TRANSPARENCY INTERNATIONAL
the global coalition against corruption

ILLICIT FINANCIAL FLOWS

TOPIC GUIDE

Compiled by the Anti-Corruption Helpdesk

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UNDERSTANDING ILLICIT FINANCIAL FLOWS

This topic guide aims to provide a comprehensive and updated overview of illicit financial flows (IFFs). It presents the most important international best practices in countering this phenomenon and highlights key-challenges and areas of intervention. The first section deals with the definition of the concept of IFFs and the conceptual debate around them. It also presents the definition along with the main trends and costs. The second part analyses the core strategies to fight IFFs and the principal difficulties in their implementation.

What are illicit financial flows?

In the international development community, the concept of illicit financial flows (IFFs) emerged as an umbrella-term that brings together previously disconnected issues. The term appeared in the 1990s and was initially associated with *capital flight*[1]: "the movement of funds abroad in order to secure better returns, often in response to an unfavourable business climate in the country of origin".[2] Over the past years, however, the term has evolved and is now broadly understood as the movement of capital, associated with illegal activity, from one country to another. The concept is now widely used by governments, international institutions and global and national civil society in development policy, with the Sustainable Development Goals (SDGs) – specifically SDG 16.4 – expliticly referring to the fight against IFFs.

Unlike the term capital flight, the concept of IFFs is based on the fact that capital outflows do not react primarily to unfavourable investment conditions but rather help to trigger them. At the same time, the conceptual shift from the concept of capital flight to that of IFFs also implies that these outflows are not only the responsibility of the countries where they originate but also of those countries that, as tax havens or secrecy jurisdictions, facilitate and encourage them.[3] According to Raymond Baker, capital flight is an expression that places virtually the whole of the problem upon the developing countries out of which the money comes and suggests that it is almost entirely their responsibility to solve the problem. IFFs, on the other hand, conveys the idea that this phenomenon is a two-way street.[4] Some studies have questioned whether capital flight is indeed motivated by insufficient investment opportunities and high risks in the country of origin. An econometric analysis conducted with data from African countries, for example, found that there is no relation between capital flight and the indicators of risk-adjusted returns to investment. This, according to the authors, leads to the idea that capital flight is, to a certain extent, driven by illegal purposes.[5]

[1] World Bank. 2016. "Illicit Financial Flows (IFFs)", *World Bank Brief*. Available at: http://www.worldbank.org/en/topic/financialmarketintegrity/brief/illicit-financial-flows-iffs
[2] United Nations Economic Commission for Africa (UNECA). 2013. The State of Governance in Africa: The Dimension of Illicit Financial Flows as a Governance Challenge. Addis Ababa: UNECA. p. 2.
[3] Cobham, A. and Janský, P. 2017. Illicit Financial Flows: An Overview. Intergovernmental Group of Experts on Financing for Development; Hakenrath, M. 2014. "Illicit Financial Flows and their Developmental Impacts: An Overview", *International Development Policy*. p. 2.
[4] Baker, R. 2008. "Illicit Financial Flows: A Note on Concepts" in Kar, D. and D. Cartwright-Smith, *Illicit Financial Flows from Developing Countries: 2002-2006*. Washington DC: Global Financial Integrity. p. 6
[5] Ndikumana, L. and Boyce, J. K. 2003. Public Debts and Private Assets: Explaining Capital Flight from Sub-Saharan African Countries. *World Development*, Vol. 31, No. 1.

There is no consensus on the definition of IFFs, although different definitions of IFFs have important implications on designing suitable anti-IFF policies.[6] Global Financial Integrity (GFI) provides one of the most widely accepted definitions: "illegal movements of money or capital … that is illegally earned, transferred or spent across international borders".[7]

In its definition, GFI, focuses on three main elements to define IFFs: i) the acts themselves are illegal (for example, bribery, fraud and other forms of corruption, tax evasion, and so on); ii) the funds are the results of illegal acts (for example, smuggling and trafficking minerals, wildlife, drugs and people); iii) the funds are used for illegal purposes (for example, financing organised crime).[8] Another commonly accepted definition is provided by OECD, which characterises as IFFs any financial flows "generated by methods, practices and crimes aiming to transfer financial capital out of a country in contravention of national or international laws".[9] While the OECD's definition focuses primarily on methods, practices and crimes that transfer financial capital out of a country, GFI's notion of IFFs takes a broader approach by extending the scope to how the funds are utilised once moved. A comparison between the two definitions also exemplifies the growing controversy around the interpretation of the term "illicit" and whether it should be understood as a synonym of illegal or if a more normative interpretation should be used.[10]

The debate around the definition of IFFs has concrete practical implications as it determines whether certain commercial activities – such as tax avoidance – should be considered as IFFs, even though many business practices to lower tax liabilities are legal.[11] While keeping mainly to the notion that IFFs have a clear connection with illegality, this guide will also consider activities such as tax avoidance as contributing to IFFs, especially considering the role of multinational corporations in aggressive tax planning and their consequences for developing countries.

