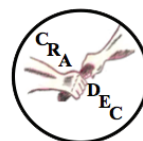




# Accelerating the IFF Agenda for African Countries



January 2017



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**Global Financial Integrity**

**TrustAfrica**

**Tax Justice Network-Africa (TJN-A)**

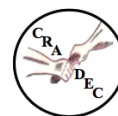
**Pan African Lawyers' Union (PALU)**

**Centre Régional Africain pour le Développement Endogène  
et Communautaire (CRADEC)**

**Civil Society Legislative Center (CISLAC)**

January 2017

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# Introduction

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Illicit financial flows (IFFs) are a large and growing problem for the African continent, with upwards of \$70 billion in IFFs leaving the continent annually.<sup>1</sup> African governments, intergovernmental organizations, industry, and civil society have come to understand the severity of the problem over the past few years.

The following list of actions are meant to address some of the first steps in addressing IFFs. These actions are foundational, involving measures that can either be undertaken more quickly and easily in some countries where some of the processes and commitments may already be underway or measures that lay the groundwork for later reforms. **The result is an *Accelerated IFF Agenda* that governments can use as a place to begin their work to tackle IFFs in their own countries, leading to greater domestic resource mobilization and growth, resources which will be critical in making progress on the Sustainable Development Goals of the 2030 Agenda for Sustainable Development, and the African Union's Agenda 2063, the Addis Tax Initiative, and the Africa Mining Vision.**

In considering the items on the Accelerated IFF Agenda, it is important to remember two things. The first is that **this should not be seen as an all-or-nothing agenda**. Each of these measures is important in its own right and can be implemented independently of others, and governments may want to consider ways to phase in certain actions. For example, requiring country-by-country reporting of all multinational companies operating in the country is one option, but a government could instead require it only of companies operating in the extractive industries or in construction. Second, **public involvement in helping achieve many of these aims can be of great benefit**. For example, a team of computer science students at a university might be able to assist in the creation of an online registry for corporations. Civil society organizations, academics, the country's youth, and other parts of society want to help tackle IFFs for the good of their countries and their futures. Working with them can multiply the effectiveness of many of the government's efforts, as well as building confidence with donors, investors, and citizens.

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<sup>1</sup> Dev Kar & Joseph Spanjers, *Global Financial Integrity, Illicit Financial Flows from Developing Countries: 2004-2013*, at vii, Dec. 2015, [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).



# The Accelerated IFF Agenda

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Below is a list of fourteen measures governments can take in the immediate term to catalyze their efforts to combat IFFs. Brief explanations of each measure are included in the pages that follow.

## Create Governmental IFF Policy

1. **Establish Multi-Agency Units within Governments to Address IFFs**
2. **Include IFF Accountability within the African Peer Review Mechanism and Open Government Partnership Commitments**

## Promote Financial Transparency

3. **Establish or Enhance Online Corporate Registries, Make Information Publicly Available, and Require Beneficial Ownership Information as Part of the Registration Process**
4. **Adopt the Open Contracting Data Standard**
5. **Require Disclosure of Beneficial Ownership Information from all Government Contract Bidders**
6. **Require Disclosure of Beneficial Ownership Information in Political Asset Declarations**
7. **Establish Government/Independent Measurement Mechanisms for Extracted Natural Resources**

## Increase Enforcement Efforts and Powers

8. **Adopt a Law Clearly Prohibiting Trade Misinvoicing**
9. **Establish Specialized Asset Forfeiture and Recovery Units and/or Advocate for the Creation of a Special Office of Asset Recovery within the African Union**

## Tackle Tax Evasion and Avoidance

10. **Join African Tax Information Sharing Networks**
11. **Establish Transfer Pricing Units within Tax Authorities**
12. **Require Public Country-by-Country Reporting by Multinationals**

## Prevent Financial Crime

13. **Mandate Rigorous Customer Due Diligence and Suspicious Activity Reporting Programs within Banks**
14. **Empower Strong and Effective Financial Intelligence Units (and create them if not yet established)**

Several of the actions identified above require that certain information be made available to the public. Countries may also want to consider adopting a more wide-ranging law, regulation or policy that provides the public with greater access to government information and data, often called freedom of information provisions.





