Symposium on IFFs: A Call to Action - Illicit Financial Flows and Migrants’ Right to Development

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This essay proposes an alternative to the contemporary theorization of the relationship between Illicit Financial Flows (IFFs) and Migrant Rights. Contemporary theorization of the relationship between IFFs and Migrant Rights solidified a linear correlation between human trafficking or smuggling and IFFs. It is common among existent literature to state that human trafficking and smuggling are some of the contributors to IFFs out of Africa. For instance, the High-Level Panel on IFFs from Africa noted that IFFs “typically originate from three sources: commercial tax evasion, trade mis-invoicing, and abusive transfer pricing; criminal activities, including the drug trade, human trafficking, illegal arms dealing and smuggling of contraband; and bribery and theft by corrupt government officials." Further notable is that analysis of the impact of IFFs on development usually tends to marginalize migrant (“a person outside of a State of which they are a citizen or national, or in the case of a stateless person or person of undetermined nationality, their State of birth or habitual residence”) communities in its theorization or empiricism. That is partly because contemporary development studies fail to recognize the relationship between IFFs and migrants’ right to development. Therefore, this essay is an early-stage critical theorization and a call to action for scholars to theorize the relationship between IFFs and migrant rights to development.

The High-Level Panel on IFFs from Africa defines IFFs as “money illegally earned, transferred or used.” Therefore, IFFs include “flows of money [..] in violation of law in their origin, or during their movement or use, and are therefore considered illicit.” What is also remarkable is that the annual inflow of official development assistance into Africa and the outflow of illicit finance out of Africa tend to be equal. For instance, the 2015 report by the High-Level Panel on IFFs from Africa found that the continent loses about 50 billion USD annually to IFFs. 2016, the African continent received 41 billion USD in official development assistance. Almost a decade later, the inflow of official development assistance and outflow of illicit finances is on par. For instance, in 2020, the United Nations Convention on Trade and Development (UNCTAD) Report on economic development in Africa estimated that illicit capital flight out of Africa equates to official development assistance. With all the difficulties of measuring and quantifying illicit financial outflows of Africa by the mere nature of its illicit character, it begs one to inquire if Dambisa Moyo’s argument that we should cut aid to Africa makes sense. Despite Moyo’s provocative argument, it seems that equating Africa’s illicit financial outflow and official development assistance inflow tends to look at Africa as a whole and hope that African solidarity would prevail to stop IFFs out of Africa and distribute the funds to countries that need more development assistance, which raises questions of redistribution within Africa and economic capabilities gap that exist among the African Union member states. Furthermore, it seems that Africa’s current developmental status is not the direct result of official developmental assistance but rather a combination of a host of neoliberal strings attached to official development assistance combined with IFFs and other governance issues in the continent.

What portion of IFFs does human trafficking cover? Looking at the UNCTAD 2020 report, one can note the difficulty of measuring IFFs from human trafficking. In 2016, the UNCTAD 2020 Report noted that “2.5 million migrants worldwide were smuggled for an economic return of at least $5.5 billion to $7 billion." The data for the report focuses on limited migration routes. The Financial Action Task Force's 2018 report (FATF 2018 Report) titled 'Financial Flows from Human Trafficking,' like the UNCTAD 2020 report, noted the difficulty of measuring the proceeds of human trafficking. The FATF 2018 Report estimates the proceeds of global human trafficking to be about 150 billion in aggregate. Despite the difficulties of calculating IFFs, what is beyond contest is that no matter how small, every penny that leaves Africa illegally could be used to serve Africa and Africans better. Therefore, tracking, stopping, and returning IFFs would open flexible policy space for development financing at the national and continental levels.

Several Scholars have noted the impact of IFFs and the right to development. What is the right to development, and what does it encompass? Do economic growth and trade liberalization measure it, or does it engage with social indicators of human development? In its International legal sense, the right to development is "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized." The right is a right vested on "every human person" individually or collectively as "people" irrespective of their migration status. The right to development of individuals and peoples is an obligation on African states as expressly stated in the African Charter on Human and Peoples' Rights (the African Charter). The African Charter expressly guarantees the right of all peoples to their economic, social, and cultural development with due regard to their freedom and identity and the equal enjoyment of the common heritage of humankind (Article 22 of the African Charter) and the right to generally satisfactory environment (Article 24 of the African Charter). As Professor Obiora Chinedu Okafor rightfully noted, the continental norms of the Right to Development received global recognition and eventual adoption at the United Nations. Therefore, Article 4(1) of the UN Declaration on the Right to Development states, "States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development." Despite these legal instruments, the right to development in Africa remains a work in progress. One might inquire what value it adds to the developmental process and the fulfillment of all human rights and fundamental freedoms of migrants.

Furthermore, the right of migrants to develop is rarely centered in both migration and development studies. Contemporary discourse on migrant rights seems to circle on either policing human trafficking, safe migration corridors, and the humanitarian vulnerabilities that, at times, migrants encounter at home, transit, or destination states. For instance, the United Nations Convention against Transnational Organized Crime (UNCTOC) adopted in 2000 and came into force in 2003; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime adopted in 2000 and came into force in 2003; United Nations Convention against Corruption (UNCAC), adopted in 2003 and came into force in 2005.

A question lingers: what, then? How do we move beyond soft and hard law that engages with development principles and efforts to curb IFFs out of Africa? Last month, United Nations General Assembly members overwhelmingly voted to develop the United Nations Tax Convention. This global tax justice initiative would bring much-needed resources to realize migrants' right to development. All fifty-four African states voted for a Global Tax Convention. However, as the former Vice-Chairperson of the African Commission on Human and Peoples' Rights, the Honorable Commissioner Maya Sahli Fadel rightfully called 'centering migrants' in deliberations that affect their rights a crucial step. In concurrence with Fadel, centering migrants would be the first step to understanding the impact of IFFs on migrants' right to development and looking at migrants beyond a source of remittances or human trafficking proceeds. In conclusion, this essay concludes with a call to action to center migrants in the conversations on tracking, stopping, and returning IFFs.

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