Global Financial Integrity (GFI) has produced regular estimates for illicit financial outflows, using data from international organizations for their statistics: They measure (a) outflows due to deliberate trade misinvoicing, by analysing imbalances in reported export and import values between a country and the world; and (b) outflows due to leakages in the balance of payments, also known as illicit hot money narrow outflows.[5] While the data and methodology of these estimates have been subject to criticism,[6] economists and international financial institutions have not to date published a comprehensive critique of GFI methodology. Alternative estimates point in the same direction: there is a huge loss owing to illicit financial flows and this annual loss is

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4 OECD, *Better Policies for Development 2014: Policy Coherence and Illicit Financial Flows 2014*, p. 23.

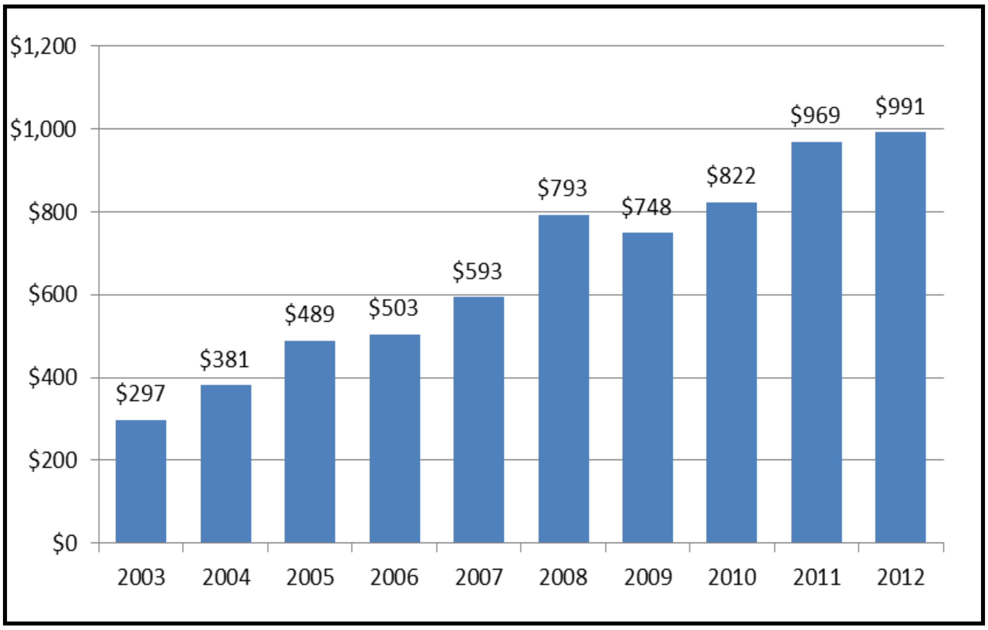
5 Dev Kar and Joseph Spanjers “Illicit financial flows from developing countries: 2003–2012” (Global Financial Integrity, Washington, D.C., December 2014), pp. 3–6.

6 See for example James S. Henry, “The price of offshore revisited”, (Tax Justice Network, July 2012), pp. 37–39.

substantially higher than the estimated annual costs of achieving the Millennium Development Goals.[7]

10. According to the latest GFI estimates, developing countries lost US$ 991.2 billion in illicit financial outflows in 2012, a further increase of 1.8 per cent from 2011. Since 2003, illicit financial outflows have increased in real terms by about 9.4 per cent per annum. The significance of such a resource drain is demonstrated by comparing those figures with official development assistance (ODA) received by developing countries. In 2012 ODA stood at US$ 89.7 billion, meaning that, for every dollar in development assistance spent in 2012, more than US$ 10 left developing countries in the form of illicit financial outflows. According to GFI, ODA and foreign direct investment combined did not net out illicit financial outflows from developing countries over the last decade.[8]

Figure I
Illicit financial flows from developing countries 2003–2012
(Billion US$)



Source: Kar and Spanjers, *Illicit Financial Flows*, 2014 (see footnote 5), p. viii.

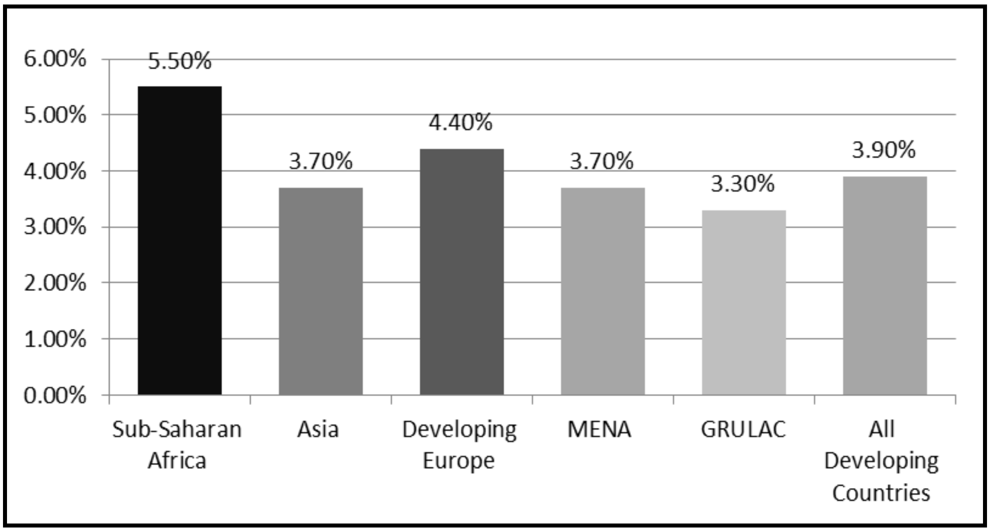
11. While a certain percentage of illicit financial outflows re-enters developing counties in the form of illicit inflows, those funds do not make up for the loss of capital through illicit outflows. Even estimates that net out illicit outflows with inflows indicate a substantial net outflow during recent decades.[9] Furthermore, illicit financial inflows are generally not taxed, or invested into public or social services to further the realization of human rights. Instead they flow into the underground economy, thereby compounding the

[7] Shantayanan Devarajan, Margaret J. Miller and Eric V. Swanson, "Goals for development: history, prospects and costs", World Bank Policy Research Working Paper (April 2002).
[8] Kar and Spanjers, "Illicit financial flows from developing countries: 2003–2012" (see footnote 5), p. vii.
[9] See for example James K. Boyce and Léonce Ndikumana, "Capital flight from Sub-Saharan African countries: updated estimates, 1970–2010" PERI Research Report October 2013 (Amherst, University of Massachusetts), p. 5.

problem. Even if they are repatriated after they have been laundered abroad or offshore, they tend to be reinvested into luxury residential property and other luxury goods, increasing inequality rather than being allocated to strengthening the rule of law, or judicial, health, education or social security systems, for the benefit of the common good. Frequently illicit inflows fund further crime, including organized crime, human trafficking, piracy, the illicit arms trade and terrorist activities undermining the rule of law, peace and security, and human rights.[10]

12. Trade misinvoicing is estimated to be the most popular way of moving funds illicitly out of developing countries. GFI estimated that they account for 77.8 per cent of all illicit outflows over the last decade. Although Sub-Saharan Africa has the smallest nominal share of regional outflows over the period 2003–2012, it has the highest average illicit outflows to gross domestic product ratio (5.5 per cent), indicating that illicit financial outflows have had a disproportionate impact on the region.[11]

Figure II
Illicit financial flows from developing countries 2003–2012 (percentage of GDP)



Source: Kar and Spanjers, *Illicit financial flows,* 2014 (see footnote 5), p. 46.