# Additional Detail for Accelerating the IFF Agenda for African Countries

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## Create Governmental IFF Policy

### 1. Establish Multi-Agency Units within Governments to Address IFFs

IFFs affect all aspects of a country's economy, therefore approaches to curtailing IFFs must include agencies from across government, enabling agencies to come together to coordinate and to develop policy. Governments should consider establishing multi-agency units that include officials from various ministries or departments who specialize in:

- Financial intelligence and bank supervision
- Import administration
- Export administration
- Transfer pricing
- Income tax
- Natural resource exploitation
- National criminal investigations
- National criminal prosecutions
- Anti-corruption

To ensure that these multi-agency units can function effectively, countries should ensure that laws are in place to allow officials from different agencies to share information within these multi-agency units. Some African countries have begun to establish multi-agency units, but they are often more narrowly focused on, for example, corruption or 'illicit finance' as described in the US-Africa Partnership on Illicit Finance. While we welcome the initiative to build on these existing multi-agency endeavors, we believe it is imperative that the scope of work for the units be broad enough to encompass the entirety of the IFF challenge.

### 2. Include IFF Accountability within the African Peer Review Mechanism and Open Government Partnership Commitments

Countries should call on the African Union to include IFF-related questions on the African Peer Review Mechanism questionnaire. As a starting point, questions on this questionnaire could address each of the policy areas recommended in this document. In addition, African countries that are part of the Open Government Partnership (OGP) should include in their OGP National Action Plans commitments to carry out the action items identified in this document.

*This action would implement previous recommendations made by the **UN Economic Commission for Africa's High Level Panel on Illicit Financial Flows from Africa**,<sup>2</sup> which were endorsed by the **African Union** in January 2015.<sup>3</sup> The High Level Panel on Illicit Financial Flows from Africa is now a joint initiative of the African Union and the UN Economic Commission for Africa.*

## **Promote Financial Transparency**

### **3. Establish or Enhance Online Corporate Registries, Make Information Publicly Available, and Require Beneficial Ownership Information as Part of the Registration Process**

Countries could look to legislation and regulation from early adopters like the United Kingdom and the Ukraine for models on how to implement these measures. In addition, a number of other countries have committed to establishing public registers or exploring their establishment and may soon have legislation that could be referenced in developing domestic measures. These countries include Bulgaria, France, Ghana, Indonesia, Jordan, Kenya, Netherlands, New Zealand, and Nigeria.

*This action would implement previous recommendations made by the **UN Economic Commission for Africa's High Level Panel on Illicit Financial Flows from Africa**, and the Human Rights Development Initiative,<sup>4</sup> which was appointed by the **African Union's** African Commission on Human & Peoples' Rights to conduct a study on the human rights implications of IFFs.<sup>5</sup>*

### **4. Adopt the Open Contracting Data Standard**

The Open Contracting Data Standard (OCDS) is a common data model that establishes a framework to enable governments to publish shareable, reusable, and machine-readable procurement data that is publicly accessible. While many countries have started to publish PDFs of procurement contracts, information provided in PDF form is of extremely limited utility. Adoption of a global data standard like the OCDS is not just an exercise in publishing procurement information. It enables governments to conduct assessments on the fitness of their procurement systems by examining the experiences and outcomes of other countries using the same standard. In addition, the OCDS is a mature standard, offering practical tools, expertise, and support to assist governments in adoption of the standard.

The Contracting 5—Colombia, France, Mexico, Ukraine, and the UK—are implementing the OCDS, and Cote d'Ivoire, Ghana, Kenya, Malawi, Nigeria, Sierra Leone, and Tunisia have included open contracting in their National Action Plans for the Open Government Partnership. Uganda developed an open contracting platform, the Government Procurement Portal (GPP), and continues to work to improve the system.

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<sup>2</sup> See High Level Panel on Illicit Financial Flows in Africa, Track it! Stop it! Get it! Illicit Financial Flows: Report of the High Level Panel on Illicit Financial Flows from Africa, at 84, 2015 [hereinafter "HLP Report on IFFs"], available at [http://www.uneca.org/sites/default/files/PublicationFiles/iff\\_main\\_report\\_26feb\\_en.pdf](http://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf)

<sup>3</sup> African Union, Assembly Special Declaration on Illicit Financial Flows, Doc. Assembly/AU/17(XXIV), at para. 1, Jan. 31, 2015, available at [http://www.au.int/en/sites/default/files/documents/29831-doc-assembly\\_declaration\\_on\\_illicit\\_financial\\_flow\\_-\\_english.pdf](http://www.au.int/en/sites/default/files/documents/29831-doc-assembly_declaration_on_illicit_financial_flow_-_english.pdf).

