Introduction to Symposium on Illicit Financial Flows and Sustainable Development in Africa

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Despite some progress, the African continent is on the brink of a sustainable financing precipice due to the alarming rate of Illicit Financial Flows (IFFs) from the region. The United Nations Conference on Trade and Development (UNCTAD) estimates that IFFs from Africa amount to $86.6 billion annually, which represents about 3.7% of the continent's total Gross Domestic Product (GDP). Simultaneously, Africa urgently requires at least USD 1.6 trillion to achieve sustainable development by 2030. Both Target 16.4 of the Sustainable Development Goal (SDG) and the Addis Ababa Action Agenda on financing for development underscore the impact and risk of IFFs, calling for concerted efforts to mitigate them.

IFFs undermine Africa's efforts at domestic revenue mobilization (DRM) and sustainable development aspirations. IFFs can arise from tax and commercial

practices, illegal markets, theft-related and terrorism financing, and corruption. They are multidimensional and transnational, affecting both Global North and Global South countries. However, the consequences are more dire for Global South countries, particularly African countries. IFFs represent a space where economic resources, in the form of tax revenue owed to these countries, are withheld due to corporate and criminal legal structures facilitating the circumvention of national laws.

However, the implications of IFFs and their intersection with sustainable development, sovereign debt, debt management and cost of capital are understudied. Against this backdrop, this symposium brings together scholars, and policy makers to reflect upon various dimensions of IFFs in Africa including potential role of an international anti-corruption court.

Contributors to the symposium offer unique perspectives and draw on different theoretical and methodological approaches to the practice and scholarship related to IFFs in African states and beyond. Several themes were addressed by the contributors, including *tax justice, technology, corruption, accountability, political will, repatriation, recovery of Assets, migration, whistleblowing, international investment, and real estate*.

The first topic was tax justice. Six contributors explore this issue, examining the impact of new technologies on IFFs and the activities of multinational corporations. ***Lyla Latif***, for instance, investigates how the 'ambiguity and fluidity in cloud computing services present opportunities' for multinationals to evade taxes and manipulate transfer prices. She contends that 'African countries are at risk of IFFs enabled by transfer pricing manipulation in the cloud computing sector due to tax rate differentials within the continent and at a global level.' Consequently, she recommends advanced audit capabilities within tax authorities across Africa to scrutinize intricate cross-border cloud computing transactions and identify abusive profit-shifting arrangements. Similarly, ***Emmanuel Onyeabor*** explores the taxation of cryptocurrencies, NFTs, and other digital assets, emphasizing that 'IFFs have now been complicated by the movement of funds in cryptocurrencies and other digital assets, which are difficult to track due to their anonymous nature.' He cautions that 'international tax cooperation amongst African countries alone cannot be effective in this digital age because governments can only share tax and

financial information to which they have access.' Therefore, he calls for cooperation between African countries and developed nations. Regarding the tax activities of Multinationals, ***Marie Louise F. Aren*** questions the limited conceptual framing of IFFs. She contends that aggressive tax practices by corporations, in the form of international tax evasion and tax avoidance, severely impact Africa's revenue mobilization for development, and recommends expanding the definition of IFF to include such practices. She further recommends that 'loopholes in tax treaties, tax and trade mispricing, and preferential tax jurisdictions' should be urgently addressed. ***Oladiwura Eyitayo-Oyesode***, on the other hand, advocates for effective and equitable tax rules to ensure that multinational corporations pay equitable taxes in jurisdictions where they engage in economic activities. She urges African countries to proactively address existing loopholes, especially regarding digital services, by re-evaluating current taxation laws based on physical presence. ***Opeyemi Bello*** introduces the nuanced concept of 'potential abusive tax avoidance (PATA)' as a tool to curb IFFs. He suggests that the examination of whether a proposed framework would facilitate IFFs in Africa should not wait until it is executed and implemented before inquiries regarding its IFFs' potential can begin. He proposes PATA as a handy toolkit to examine tax rules and provide guidance on how states can use it. Finally, ***Magalie Masamba*** investigates the impact of IFFs on unsustainable debt burdens in Africa and calls for tax and debt justice. Masamba recommends enhancing tax systems and policies by expanding the tax base and minimizing tax evasion, arguing that addressing the problem of IFFs requires a comprehensive strategy involving international collaboration, legislative overhauls, and bolstering institutions.