MENA = Middle East and North Africa.

GRULAC = Latin America and the Caribbean.

13. Illicit financial flows are also a serious concern for developed countries. Tax avoidance schemes by transnational corporations shifting profits to low tax jurisdictions within OECD countries and commercial banks that facilitate tax evasion by high net worth individuals in a systematic manner have recently received much attention.[12] In addition,

[10] For a comprehensive analysis see for example Alex Cobham, (see footnote 3) and Jeremy Haken, "Transnational crime in the developing world" (Washington D.C., Global Financial Integrity, 2011).
[11] Kar and Spanjers, "Illicit financial flows from developing countries: 2003–2012" (see footnote 5), p. 46.
[12] See for example, www.forbes.com/sites/halahtouryalai/2013/01/04/tale-of-two-swiss-banks-why-wegelin-failed-and-ubs-survived-tax-evasion-charges/ and www.icij.org/project/luxembourg-leaks.

there is a lack of comprehensive information as to where illicit funds are held.[13] While in some cases significant funds may be returned and invested in private assets, such as land and luxury estates in the countries of origin, most funds remain offshore (A/HRC/22/42, paras. 20–23). The main beneficiaries of illicit financial flows are secrecy jurisdictions, financial service providers and economic sectors into which laundered funds are reinvested, including vendors of luxury estates and producers of luxury goods.

14. Against common beliefs, corruption-based illicit financial outflows account only for a small fraction of all illicit financial flows. The Stolen Asset Recovery Initiative (StAR), a joint initiative by the World Bank and the United Nations Office on Drugs and Crime (UNODC), has tried, jointly with Organisation for Economic Co-operation and Development, to track international asset recovery efforts relating to corruption-based illicit financial flows. Their report *Few and Far: The Hard Facts on Stolen Asset Recovery*, published in September 2014, provides a bleak picture of international asset recovery efforts.[14]

15. Between 2010 and June 2012, only 8 of 34 OECD countries reported asset recovery efforts (Belgium, Canada, Luxembourg, the Netherlands, Portugal, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America) including cross-border asset tracking, freezing or asset return efforts.[15]

16. On the positive side, the volume of assets frozen between 2010 and June 2012 amounted to US$ 1.39 billion and increased in comparison to the four-year period from 2006 to 2009 (US$ 1.23 billion). However assets returned from 2010 to June 2012 remained US$ 147.2 million lower compared to the earlier period. A slightly positive development is that assets returned to developing countries increased from US$ 108.1 million (during the four years from 2006 to 2009) to 127.7 million (for the 2.5 years from 2010–June 2012). However, the total volume of assets returned between 2006 and June 2012 was US$ 423.5 million, which is significantly less than the US$ 2.623 billion in assets that were reported frozen, and again only a fraction of the estimated US$ 20 billion to 40 billion stolen each year from developing countries by means of corruption-related activities.[16] Figure 3 illustrates this relationship, assuming a rather conservative estimate of an annual outflow of US$ 20 billion in the form of corruption-based illicit financial flows.

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[13] For recent estimates, see Gabriel Zucman, "The missing wealth of nations: Are Europe and the U.S. net debtors or net creditors?" in *Quarterly Journal of Economics*, vol. 103, No. 3, 2013; Gabriel Zucman, "Taxing across borders: tracking personal wealth and corporate profits", *Journal of Economic Perspectives*, vol. 28, no.4, 2014.

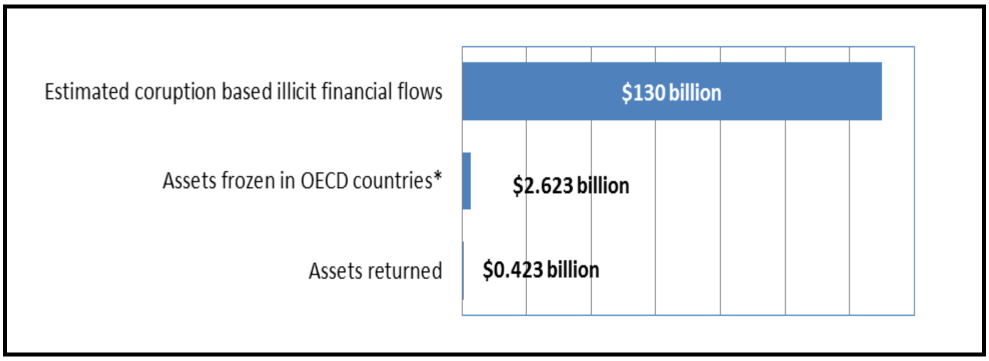
[14] Larissa Grey and others, *Few and Far: The Hard Facts on Stolen Asset Recovery* (Washington, D.C., World Bank, 2014).

[15] Ibid. p. 18. It should be noted that in addition France and Australia reported asset freezes during the period 2006–2009.

[16] Ibid. pp. 18–21 and p. 26. The data do not include assets frozen worldwide pursuant to United Nations Security Council resolutions 1970 (2011) and 1973 (2011) in relation to Libyan individuals and institutions, amounting to US$ 25.6 billion, which were not exclusively the proceeds of corruption.

Figure III

Estimates of corruption-based illicit financial flows, assets frozen and returned from OECD countries, 2006–June 2012



Source: Larissa Grey and others, *Few and Far*, 2014 (see footnote 14), p. 21.

17. According to data collected by StAR only four OECD countries managed to return stolen assets to countries of origin after completing national legal procedures during the 6.5 year period between 2006 and June 2012. They are Australia, Switzerland, United Kingdom and the United States of America, with Switzerland and the United States of America, each accounting for about 40 per cent of all asset returns to foreign jurisdictions.[17]

18. The results demonstrate the difficulties and barriers existing in the complex process of tracking stolen assets, freezing them, or returning them through criminal or non-conviction based confiscation, private civil action and domestic investigation. The political will to combat corruption and to recover assets in receiving States, timely and well documented requests for mutual legal assistance and close collaboration between investigating authorities in countries of origin and destination are all essential to ensure the successful repatriation of stolen assets. States continue to face challenges in recovering assets owing to differences between legal systems, the complexity of multijurisdictional investigations and prosecutions, the limited implementation of effective domestic tools such as non-conviction-based forfeiture for asset recovery, lack of familiarity with the mutual legal assistance procedures of other States and difficulties in identifying the flow of corruption proceeds. In addition there are particular challenges posed in recovering the proceeds of corruption in cases involving individuals occupying prominent public positions.

19. One significant way of reducing illicit gains and related illicit financial flows is to focus on the supply side, the bribe payers. An estimated US$ 1 trillion is paid in bribes worldwide each year, and bribery in the developing world may amount to an equivalent of 15–30 per cent of all ODA. Ending impunity on the supply side must be part of the efforts to reduce illicit financial flows. An OECD report taking stock of the total number of individuals and legal persons sanctioned or acquitted in relation to foreign bribery from 1992 to 2012 shows significant disparities between prosecutorial efforts and the enforcement of anti-bribery legislation in the 40 States parties to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Convention).[18]

20. However, even if transborder bribery is prosecuted, monetary sanctions frequently do not reach the country where the bribe took place. An analysis by StAR of 395 foreign

[17] Larissa Grey and others, *Few and Far* (see footnote 14), p. 20.

