

## CAPITAL FLIGHT AND INSTITUTIONAL FRAMEWORKS TO PROMOTE TRANSPARENCY\*

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### ABSTRACT

The paper has three main objectives. First it identifies the kind of institutional frameworks at the global, regional and country level which have evolved to address the issues of illicit financial flows. Second, it analyzes the factors that have inhibited the efficiency and effectiveness of the frameworks. Third it proposes a way forward in terms of addressing the challenges with a view to achieve enhanced progress as far as the war against illicit financial flows is concerned. The main findings are: First, a variety of institutional frameworks has emerged at the three levels. However, they are interlinked and feed into each other, in the sense that those at the country level have been driven by those at the global and regional level. Given that most of these frameworks are not organic to Africa, the continent's position has thus been more reactive than proactive. Second, the establishment of the institutional frameworks is an outcome of lobbying and advocacy organizations, spearheaded by non-governmental organizations and civil society organizations. This has been complemented by publications undertaken by a number of researchers in a variety of academic and non-academic institutions. All these efforts have underpinned the establishment of policy, legislative and enforcement frameworks at the country level. Third, the level of awareness, across a broad range of stakeholders, of the scope of the problem and its negative impact on African development, has been heightened. This notwithstanding, illicit financial flows continue to flourish unabated. A number of factors have contributed to this state of affairs. They include weak political will, lack of comprehensive legislation, weak enforcement capacities, continued existence of secrecy havens, corruption, and weak human and institutional capacities. Fourth, in order to adequately address the problem of illicit financial flows, solutions to the constraining factors must be sought, and the attendant measures effectively implemented. However, and most importantly, Africa needs to be proactive and own the process. The establishment of the High Level Panel at the Economic Commission for Africa (ECA) is a good starting point for spearheading efforts to combat illicit financial flows.

**Key Words:** Capital flight; illicit financial flows; Africa; sub-Saharan Africa; transparency; corruption

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## 1. Introduction

A number of initiatives have been undertaken to address the socio-economic problem of capital flight. These include awareness-raising through lobbying and advocacy, with a view towards encouraging developed and developing countries to put in place laws, regulations and policies that promote transparent financial transactions. Indeed, enhanced transparency and tighter oversight of international banks and offshore financial centers, the main conduits of illicit financial flows, are critical measures for tackling the problem.

The main drivers of current initiatives are many including individual researchers, think tanks, research institutions (both public and private), non-government organizations (NGOs), civil society organizations (CSOs), and regional and global political forums. Their work has not only raised awareness of the scope of the problem of illicit financial flows, but also has informed the establishment of institutional frameworks at the country, regional and global levels, including task forces and commissions, aimed at mobilizing political will and public support for adopting important measures to curtail illicit capital flight.

The purpose of this paper is to review the institutional frameworks that have been established to combat illicit financial flows. The study is structured as follows. It starts with building a case for why transparency is key to winning the fight against illicit financial flows. Then, it identifies a sample of institutions that are at the forefront of this agenda. The discussion focuses on key players in the thematic areas of corruption, tax evasion and avoidance, tax havens, taxation, budgetary processes, trade mispricing, aggressive tax planning, operations of multi-national corporations (MNCs) and illegitimate debt. The fifth section examines the mandates of the existing regional and global institutional frameworks, including those at the country level.

Finally, the sixth section analyzes the impact of these frameworks and the constraints that undermine their efficiency and effectiveness.

## **2. The Rationale for Enhancing Transparency**

Many studies indicate that illicit financial flows can be generated through a number of channels that are not recorded in national accounts or figures (Global Financial Integrity, 2008; Economic Commission for Africa, 2011; African Development Bank and Global Financial Integrity, 2013; various chapters in Ajayi and Ndikumana (2014)). These channels include trade mispricing, smuggling, and corruption, to mention a few. These outflows have a negative impact on African economies in that they deplete foreign currency reserves, heighten inflation, reduce domestic resource mobilization, and lead to low investment rates, widening inequality, and enhanced poverty.

The proliferation and persistence of illicit activities have been driven by inadequate governance, the operations of multinational corporations in Africa, and unregulated financial institutions, secrecy jurisdictions, and tax havens. We discuss these drivers in some detail with the aim of building a case for why increased transparency is critical for curtailing illicit financial outflows.

### **2.1 African Governance Practices**

The 2005 *African Governance Report* gives positive marks for Africa's governance in the areas of democratic transition, more socially inclusive political dispensation, and the capacity of civil society groups (including media) to operate with much greater freedom and participation in decision-making than in the past. Furthermore, the report notes that governments are becoming more responsive and transparent. This is coupled with improved public financial management

and accountability, auditing of public funds, and enhanced transparency of macroeconomic policies.

These positive developments notwithstanding, many African countries still score quite low on the control of corruption, the integrity of tax systems, transparency, and accountability of most branches of government, especially the civil service. The report findings indicate that most respondents ranked the quality of government service delivery as very poor and the decentralization processes as inadequate. Almost without exception, citizens and experts alike acknowledged the lack of capacity, or the inadequacy of human and material resources, as a major source of the ineffectiveness of governance institutions.

The governance deficit in Africa has not only encouraged corruption and other illicit activities, but has also tempted cross-border investors to seek excessive tax concessions from governments, coupled with extensive exemptions from corporate taxes, withholding taxes and import duties. In many cases, and especially with regard to natural resources, royalty charges were either reduced or waived. These arrangements have definitely fueled the outflow of illicit finances (Africa Progress Panel, 2013).

## **2.2 Multi-National Corporations (MNCs)**

Foreign investment in Africa is undertaken by MNCs. The ownership structures of these corporations involve complex partnerships and linkages, which result in governance problems. The presence of offshore-registered companies in the ownership chain is a constraint to the enforcement of public disclosure requirements. Meanwhile, the subsidiaries and affiliates serve

as conduits for trade mispricing, aggressive tax planning and tax evasion, thus enabling companies to maximize the profits reported in low-tax jurisdictions.

The practice by the MNCs of shifting profits to tax havens to avoid taxes in both developed and developing countries tends to disguise information on ownership, risks, profits and pricing. Given this lack of adequate disclosure, very few African governments have the technical capacity and information to negotiate ‘fair investment terms’ with these MNCs. On their part, the MNCs, especially those in extractive sectors, possess the type of information they need to assess the extent of mineral reserves and the potential costs of extraction and marketing. By contrast, oil and mining companies have unveiled access to market information, geological analysis technologies for exploration and extraction, financial resources and export channels. In such circumstances, the commercial activities of MNCs in the natural resource sectors tend to dwarf the economies of the African countries that they operate in (Africa Progress Panel, 2013).