<sup>4</sup> See HLP Report on IFFs, see supra note 2, at 81; and Human Rights Research Initiative, A Study by the Human Rights Development Initiative on The Human Rights Impact of and Human Rights-Based Solutions to Illicit Financial Flows from Africa, at 41, Dec. 10, 2015 [hereinafter "HRDI Study on Human Rights and IFFs"], available at <http://www.hrdi.org.za/publications/i%20Human%20Rights%20Impact%20of%20and%20Human%20Rights%20Based%20Solutions%20to%20IFF%20in%20Africa.pdf>.

<sup>5</sup> African Commission on Human & Peoples' Rights, African Union, Appointment of HRDI as Secretariat of the ACHPR Study on Human Rights Implications of Illicit Capital Flight in Africa, ACHPR/SM/El/649/14, May 5, 2014, available at <http://www.hrdi.org.za/publications/ACHPR%20Appointment%20of%20HRDI%20as%20Secretariat%20for%20IFF%20Study.pdf>.

*This action would implement previous recommendations on open contracting and open spending made by the **UN Economic Commission for Africa's High Level Panel on Illicit Financial Flows from Africa**, and the **Pan African Lawyers' Union**.<sup>6</sup>*

#### **5. Require Disclosure of Beneficial Ownership Information from all Government Contract Bidders**

Currently, the Open Data Contracting Standard does not collect information on beneficial ownership. To fill this gap, countries should require beneficial ownership disclosures for all bidders for and recipients of government contracts to help prevent sham bidding, bidding by persons barred from government procurement for past actions, and other forms of corruption in bidding processes. Such policies are already in place in Slovakia and could serve as a study for countries wishing to implement this recommendation.

*This action would implement previous recommendations made by the **UN Economic Commission for Africa's High Level Panel on Illicit Financial Flows from Africa**.<sup>7</sup>*

#### **6. Require Disclosure of Beneficial Ownership Information in Political Asset Declarations**

Conflicts of interest may not be readily identifiable in asset declarations unless the beneficial owners of the entities included are known. Adding this detail to the asset declaration requirements can help identify where potential conflicts may arise in the individual's political work. The Ukraine has passed legislation requiring the inclusion of beneficial ownership of property information on its asset declarations, and Liberia has included making use of beneficial ownership information on asset declarations an element of its National Action Plan for the US-Africa Partnership on Illicit Finance.

#### **7. Establish Government/Independent Measurement Mechanisms for Extracted Natural Resources**

Governments should independently determine or verify the actual volume of natural resources being extracted from the ground by mining and oil companies and not just rely on the volumes reported by the companies. Without independent verification of the volume of natural resources being extracted, it is impossible to determine if companies have in fact paid the correct amount to the government under their extraction contracts.

Zambia has implemented the Mineral Value Chain Monitoring Project (MCVMP), which aims to independently monitor and facilitate the exploration and exploitation of mining and mineral value chains in the country. International support has contributed to the MCVMP effort in Zambia, including the Government of Norway, the European Union, and the Public Finance Management Reform programme.<sup>8</sup> Where the African Mining Vision and/or the African Mineral Governance

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<sup>6</sup> HLP Report on IFFs, see supra note 2, at 83 (open budgets, open contracting); Pan African Lawyers' Union and Friends of PALU, Yaoundé Declaration on Combatting Illicit Financial Flows from Africa, at para. 27, June 7, 2014 (open spending) [hereinafter "PALU Yaoundé Declaration"], available at <http://lawyersofafrica.org/wp-content/uploads/2014/06/PALU-Illicit-Financial-Flows-Communique.pdf>.

<sup>7</sup> HLP Report on IFFs, see supra note 2, at 81.

<sup>8</sup> Mineral Value Chain Monitoring Project, Monitoring Mining and Mineral Value Chain from exploration to exportation, Apr. 26, 2016, <http://www.mvc.org.zm/?p=95>.

