

Input from the Civil Society Financing for Development Group in response to the announcement by the Presidents of the UN Economic and Social Council and the UN General Assembly, regarding the establishment of a High-level Panel on International Financial Accountability, Integrity and Transparency for Achieving the 2030 Agenda.

Your excellencies,

We strongly agree that mobilising sufficient financing for development remains a major challenge, especially in developing countries. In this context we welcome the leadership that Nigeria and Norway have shown when it comes to placing the issue of illicit financial flows (IFF) on the agenda of the United Nations (UN).

Regarding the initiative to establish a new High-Level Panel on Financial Accountability, Transparency and Integrity (FACTI), we regret that the invitation to provide input on the draft terms of reference (ToRs), and potential panel members, was not extended to civil society organisations. None the less, we would like to provide the following input, which we hope will be well received and taken into consideration, especially as we recognise that there is an urgent need to build political momentum at global, regional and national levels to decisively and comprehensively address IFFs.

Context

We believe that this panel should build on the work done by the previous UN General Assembly (UNGA) presidency. The summary by the president of UNGA as a result of the High-Level Meeting on International Cooperation to Combat Illicit Financial Flows and Strengthen Good Practices on Assets Return to Foster Sustainable Development, organised on 16 May 2019, provided important recommendations for combating IFFs. Some key messages concerned:

- The need for focus on tax avoidance and tax evasion, which are currently not covered under the UN Convention Against Corruption (UNCAC), and the UN convention against Transnational Organised Crime (UNTOC);
- That several initiatives undertaken by the Organisation for Economic Co-operation and Development (OECD) and Group of 20 (G20) to tackle the international tax system issue have limited applicability for developing countries;
- That a more explicit definition of IFFs is required, recognizing its three components as corruption, transnational organised crime and tax related issues (tax evasion and tax avoidance).

During the first announcement about the panel, on 28 January 2020, statements from a limited but very vocal group of Member States revealed some of the political dynamics that have until now blocked global progress on some of the most central aspects of IFFs. It was clear that some members of the OECD:

- Are very reluctant to move forward the work on tax related IFFs, and in particular tax abuse, including tax avoidance, within the framework of the UN;
- Believe that the UN's work should be restricted to a limited number of IFF related issues, such as drugs and other criminal markets, and a very narrow corruption-only view;
- Believe that the focus of the UN should be on implementing existing international agreements, including those made in non-inclusive bodies such as the OECD and the Financial Action Task Force (FATF).

We also note that some of the countries calling for a transparent and inclusive process in relation to the FACTI panel also argue for international decision making on global standards to be maintained within existing non-UN bodies such as the OECD, where transparency is low and developing countries in particular are unable to have their interests represented and participate on an equal footing. Developing countries and civil society organisations have expressed the need for equitable tax systems and for the creation of a transparent and inclusive intergovernmental tax commission under the auspices of the UN, to address large-scale tax abuse, including avoidance and evasion, as well as other types of IFFs. It is from this perspective that we reflect on the possible opportunities, or risks, that the creation of the FACTI panel brings about.

On the one hand, the value of high-level panels lies in their ability to remain above narrow political agendas and assess how to resolve the global problems we face. On the other hand, there is a risk that such panels can get bogged down by an overly technical focus, or captive to selective or narrow political interests. With this in mind, we are deeply concerned that the positions of the above-mentioned limited group of Member States may already have resulted in political pressure to restrict the ToRs of the FACTI panel before its work has even begun. The ToRs of the FACTI panel should not be a political compromise, but should enable the panel to serve the process of correcting gaps and imbalances in the international system, and promote progress towards fair, inclusive and accountable institutions and systems, as well as accelerate the abilities of countries to achieve the sustainable development goals (SDGs) and deliver on human rights and gender equality obligations.

Regarding the draft terms of reference

Building momentum and ensuring effective participation of civil society

The draft ToRs include a process of regional consultations and discussions with civil society and other constituencies. We welcome this element as we believe it is very important to ensure that the work of the panel is well informed, and that the panel contributes effectively to building momentum at regional and national levels. A central lesson from the High Level Panel on Illicit Financial Flows from Africa (also referred to as the “Mbeki panel”), which established this agenda globally, including within the SDGs, shows that political traction depends on the combination of senior policymaker engagement and broad civil society participation. We therefore urge you to ensure that these consultations will provide an effective process for civil society to feed in to the panel’s work.