African countries are highly vulnerable to aggressive tax planning and tax evasion, facilitated by the extensive use of off-shore companies, high levels of intra-company trade and the commercial secrecy surrounding the operations of MNCs. Indeed, African governments lack the human, financial and technical resources needed to secure tax compliance and the market intelligence needed to adequately assess the tax liabilities of MNCs. As a result, they are losing significant revenue through illicit financial outflows.

### **2.3 Financial Institutions, Secrecy Jurisdictions and Tax Havens**

Banks and non-bank financial institutions are active players in facilitating the outflows of illicit finances. Banks have helped political elites and their close associates, companies, individuals

and organized crime to channel capital out of African countries (Heggstad and Fjeldstad, 2010). Likewise, banks in secrecy jurisdictions play an important role in hiding and laundering capital from Africa (Kapoor, 2007; Murphy, 2008). These tax havens erode the tax base of countries because of non-transparent or harmful tax measures.

It is argued, therefore, that more transparency in the financial sector of these jurisdictions is required to give businesses, criminals, and politically exposed persons (PEPs), such as high-level politicians and associates, fewer means to hide their illegally gained capital. For African countries, more transparency and fewer hiding places could mean that less public funds would be channeled out of the country as private assets. Consequently, more resources are available for service provision and poverty reduction interventions (Christian Aid, 2010). Measures to enhance transparency in this area should include improved regulation of banks and non-bank financial institutions, the establishment of comprehensive Know Your Customer (KYC) routines, and the suspension or termination of existing Double Tax Conventions that have been established by jurisdictions identified as tax havens.

We conclude this section by placing emphasis on the need for greater transparency in African governance processes and the operations of multinational corporations, banks, financial institutions and secrecy jurisdictions.

### **3. Institutional Frameworks**

In this section we describe a selected sample of institutional frameworks that have been at the forefront in championing the course for enhanced governance in general, and transparency in particular, not only for governments, but also for domestic and cross-border business companies

and secrecy jurisdictions. The discussion focuses on those institutions that are more active globally, regionally and nationally in the campaigns against tax evasion and avoidance, corruption, money laundering and trade mispricing.

It needs to be emphasized that most of the institutions discussed in this paper have forged strong networks among themselves to the extent that it is difficult to draw a solid line between their mandates. In most cases, they collaborate closely on issues related to illicit financial flows by undertaking joint publications and organizing joint conferences, workshops, and seminars. Furthermore, the collaborative efforts are not only observable at the global level, but also at the regional and national levels. Again, whereas some actions at the regional and national level may appear to be driven by global stakeholders, others are a product of a region's or a country's membership to a global organization (for example, the United Nations) or a regional organization (NEPAD, Africa Union). Even in cases where frameworks are regionally or nationally driven, they tend to contain programs (for example, capacity building and the exchange of information) that are supported by global and regional players.

### **3.1 Research, Lobby and Advocacy Institutions**

This section describes the work of a sample of research and advocacy institutions that have been critical in analyzing the scope, drivers, and impact of illicit financial flows on developing countries, especially in Africa. This work has inspired the establishment of policy, legal, and institutional frameworks for tackling illicit financial flows. The information contained in these sub-sections has been sourced from the respective organization's website.

#### **Global Financial Integrity (GFI)**

Global Financial Integrity (GFI) was launched in September 2006, following the publication of “Capitalism’s Achilles Heel: Dirty Money and How to Renew the Free Market” by Raymond Baker (see [www.gfintegrity.org](http://www.gfintegrity.org)). GFI promotes national and multilateral policies, safeguards, and agreements aimed at curtailing the cross-border flow of illegal money by putting forward solutions, facilitating strategic partnerships, and conducting research on illicit financial flows from developing countries. Recent publications include African Development Bank and Global Financial Integrity, 2013; Kar and Cartwright-Smith, 2010; Kar, 2010.

The publications of GFI have generally resulted in enhanced awareness, as well as in the establishment of global and regional task forces. In 2009, GFI launched the Task Force on Financial Integrity and Economic Development (FIED), a global coalition of civil society organizations and over fifty governments that advocates for greatly improved transparency and accountability in the global financial system. The Task Force was renamed The Financial Transparency Coalition May 2013. Specifically, the Coalition advocates five priorities with the objective of enhancing transparency (see <http://www.financialtransparency.org/about/overview>):

- (i) Curtailment of mispricing in import-export trade;
- (ii) Country-by-country accounting of sales, profits and taxes paid by multinational organizations;
- (iii) Confirmation of beneficial ownership in all banking and securities accounts;
- (iv) Automatic cross-border exchange of tax information;
- (v) Harmonization of predicate offenses under anti-money laundering law.

**The Revenue Watch Institute (RWI)**

RWI is a non-profit policy institute and grant-making organization that promotes the effective, transparent, and accountable management of oil, gas, and mineral resources for the public good (see [www.revenuewatch.org](http://www.revenuewatch.org)). The organization was founded in 2006 and is based in New York. The mainstay of RWI's work is the development of civil society capacity. RWI provides financial and technical training and support to more than 50 partner organizations on every aspect of oil gas and mining. RWI is a founding mentor of the Publish What You Pay Campaign, and supports national PWYP coalitions in Africa, Asia, Eurasia, Latin America and North America. Through advocacy, RWI is spearheading the global campaign to develop global standards for transparency and accountability in the mineral sector. In this regard, RWI is also a leader in the development and implementation of the Extractive Industries Transparency Initiative (EITI).

RWI provides assistance to governments in drafting mining and oil laws and in improving revenue management. Through its research, RWI has built a body of literature on best practices in the management of revenues, including contracting, oil fund laws, fiscal regimes for mining, and effective parliamentary oversight. Furthermore, RWI publishes the Revenue Watch Index, analyzing transparency practices in more than 40 countries that are among the top producers of petroleum, coal, copper, and diamonds.

The EITI aims at strengthening governance by improving transparency and accountability in the extractive sector, with the goal of ensuring that the exploitation of these resources generates large revenues to foster economic growth and reduce poverty. Although this initiative appears to be in the right direction, it can hardly address the outflows from the extractive sector comprehensively. This is because it focuses more on the transparency of the outcomes instead of

the process of negotiating mining contracts, which is characterized by secrecy, corruption, and power politics.