Some examples of illicit financial flows include:

- A drug cartel using trade-based money laundering techniques to mix legal money from the sale of used cars with illegal money from drug sales
- An importer using trade misinvoicing to evade customs duties, VAT or income taxes
- A corrupt public official using an anonymous shell company to transfer dirty money to a bank account in the United States
- A human trafficker carrying a briefcase of cash across the border and depositing it in a foreign bank
- A terrorist wiring money from the Middle East to an operative in Europe[12]

Illicit financial flows are typically used to conceal illegal activities and evade taxes. They are not a new phenomenon, but the growing globalisation of financial markets has increased their economic and political significance.[13] Moreover, both developed and developing countries are suffering from the effects of these flows. As a result, the attention to IFFs has grown, and research by civil society, academia and international organisations on the economic consequences of IFFs have started emerging in the past few years. A common thread in the specialised academic literature are papers

[6] Eriksson, F. 2017. Illicit Financial Flows Definitions: Crucial Questions. U4 Anti-corruption Research Center, https://medium.com/u4-anti-corruption-resource-centre/iff-definitions-3f3d0ba106c3
[7] See Global Financial Integrity. "Illicit Financial Flows" available at: http://www.gfintegrity.org/issue/illicit-financial-flows/ and Transparency International Anti-Corruption Glossary available at: https://www.transparency.org/glossary/term/illicit_financial_flows
[8] World Bank. 2016. "Illicit Financial Flows (IFFs)", *World Bank Brief*.
[9] For a full list of definitions of IFF by international organisations and groups see Forstater, M. 2018. "Illicit Financial Flows, Trade Misinvoicing, and Multinational Tax Avoidance: The Same or Different?"
[10] Aziani, A. 2018. Illicit Financial Flows. An Innovative Approach to Estimation.
[11] Aziani, A. 2018. Illicit Financial Flows. An Innovative Approach to Estimation.
[12] Global Financial Integrity. "Illicit Financial Flows" available at: http://www.gfintegrity.org/issue/illicit-financial-flows/
[13] Herkenrath, M. 2014. "Illicit Financial Flows and their Developmental Impacts: An Overview", *International Development Policy*.

that count IFFs as part of the concept of capital flight and explore the causes of that phenomenon. Theoretical reflections and empirical case material can be found mostly in reports by non-governmental organisations (NGOs).[14]

Although only a small percentage of IFFs seem to be directly linked to embezzlement and bribery, corruption is closely linked to many of the other practices that give rise to these flows and still involves the theft of large amounts of money in absolute terms. Corruption should be seen as both a source and enabler of IFFs: it is often used as a means to ensure companies, individuals and criminal organisations can evade taxes or launder the proceeds of criminal activities and avoid punishment. More generally, corruption can be used to facilitate access to the international financial system to hide the proceeds of crime; corruption undermines the capacity of public or private institutions to prevent or detect cross-border transfers; and corruption facilitates the illegal use of funds once they have crossed borders.[15] Moreover, the proportion of total IFFs stemming from corruption may be higher in developing countries with less sophisticated organised crime and smaller financial centres. It can also be argued that a failure to limit corruption first will make the stemming of IFFs an almost impossible task.[16]

Trends in illicit financial flows

As mentioned above, much of the current debate around IFFs revolves around finding a comprehensive definition of illicit financial flows and around measuring their size. On the one hand, illicit flows are by nature poorly recorded and therefore difficult to track. On the other, the measurement of IFFs is closely linked to which definition of IFF is used, whether a broader definition including "legal" practices such as tax avoidance or not is chosen. In either case, estimating the total size of these flows means including a wide range of activities from company tax evasion conducted via transfer mispricing to the proceeds of crime including corruption, and is still something no model has achieved successfully.[17] The attempts to estimate the magnitude of IFFs have been based principally on financial flows that are unregistered in the country of origin: the basic assumption of this work is that the transfers in question take place via unregistered channels because their background or purpose is illegal.

Broadly speaking, there seems to be a consensus that IFFs from developing countries are worth more than the total development assistance provided by OECD donor countries.[18] As the OECD emphasises, every year huge sums of money are illegally transferred from developing countries, taking away resources that could be used to finance public services, thus weakening their financial systems and economic potential. Although such practices may occur in all countries, the social and economic impact on developing countries is more severe due to the their smaller resource base and markets.[19]

Most of the available estimates on the scale of IFFs are provided by NGOs, and the most cited calculation is that developed by GFI. This organisation relies on discrepancies in various trade and international macroeconomic statistics to identify these hidden flows. Although the GFI approach

[14] Herkenrath, M. 2014. "Illicit Financial Flows and their Developmental Impacts: An Overview", *International Development Policy*, p. 2.
[15] Eriksson, F. 2018. "Expanding the Role of Corruption in IFF", in Putting the IFF Agenda into Action at the Country Level. U4 Anti-Corruption Resource Center: https://medium.com/u4-anti-corruption-resource-centre/expanding-the-role-of-corruption-in-iff-b50311a38a0a
[16] African Union Commission/United Nations Economic Commission for Africa .2012. Illicit Financial Flows: Report on the High Level Panel on Illicit Financial Flows from Africa, UNECA. p. 32.
[17] Reed, Q. and Fontana, A. 2011. "Corruption and Illicit Financial Flows: The Limits and Possibilities of Current Approaches", *U4 Issue*, Bergen: U4 Anti-Corruption Resource Centre/Chr. Michelsen Institute. p. 8.
[18] Measuring OECD Responses to Illicit Financial Flows from Developing Countries. 2013. p. 15.
[19] Ogbonnaya, A., Ogechuckwu. 2017. "Impact of Illicit Financial Flow on Economic Growth and Development: Evidence from Nigeria", *International Journal of Innovation and Economic Development,* Volume 3, Issue 4, October 2017, p. 19.

