Outcomes and Recommendations of the

SECOND AFRICAN FISCAL POLICY FORUM (Part One)

Curbing Illicit Financial Flows from Africa and Accelerating Asset Recovery for Sustainable Development

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Coalition for Dialogue on Africa
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Introduction

The African Fiscal Policy Forum is an initiative of the Coalition for Dialogue on Africa (CoDA) created to reclaim some of the shrinking policy space and attend to several specific matters pertaining to fiscal policy in a timely manner, using well researched and unified messages from the continent and by adequately positioning global south concerns in international fora. The first African Fiscal Policy Forum was held on 16 December 2021 in South Africa.

The Second African Fiscal Policy Forum (Part One) is organised at a time when African countries are faced with revenue challenges given the inability of their revenue-generating authorities to mobilise enough resources required for addressing development challenges. The revenue base of African countries is further hampered by illicit financial flows which is largely driven by the aggressive tax avoidance and base erosion strategies of multinational enterprises as well as the unduly lengthy process associated with the recovery of stolen assets stashed in foreign jurisdictions.

The G20/OECD Inclusive Framework Two-Pillar Solution designed to address the tax challenges arising from the digitalisation of the economy is considered not to be inclusive enough by developing countries. Developing countries have opposed some of the building blocks of the Two-Pillar Solution especially the in-scope and Amount A thresholds as well as the withdrawal of all national Digital Services Tax (DST). Recently, a United Nations resolution has called for inter-governmental solution to international taxation. The shift of international tax agenda-setting to the United Nations is expected to amplify the voices of developing countries and take their legitimate concerns into account even as developing countries have expressed willingness to make reasonable concessions around the taxing rights of source jurisdictions where consumers are located.

Also, the road to the recovery of stolen assets stashed in foreign jurisdictions remains long and complicated as seized/frozen assets are kept in foreign jurisdictions as opposed to demands that frozen assets be managed by development banks before final confiscation. Recently, some developed countries have disallowed public access to ultimate beneficial owners' register. Given that publicly available beneficial owners' register is critical for the tracking of illicit assets, the restriction of access to the register is a major set-back for the tracking and recovering of looted assets.

In order to comprehensively examine latest developments around illicit financial flows and recovery of stolen assets, the dialogue was composed of two sessions. The first session focused on curbing commercial illicit financial flows and more inclusive tax regime for Africa. The second session focused on the interventions required to accelerate stolen asset recovery. A research paper titled 'Illicit Financial Flows and Stolen Asset Recovery: The Global North Must Act' which analyses the origins and destinations of stolen assets was also presented.

Opening Session

Dr. Adeyemi Dipeolu- Alternate Chair of CoDA Technical Committee on Domestic Resource Mobilisation opened the forum and introduced the moderators and panelists. He presented the objectives and expected outputs from the Forum. H.E Dr. Maxwell Mkwezalamba- Former Minister of Finance, Republic of Malawi & Member of the CoDA Technical Committee on Domestic Resource Mobilization, closed the Forum.

Prof. Florens Luoga the Governor of the Bank of Tanzania delivered the opening statement. He noted that a number of African countries are making efforts at improving Domestic Resource Mobilisation but without effective control, those efforts will be undermined by illicit financial outflows. He observed that illicit financial flows are facilitated locally by legal and regulatory frameworks with inimical clauses.

Prof. Luoga advised African policy makers to think very fast and ensure that all commercial and economic sectors that are prone to abuse are regulated. Regulations must be well structured to ensure that necessary safeguards are created.

The technical discussion was organised as highlighted below:

Session 1: Curbing Commercial IFFs: Towards a Fairer Tax Regime for Africa

Moderator: Hon. Irene Ovonji-Odida - Member of the AU-High Level Panel on IFFs from Africa and UN Financial Accountability, Transparency and Integrity Panel (UN-FACTI)

Panellists:

- **Mr. Gamal Ibrahim** - Chief Economic Governance and Public Finance Section, Macroeconomics and Governance Division, UNECA
- **Mr. Alex Cobham** - Chief Executive, Tax Justice Network
- **Mr. Lameck Odada** – Economist, Namibia University of Science and Technology

Session 2: Interventions to Stimulate and Accelerate Stolen Asset Recovery: Towards an Enhanced Cooperation

Moderator: Barrister Akere Muna - Member of the AU-High Level Panel on IFFs from Africa and Co-Chair of the CAPAR Working Group

Presentation by: Mr. Abdul Muheet Chowdhary- South Centre

Panellists:

- **Mr. Mor Ndiaye -** Director General, Office National de Recouvrement d’Actifs Criminel, Senegal
- **Mr. Olivier Pognon -** Director and CEO, African Legal Support Facility (ALSF)

Key Outcomes and Recommendations

The following are key outcomes and recommendations from the forum:

1. Extractive industries constitute high risk for illicit financial flows. The regulations governing the extractive sector for the purpose of attracting foreign direct investment are usually relaxed and too generous. The investment incentives often give rise to unintended consequences as it has been established that unscrupulous investors abuse such rules and regulations. For instance, a regulation that provides for the permission to export minerals without impediment could limit the capacity of government to effectively audit operators in the industry thereby facilitating export product under-declaration and misclassification.