For example, the EITI Report on Tanzania for the year ending 30 June 2011 (EITI, 2013) shows that the country has failed to comply with the transparency requirements. The non-compliance is based on a number of factors. First, the government failed to account for over USD 2.4 million earned through its mineral resources. Second, the EITI process did not include some extractive companies such as Songas and Tanzania Royalty Exploration (TRE), a public company registered in the New York stock exchange. Third, out of the thirteen companies covered in the report, only five reported having paid either income or corporate tax or both. Fourth, El Hillal Mineral Ltd, the only large scale mining company that was covered by the report, declined to respond to the required template and instead handed out a schedule that indicated the amount of royalties it had paid under the reconciliation period, thus ignoring other payments to the government that it was required to report. Finally, the country lacks a law to support the existence of EITI and to require companies such as El Hillal Minerals Ltd to provide the requested information.

### **European Network on Debt and Development (Eurodad)**

Established in 1990, Eurodad is a network of about fifty NGOs from fifteen European countries working on issues related to debt, development finance and poverty reduction. It offers a platform for explaining issues, collecting intelligence and ideas, and undertaking collective advocacy. The network focuses on debt cancellation, aid effectiveness, and pro-poor policies. Furthermore, it promotes responsible finance principles and practices and the design of financial architecture.

The main objectives of Eurodad are to (see [www.eurodad.org](http://www.eurodad.org)):

- (i) Push for development policies that support pro-poor and democratically-defined sustainable development strategies;
- (ii) Support the empowerment of people in developing countries to chart their own path towards development and ending poverty;
- (iii) Seek a lasting and sustainable solution to debt crisis, appropriate development financing, and a stable international financial system conducive to development.

Regarding illicit financial flows, Eurodad published a paper on “Secret Structures: Urgent Steps to Address Hidden Ownership, Money Laundering and Tax Evasion from Developing Countries” (Marriage, 2013). The main message of the report was a call to take seriously illicit outflows from developing countries and the necessity of clamping down on tax dodging by multinational corporations.

### **Tax Justice Network (TJN)**

The network is an independent organization launched in the British House of Parliament in March 2003. It is dedicated to high-level research, analysis and advocacy in the field of tax and regulation. It works to map, analyze and explain the role of taxation and the harmful impact of tax evasion, tax avoidance, tax competition and tax havens. TJN’s main objective is to encourage reform at the global and national levels. In achieving this, it networks with a wide variety of stakeholders ranging from researchers, accountants, NGOs, trade unions, and faith groups.

The specific objectives of TJN are the following (see [www.taxjustice.net](http://www.taxjustice.net)):

- (i) To raise the level of awareness about the secretive world of offshore finance;
- (ii) To promote links between interested parties around the world, particularly in developing countries;
- (iii) To stimulate and organize research and debate;
- (iv) To encourage and support national and international campaign activity;
- (v) To promote local campaigns for tax justice, especially in developing countries;
- (vi) To provide a medium through which tax justice issues can be promoted within multilateral agencies such as the United Nations, the World Bank, the IMF, the OECD, and the European Union.

In a nutshell, TJN is committed to promoting transparency in international finance by showing strong opposition to secrecy, loopholes and distortions in tax and regulation, tax evasion and avoidance, and tax havens or secrecy jurisdictions.

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

TJN-A is a Pan-African initiative established in 2007 and a member of the global Tax Justice Network. TJN-A seeks to promote socially just, democratic and progressive taxation systems in Africa, advocating for pro-poor tax regimes and the strengthening of tax regimes to promote domestic resource mobilization.

TJN-engages in various activities that are aimed at promoting public awareness regarding tax issues in Africa. Through networking among member organizations across Africa, TJN-A seeks to raise awareness of the importance of taxation as a tool for development and enhancing

democratic governance. The organization aims to consolidate the efforts by CSOs to work on tax justice.

TJN-A organized a Pan-African Conference on Taxation and Development in Nairobi (March 25-26, 2012) and drafted “The Nairobi Declaration 2012”. The declaration underscores that (<http://www.taxjusticeafrica.net/content/nairobi-declaration>):

- (i) The common threat to political progress, sustainable economic development, and poverty eradication arises from the unacceptable domestic and international practices that hinder effective mobilization of tax revenues for development.
- (ii) Effective and equitable taxation is critical to the independence of African countries, and to the strengthening of channels of political representation and government accountability.
- (iii) Reforms in the areas of domestic taxation, revenues from natural resource extraction, and international taxation are essential.

### **Transparency International (TI)**

TI’s mandate focuses on issues of human rights and corruption (see [www.transparency.org](http://www.transparency.org)). Specifically, on corruption, it publishes annually the Corruption Perceptions Index, which attempts to gauge the levels of corruption globally.

Corruption being one of the drivers of illicit financial flows, the work of Transparency International aims at urging governments to integrate anti-corruption actions into all public decision making. Priorities include better rules on lobbying and political financing, making

public spending and contracting more transparent, and making public bodies more accountable to the people (Labelle, 2012).

### **3.2 Other research institutions**

The above institutions are a subset of a much larger group. However, there are other institutions, many linked to universities that conduct studies in the area of illicit financial flows. These include studies by researchers at the Political Economy Research Institute at the University of Massachusetts in Amherst (Ndikumana and Boyce 2003, 2011a, 2011b, 2010; Ndikumana et al. 2014; Boyce and Ndikumana, 2001); the Anti-Corruption Resource Centre of the Chr. Michelsen Institute (Fontana and Hearson, 2012; and the Fredrick S. Pardee Centre at Boston University (Gallagher, 2012). The research output of these institutions contributes to a greater understanding of the scope of the problem of capital flight. They can inform policy, legal, and institutional frameworks in tackling the problem. Furthermore, they are likely to enhance the capacity of policymakers and law enforcement institutions to respond appropriately and adequately to the issues pertaining to illicit capital flight.

We conclude this section by emphasizing the fact that these institutions have been working collaboratively amongst themselves and with others, like the World Bank, IMF, UNDP, etc. This collaborative approach is a catalyst for interdisciplinary, multi-party dialogue and exchange. All these outcomes contribute to raising awareness among key stakeholders and consequently propel the search for solutions.

## **4. Policy and Legislative Institutional Frameworks**

Earlier, we alluded to the fact that there are three main channels through which illicit financial flows are facilitated: over-and under-invoicing of trade transactions, tax evasion, and corruption. If we were to consider the mispricing of trade transactions as trade-based money laundering, and the other two drivers as predicate offenses of money laundering, then it should not be surprising to note that most of the institutional frameworks at the regional and country levels have been products of global initiatives on combating money laundering. This being the case, it is important to be cognizant, first, of the overlap between the two concepts of money laundering and illicit capital flight, and consequently, of the convergence of measures necessary to address them.