Framework call for similar verification of the volume of minerals extracted, this action item could be implemented through those initiatives. This action builds on the strength of the OCDS and the Extractive Industries Transparency Initiative (EITI), which track agreements and payments between governments and companies.

## **Increase Enforcement Efforts and Powers**

### **8. Adopt a Law Clearly Prohibiting Trade Misinvoicing**

Trade misinvoicing is the manipulation of the price, value, or quantity of a good on an international invoice in order to avoid taxes, move money, or evade capital controls. Of measurable IFFs, trade misinvoicing has historically represented and continues to represent the largest portion of IFFs. Though trade misinvoicing is a relatively simple technique to use, it is exceedingly difficult for government officials to identify. Moreover, the widespread, routine, and customary nature of its use makes enacting a law prohibiting the conduct essential in order to put business persons on notice and to empower prosecutors to prosecute the conduct when it is identified.

#### **Example of a model law criminalizing trade misinvoicing:**

Whoever, in relation to the importation or exportation of goods or in relation to the trade in services or intangible property, deliberately misstates, manipulates, falsifies, or omits a price, quantity, volume, grade, or other material aspect of an invoice for the purpose of (i) evading or avoiding VAT taxes, customs duties, income taxes, or any other form of tax or revenue collected by the Government; (ii) obtaining a tax benefit, export subsidy, or other benefit provided by the Government; or (iii) evading or avoiding [capital or foreign exchange controls]; shall be subject to a civil or criminal fine of up to [specific amount] [or imprisoned for up to [x] year[s], or both].

*This action would implement previous recommendations made by the **UN Economic Commission for Africa's High Level Panel on Illicit Financial Flows from Africa**.<sup>9</sup>*

### **9. Establish Specialized Asset Forfeiture and Recovery Units and/or Advocate for the Creation of a Special Office of Asset Recovery within the African Union**

Asset forfeiture and recovery efforts deprive all types of criminals of the proceeds of their crime, providing powerful disincentives for crime in the first place. However, in order to be effective disincentives, these efforts must be consistent and efficient. Because they involve funds found in other jurisdictions, asset recovery efforts require specialized knowledge of foreign legal systems and mutual legal assistance treaties. Establishing units specializing in asset forfeiture and recovery ensures that all criminals face the potential for the loss of their criminal proceeds and improves the odds of a country recovering the funds because of the increased capacity and expertise that these units develop over time.

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<sup>9</sup> HLP Report on IFFs, see *supra* note 2, at 80.

Another approach would be to advocate for the creation of a special office of asset recovery within the African Union. This office could assist and facilitate asset repatriation requests among states, including the maintenance of a public list of funds requested for return and the status of such requests. Taking this approach could contribute to the implementation of the recommendation by the **UN Economic Commission for Africa's High Level Panel on Illicit Financial Flows from Africa** for the African Union to lead an effort to establish a global governance framework for asset freezing and repatriation.<sup>10</sup> The African Development Bank has also committed to supporting a regional network on recovery of stolen assets in its recently adopted Bank Group Policy on the Prevention of Illicit Financial Flows. In addition, collaborative asset recovery approaches already exist. For example, Asset Recovery Inter-Agency Networks (ARIN) have been initiated in Southern Africa, East Africa, and West Africa.

## **Tackle Tax Evasion and Avoidance**

### **10. Join African Tax Information Sharing Networks**

Several African countries have signed up to the OECD-led Common Reporting Standard (CRS) for the international exchange of information about bank accounts held by citizens abroad in an effort to capture lost tax revenue. Access to this information is critical in identifying and pursuing cases of individual tax evasion because without the information provided by the foreign countries, the home country has no way of knowing which citizens hold taxable bank accounts abroad and must instead rely upon self-reporting by individuals.

However, some African countries may have difficulty initially accessing the broader international system for automatic exchange of tax information because of how the system has been set up (with little input from developing countries). Despite this, the international framework could readily be adapted to establish exchange arrangements among developing countries, especially within regions. In fact, the African Tax Administration Forum (ATAF) is currently engaged in a pilot program facilitating automatic exchange of tax information among a number of African countries. In addition to enabling African countries to get this critical information sooner than may be available from developed countries, it offers countries the opportunity to demonstrate capacity to perform within these arrangements, making the country a more attractive potential exchange partner for developed countries down the line.