In the second theme, contributors explored the intersections of corruption, accountability, and political will. ***Dunia P. Zongwe*** suggests that policymakers and lawmakers should incorporate a 'duty to revolt (R2R)' against state-sponsored illicit financial flows (SIFFs) into their national constitutions. This duty would compel African countries to address endemic corruption. His arguments are rooted in the fact that SIFFs constitute state complicity in graft, which utilizes legitimate channels to systematically extract and launder assets abroad. He cited the activities of Ali Bongo, the former Gabonese president, as a good situation where the R2R may work. ***Ashimizo Afamdameh***, on the

other hand, addresses corruption by proposing the use of amnesty in the ‘recovery of assets.’ He argues that this option is pragmatic given the peculiarities of the African political class. As a corollary to the amnesty program, he further recommends the adoption of restitution as a strategy to ‘claw back as much stolen assets that are recoverable,’ with the proceeds reinvested in a sovereign fund to support development financing. Finally, ***Najjuko Joanita*** emphasizes the role of political will and holding corporate power accountable in combating IFFs. She argues that accountability and a robust global financial system, based on a human rights framework, are essential to stopping the massive drain of public resources and contributing to ensuring a just distribution of wealth and power.

The third theme was about IFFs and climate finance. Two authors addressed this issue. ***Florence Shako*** argues that the question of financial integrity should be incorporated into climate transition endeavours. While acknowledging the urgency and importance of climate finance, she argues that it should be executed with integrity, which entails tax transparency, fiscal transparency, procurement and contract transparency, and beneficial ownership transparency. On the other hand, ***Miracle Okoro*** examines how IFFs threaten the realization of the Just Energy Transition in Africa and erode investors' confidence. Okoro calls on developing countries to tighten their legal systems in retaining capital and limiting the illicit exportation of capital toward realizing the Just Energy Transition.

The fourth set of contributors explores the repatriation and recovery of assets, as well as holding developed countries accountable. Regarding asset repatriation, ***Damilola Awotula*** reviews the recommendations of the High-Level Panel on International Financial Accountability, Transparency, and Integrity for Achieving the 2030 Agenda (FACTI Panel). He highlights two recommendations: the creation of a voluntary multilateral mediation mechanism to help states fairly resolve difficulties in asset recovery and return, and the use of escrow accounts for frozen/seized accounts until their return. He argues that if this mediation mechanism is effectively operationalized, it would be immensely advantageous to African states, potentially lowering administrative fees and mitigating inflationary impacts. However, he raises concerns about the recommendations, noting that the mechanism being voluntary might be subject to the political will of returning states, and the

transfer process could face unjustifiable terms and conditions that might defeat the overall goal. ***Michelle Gallant*** brings a unique lens to this issue. She questions the recent listing of South Africa on the Financial Action Task Force (FATF)'s grey list. She argues that, since the grey list's inception, it has been populated by non-Western, less-developed countries and subjecting them to increased monitoring regarding money laundering, terrorist financing, and proliferation financing. She specifically points out that the Task Force has never called out European countries, nor America, Canada, Australia, Japan, or others for their money laundering misdeeds. Therefore, she recommends that African countries should consider authoring their grey and blacklists.

The fifth set of contributions centred on international investment law and the real estate sector. In this regard, ***Olufunmilola Olabode*** examines the role of inequitable bilateral and multilateral investment treaties in facilitating IFFs. Olabode argues that these treaties 'restrict the power of developing countries to tax' and 'collect other forms of revenues from multinational enterprises and individuals from countries with which they are signed.' Olabode recommends that Regional Economic Communities (RECs) adopt common policies related to punishable measures on money laundering by foreign investors and establish a common position on reporting by multinational enterprises (MNEs) to promote transparency. The other contributor ***Irene Kariuki*** addresses the vulnerability of the real estate sector to IFFs, highlighting that the sector creates opportunities 'to launder and move large amounts of money in single transactions' and that the 'subject property can be used as a source of supposedly 'clean' income through further transactions such as leasing the properties out.' Kariuki calls on African governments to 'implement comprehensive anti-money laundering laws that specifically address the real estate sector.'