Trade-based money laundering is defined as the process of disguising the proceeds of crime and moving value through the use of trade transactions to legitimize their illicit origins (FATF, 2012; Zdanowicz, 2008; Moshi, 2010). To the extent that money laundering means concealing the fact that money has been obtained illegally, be it through trade transactions, tax evasion, or corruption, it follows that effective anti-money laundering frameworks provide an opportunity to secure transparency in illicit financial flows-related activities.

### **4.1 Global Initiatives**

International action to combat illicit financial flows in general, and money laundering in particular, started in the late 1980s. The resulting developments have underpinned the basis for international standards and national initiatives.

#### **The Vienna Convention**

The Vienna Convention, which came into force in November 1990, was the outcome of the 1988 United Nations Conference for the Adoption of a Convention Against Illicit Traffic in Narcotic Drugs Psychotropic Substances. The signatories agreed to join together to combat the laundering of the proceeds of drug trafficking. Specifically, the parties to the Vienna Convention committed themselves to (World Bank 2009, p. 18):

- (i) Criminalize drug trafficking and associated money laundering;
- (ii) Enact measures for the confiscation of the proceeds of drug trafficking;
- (iii) Enact measures to promote international cooperation to combat the vice;
- (iv) Empower the courts to order that bank, financial or commercial records are made available to law enforcement agencies, regardless of bank secrecy laws.

Article III of the Vienna Convention provided a comprehensive definition of money laundering<sup>1</sup>, which has been the basis of virtually all subsequent legislation. It was also the basis of the money laundering offenses in the draft *Model Law for the Prohibition of Money Laundering for Commonwealth Countries* (Commonwealth Secretariat, 1996).

### **The Palermo Convention**

Building on the Vienna Convention, the United Nations Convention against Transnational Organized Crime was adopted by the General Assembly at its millennium meeting in November 2000 and was opened for signature at a high-level conference in Palermo, Italy, in December 2002. Of significance was the fact that it was the first legally binding UN instrument in the field of organized and serious crime.

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<sup>1</sup> Money laundering is a process by which proceeds from a criminal activity are disguised to conceal their illicit origins.

Those signing are required to establish four distinct criminal offenses in their own jurisdictions.

These are (World Bank 2009, p. 18):

- (i) Participation in an organized criminal group;
- (ii) Money laundering;
- (iii) Corruption;
- (iv) Obstruction of justice.

Additionally, the meeting specified how countries can improve cooperation on such matters as extradition, mutual legal assistance, transfer of proceedings, and joint investigations. Moreover, the signatories committed to providing technical assistance to developing countries, to help them take their own measures to deal with organized crime.

### **The Council of Europe Convention**

In September 1990, the Committee of Ministers of the Council of Europe adopted a new *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* (World Bank 2009, p. 19). This Convention deals with all types of criminal offenses, and so goes beyond the Vienna Convention. More specifically, the offense was extended to include money laundering, which is associated with all serious criminal offenses. This was an important step in the fight against money laundering, as it recognized that the major criminal organizations do not specialize in one product alone, and added the impetus to establish an international money laundering strategy.

### **The European Money Laundering Directives**

The 1991 European Money Laundering Directive provided the basic standard for legislation and regulation amongst all European member states (World Bank 2009, p. 19). A revised directive in 2001 extended the scope beyond credit and financial institutions to corporate service providers, real estate agents, casinos, lawyers and accountants. Therefore, any new country wishing to join the European Union must comply with the Directive as a condition of entry. The Directive also forms the basis for many countries outside of Europe, particularly the offshore financial centers.

### **The Financial Action Task Force**

The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the ministers of its member jurisdictions (see [www.fatf-gafi.org](http://www.fatf-gafi.org)). The mandate of the FATF is to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing, the financing of proliferation of weapons of mass destruction, and other related threats to the integrity of the international financial system. In collaboration with other international stakeholders, the FATF also works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse.

The FATF Recommendations set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering and terrorist financing as well as the financing of the proliferation of weapons of mass destruction (FATF, 2012).

### **United Nations Global Programs**

In support of concerned international action against illicit production, trafficking and abuse of drugs, a central tenet of the United Nations Drug Control Program (UNDCP) is the development of global programs against money laundering and of legal assistance.

The Global Program against Money Laundering was set up to strengthen the ability of national law enforcement authorities and international bodies to fight money laundering more effectively.

The Global Program is designed to achieve the following objectives (World Bank 2009, p. 22):

- (i) To increase knowledge and understanding of the money laundering problem and contribute to the development of policies by the international community of member states;
- (ii) To increase the legal and institutional capacity of state to fight money laundering;
- (iii) To increase the capacity of states to successfully undertake financial investigations into money laundering and matters relating to the proceeds of crime.

Composed of a multi-disciplinary team of legal, financial and law enforcement experts, the Global Program provides advice and assistance to states in the development of anti-money laundering mechanisms; undertakes research on key issues; supports the establishment of specialized units; and provides training to law enforcement and justice officials for better implementation of money laundering laws.

### **Financial Sector Supervisors and Regulators**

Financial regulation around the world is governed by standards set by four main groups of regulators, namely (World Bank 2009, p. 22):

- (i) The Basel Committee on Banking Supervision
- (ii) The International Organization of Securities Commissioners (IOSCO) for securities firms and markets;

- (iii) The International Association of Insurance Supervisors (IAIS) for insurance companies;
- (iv) World Bank and IMF, through the Financial Stability Forum (FSF), set core principles for banking supervision. In the wake of the 2008 global financial crisis, IMF has come up with new guidelines for the use of Capital Account Regulations in Developing Countries (Gallagher, 2012). In 2007, the World Bank launched the Stolen Assets Recovery Programme (StAR) to recover public wealth stolen and invested offshore by corrupt leaders.

## 4.2 Regional and Country Frameworks

### Regional Frameworks

These institutional frameworks will focus more on initiatives of the African continent, spearheaded by the Organization for African Union (OAU), African Union (AU), New Partnership for Africa's Development (NEPAD), and FATF-styled Regional Bodies (FSRPs).

### OAU, AU and NEPAD Initiatives

Many conventions have been adopted and many cooperation initiatives launched by African nations at the continental and sub-regional levels. In 1999 the organization of African Unity adopted a Convention on the Prevention and Combating of Terrorism (Algiers Convention). In 2002, the African Union's Second High-level Inter-governmental Meeting on the Prevention and Combating of Terrorism in Africa adopted a plan of action which highlighted specific areas for action. These included measures to suppress the financing of terrorism, coupled with national legislation to criminalize terrorist financing and money laundering, as well as setting up FIUs,

training personnel to combat and prevent money laundering, and cooperating with international financial institutions.

