Combating Illicit Financial Flows with Whistleblowing in Africa

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May 3, 2019

In this blog post I will consider policy initiatives for tackling the issue of illicit flow of funds out of African countries and the implications of these activities on investment and trade in the context of the AfCFTA. Combating Illicit Financial Flows has been a difficult task for African countries and, the best approach to tackle this endemic problem may be to develop and implement comprehensive mechanisms that will encourage the disclosure of these illegal activities in a timely manner. Such disclosure can best be realized by the adoption of a regional whistleblower protection directive.

Illicit Financial Flows (IFF) refers to money that is illegally acquired and transferred. These funds may be proceeds from corruption, trade manipulations, money laundering and tax evasion. IFFs have negative effects it has on economic development particularly in Africa. Although IFF is a global problem, it is estimated that about $100 billion annually is illegally acquired or transferred from Africa as a result of these illicit financial activities and, this has contributed to underdevelopment and lack of investment opportunities which

has hindered sustainable development prospects in African countries. Whilst some African countries are currently undergoing economic growth, IFF is proving to be a formidable barrier to accelerating development to improve the economic status for citizens in Africa.

There are several reasons that have been attributed to the rising rate of IFF activities in Africa some of which include the difficulty of accessing the channels through which these funds are illegally acquired and transferred, lack of governmental oversight, and the absence of regional co-operation amongst African States. Furthermore the clandestine nature of IFF means that it may never be disclosed unless legitimate disclosures are made by people who discover them in the course of their employment or through confidential and anonymous sources. This is where the use of whistleblowing mechanisms can be employed in order to encourage the disclosure of these illegal practices. Major financial and corporate scandals such as the panama papers and Lux Leaks tax scandal have highlighted the significant role whistleblowing plays in exposing wrongdoing and whistleblowing has now been established as one of the most significant processes by which government and organisations are kept accountable to the society.

In spite of the evidence of the impact of whistleblowing in exposing illegal activities, only seven out of fifty-four African States have enacted whistleblowing protection laws. African countries need a strong incentive for implementing whistleblowing regulatory frameworks. The absence of uniformity in implementing whistleblowing regulatory frameworks poses a huge barrier in actualising the goal of combating IFF in Africa. The time has come for the African Union to seriously consider following the path of the European Union and implement a whistleblowing protection directive. This proposed whistleblowing directive should clearly and concisely cover a wide range of wrongdoing which would also cover disclosures of IFF amongst other illegal activities and provide protection for whistleblowers making these public interest disclosures.

This proposed whistleblower protection directive should also require African countries to ratify and transpose its provisions into their national laws through the amendment of existing laws or by adopting stand-alone whistleblower

protection legislations. Adopting this approach would shift the focus from whether or not African countries should have whistleblowing protection frameworks to how best these initiatives would be transposed in the respective states. Implementing legal frameworks that addresses the right of individuals not to be subjected to retaliatory actions for making legitimate disclosures in the public interest also builds on the democratic principles of free speech and freedom of information. IFF is not unique to a particular African country and so each state must play their role in addressing this issue.

Combating IFF should be an African Union (AU) priority and a collective action between African States most especially now in light of the recent African Continental Free Trade Agreement (AfCFTA) which is primarily designed to promote intra-African trade, investment and industrial development. Addressing IFF is critical to the AfCFTA in that African states require financial resources to actualise the full potentials of this agreement and losing huge sums of money through these undetectable channels would greatly impede the capability of African states to facilitate trade, infrastructure development and productivity. The Phase II negotiations round of the AfCFTA with its focus on investment law provides a unique opportunity to put this issue on the table.

The regional regimes that have attempted to tackle IFF related activities have proven to be unsuccessful and so, the African Union must consider the viability of whistleblowing. The reality is that whistleblowing in Africa without protection is a risky venture and the implementation of a whistleblowing protection directive by the AU may also serve as a good means of changing the cultural and social perceptions towards whistleblowing in African countries. The AU has declared its commitment to combating these illegal activities but until comprehensive policies and actions are put in place to positively encourage whistleblowing these efforts remain utterly useless.

Implementing strong initiatives that protect whistleblowers who make disclosures on IFF activities, by providing practical advice and support, clear reporting channels, procedures for making protected disclosures and protection from retaliation maybe an effective way of tackling these illegal activities. African countries need to show strong political will and commitment in their efforts to eradicating IFF and a positive approach towards resolving the issue of

IFF may be to adopt robust whistleblowing regulatory frameworks to encourage disclosures on these illegal activities. Adopting a whistleblowing protection directive to protect African whistleblowers would be a symbolic achievement by the AU in addressing the issue of IFF in Africa and uniformity in the application of this proposed directive is critical.

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