With this in mind we are concerned that in the tentative timeline, as outlined in the draft ToRs, the regional consultations are scheduled to take place after the first three meetings of the panel, and at a point in time when the panel has already published its interim report. In our view, **the regional consultations must take place during an earlier stage of the process, prior to the second meeting of the panel and the publication of the interim report.**

Regarding the format of the consultations, we believe it is important to **ensure sufficient time and opportunity for a broad spectrum of civil society actors to address the panel members.** Furthermore, in order to ensure effective participation, we believe it is **important that funding is available to support travel costs, especially for civil society groups from the global south.**

Previous high-level initiatives

The FACTI panel will not be the first high-level initiative to discuss and address issues related to IFFs. Other high-level processes, including the High Level Panel on Illicit Financial Flows from Africa and the 2019 UN High-level Meeting on IFFs, have provided thorough analyses and important recommendations for action. One important reason for these achievements is the leadership and commitment that Norway and Nigeria have shown as champions of international action on IFFs. However, despite these efforts, we have yet to see the Member States of the UN collectively engage in a real discussion on how to follow up on these initiatives and recommendations.

We believe the **FACTI Panel should endorse and build on the work of previous high-level initiatives**, rather than duplicate it. This includes endorsing the **African Union Assembly Special Declaration on Illicit Financial Flows¹** and the **summary report of the 2019 UN High-Level Meeting on Illicit Financial Flows.²** We are therefore disappointed to note that the draft ToRs of the FACTI panel do not include reference to these documents, and recommend that specific text on this should be added.

The concept of illicit financial flows, including tax avoidance, tax abuse and the effectiveness of the international corporate tax system

We note that the draft ToRs include references to both “illicit financial flows” as well as “illicit finance”. We would like to call your attention to the fact that these concepts are not interchangeable, and that **the central concept, which is also the key focus on the SDGs and the Addis Ababa Action Agenda, is “illicit financial flows”.**

In the introduction, the draft ToRs refer to a broad spectrum of issues related to IFFs, including tax avoidance. We welcome this and agree that this issue is an area where urgent progress is needed, but regret that this aspect does not seem to be explicitly included in the draft objectives for the panel. Instead, the objectives seem narrowly focused on issues related to financial accountability, transparency and integrity. In order to ensure a holistic and relevant contribution to the debate about IFFs, we **strongly recommend that the objectives of the panel explicitly include the very central**

issue of tax avoidance, as well as the issue of tax abuse. Corporate tax abuse, including both avoidance and evasion, emerge clearly as the major element of IFFs in the report of the African high-level panel.³ As the previous World Bank president Jim Yong Kim noted, corporate tax abuse is a form of corruption that hits the poorest hardest. This must be central to the work of the FACTI panel, and not left to an unrepresentative process at the OECD in which challenging poverty is not an objective. These issues are directly linked to an important question about the complexity and ineffectiveness of the international corporate tax system, which is also an issue we urge the presidents to include in the objectives for the panel.

The impacts of IFFs

In its work, we also find it important that the panel addresses the impacts that IFFs have on prospects of achieving the SDGs, and not least the **commitments to reduce inequality, including substantive gender inequality, as well as the cultural, economic and social rights of women and girls.** The Beijing Declaration and Platform for Action (1995) commits all countries to eradicate all forms of discrimination, including that which is driven by IFFs, tax laws and policies. IFFs, including corporate tax abuse, obstruct redistribution and drain resources that are crucial to challenging inequalities. **We therefore call on you to add this element to the objectives for the panel, as outlined in the draft ToRs.**

We also find it **vital that the voices of those who are the most impacted by IFFs are included in the discussion at an early stage.** This could in our view help to steer the debate towards the most pertinent areas – as pointed out by gender justice and women’s rights groups within wider civil society. These groups are calling out the differentiated impact of IFFs on women as well as on marginalised people, who face a greater risk of rights abuses along with the lack of adequate public spending on key areas that would improve equality, including gender equality.

The concept of universality and the work of human rights mechanisms and treaty bodies

We would like for the draft ToRs to **reflect on the meaning of ‘universality’** as a core component of the sustainable development agenda. Universality in human rights terms means that they apply to all equally, and all have the right to participate in decisions that affect their lives.