In 2004 the AU also adopted a protocol to the OAU Convention on the Prevention and Combating of Terrorism that captured the parties' commitment to implement the provisions of the Algiers Convention and, among other things, to identify, detect, confiscate, and freeze or seize any funds or other assets used, or designated to be used, for committing a terrorist act. In addition, the protocol set out to establish a mechanism for the use of such funds to compensate victims of terrorist acts or their families.

In 2008 the AU adopted the Convention on Preventing and Combating Corruption which, unfortunately, has yet to be ratified by enough member states to come into force. The convention calls for the criminalization of the use or concealment of proceeds from acts of corruption (article 4) and the laundering of the proceeds of corruption (article 6). It also establishes a regional cooperation framework for improved mutual law enforcement assistance, including extradition, investigations, and the confiscation, seizure or repatriation of the proceeds of corruption.

Both the AU and the UN conventions were adopted in 2003, but the AU convention has been ratified by fewer states. In November 2005, at the First Pan-African Meeting of National Anti-Corruption Bodies in Lusaka, it was recommended that AU member states be given assistance in identifying the areas of convergence and divergence between the multilateral anti-corruption instruments so as to facilitate their implementation at the national level.

### **High Level Panel on Illicit Financial Flows from Africa**

The High Level Panel on Illicit Financial Flows from Africa was created in 2011 by the United Nations Economic Commission for Africa (UNECA). It is chaired by former South African President Thabo Mbeki. Its members include the Executive Secretary of the UNECA, human rights lawyers, businessmen, financiers and politicians from across Africa and beyond. The primary role of the High Level Panel is to complement and support the work on illicit financial flows, currently undertaken by other African and non-African institutions, particularly in the areas of: commercial tax evasion, criminal activities and corruption. To that effect, the Panel promotes national and multilateral policies (safeguards and agreements) aimed at curtailing the cross-border flow of illegal money. In addition, it recommends solutions, facilitates strategic partnership, and commissions research on various aspects of the subject. Specifically, the objectives of the Panel are ([www.uneca.org](http://www.uneca.org)):

- (i) To determine the nature and patterns of illicit financial outflows;
- (ii) To determine the level of illicit financial outflows from Africa;
- (iii) To assess the short and long-term implications of illicit financial flows on development.
- (iv) To sensitize African governments, citizens and international development partners on the scale and effect of financial outflows on development, and also mobilize political will in support of putting in place the rules and regulations that are necessary to combat illicit financial outflows (ECA, 2011).

### **FATF Styled Regional Bodies (FSRBs)**

There are three regional AML groups (FSRBs), or associate members of FATF: the Middle East and North Africa Financial Action Task Force against Money Laundering and Terrorism

Financing; the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG); and the Inter-governmental Action Group against Money Laundering in West Africa (GIABA). A fourth group is being established in the context of the Economic and Money Community of Central Africa and the Central African Monetary Union (known by their French acronyms, CEMAC and UMAC respectively): namely, the Groupe d'Action contre le Blanchiment d'Argent en Afrique Centrale (GABAC), or Action Group against Money Laundering in Central Africa.

The mandate of GIABA includes:

- (i) Development of strategies to protect the economies of member states from abuse and the laundering of the proceeds of crime;
- (ii) Improvement of measures and intensification of efforts to combat the laundering of proceeds of crime in West Africa;
- (iii) Strengthening of cooperation amongst its members.

The objectives of ESAAMLG are to:

- (i) Adopt and implement the 40 & 9 Recommendations of the FAFT;
- (ii) Apply anti-money laundering measures to all serious crimes;
- (iii) Implement any other measures contained in multilateral agreements and initiatives to which they subscribe for the prevention and control of the laundering of the proceeds of crime (ESAAMLG, 2009).

Over the years, these regional organizations have not only heightened awareness in the member states, but they have also undertaken activities to build the individual and institutional capacity

of a number of stakeholders and initiated the establishment of the requisite legal and institutional frameworks, including the establishment of Financial Intelligent Units (FIUs) in a number of jurisdictions.

### **African Forum and Network on Debt and Development (AFRODAD)**

AFRODAD acknowledges that Africa is a continent endowed with rich natural resources. Underutilization of the natural resources, mismanagement of proceeds from natural resources and skewed trade agreements with developed countries have prevented Africans from fully benefitting from these resources. Furthermore, public financial management in Africa has been characterized by inefficiency and the misallocation of resources, and high poverty levels and disparities between the rich and poor have been attributed to poor economic governance. In order to address this governance problem, AFRODAD has set the following objectives ([www.afrodad.org](http://www.afrodad.org)):

- (i) To identify the root causes, structure, and effects, and find sustainable and lasting solutions to, the African debt crisis;
- (ii) To secure policy change that will redress and avert Africa's debt crisis based on a human rights value system;
- (iii) To support the creation and strengthening of people-based coalitions in African countries to deal with debt and other related issues;
- (iv) To facilitate policy dialogue among civil society, African governments and their development partners, and international financial institutions on debt and development-related issues;

- (v) To secure total debt cancellation for all African countries and free financial resources for sustainable development;
- (vi) To create, package, and disseminate debt and development-related knowledge for use by different actors in debt cancellation campaigns.

In the process of achieving these objectives, AFRODAD has worked closely with UNCTAD, among others, in developing the UNCTAD Principles on Promoting Responsible Sovereign Lending and Borrowing. The principles are aimed to reduce the frequency and severity of debt crisis by developing a set of voluntary guidelines that promote and reinforce responsible sovereign lending and borrowing practices (UNCTAD, 2012).

#### **African Tax Administration Forum (ATAF)**

ATAF is a platform to promote and facilitate mutual cooperation among the African Tax Administration and other relevant and interested stakeholders with the aim of improving the efficacy of their tax legislation and administration (see [www.ataftax.net/en](http://www.ataftax.net/en)). The Forum brings together heads of African tax administrations and their representations to discuss the progress made, challenges faced, and possible new directions for African tax policy and administration in the 21<sup>st</sup> Century.

One of the objectives of ATAF is to contribute towards increased transparency and cooperation among tax administrations on the continent. It is strongly believed that enhanced transparency would address Africa's challenges of boosting revenue through broad-based taxation, mobilizing domestic resources, and reducing dependence on foreign aid and indebtedness.