[18] OECD, "Illicit Financial Flows from Developing Countries, Measuring OECD responses", (Paris, 1994), pp. 84–93 and Annual Report of the OECD Working Group on Bribery 2014, pp. 14–19.

bribery cases that were solved through legal settlements showed that only 3.3 per cent (or US$ 197 out of the total value of settlements of nearly US$ 6 billion) was returned or ordered to be returned to the countries where the bribery had taken place, as monetary sanctions were mostly imposed in countries where the corrupt companies were headquartered.[19]

21. It should be stressed that the return of stolen assets is only the last step and is unlikely to result in the full recovery of assets stolen, as it is frequently very difficult to trace, freeze and finally return stolen assets in accordance with international and national legal provisions. Much more needs to be done on the supply side of illicit financial funds, to prevent illicit financial outflows leaving countries of origin and to combat non-corruption-based illicit financial outflows related to tax evasion and questionable tax avoidance schemes. Curbing tax-based illicit financial flows would, from a purely financial perspective, have the biggest impact on the fiscal space of States and their ability to realize social and economic rights and the right to development.

III. Illicit financial flows and human rights

22. There are various connections between illicit financial flows and human rights: illicit financial outflows deprive Governments first and foremost of resources required to realize progressively economic, social and cultural rights. They also undermine efforts to build up effective institutions to uphold civil and political rights and the rule of law in the countries of origin. Third, business enterprises, including transnational business corporations, have to ensure that their tax planning strategies and policies not only adhere to national law, but also comply with international human rights norms. Fourth, whistle-blowers and reporting persons, media representatives and human rights defenders require effective protection based on international human rights standards and the United Nations Convention Against Corruption . Fifth, human rights and due process guarantees are essential to protect persons from undue allegations, undue removal from office, criminalization, freezing or confiscation of their assets or arbitrary deprivation of property or detention. Finally, human rights obligations of States should also inform the public management of returned assets to ensure that maximum available resources are directed to the realization of economic, social and cultural rights.

A. Impact on social, economic and cultural rights

23. Illicit financial outflows divert resources intended for development and may undermine government efforts to provide basic services and ability to comply with their international human rights obligations. The diversion of resources due to illicit financial outflows reduce the “maximum resources” available to the countries of origin for the realization of economic, social and cultural rights (A/HRC/26/28, paras. 24–28). It would be improper to solely blame illicit financial flows for lack of compliance with human rights obligations. Failure to respect social, economic and cultural rights is frequently not exclusively due to unavailability of public funds. However, illicit financial outflows from developing countries and tax abuse in industrialized countries have clearly limited the fiscal space of governments to ensure the progressive realization of social, economic and cultural rights.

[19] Jacinta Anyango Oduor and others, *Left out of the Bargain: Settlements in foreign bribery cases and Implications for Asset Recovery* (Washington, World Bank, 2014), p. 2.

24. A comprehensive report published in October 2013 by the International Bar Association underscored the linkages between illicit financial flows, poverty and human rights. The report found that

> tax abuses have considerable negative impacts on the enjoyment of human rights. Simply put, tax abuses deprive governments of the resources required to provide the programmes that give effect to economic, social and cultural rights, and to create and strengthen the institutions that uphold civil and political rights. Actions of States that encourage or facilitate tax abuses, or that deliberately frustrate the efforts of other States to counter tax abuses, could constitute a violation of their international human rights obligations, particularly with respect to economic, social and cultural rights.[20]

25. This link has also been stressed by the Special Rapporteur on extreme poverty and human rights, who recently stated that tax abuse is

> not a victimless practice; it limits resources that could be spent on reducing poverty and realizing human rights, and perpetuates vast income inequality. While the rich benefit from this practice, the poor feel the negative impact on their standard of living, their unequal political power and the inferior quality of health and education services for themselves and their children. (A/HRC/26/28, para. 59)

26. The Special Rapporteur emphasized that high levels of tax abuse undermine the principles of equality and non-discrimination, given that evaders end up paying less than taxpayers with the same— or less— capacity to pay. High net-worth individuals and large corporations also have a far greater ability to evade or avoid taxes as they are able to pay tax advisers or able to open undeclared foreign bank accounts in low-tax jurisdictions. Governments then have to raise revenue from other sources: often regressive taxes, the burden of which falls hardest on the poor. Therefore, if States do not tackle tax abuse, they are likely to be disproportionately benefiting wealthy individuals to the detriment of the most disadvantaged (ibid., para. 60).

27. The negative impact on social and economic rights can be illustrated by analysing how illicit financial flows have contributed to undermining efforts of governments in sub-Saharan States to realize progressively the right to health, as enshrined in article 12 of the International Covenant on Economic, Social and Cultural Rights. A recent study published in the Journal of the Royal Society of Medicine has estimated the impact of illicit financial outflows on the ability of sub-Saharan States to realize Millennium Development Goal 4, relating to the right to health. The three indicators for Goal 4 are: (1) Under-five mortality rate, (2) Infant mortality rate and (3) Proportion of 1 year-old children immunized against measles. The study analysed data for 34 countries in Sub-Saharan Africa. The results speak for themselves: at the current rate of progress it is estimated that only six of the 34 countries in Sub-Saharan Africa would reach their Millennium Development Goal targets by the end of 2015. If illicit financial outflows were completely curtailed, that number could be increased to 16 countries. Even those countries that would not achieve their targets by 2015 would be able to reach them in a substantially shorter period in the absence of illicit financial flows.[21]

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[20] International Bar Association, "Tax abuses, poverty and human rights: a report of the International Bar Association's Human Rights Institute Task Force on Illicit Financial Flows, Poverty and Human Rights" (London, 2013), p. 2.

[21] Bernadette O'Hare et al., "The effect of illicit financial flows on time to reach the fourth Millennium Development Goal in Sub-Saharan Africa: a quantitative analysis" in *Journal of the Royal Society of Medicine*, vol. 107, No. 4, 2014; available from http://jrs.sagepub.com/content/107/4/148.short.

28. In the decade before the Ebola outbreak, Guinea, Liberia and Sierra Leone experienced, according to recent GFI estimates, an annual average of US$ 1.37 billion illicit financial outflows, while, according to the World Health Organization (WHO), during the same period the three countries spent on average only US$ 140 million per year on public health (see fig. IV).[22] All three countries were under International Monetary Fund (IMF) programmes, failed to meet targets for social spending before the outbreak and saw a further decrease in the number of community health workers from 0.11 per 1,000 population in 2004 to 0.02 per 1,000 population in 2010.[23] Some health experts claimed that IMF programmes contributed to the weaknesses of the public health systems in the countries, an assessment that has been questioned.[24]

29. In addition to illicit financial flows, the three countries paid on average US$ 205 million in debt service per annum on public or publicly guaranteed external debt during the decade before the Ebola outbreak, and continued to spend US$ 81.6 million in 2013.[25] In Sierra Leone, where the estimate for illicit financial outflows is lower, legal tax incentives and tax breaks for extractive industries have weakened domestic resource mobilization. Christian Aid has estimated that the Government of Sierra Leone will lose revenues of US$ 131 million in the three years 2014–16 alone as the result of corporate income tax incentives granted to five mining companies – an average of US$ 43.7 million a year. All tax incentives combined amounted in 2012 to eight times the health budget and seven times the education budget.[26] While the roots of the weakness of the public health system in the Ebola-affected countries are varied, tax evasion, legal tax breaks and external debt services have been contributing factors to the weak state of public health institutions and services. The above examples demonstrate that debt relief, improved tax regimes and a reduction in illicit financial flows would allow those and many other least developed countries to improve their public health and education systems.