2. Tax incentives extended to multinational companies are capable of facilitating illicit financial flows as companies may be exempted from strict accounting rules and the disclosure of their financial accounts. Harmful and non-productivity enhancing tax incentives must be evaluated and rolled-back.

3. Multinational enterprises are culpable of generating false information in loan financing and aggressive thin capitalisation. It has been found that loans purportedly contracted by some companies are 'paper loans' for the purpose of reducing tax liability.

4. Financial institutions and insurance companies must be well regulated for the preservation of tax base. Some banks engage in aggressive tax planning thereby artificially increasing cost to income ratio to 70%. Also, artificial forex shortages are created through the banks as large companies sometimes demand for huge foreign currencies.

5. Some Double Taxation and Investment Agreements are not balanced, and are not well negotiated with inimical clauses. Such agreements should be re-negotiated as they are capable of facilitating illicit financial flows.

6. Although developed and African countries are vulnerable to IFFs, African countries are disproportionately affected by illicit outflows. Illicit financial outflows from some African countries are as high as budgetary appropriations for the health sector. However, for developed countries it could be as low as 3% of appropriations for the same sector.

7. The African Group was commended for initiating a United Nations led international tax convention. Other continental regions were encouraged to put their weight behind the resolution for a more transparent and inclusive international tax negotiation.

8. The process of asset recovery to legitimate owners is lengthy and complex. The government agencies and investigators saddled with the responsibility of recovering looted assets must understand the problem statement. Governments must develop appropriate capacity building strategies to improve the capacity of officials in the area of intelligence gathering as well as rigorous analysis of scientific and financial data.

9. For the purpose of confidence building and the strengthening of international cooperation, African governments must respect the principles of asset recovery by ensuring that recovered assets are rightly invested and not re-looted.
10. The extractive sector, public procurement and public-private partnership arrangements are very vulnerable to IFFs. Therefore, appropriate laws and regulations must be designed to limit illicit tendencies. Investment agreements are extremely comprehensive. Negotiators should dedicate time and special attention to all the provisions in every document before entering into agreement.
11. The Regional Economic Communities facilitate trade by the free movement of people, goods, services and capital. Customs Service officials of African countries must be trained and alert to cross-border money laundering.
12. Financial institutions have an obligation to alert relevant agencies of suspicious transactions and generate suspicious transactions reports to national Financial Intelligence Units. National laws must require banks to adopt strict Know Your Customer (KYC) rules for real estate companies and travel agencies as well as other high-risk arrangements that are specific to African countries based on the uniqueness and realities of different countries.
13. African countries are encouraged to deepen experience sharing efforts and mechanisms for the purpose of peer learning and the understanding of new risks of illicit financial flows.
14. Contribution was focused on the need to strengthen international cooperation in the recovery of criminal assets.
15. States are called upon to implement the relevant United Nations conventions, in particular the Merida Convention and the Convention on the fight against transnational organised crime. States are also called upon to comply with the Financial Action Task Force (FATF) standards.
16. Furthermore, it is strongly recommended that countries create specialised bodies in charge of the management of seized or confiscated assets and their recovery. In this respect, ONRAC which is set up by the Government of Senegal is a good example. In its missions and structure, and within the framework of international cooperation, institutions such as this can ensure the management of seized and confiscated assets located in Senegal on behalf of foreign countries. In the same vein, within the framework of the fight against financial flows, ONRAC, if necessary, can receive the assets to be repatriated to Senegal when they are the object, the instrument, the direct and indirect product of financial offences.

Conclusion

Illicit financial flows are structured to be hidden. The research paper that was presented clearly shows that looted assets from Africa more often than not end up in Western countries. Participants encouraged the West to adopt all the Asset Recovery (Article 5) principles and provisions enshrined in the United Nations Convention Against Corruption (UNCAC). The elimination of Illicit financial flows which deprives countries of economic growth and development is contingent on the decision of destination countries to expose perpetrators of the crime.

Open and frank discussions are required in order to devise strategies aimed at curbing illicit outflows. The Executive Director of CoDA- Ms Souad Aden-Osman, stated that Africa has a position on IFFs. The decision of the African Union Commission (AUC) and the AU-High Level Panel on IFFs from Africa chaired by President Thabo Mbeki are the main instrument and vehicle for addressing IFFs from the Continent. Additionally, African Ministers of Finance, Planning and Economic Development have also endorsed the decision of the AU-HLP.

Participants expressed the need for co-operation and coordination between all the stakeholders in the fight against illicit outflows.