In shouldering its mandate, ATAF collaborates closely with the Global Forum and the associated review process. This networking has assisted ATAF to (i) develop skill and build experience on the legal and regulatory framework for transparency and the exchange of information for tax purposes; (ii) identify best practices against which to benchmark and review its own exchanges of tax information system to ensure compliance with the international standard.

### **Country-Level Initiatives**

The legislative, policy and implementation frameworks at the country level have been informed by, and are outcomes of, the regional and global initiatives discussed in the preceding sections. In this regard, countries have either acquired membership in global and regional organizations or have ratified and acceded to a number of the Conventions and Regional Protocols on combating illicit financial flows in general and money laundering in particular. For countries which have not done the same, there are a number of explanatory factors, including the lack of political will, low levels of awareness of the magnitude and impact of the problem, low levels of donor dependency, competing priorities, and the non-obligatory nature of the initiatives. In the remainder of this section we look more closely at these frameworks.

### **Membership in Regional Organizations**

In Africa, the majority of countries have acquired membership in either GIABA or ESAAMLG. For example, fourteen countries in Eastern and Southern Africa are members of ESAAMLG, and by so doing, they automatically adopt the 40 & 9 Recommendations of FATF. Likewise, they commit themselves to implementing measures contained in multilateral agreements and initiatives to which they subscribe for the prevention and control of the laundering of the proceeds of crime.

In the same vein, over fifteen African countries, which are rich in natural resources, have joined the EITI. This initiative is a developed global standard that aims at promoting the transparency of payments from natural resources. Therefore, companies are obliged to publish what they pay and governments, on their part, have to publish what they receive from the companies.

### **Ratification and Accession to Regional and International Initiatives**

A number of African countries have ratified and acceded to a variety of initiatives. The ratification and accession exercise subsequently ushered in the enactment of several laws at the national level as a way of domesticating the initiatives. At the end of the day, most countries have put in place laws and regulations that seek to criminalize money laundering and provide for criminal and civil restraint, seizure and forfeiture (Moshi, 2008)

### **Enforcement of Institutional Frameworks**

The implementation of policy and legislative initiatives has resulted in the establishment of requisite institutional frameworks at the country level. These include national advisory boards, Financial Intelligent Units, and national anti-corruption bodies. In the area of anti-money laundering initiatives, most African countries have established a National Multi-Disciplinary Committee (Task Force), whose primary mandate is to facilitate the development of a robust and effective anti-money laundering regime by educating members of the public on the dangers of money laundering, in addition to crafting a national policy framework on AML that is in line with international standards and best practices (ESAAMLG, 2009).

Likewise, a number of governments in Africa have established Financial Intelligent Units (FIUs): Kenya, Tanzania, Mozambique, Malawi, Zambia, Zimbabwe, Zambia, Lesotho, South

Africa, Namibia, Swaziland, Ethiopia, Angola, Botswana, Seychelles, Comoros and Mauritius. Out of all these units, only those of South Africa, Mauritius, Seychelles and Malawi have qualified to become members of the Egmont Group. These units are mandated to challenge criminality by detecting and investigating the proceeds of crime and preparing court cases for freezing and confiscating criminally derived assets. The above list of countries is far from exhaustive. Indeed, Nigeria, like many other countries, has established a body known as the “Economic and Financial Crimes Commission”, which is charged with the responsibility of coordinating the various institutions involved in the fight against money laundering and the enforcement of all laws dealing with the economic and financial crimes in the country.

In an effort to prevent and combat corruption, the majority of African countries have enacted an Anti-Corruption Act and established an anti-corruption body. These include: Botswana, Kenya, Mozambique, Namibia, South Africa, Tanzania, Zambia and Zimbabwe. Indeed, preventing the laundering of the proceeds of corruption and recovery, whenever possible, are crucial elements of the fight against corruption. In some countries, like Ethiopia, Malawi, Tanzania and Zambia, the anti-corruption initiatives have been complemented with the enactment of the Whistleblowers Protection Act and Construction Sector Transparency Initiative (CoST). Whereas the former aims at safeguarding whistleblowers and thereby entitles them to anonymity, compensation, relocation, and employment reinstatement, the latter focuses on enhancing transparency and accountability in the construction sector, specifically in the public disclosure of information.

However, the effectiveness of the anti-corruption initiatives has been rather modest because of the failure to enforce the rules – or the willful circumvention of them – and the weaknesses of

the institutions dealing with corruption, including their lack of independence from politicians. Further, while a number of the recommended reform efforts are on-going in a number of countries, many of them are of a long-term nature and will have little impact on short-term success in fighting corruption. And finally, while there are a number of high-profile corruption cases that are either on-going or completed in some countries like Tanzania, all in all there has been slow progress on grand corruption cases. These cases have received less attention than lower-profile ones.

Many of the Anglophone and Francophone African countries have established semi-autonomous tax revenue authorities. These authorities have adopted an organizational model that aims to promote transparency by targeting the mobilization of domestic resources while combating corruption. Although variations of the model exist, some common characteristics include human resource policies and procedures that are separate from regular government departments and strategic oversight by a board, typically with a mix of private and public representation (IMF, 2013).

Efforts have also been directed towards strengthening the institutional capacity of agencies and organizations that regulate the activities of banks and financial institutions, insurance companies, and capital and securities markets. The primary objective of regulation is to ensure that the regulated entities comply with the demands for transparency.

## **5. Challenges and the Way Forward**

The preceding sections have taken account of the global, regional and national initiatives aimed at preventing and combating illicit financial flows. Indeed, the resultant policy, legislative and

institutional frameworks have increased the awareness of key stakeholders of the scope and impact of illicit financial flows on a country's socio-economic development. The assertion that awareness has been heightened is supported by the vast dissemination of knowledge and amplified research interest on the subject. However, apart from the gains in awareness, one could confidently claim that the problem is far from being solved. In this section, we would like to identify the constraining factors and offer some recommendations for addressing the challenges.

## 5.1 The Challenges

African economies, like the economies of many other developing countries, are characterized by two factors. First, they are, to a larger extent, cash-based. More than 50 percent of the economic transactions in all sectors are conducted in cash and the majority of the population are unbanked (Moshi, 2007, World Bank, 2011). Secondly, the informal sector in these economies is significantly large. Schneider (2005) estimates that the contribution of the informal sector in 32 Sub-Saharan African countries, excluding South Africa, stands at 41 percent of GDP. This percentage is higher than in other continents. Further, ILO (2002) data show that the share of informal employment in non-agricultural employment is 78 percent in Sub-Saharan African countries (excluding South Africa). Again, this figure is the highest in the world. These two dimensions have critically undermined efforts to combat illicit financial flows. They scale up the countries' vulnerability since they provide a fertile ground for illicit activities to thrive.