[22] Kar and Spanjers, "Illicit financial flows from developing countries: 2003–2012" (see footnote 5), pp. 28–29 ; WHO, Global health expenditure database, General Government expenditure on health 2012 in US$, available from http://apps.who.int/nha/database/Home/Index/en.

[23] Alexander Kentikelenis and others, "The International Monetary Fund and the Ebola outbreak", The Lancet Global Health (2015), available from http://dx.doi.org/10.1016/S2214-109X(14)70377-8.

[24] See Sanjeev Gupta, "Response to 'The International Monetary Fund and the Ebola outbreak'", The Lancet Global Health, available from http://dx.doi.org/10.1016/S2214-109X(14)70345-6.

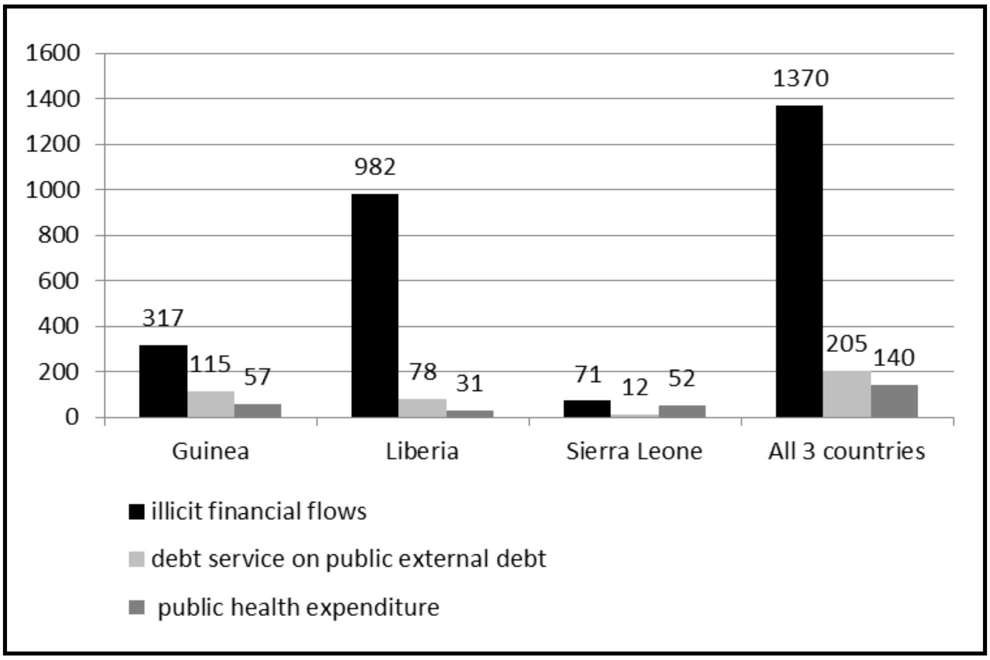
[25] World Bank, International Debt Statistics, Debt service on external debt, public and publicly guaranteed, available from http://databank.worldbank.org/data/views/variableselection/selectvariables.aspx?source=international-debt-statistics.

[26] Christian Aid, "Losing out. Sierra Leone's massive revenue losses from tax incentives" (London, Christian Aid, April 2014), pp. 5–6, available from www.christianaid.org.uk/images/Sierra-Leone-Report-tax-incentives-080414.pdf.

Figure IV

Illicit financial flows, debt service on public external debt and public health expenditures of Ebola-affected countries, annual averages 2003–2012

(In millions of dollars)



Source: see footnotes 22 and 25.

30. The Independent Expert welcomes the call for debt relief for Ebola-affected countries made by the United States of America and the United Nations Economic Commission for Africa and hopes that such relief will be implemented swiftly, after the G20 summit in Brisbane announced in November 2014 that IMF would grant a US$ 300-million package to Ebola-affected countries comprising new concessional loans, debt relief and grants.

B. Impact on civil and political rights and on the rule of law

31. Illicit financial outflows and their non-repatriation undermine civil and political rights and the rule of law in countries of origin and destination. The existence of illicit unregulated money contributes to the spread of other criminal activities, such as illegal weapons, smuggling, terrorism and the infiltration of criminal interests in the public sector. That includes funding of political parties or election campaigns in contravention of domestic regulations, contributing to the risk of State capture and subverting the right to vote and to participation in public affairs on a non-discriminatory basis.

32. In addition, States need independent, well-equipped, trained and properly paid officers responsible for combating corruption and tax evasion, handling requests for mutual legal assistance and a properly functioning independent judicial system to combat illicit financial funds. Significant investments are required to ensure that nobody is above the law, including so-called politically exposed persons, their associates, or large business

enterprises.[27] Where both the incentives for and the opportunities to export illicit wealth are significant, it is likely that the damage to the rule of law will be exacerbated. It has been pointed out that “the potential to hide illicit capital securely in tax havens is a direct stimulus to corruption and other illicit activities like transfer mispricing. It decreases the chances of detection and therefore increases the likely returns”.[28] If parts of the political elite are able or willing to accumulate wealth through illicit outflows, economic inequalities are exacerbated and incentives to strengthen tax agencies, the investigatory powers of police services, the independence of the judiciary and public audit services are low. That is a problem in particular in developing countries that face resource constraints in establishing well-equipped and independent institutions to address such complex issues as transfer mispricing.

C. Responsibilities of business enterprises

33. Illicit financial flows should not be a human rights concern for States only. While States have the primary duty to respect, protect and fulfil human rights, business enterprises are also required to “avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur” as set out in the Guiding Principles on Business and Human Rights (guiding principle 13). Business enterprises have to respect human rights throughout their operations. They can demonstrate respect for human rights through appropriate policies and due diligence procedures. Multinational enterprises, as well as their advisers and financiers, need to understand that their tax planning strategies have potential negative impacts on human rights.

34. Business enterprises that contribute through transfer mispricing, tax evasion or corruption to significant illicit financial outflows cause adverse human rights impacts by undermining the abilities of States to progressively achieve the full realization of economic, social and cultural rights. This is particularly the case when they operate in States that have difficulties in meeting the minimum core human rights obligations. One obvious way for business enterprises to show responsible behaviour and demonstrate compliance is to embrace a greater degree of transparency, in particular by publishing on a country-by-country basis their sales, profits and taxes.

35. The same applies to trust and company service providers and commercial banks that do not meet basic due diligence standards when they provide services or help launder and hide illicit funds in offshore financial centres. Most illicit financial flows are facilitated by tax havens, secrecy jurisdiction, shell companies that cannot be traced back to their owners, anonymous trust accounts, bogus charitable foundations, money-laundering techniques and questionable trade practices. There is evidence that banks play a key role in facilitating illicit financial flows when they do not exercise due diligence with their customers (A/HRC/22/42, para. 11). It is the responsibility of States to ensure that their banking regulations comply fully with international recommendations against money-laundering and to take action against structures facilitating illicit financial flows.