The sixth set of contributors examines issues of whistleblowing and migrants' rights. ***Fola Adeleke***, for instance, discusses the importance of whistleblowers in curbing IFFs, including asset recovery. He reviews the whistleblowing policies and laws of Nigeria, Kenya, and South Africa, advocating for a more prominent role for whistleblowers, 'especially as the global digital economy and stronger privacy-enhancing technologies make the detection of IFFs harder.' ***Luwam Dirar***, on the other hand, argues that 'contemporary development studies fail to recognize the relationship between IFFs and migrants' right to development'

and provides an ‘early-stage critical theorization and a call to action for scholars to theorize the relationship between IFFs and migrant rights to development.’ He contends that this would require ‘understanding the impact of IFFs on migrants' right to development and looking at migrants beyond a source of remittances or human trafficking proceeds.’ The final post by ***Robert J Currie***, reflects on the possibility of the proposed International Anti-Corruption Court as an avenue for addressing corruption and IFFs.

The key insight from this symposium is that it would require strategic cooperation at the global, regional, and national levels to stem the tide of IFFs in Africa, which should be guided by the principles of fairness, equity, and justice. This may require amending tax rules, checkmating inequitable investment treaties, protecting whistle-blowers, empowering citizens to hold their political leaders accountable, expanding the definition of IFFs to include aggressive transfer pricing practices, making the FATF’s grey or blacklist inclusive and also the possibility of a role for the proposed International Anti-Corruption Court. It may also necessitate creating specialized agencies and providing consistent pieces of training to staff, granting amnesty to people who volunteer, deploying technology when necessary, considering migrant rights, and ring-fencing vulnerable sectors like the real estate business. These suggestions indicate that it is feasible to curb the prevalence of IFFs in Africa. However, achieving this goal would necessitate a sense of community and solidarity among stakeholders for the overall development of the African continent.

Contributors:

Olabisi D. Akinkugbe and Morris Odeh: Symposium Introduction - Illicit Financial Flows (IFFs) and Sustainable Development in Africa

Olufunmilola Olabode: Illicit Financial Flows: An Impediment to Africa's Sustainable Development

Fola Adeleke: Piercing the Veil of Secrecy in Illicit Financial Flows

Magalie Masamba: Investigating the Impact of Illicit Financial Flows on Unsustainable Debt Burdens in Africa and the Quest for Tax and Debt Justice

Marie-Louise F. Aren: Perpetual Financial Drain: Assessing the Effect of Abusive Corporate Tax Practices in Exacerbating Africa's Illicit Financial Flows, Debt Burden, and Under-development

Lyla Latif: The Evolving Landscape of Illicit Financial Flows: Transfer Pricing in the Age of Cloud Computing

Oladiwura Eyitayo-Oyesode: Bridging Tax Treaty Gaps for SDG Success: Unraveling the Impact of Illicit Financial Flows

Opeyemi Bello: Global Minimum Tax Without Global Impact: Examining the OECD's Pillar 2 and its Potential Impacts on Illicit Financial Flows

Ashimizo Afamdameh: Recover and Reinvest: Applying Recovered Proceeds of Corruption to Development Financing in Africa

Irene Wanjiru Kariuki: Illicit Financial Flows and the Real Estate Sector in Africa

Dunia P. Zongwe: "Make Noise!" Revolt and the State's Illicit Flows

Luwam Dirar: A Call to Action: Illicit Financial Flows and Migrants' Right to Development

Florence Shako: Strengthening the Financial Integrity of the Climate Transition by Curbing Illicit Financial Flows

Miracle Okoro: Securing the Bag - Towards Realising Just Energy Transition: A Developing Country's Perspective

Najjuko Joanita: Virtual Heists: Illicit Financial Flows Amidst Digitalisation and Economic Liberalisation in Africa

Emmanuel Onyeabor: Third World Approach to Economic Globalisation and Digitalisation of the Economy: Assessing Current Initiatives for Combating Tax and Commercially Related Illicit Financial Flows from Africa

Michelle Gallant: Grey-Listing, Global Anti-Money Laundering Regulation and the Classic Divide

Damilola Awotula: Illicit Financial Flows & FACTI Recommendations: Reforming International Asset Recovery Mechanism

Robert J. Currie: An International Anti-Corruption Court: A Win Against Illicit Financial Flows, A Win for Africa

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