The adoption of global or regional codes of conduct, standards, and best practices by both developed countries and African countries has not been easy for a number of reasons. First, there has not been a consensus among stakeholders on the definition of what constitutes a secrecy

jurisdiction or tax haven. In this regard, there are those who argue that closing down banking operations in secrecy jurisdictions is not a desired alternative (Antoine, 2008; NHO, 2009).

Second, there is resistance by countries in the European Union to implement country-by-country reporting. Such reporting would have enabled the identification of illegal and ethically questionable tax practices by MNCs that deprive developing countries, including Africa, of much needed resources. This notwithstanding, Africa's revenue authorities are yet to develop their audit capacity in these areas (Eurodad, 2011). Furthermore, apart from the above resistance factors, the initiative falls short of being a meaningful accounting disclosure that will hold these companies truly accountable. That is, it fails to hold capital accountable not only for what it does in developing countries, but also for its flow into and out of such places.

Third, there have been delays in adopting some resolutions and these have subsequently delayed the implementation of earmarked measures and actions. For example, decisions on some components of the European Parliament Resolutions on the fight against fraud, tax evasion and tax havens have been deferred to the end of 2014. These address the clear definition of tax havens and a common set of criteria to identify them. Another delay is in compiling and creating a public European blacklist of tax havens.

Fourth, the arm's length principle of OECD to prevent transfer pricing, and the OECD model for tax information exchange "upon request" have been but small contributions in terms of results. The clause "upon request" not only undermines compliance by companies but also excludes those countries, mostly in Africa, which are unable to pay for the requested information. Furthermore, the clause tends to water down the effectiveness of the peer reviews conducted by

the Global Forum (GF), and thus inhibits the effectiveness of the GF standards in curtailing illicit financial flows.

Corruption, which is already systemic in a number of countries, has equally frustrated efforts to fight illicit capital flight. In the case of Kenya, for example, it is noted that, “The fight against corruption and organized crime has primarily been in the hands of the police and the judiciary. The police, being in charge of investigation and prosecution, are responsible for providing evidence to the judiciary for the conviction of suspects in courts of law. However, corruption became so entrenched in the police force and the judiciary that a large number of criminal cases were scuttled either by shoddy investigations done by police officers compromised by the suspects, or as a result of the corruption in the judges and magistrates handling such cases” (Warutere, 2006, p. 86 ). The Kenyan case could be generalized to most of the African countries. To the extent that corruption is endemic in the police force, judiciary and other institutional frameworks, the effectiveness of measures to address illicit capital flight tends to be compromised by corruption (Moshi, 2011).

The deficiencies in the enabling legal framework tend to limit the effectiveness of the frameworks in combating crimes. For example, the performance of South Africa’s Financial Intelligence Centre Act (FICA) is inhibited by the absence of effective regulatory powers for supervisory bodies. This structural deficiency disabled FICA’s attempts to supervise financial and non-financial institutions effectively and enforce their compliance with anti-money laundering regulations (Goredema, 2007).

The legal frameworks in some jurisdictions have not been broad enough to capture all crimes that drive illicit financial flows. For example, tax evasion has not been criminalized in a number

of jurisdictions, either because the definition of what constitutes tax crimes varies across countries or the concept is defined too narrowly by other jurisdictions. This phenomenon has, to a greater extent, obstructed cross-border cooperation and has led certain types of tax crimes not to be considered as a predicate crime of money laundering. Due to the very fact that tax evasion has not been criminalized, court sentences with regard to tax crimes have been quite mild in that they have failed to act as a deterrent to both actual and potential tax evaders.

Most multinational corporations (MNCs) are domiciled in the USA and Europe. These countries are also the sources of ODA and technical assistance for developing countries, especially Africa. These two phenomena place African countries in a “subordinate” position when it comes to negotiating contracts with either MNCs or donors. Given the low human and institutional capacity in most African countries, it has been extremely difficult for these countries to secure “win-win” investment contracts in the face of financial clout and politically influential MNCs and donors. The demand for and granting of investment incentives (tax holiday) to foreign investors have further aggravated the situation as far as illicit financial flows are concerned.

Initiatives like EITI fail, however, to ensure that the contracting process is transparent and the resultant deal is a win-win. Unless transparency reigns during the contracting phase and the parties involved do away with the secrecy embroiled in such contracts, mining contracts will continue to be a significant conduit for illicit financial flows. We are of the opinion that the overemphasis of EITI on revenues rather than on expenditures is misplaced. This view seems to be widely shared (Kolstad and Wiig, 2008).

The level of political will in both developed and African countries has never attained a threshold that could be termed satisfactory. Banks in EU member countries, USA, and Switzerland

continue to be perceived as the safest places to invest. Further, these countries continue to give preferential tax treatment to foreigners. Finally, these countries have adopted “beggar thy neighbor” tax competition policies to attract illicit capital from abroad to swell their financial sectors.

The continued application of the above measures by the developed countries, coupled with their partial compliance with Anti-Money Laundering Standards, Transparency and Exchange of Information for Tax Purposes, and the joint OECD/Stolen Assets Recovery Initiative, is a clear manifestation of their lack of political will to embark on bold measures that will effectively fight illicit capital flows. This apparent resistance or unwillingness to act more forcefully may be informed by the fears that they might be, at the end of the day, the likely “losers”, given that, currently, they are directly or indirectly the major beneficiaries of the illicit flows. It is high time that the developed countries, including the OECD, were to be once again reminded of the need to implement their commitments to combat money laundering, tax evasion, bribery, and corruption, and to track, freeze, and return assets to the source countries. A recent report (OECD, 2013) shows that most of OECD countries have not made significant progress in fulfilling their commitments to fight the above named crimes.

On the other side of the coin, African governments have not been keen on demanding the repatriation or recovery of the illicit capital. The main factor behind this apparent resistance stems from the fact that part of the illicit financial flows has been attributed to corruption by politically exposed persons (PEPs) and highly placed civil servants. To the extent that some of these personalities are still in power, this type of resistance is unavoidable but unjustifiable.

In addition to the above set of challenges, there are other constraining factors that have disabled the effectiveness of the frameworks. These include weak coordination amongst national executing agencies, the inadequacy of resources (human, capital, and financial) availed to the executing bodies, the non-availability of certain skills and expertise (forensic investigations), and poor data and information sharing within and outside country borders.