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[27] See Theodore S. Greenberg and others., *Politically Exposed Persons: Preventive Measures for the Banking Sector* (Washington: Stolen Asset Recovery Initiative, 2010); see also Emile van der Does de Willebois et al., *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* (Washington: Stolen Asset Recovery Initiative, 2010).

[28] Mick Moore, “The practical political economy of illicit flows” in Peter Reuters (ed.), *Draining Development*, p. 474.

D. Protection of whistle-blowers and reporting persons

36. In its resolution 25/9, the Human Rights Council acknowledged the important role that civil society plays in exposing corruption and drawing attention to the negative impact of the non-repatriation of funds of illicit origin on the rule of law and the realization of economic, social and cultural rights. In that resolution the Council reiterated the obligation of States to protect reporting persons in accordance with article 33 of the United Nations Convention against Corruption and the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

37. Journalists, whistle-blowers, anti-corruption activists, investigating officers, judges, prosecutors, lawyers and human rights defenders exposing corruption have frequently been victims of reprisals or human rights violations, including death threats, arbitrary detention, enforced disappearances and killings. Between 1 January 2010 and 31 November 2014, the special procedures of the Human Rights Council sent more than 35 urgent appeals and letters of allegation to 22 countries and territories covering such concerns.[29] The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression recently stressed that journalists covering corruption, organized crime and drug trafficking were at particular risk (see A/HRC/20/17). According to the Committee to Protect Journalists, as of 31 December 2014 out of 725 journalists murdered since 1992 worldwide, 208 of them, or 29 per cent, had covered corruption issues.[30] Reporters Without Borders reported in 2011 that at least 141 journalists covering organized crime or drug trafficking—another major source for illicit financial flows— were killed in the decade 2000–2010.[31]

38. While several jurisdictions have introduced new laws protecting witnesses, whistle-blowers or persons reporting corruption, the protection of whistle-blowers and witnesses to corruption frequently falls short of international standards or best practices. The latest thematic report presented to the Implementation Review Group of the United Nations Convention against Corruption notes that there “was wide variation among the States parties with regard to the protection of witnesses, experts and victims”. While in several States the protections went beyond the minimal protection of non-disclosure of the identity or whereabouts of witnesses, the report noted that “in several States no measures had been taken for the effective protection of witnesses and experts”. The report furthermore underlines that “a number of States parties had not established comprehensive whistle-blower protections, although legislation was pending in several cases. Common challenges related to specificities in national legal systems, limited capacity and the absence of specific regulations or systems for the protection of whistle-blowers” (CAC/COSP/IRG/2014/7, paras. 13–14).

39. Transparency International has highlighted the fact that many legal frameworks to protect whistle-blowers do not adequately ensure the confidentiality and anonymity of reporting persons or fail to cover whistleblowing within the private sector.[32] Several countries have introduced notable new national legislation strengthening the protection of whistle-blowers in recent years: they include the Republic of Korea, South Africa, and

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29 See the periodical communications reports of special procedures, A/HRC/28/85, A/HRC/27/72, A/HRC/26/21, A/HRC/25/74, A/HRC/24/21, A/HRC/23/51, A/HRC/22/67, A/HRC/21/49, A/HRC/20/30, A/HRC/19/44, A/HRC/18/51.

30 Committee to Protect Journalists, data available from www.cpj.org/killed/murdered.php

31 Reporters Without Borders, “Organized crime: Muscling in on the media” (Paris, 2011),

32 Transparency International, “Whistleblower Protection and the UN Convention against Corruption” (Berlin, 2013).

Slovenia, and, during 2014, Ireland and Greece.[33] An analysis of whistle-blower legislation in the European Union showed that national legislation frequently falls short of international standards or best practice. In November 2013 only four countries had legal frameworks for whistle-blower protection that Transparency International considered advanced.[34] The Independent Expert hopes that a new recommendation adopted on 30 April 2014 by the Council of Europe will strengthen the protection of whistle-blowers. Their protection is, however, a worldwide concern, as indicated by reports of the Implementation Review Group of the Convention and of anti-corruption organizations.[35] In addition, the protection of persons exposing tax abuses or evasion who may not be able to rely on the protection of the Convention needs to be strengthened.

E. Due process in asset recovery and criminal matters

40. Human rights are also relevant for the seizure and freezing of the proceeds of corruption or other criminal activities. That includes due process rights in criminal or civil law matters against persons presumed to be responsible for corruption, tax evasion or other related criminal conduct and ensuring the independence of authorities charged with investigating and prosecuting crimes, including ensuring that asset freezing and forfeiture does not deprive persons suspected of, or investigated for, corruption of the enjoyment of essential core minimum levels of social, economic and cultural rights. While the right to property, contained in article 17 of the Universal Declaration of Human Rights and in several regional human rights instruments, does not protect stolen assets from recovery, no one may be arbitrarily deprived of that right. The Independent Expert is also concerned about reports that governments have occasionally used charges of tax evasion or corruption against former members of the ruling elite, political opponents, dissidents or human rights defenders to criminalize them. Special procedures have also sent communications on behalf of such individuals.[36]

41. It is also notable that some provisions of the Convention against Corruption have been contested on human rights grounds. Article 31, paragraph 8, of the Convention provides that an offender must demonstrate the lawful origin not only of the alleged proceeds of crime but also of other property liable to confiscation. The United Nations High Commissioner for Human Rights has noted that "similar provisions were analysed in a set of precedents that established the conditions that must be met in order not to violate due-process rights. Such precedents held that the right to be presumed innocent is not an absolute right, and that legal presumptions in criminal law are not per se restrictive to such right as long as States take into account the importance of what is at stake, and respect the right to defence" (A/HRC/19/42, para. 46).

[33] Ibid., and Transparency International, press releases "Transparency International welcomes Protected Disclosures Act 2014" (15 July 2014), and Transparency International: "Legal protection for citizens who denounce big corruption cases" (23 April 2014), available from www.transparency.org.

[34] Mark Worth: "Whistleblowing in Europe: legal protections for whistleblowers in Europe" (Berlin, Transparency International, 2013).

[35] Council of Europe, Recommendation CM/Rec(2014)7 of the Committee of Ministers to member States on the protection of whistleblowers; Transparency International, "Fighting corruption in South Asia: building accountability" (Berlin, 2014), pp. 12–13.

[36] See for example communications MNG 1/2012 of 21 May 2012, reported in A/HRC/21/49, and PRK 1/2013 of 17 December 2013, reported in A/HRC/26/21.

F. Use of repatriated illicit funds

42. Finally, a human rights approach to asset recovery has to consider policy implications relating to the use of returned illicit funds. StAR has pointed out that the use of returned assets is the sovereign decision of the country that recovers its stolen property, but concluded that "countries that have embraced a policy of openness and transparency in the design of arrangements for the management of returned assets have benefited from this approach".[37]

43. The Independent Expert supports that view. In his estimation, respect for and adherence to the human rights principles of transparency, accountability and participation is a critical factor in ensuring the prudent use of repatriated illicit funds. He further endorses the view that "decisions over resources allocation cannot be made behind closed doors, but publicly and openly, with due attention to civil society's demands. In some cases, lack of transparency and participation in the allocation decisions can end up in the use of the recovered assets to ends different from those sought by human rights principles" (A/HRC/19/42, para. 30). As the study by the High Commissioner underscored, since "recovered resources are not foreseen or public income included in the budget, States must allocate them in accordance with their obligation to devote the maximum of available resources to the fulfilment of economic, social, and cultural rights" (ibid., para. 28).