We also consider it **critically important that the draft ToRs reflect the work of human rights mechanisms and treaty bodies.** In particular, we would like to highlight the study by the UN Human Rights Council on 'Illicit financial flows, human rights and the 2030 Agenda for Sustainable Development', conducted by the Independent Expert on the effects of foreign debt.⁴

Promoting urgent and inclusive intergovernmental action

The draft ToRs state that the global community should act upon the panel's recommendations during the first half of 2021. However, we would like to stress the importance of ensuring that intergovernmental action to address IFFs is not delayed until 2021. Therefore, we urge you to include this point in the ToRs for the panel, by **stressing that the panel should feed into intergovernmental discussions on IFFs, but should not be seen as a reason to delay intergovernmental action.**

We also find it important that the panel's report is not only fed into the existing ongoing UN processes, but that a **specific intergovernmental follow-up meeting** is organised as part of the process. The aim of such a meeting should be to ensure that the UN Member States meet and discuss the report of the panel and the broader issue of IFFs at the political level.

We believe that the increased level of intergovernmental action, which should be initiated already this year and to which the panel's report should feed in, must be seen as part of the preparations for and build up to a UN Summit on Financing for Development on the occasion of the 20th anniversary of the Monterrey Consensus. This build-up should also include regional processes to increase awareness and promote government action on IFFs. Such regional processes should, where relevant, reinforce and cooperate with existing regional IFF processes, including the African regional process to follow up on the work of the High-Level Panel on Illicit Financial Flows from Africa.

Regarding the membership of the panel

We note that members of the panel will be appointed by you as the presidents of the UN Economic and Social Council (ECOSOC) and the UN General Assembly (UNGA), and that some will be drawn from civil society. In the context of civil society membership of the panel, one of the key priorities from our side will be to **ensure strong representation from the global south as well as gender balance. We call on you to invite us to have a say in who gets appointed on behalf of civil society.** Such a process of self-selection would mirror existing procedures related to civil society participation in UN processes, such as the UN Financing for Development process.

Concluding remarks

The FACTI panel should not detract from, and should aim to bolster, the need for progress on the political process on IFFs and the UN. Already today we know that there are serious shortcomings in the international response to large-scale tax abuse, including avoidance and evasion, as well as other types of IFFs. In particular, we express our strong concern that there is currently no inclusive intergovernmental body where governments can negotiate on an equal footing and agree effective solutions to the serious problems with tax related IFFs, which have already been identified. On the contrary, international standards are being set by bodies where countries are only allowed to participate on the condition that they sign on to existing standards and agreements that have been negotiated in

non-inclusive forums. This includes the ongoing negotiations under the OECD's Inclusive Framework, which aims at developing new international tax standards by the end of 2020.

Keeping in mind that IFFs are costing countries hundreds of billions of dollars every year, and that developing countries suffer the hardest impacts of this problem, it is clear that urgent and fully inclusive intergovernmental action is urgently needed.

Therefore, we believe that without delay, governments must initiate a transparent intergovernmental process under the auspices of the United Nations to address large-scale tax abuse, including avoidance and evasion, as well as other types of IFFs. As presidents of the UN General Assembly and ECOSOC respectively, we call on Nigeria and Norway to play a leading role in this regard. The panel should not be a reason to delay action. Instead, the value of the panel will be in how quickly it can move forward this critical process.

¹ African Union (2015), 'Assembly special declaration on illicit financial flows', Doc. Assembly/AU/17(XXIV),

https://au.int/sites/default/files/documents/29831-doc-assembly_declaration_on_illicit_financial_flow_-_english.pdf

² The President of the General Assembly (2019), 'Summary of the High-Level Meeting on International Cooperation to Combat Illicit Financial Flows and Strengthen Good Practices on Asset Return to Foster Sustainable Development', 9 July 2019,

<https://www.un.org/pga/73/wp-content/uploads/sites/53/2019/07/Summary-HLM-IFF.pdf>

³ African Union / UNECA (2014), 'Track it! Stop it! Get it! Illicit Financial Flows: report of the high level panel on illicit financial flows from Africa', Commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development,

https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf

⁴ UN General Assembly, Human Rights Council (2016), 'Final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights', Note by the Secretariat, 15 January 2016, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/61