## 5.2 The Way Forward

In this section, we articulate some of the necessary steps to be taken, at different levels, to improve the performance of the existing frameworks, with the view towards combating illicit financial flows while at the same time addressing the identified challenges. Africa has to take a proactive position and own the process of the fight against illicit capital flight. Most of the existing initiatives and the institutional frameworks appear to have been driven by forces outside the continent, with their attendant problems of adaptability. Africa needs to be in the driver's seat and champion the process in order to ensure that significant progress is made within a reasonable timeframe.

Strong political will by governments, in both developed and developing countries, remains one of the critical building blocks for addressing the issue of illicit financial flows. This being the case, governments should not only rectify and accede to global and regional conventions, but they should also ensure that the evolving institutional frameworks (regulatory and supervisory) are well-equipped to provide adequate resources (human, financial and otherwise) to execute their mandates effectively and efficiently. Further, institutional capacity building efforts should go hand in hand with those of improving coordination among regulatory, supervisory and executing agencies as a way of building a shared vision and realizing the synergies of

coordination. African governments also need to commit themselves seriously to the agenda of combating illicit flows by embracing the principles of good governance, understood as promoting transparency and accountability. In this regard, the capacity of oversight and other non-governmental institutions should be enhanced so that they are able to demand accountability from governments. This should go hand in hand with capacity building for the media.

Tax evasion, one of the main channels of capital flight, needs to be criminalized by all jurisdictions. In so doing, the crime will not only be captured by anti-money laundering legislation and actions, but cross-border cooperation in the operationalization of the concept of “dual criminality” will also be facilitated. Further, once tax crimes are made a predicate offense of money laundering, FATF transposition provides an avenue whereby individuals, companies and professionals can be held accountable for their insidious activities, a measure which will enhance transparency.

Studies show that tax evasion accounts for a large share of international illicit financial flows, and a large proportion of this is through transactions conducted by multinational companies. In order to enhance the transparency of the transactions of these companies, especially between them and their subsidiaries, where most of the price manipulation takes place, we recommend that governments enforce the adoption and implementation of International Accounting Standards (IAS) that require multinational corporations to show clearly their country-by-country earnings. It needs to be recalled that the absence of adequate information prevents scrutiny by legislators and the public while creating opportunities for corruption.

In some jurisdictions, banking secrecy laws prevent the sharing of information with other jurisdictions on tax evasion and other forms of money laundering. Likewise, data protection laws

sometimes prohibit the sharing of information on customers globally within a multinational bank. Indeed, these laws need to be amended if progress were to be made as far as the fight against illicit financial flows is concerned. In order to achieve this, there is a need to scale up lobbying and advocacy by showing the extent of the damage (resources lost or foregone) caused by these prohibitive laws to the source countries of the flows. All in all, the adoption of country-by-country reporting enhances transparency in tax dodging and planning, and is of paramount importance for all countries.

There is also a need to design and implement strategies aimed at enhancing the role of financial intelligence units (FIUs) in cash-based economies. By ensuring that the institutions are empowered to work with non-formal institutions, they can receive information on suspicious transactions from the informal sector. In a cash-based economy, it would be counterproductive to have FIUs whose mandate is restricted to dealing only (in terms of working relationships) with formal or semi-formal financial and non-financial institutions, given their narrow outreach in most African countries.

To the extent that capital flight is a cross-border phenomenon, the issue of broadening and deepening regional and global cooperation becomes of necessity. Areas of cooperation range from the exchange and sharing of information and experiences, the adoption of sound practices, mutual legal assistance, human and institutional capacity building, to the transposition of global initiatives. However, in order for the cooperation to be effective it has to be guided by the spirit of partnership, rule-based fairness and accountability with the aim of engendering African ownership of the initiatives. Equally important, developed countries, especially G-8 and G-20, should honor their commitments to enhance transparency in secrecy havens. These have to be

matched with concrete actions such as dispensing with the “beggar thy neighbor” mentality and the application of double standards involving fiscal incentives for attracting investments.

## **6. Concluding Remarks**

In this paper we have argued that, over the years, awareness of the sources, scope, channels and impact of illicit financial flows on the economies of African countries has increased. This is evidenced by the massive dissemination of knowledge generated in the recent past and continued research interest in the subject. The heightened awareness has been a product of efforts by researchers, think tanks, NGOs, CSOs, the media, and a wide spectrum of advocacy organizations. These institutional frameworks have forged strong networks among themselves and their collaborative modality of work has resulted in the undertaking of joint projects in the form of conferences, workshops, seminars and publications. These efforts have, in turn, ushered in the establishment of policy, legislative and institutional frameworks at global, regional and country levels. The frameworks are aimed at promoting transparency with a view towards combating illicit financial flows while at the same time facilitating the repatriation of the ill-gotten resources.

In promoting transparency, these institutional frameworks have spearheaded the adoption of codes of conduct, standards and best practices as a way of curbing tax evasion, trade mispricing, corruption, non-transparent operations of multinational corporations and secrecy jurisdictions, and ultimately illicit financial flows. However, the overall impact of these initiatives on reversing capital flight has been minimal. Their modest performance is due to a number of factors.

One, the political will of both developed and developing countries, including Africa, has been weak. Policy makers have repeatedly committed to bringing illicit flows and tax evasion under control in international and regional fora such as G-20 and the African Union, but barely any progress has been made towards comprehensive and effective measures. Likewise, even where African governments have put in place the requisite frameworks to fight corruption, progress has been poor and slow.

Two, in most African countries enforcement capacity has been low due to inadequate human, financial and technical capacities. The lack of capacities has translated into difficulty enforcing tax legislation, mobilizing resources from the dominant informal sector, and auditing the activities of multinational corporations. Other difficulties are those associated with dealing with tax competition issues, weak negotiation power for investment and tax agreements, and systemic corruption.

Three, the evolution of institutions that promote transparency in Africa initially revolved around addressing thematic issues like tax evasion, corruption and mispricing separately, without necessarily focusing on their linkages and how these drive illicit financial flows. This phenomenon has, to some extent, delayed Africa's active role in this area. However, the establishment of the High Level Panel is one of the indications that African countries are taking a proactive position in owning and driving the process of combating illicit financial flows and recovering the missing resources. The success of the initiative will very much depend on African countries' capacity to design, adopt and implement strategies that will effectively address their respective human and institutional constraints, inadequacy of financial resources, and low voice in global institutional arrangements.

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