44. In transitional countries, returned illicit assets may also help States to fulfil their obligations to provide reparation to victims of human rights violations of a previous regime. This is particularly the case if returned illicit funds derive from assets controlled by politically exposed persons who are alleged to have been directly or indirectly responsible for past human rights violations. While not a comprehensive solution to the problem of financing transitional justice initiatives and reparation programmes, recovered assets have for example been used in Peru for anti-corruption and transitional justice measures, including truth-seeking and reparations.[38] The Egyptian Initiative for Personal Rights, published in September 2014, a best practice compilation for the management of recovered assets, drawing on international experiences.[39]

45. It is important that asset recovery efforts are viewed as one of several efforts that States must make in order to comply with their human rights obligations. As the High Commissioner for Human Rights has underscored, those "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" (A/HRC/19/42, para. 24).

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[37] StAR Initiative, "Stolen Asset Recovery – Management of returned assets: Policy considerations" (Washington, D.C., 2009), p. xi.

[38] Office of the United Nations High Commissioner for Human Rights, *Rule-of-law tools for Post-Conflict States: Reparations programmes* (New York and Geneva, 2008) and Ruben Carranza, "Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?" in *The International Journal of Transitional Justice*, vol. 2, No. 3 (2008), *pp. 310–330.*

[39] Egyptian Initiative for Personal Rights, "How to best utilize our stolen assets? Best practices for the management of recovered assets" (Cairo, September 2014), available from http://www.eipr.org/sites/default/files/reports/pdf/asset_recovery_e.pdf.

IV. International initiatives to curb illicit financial flows

46. Before discussing the importance of curbing illicit financial flows in the context of the post-2015 development agenda, the Independent Expert wishes to provide a brief overview of recent international initiatives, updating information contained in previous reports (A/HRC/22/42 and A/HRC/25/52).

47. The Convention against Corruption constitutes a comprehensive point of reference for anti-corruption laws, institutions and actions of States parties and recognizes the return of illicit funds as one of its fundamental principles in article 57, paragraph 3 (a). In article 52 of the Convention each State party is enjoined to "conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates".

48. The Independent Expert welcomes the fact that Germany, Oman, the State of Palestine and the Sudan ratified the Convention in 2014, bringing the number of States parties to 173 (as of 31 December 2014). He calls upon those States that have not yet signed or ratified the Convention to do so at their earliest opportunity.

49. The Conference of States Parties to the United Nations Convention against Corruption has set up the open-ended intergovernmental working group on asset recovery. Since its first session in 2006, the working group has convened eight times and discussed during its most recent meeting the prevention and detection of transfer of the proceeds of crime, and measures for direct recovery of property under articles 52 and 53 of the Convention.[40]

50. On 18 December 2014, the General Assembly adopted resolution 69/199, in which it underlined the need to redouble efforts to assist in the recovery of stolen assets in order to preserve stability and sustainable development and for transparency in financial institutions. The General Assembly called upon Member States to continue to work with all stakeholders in international and domestic financial markets to deny safe haven to assets acquired illicitly by individuals engaged in corruption and urged States to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of, and the fight against, corruption. The General Assembly acknowledged the vital importance of ensuring the independence and effectiveness of authorities charged with investigating and prosecuting crimes of corruption and of recovering the proceeds of such crimes and the fundamental principles of due process of law in criminal proceedings and in civil or administrative proceedings to adjudicate property rights. In addition, in resolution 69/199 the Assembly expressed concern about the negative impact of widespread corruption on the enjoyment of human rights, recognizing that corruption constitutes one of the obstacles to the effective promotion and protection of human rights, as well as to the achievement of the Millennium Development Goals and other internationally agreed development goals.

51. StAR, jointly launched in 2007 by UNODC and the World Bank, supports international efforts to end safe havens for corrupt funds. StAR works with developing countries and financial centres to prevent the laundering of the proceeds of corruption and to facilitate more systematic and timely return of stolen assets. In recent years StAR has continued providing training, capacity-building and technical assistance to countries that are operationally engaged in asset recovery cases. Its corruption case database includes, as of 31 December 2014, information on 748 transborder corruption cases.

[40] CAC/COSP/WG.2/2014/4, paras. 40–58.

52. The third meeting of the Arab Forum on Asset Recovery, hosted by the Government of Switzerland, in association with StAR, was held in Geneva from 1 to 3 November 2014, bringing together 250 specialists from 40 countries.[41] In parallel, a side event focused on the role of civil society organizations in the asset recovery process and stressed the need to create mechanisms for information sharing between civil society and governments, and the need to establish accountable and transparent mechanisms to manage and dispose of returned assets, through broad consultation with concerned stakeholders.[42]

53. On 29 and 30 April 2014, StAR provided technical support to the Ukraine Forum on Asset Recovery following asset freezes in relation to the former Ukrainian President, Viktor Yanukovych, and his associates by Austria, Canada, Liechtenstein, Switzerland, the United States of America and the European Union. In that context a guide for civil society organizations illustrating how they can contribute to asset recovery efforts was published.[43]

54. In response to public outcry over tax evasion and corporate tax avoidance, the G8 countries made a commitment at the Lough Erne Summit in June 2013 to introduce automatic exchange of information by tax authorities across the world in order to fight the scourge of tax evasion; to change rules that let companies shift their profits across borders to avoid taxes; to assist developing countries with information and capacity to collect taxes owed to them; to introduce public country-by-country reporting for extractive companies; and to address the issue of misuse of shell companies to facilitate illicit financial flows.[44] OECD was tasked by the G8 and G20 Finance Ministers with developing an Action Plan on Base Erosion and Profit Shifting , published in July 2013, containing 15 specific actions to address a range of issues relating to tax transparency, accountability and information exchange. The G20 declaration in St. Petersburg in September 2013 underlined that "developing countries should be able to reap the benefits of a more transparent international tax system".

55. During the annual meeting of the Global Forum on Transparency and Exchange of Information for Tax Purposes in Berlin in October 2014, 51 jurisdictions announced the introduction of a new single global standard on Automatic Exchange of Information on Taxation Matters by 2017 or the end of 2018. Leaders at the G20 summit in Brisbane, Australia, in November 2014 affirmed the principle that "profits should be taxed where economic activities deriving the profits are performed and where value is created". G20 leaders also welcomed progress on taxing patent boxes, a practice whereby intellectual property royalties can divert profits from the countries where they are made.[45]

56. Concerns have, however, been expressed that developing countries have been excluded from the design phase of the new system for automatic exchange of tax information or may not yet be in a position to provide reciprocal information and may thus gain little from it, which would deprive many low and middle income countries of the benefits of international tax information exchange. One suggestion is for a window of, say,

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[41] See final communiqué, available from http://star.worldbank.org/star/sites/star/files/co_chairs_english.pdf.

[42] Recommendations from civil society are available from www.transparency.org/files/content/pressrelease/Final_civil_society_recommendations_from_AFAR_III_Geneva.pdf.

[43] For more details see http://star.worldbank.org/star/UFAR/stolen-asset-recovery-ukraine-0. The guide is available from http://star.worldbank.org/star/ufar/ukraine-resources.

[44] See G8 Lough Erne Declaration; 2013 Lough Erne G8 Leaders' Communiqué; Common principles on misuse of companies and legal arrangements and the G8 action plan principles to prevent the misuse of companies and legal arrangements, available from https://www.gov.uk/government/collections/g8-communique-and-documents.