### **11. Establish Transfer Pricing Units within Tax Authorities**

Financial arrangements within corporate groups or among related entities are nearly impossible to observe from the outside and consequently are of high risk for manipulation. For this reason, transactions among these parties, referred to as transfer pricing, warrant special attention. Given the complexity of these arrangements and transactions, it has been found that forming units with highly trained officials to monitor these types of transactions yields the most consistent and effective results for tax administrations.

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<sup>10</sup> HLP Report on IFFs, see *supra* note 2, at 86.

*This action would implement previous recommendations made by the **UN Economic Commission for Africa's High Level Panel on Illicit Financial Flows from Africa**, and the **Human Rights Development Initiative**.<sup>11</sup>*

## **12. Require Public Country-by-Country Reporting by Multinationals**

Public country-by-country reporting (CBCR) helps identify where transfer pricing investigations should focus. By requiring companies to provide basic financial information for entire corporate groups, disaggregated by country, tax administrations are better able to identify the risk of potential transfer pricing abuse and even identify jurisdictions of concern to help establish more sensitive risk management frameworks within tax administrations.

African countries should require foreign multinational corporations (MNCs) operating in their country to provide their country-by-country reports with their local tax returns and encourage those MNCs to make the information publicly available. Further, African countries should require MNCs headquartered in their country to prepare and publish country-by-country reports.

*This action would implement previous recommendations made by the **UN Economic Commission for Africa's High Level Panel on Illicit Financial Flows from Africa**.<sup>12</sup>*

## **Prevent Financial Crime**

### **13. Mandate Rigorous Customer Due Diligence and Suspicious Activity Reporting Programs within Banks**

The Financial Action Task Force (FATF) has set the international standards for customer due diligence and suspicious activity reporting in their FATF Recommendations 2012 standard, Recommendations 10 and 20, respectively.<sup>13</sup> Countries can look to their FATF-Style Regional Body (FSRB) for assistance in implementing and strengthening their laws and regulations in this area.

*This action would implement previous recommendations made by the **UN Economic Commission for Africa's High Level Panel on Illicit Financial Flows from Africa**, and the **Human Rights Development Initiative**.<sup>14</sup>*

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<sup>11</sup> HLP Report on IFFs, see supra note 2, at 80; HRDI Study on Human Rights and IFFs, see supra note 4, at 40.

<sup>12</sup> HLP Report on IFFs, see supra note 2, at 81.

<sup>13</sup> Financial Action Task Force, The FATF Recommendations, 2012, available at <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>.

<sup>14</sup> HLP Report on IFFs, see supra note 2, at 82; HRDI Study on Human Rights and IFFs, see supra note 4, at 41.

#### **14. Empower Strong and Effective Financial Intelligence Units (and create them if not yet established)**

Financial intelligence units (FIUs) are bodies that collect and, if given the power, coordinate intelligence on financial crime that results in IFFs. Creating FIUs where none exist, and giving them strong powers of coordination and information collation from different arms of government (possibly in a lead role in a Multi-Agency IFF Unit (see point 1 above)), is critical to organizing and operationalizing counter-IFF measures. Additionally, connecting to the international network of FIUs, the Egmont Group, can help facilitate cooperation among FIUs of different countries. While most African countries do have FIUs, only twenty-two African countries have FIUs that are members of the Egmont Group.





# About

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This document is the result of consultations among experts on various elements of illicit financial flows, including:

- **Raymond Baker** – Global Financial Integrity, Washington, D.C., USA
- **Jason Braganza** – Tax Justice Network-Africa (TJN-A), Nairobi, Kenya
- **Liz Confalone** – Global Financial Integrity, Washington, D.C., USA
- **Donald Deya** – Pan African Lawyers' Union (PALU), Arusha, Tanzania
- **Donald Ideh** – TrustAfrica, Abuja, Nigeria
- **Heather Lowe** – Global Financial Integrity, Washington, D.C., USA
- **Jean Mballa Mballa** – Centre Régional Africain pour le Développement Endogène et Communautaire (CRADEC), Yaoundé, Cameroon
- **Auwal Ibrahim Musa (Rafsanjani)** – Civil Society Legislative Center (CISLAC), Abuja, Nigeria
- **Crystal Simeoni** – Tax Justice Network-Africa (TJN-A), Nairobi, Kenya

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