[45] See www.theguardian.com/business/2014/nov/16/g20-tax-avoidance-pledge-still-leaves-poor-countries-vulnerable.

five years, during which lower-income countries would receive tax information automatically, without a requirement for full reciprocity. That would allow time for domestic systems to be modified and improved, while demonstrating the value of participating in information exchange.

57. OECD has named combating illicit financial flows one of its three priority areas in its Strategy on Development (2012). In 2014, OECD published a report entitled “Illicit Financial Flows from Developing Countries: Measuring OECD Responses”, which analyses the performance of OECD countries against the main international standards for countering illicit financial flows. It focuses on five policy areas: money-laundering, tax evasion, foreign bribery, asset recovery and the role of development agencies. Another OECD publication – *Better Policies for Development 2014: Policy Coherence and Illicit Financial Flows* stresses the need for policy coherence to address illicit financial flows. The OECD analysis shows that countries are making progress in the fight against illicit financial flows, but warns that “without action, OECD countries are at risk of becoming safe havens for illicit assets from developing countries” (p. 22).

58. The Financial Action Task Force (FATF) has become an international policymaking body in the fight against money-laundering. FATF has developed a series of recommendations that are recognized as the international standard for combating money-laundering and the financing of terrorism, and conducts peer reviews of each member on an ongoing basis to assess their implementation. In February 2012, FATF adopted a new set of recommendations which will provide an opportunity to ensure that national legislation makes it more difficult to hide illicit money in secrecy jurisdictions. In October 2013 new FATF guidance on the due diligence requirements in relation to politically exposed persons was published, followed in 2014 by guidance on transparency and beneficial ownership to deter and prevent the misuse of corporate vehicles for money-laundering, terrorist financing, tax evasion or other illicit activities.

59. At the regional level in Africa, the African Union and the Economic Commission for Africa have been combating the flow of illicit funds. The High-Level Panel on Illicit Financial Flows was established in February 2012 to address the debilitating problem of illicit financial outflows from Africa. The Panel has carried out consultations, country visits and studies in six African countries. In its progress report, the Panel found “that in some African countries, the institutional architecture for responding to illicit financial flows was at best uneven or, as in several key instances, non-existent. Lack of transparency, secrecy and the difficulty of obtaining information and systematic data remain key challenges across the board” (E/ECA/CM/47/6, para. 20).[46]

60. In February 2013, the European Commission published proposals to amend the Anti-Money-Laundering Directive, clarifying the definition of “beneficial ownership” and providing more detail on customer due diligence requirements.[47] The new directive will for the first time oblige European Union member States to maintain central registers listing information on the ultimate beneficial owners of corporate and other legal entities, and trusts. The registers will not be public, but accessible to competent authorities and financial

[46] The final report of the High-Level Panel was released on 31 January 2015 after the present study was submitted by the Independent Expert for editing. It will be duly considered in the final study of the Independent Expert. See “Illicit Financial Flows: Report of the High Level Panel on Illicit Financial Flows from Africa” commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development, available from www.uneca.org/sites/default/files/publications/iff_main_report_english.pdf

[47] Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, COM(2013)45.

intelligence units and to people with a “legitimate interest”, such as investigative journalists and other citizens concerned. The aim is to enhance transparency, make “dodgy deals” harder to hide and fight money-laundering and tax crime.

V. Curbing illicit financial flows and the United Nations post-2015 development framework

61. IIFs were not explicitly addressed in the United Nations Millennium Development Goals, including Goal 8 on global partnership for development, covering foreign debt, trade and development cooperation. That neglect has been addressed by the report of the United Nations High-Level Panel of Eminent Persons on the post-2015 development agenda, published in May 2013, which recommended including a global target to “reduce illicit flows and tax evasion and increase stolen-asset recovery” in the future development goals.[48]

62. The report stated that “it is time for the international community to use new ways of working, to go beyond an aid agenda and put its own house in order: to implement a swift reduction in corruption, illicit financial flows, money-laundering, tax evasion, and hidden ownership of assets”. It underlined that developed countries “have special responsibilities in ensuring that there can be no safe haven for illicit capital and the proceeds of corruption and that multinational companies pay taxes fairly in the countries in which they operate” and noted that “developed countries could be more actively seizing and returning assets that may have been stolen, acquired corruptly, or transferred abroad illegally from developing countries”.[49]

63. Civil society organizations have also advocated for addressing the issue of illicit financial flows as part of the post-2015 development agenda. For example, the Center for Economic and Social Rights and Christian Aid proposed an explicit target for reducing illicit financial flows as part of the new sustainable development goals , to address cross-border tax evasion, return of stolen assets, odious debt and tax abuses.[50] They further noted that “People’s right to access detailed, reliable, periodic and disaggregated fiscal and financial information is strongly curtailed in many countries, especially the financial information necessary to root out illicit financial flows, curb corporate capture of development processes, and detect other tax abuses such as socially-useless tax expenditures. This fundamental vacuum in fiscal information compounds and reinforces the lack of effective, meaningful and institutionalized participation of the most disadvantaged social groups and countries in the design, implementation and monitoring of fiscal policy.”

64. The Independent Expert welcomes those and other initiatives that eventually ensured that the report of the Open Working Group of the General Assembly on Sustainable Development Goals, adopted on 19 July 2014, incorporated the issue of illicit financial flows under a proposed goal 16 to “promote peaceful and inclusive societies for sustainable development”. It proposed a specific goal (16.4) “to reduce significantly illicit financial and arms flows, strengthen recovery and return of stolen assets, and combat all forms of organized crime” by 2030.

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[48] Report of the High-Level Panel of Eminent Persons on the post-2015 development agenda, “A new global partnership: eradicate poverty and transform economies through sustainable development” (May 2013).

[49] Ibid., Executive summary, and pp. 10 and 55.

[50] Center for Economic and Social Rights and Christian Aid, “A post-2015 fiscal revolution: human rights policy brief” (May 2014).

65. The synthesis report of the Secretary-General on the post-2015 agenda, issued in December 2014, stressed that “access to fair justice systems, accountable institutions of democratic governance, measures to combat corruption and curb illicit financial flows and safeguards to protect personal security are integral to sustainable development”, thus embedding the fight against illicit financial flows and corruption in the core of human rights protection and good governance. He noted in the same paragraph that “an enabling environment under the rule of law must be secured for the free, active and meaningful engagement of civil society” and referred to “press freedom and access to information, freedom of expression, assembly and association” as “enablers of sustainable development” (A/69/700, para. 78).

66. The report of the Secretary-General confirms the view of the Independent Expert that curbing illicit financial flows is a human rights issue and closely interlinked with the protection and enjoyment of human rights and fundamental freedoms, transparency, the right to participation and access to information. The Independent Expert fully endorses the view of the Secretary-General that the implementation of the post-2015 development agenda, including efforts to curb illicit financial flows, “must ensure that all actions respect and advance human rights, in full coherence with international standards” (ibid., para 65), and recommends that such language should be explicitly included in the final set of sustainable development goals agreed upon by Member States.

67. In his report, the Secretary-General underlines that effectively addressing illicit flows is urgent and that more vigorous implementation of the Convention against Corruption is needed, as well as measures to overcome impediments to the return of stolen assets. He further suggests that Member States should consider measures to ensure information exchange, judicial cooperation and the establishment of an intergovernmental committee on tax cooperation, under the auspices of the United Nations (ibid., para. 115).

68. The Independent Expert welcomes those recommendations, which would contribute to more inclusive participation by all Members States, including least developed countries, in current efforts by the G8/G20 and OECD to reform international tax rules and shrink tax evasion globally.

69. The Independent Expert also notes some concerns. One of the main issues is to specify how progress to achieve the proposed target on curbing illicit financial flows can be measured and how accountability for their implementation can be ensured, in particular on a matter that requires concerted effort, both by countries of origin and destination and public and private stakeholders, including governments, business enterprises and the financial sector. He shares the view of the Secretary-General that the post-2015 development agenda should include strong inclusive public mechanisms at all levels for reporting, monitoring progress, learning lessons and ensuring mutual accountability (A/69/700, para. 60).

70. He is disappointed, however, at the lack of references by the Open Working Group to addressing tax evasion and tax havens, in particular, in the proposed goal 17 on strengthening the means of implementation and revitalizing the global partnership for sustainable development. For example, finance target 17.1 only addresses the issue of taxation in the context of improving developing countries’ capacity for tax and other revenue collection, but does not mention combating tax evasion. An earlier proposal on international tax evasion and avoidance by the High-Level Panel was not included in its outcome document, possibly representing a missed opportunity for developed and developing countries to address one of the most needed structural reforms.

71. To ensure that the sustainable development goal on curbing illicit financial flows will lead to policy action by countries of origin and destination and the private sector, progress needs to be tracked with suitable indicators, baselines and targets. GFI has

proposed that the sustainable development goal on illicit financial flows should incorporate the target to "reduce illicit financial flows from trade misinvoicing by 50 per cent", noting that the current proposal by the Open Working Group to "reduce significantly illicit financial flows" or to "strengthen recovery of stolen assets" leaves it very vague as to what each State or actor would have to achieve by 2030. GFI argued that selecting tax and trade-related illicit flows as a target would focus on the majority of illicit financial flows, could be measured using official government statistics, would complement transparency initiatives already under way, enhance domestic resource mobilization and tax revenue and ensure that a far larger amount of capital would remain in developing countries.[51]

72. Alex Cobham has suggested specifying three targets aimed at curbing illicit financial flows through enhanced transparency and exchange of tax information. His proposal is to:

(a) Reduce to zero the legal persons and arrangements for which beneficial ownership information is not publicly available, in order to eliminate the potential for anonymous ownership of companies, trusts and foundations;

(b) Reduce to zero the cross-border trade and investment relationships between jurisdictions where there is no bilateral automatic exchange of tax information, in order to prevent hiding of offshore assets and income streams;

(c) Reduce to zero the number of multinational businesses that do not report publicly on a country-by-country basis, in order to expose major misalignments between the distribution of profit and the location of real economic activity.

73. Cobham argued that the strength of such targets would be that data could be collected to highlight to what extent each jurisdiction had met its responsibilities, so that accountability for financial secrecy affecting others could be properly monitored and tracked over time against objective criteria rather than vague political promises.[52]

74. The Independent Expert is of the view that the targets and indicators suggested by GFI and Cobham would be essential to operationalize and track progress in implementing a rather unspecified inspirational goal of "reducing significantly illicit financial flows", that may easily fall victim to a lack of specification as to who should be responsible and held accountable for its implementation. However, such targets may need to be complemented by other indicators that would allow the tracking of progress in asset recovery efforts and the curbing of corruption and crime-related illicit financial flows.[53] Consideration should also be given to indicators that would ensure that human rights are fully integrated into national and international efforts to curb illicit financial flows. Therefore, additional targets relating to the protection of witnesses and whistleblowers, the implementation of due diligence procedures by financial business and service providers, and investigative and prosecutorial efforts in relation to tax evasion and corruption should be considered.

[51] Tom Cardamone and Dev Kar, "Benefits and costs of the IFF targets for the post-2015 Development Agenda", working paper (4 August 2014), available from www.copenhagenconsensus.com/sites/default/files/iff_perspective_-_cardamone_kar.pdf.

[52] Alex Cobham, "Benefits and costs of the IFF targets for the post-2015 development agenda" working paper (4 August 2014), available from www.copenhagenconsensus.com/sites/default/files/iff_assessment_-_cobham_0.pdf.

[53] Angela Me, "Benefits and costs of the IFF targets for the post-2015 development agenda", working paper (30 July 2014), available from www.copenhagenconsensus.com/sites/default/files/iff_viewpoint_-_me_0.pdf.

VI. Conclusion

75. **While crime, corruption, and tax evasion and abuse can contribute to illicit financial flows, all negatively affecting human rights in a number of ways, it has been estimated that the majority of all illicit financial flows are related to cross-border tax-related transactions. In developing countries, trade and transfer mispricing is the main vehicle for tax evasion or abuse and the financial crisis has focused attention in high-income countries on tax evasion and avoidance schemes of transnational corporations. Tax havens, secrecy jurisdictions and offshore financial centres greatly facilitate illicit flows. While more empirical research is needed, such quantitative aspects will be kept in mind when the final study, with a more holistic set of recommendations, is prepared and submitted to the Human Rights Council in March 2016.**

76. **Reiterating recommendations made by the former Independent Expert and by the Special Rapporteur on extreme poverty and human rights (A/HRC/25/52, para. 50; A/HRC/26/28, paras. 79–82) the Independent Expert would like to make the following recommendations as a timely contribution to current discussions on the post-2015 development goals of the United Nations. He would also like to draw his recommendations to the attention of the third International Conference on Financing for Development, to be held in Addis Ababa from 13 to 16 July 2015.**

77. **The Independent Expert recommends that States:**

(a) Include a goal to reduce illicit financial flows in the final set of sustainable development goals, anchoring that goal in the context of good governance, the rule of law, justice and the duty of States to respect, protect and fulfil human rights;

(b) Include in the final post-2015 development agenda explicit language specifying that States and other actors, when implementing the sustainable development goals, must ensure that human rights are respected and advanced in all measures and activities undertaken, in full compliance with international standards;

(c) Complement an overarching goal of reducing illicit financial flows with measurable targets and indicators to ensure accountability for implementation;

(d) Support empirical research on illicit financial flows, improve existing data and estimations, and agree on common methodology for the purpose of tracking progress in curbing illicit financial flows by 2030;

(e) Ensure that such indicators will include specified percentage targets to reduce trade- and tax-based illicit financial flows by 2030;

(f) Include in the measurement of progress three transparency targets aimed at reducing to zero:

(i) The number of legal persons and arrangements for which beneficial ownership information is not publicly available;

(ii) The number of cross-border trade and investment relationships between jurisdictions where there is no automatic exchange of tax information;

(iii) The number of transnational business corporations that do not report publicly on a country-by-country basis.

Those zero targets should be complemented by additional indicators tracking asset recovery efforts, curbing corruption and crime-based illicit financial flows; ensuring implementation of due diligence procedures by financial businesses and

service providers; strengthening the legal frameworks and practical arrangements for the protection of witnesses and whistleblowers; and enhancing investigative and prosecutorial efforts in relation to tax evasion and corruption in consonance with international human rights standards;

(g) Consider the establishment of an intergovernmental committee on tax cooperation, under the auspices of the United Nations, to ensure that all countries, including the least developed countries, will benefit from the emerging new system of automatic exchange of tax information and can fully participate in its further design and implementation.