has been increasingly criticised for making unrealistic assumptions about trade-related transport costs and ignoring many other factors that could account for errors in international trade and finance statistics,[20] they offer a broad picture of the magnitude of the problem.[21]

According to the GFI calculations, the developing world lost around US$7.85 trillion in illicit outflows between 2004 and 2013.[22] Moreover, according to the same data, IFFs increased at a rate of 9.4 per cent per annum and reached a new peak of almost US$1.1 trillion in 2013[23]. As for the destination of IFFs, GFI estimates that about 45 per cent of illicit flows end up in offshore financial centres and 55 per cent in developed countries.[24]

GFI's most recent estimates indicated, using IMF sources, that, in 2015, the top 30 countries out of 148 with the highest illicit outflows in dollar values include resource rich countries such as South Africa, Nigeria, Turkey, Mexico, Brazil and Malaysia. At the other side, the top 30 countries ranked by illicit outflows as a percentage of total trade with advanced economies produced a very different group of countries, and includes Mozambique, Malawi, Zambia, Honduras and Myanmar. GFI further noted that potential trade misinvoicing has averaged nearly 19 per cent of total developing country trade between 2006 and 2015.[25] In this context, misinvoicing refers to the practice of moving money illicitly across borders through the deliberate falsification of the value, volume, and/or type of commodity in an international commercial transaction of goods or services by at least one party to the transaction.

The current literature on IFFs suggests that they mostly involve money laundering, tax evasion and trade mispricing. According to GFI, corruption, in the form of foreign bribery or embezzlement, accounts for 3 per cent of the total value of illicit financial flows. Criminal activities by organised criminal groups are responsible for 35 per cent of these outflows, and tax evasion and avoidance, mostly in the form of trade misinvoicing, account for the remaining 60 to 65 per cent[26].

Determinants of illicit financial flows

The illicit outflow of capital is primarily made possible by a shadow international financial system, especially offshore financial centres, tax secrecy jurisdictions or "tax havens". This system enables individuals and organisations to hold their wealth – including the one possibly accumulated as a result of criminal activities – abroad by capitalising on banking secrecy and loose financial regulations, specifically a substantial lack of transparency on the beneficial ownership of companies, the existence and widespread use of anonymous or shell companies, trusts, and other legal vehicles, breifly analysed in the next sections of this guide. Further key drivers of IFFs identified in the literature include:

- Structural features of the country's economy: in a context of weak governance and regulations, natural resource abundance (and a dependence on natural resources) combined with trade openness may create the perfect environment for the proliferation of IFFs. Endowment in natural resources presents opportunities for

[20] See, for example, Forstater, M. 2018. "Illicit Financial Flows, Trade Misinvoicing, and Multinational Tax Avoidance: The Same or Different?"
[21] Reuter, P. 2012. *Draining Development? Controlling Flows of Illicit Funds from Developing Countries*. Washington DC: World Bank.
[22] Kar, D. and J. Spanjer. 2015. *Illicit Financial Flows from Developing Countries: 2004-2013*. Washington DC: Global Financial Integrity. p. 7.
[23] Kar, D. and J. Spanjer. 2015. *Illicit Financial Flows from Developing Countries: 2004-2013*. Washington DC: Global Financial Integrity. p. 3.
[24] Global Financial Integrity. "Illicit Financial Flows" available at: http://www.gfintegrity.org/issue/illicit-financial-flows/
[25] Global Financial Integrity. 2019. Illicit Financial Flows to and from 148 Developing Countries: 2006-2015.
[26] Martini, M. 2014. "Combating Illicit Financial Flows: The Role of the International Community". U4 Expert Answer. Bergen: Chr. Michelsen Institute. p. 3.

embezzlement, theft and trade misinvoicing given the large volumes of transactions involved in exploration, exploitation and export of these resources. Specifically, the Christen Michelsen Institute (CMI) proposes four factors which make extractive industries prone to IFFs: i) extractive industries fall under high-level discretionary political control, such as a president or executive committee, and are often prone to secrecy; ii) state companies in extractive sectors often blur lines between personal and public interests; iii) limited competition in extractive sectors leads to fewer corporate checks and balances; and iv) extractive sectors often require high degrees of technical expertise, which makes mispricing and falsifying reports easier.[27]

- Macroeconomic conditions: research highlighted that the presence of challenging macroenomic conditions in developing countries, especially from Africa, including indebtedness, high inflation, low growth rate and public deficits, significantly contribute to facilitating illicit financial flight.[28]

- Poor governance and lack of state capacity: this factor has several dimensions as it is linked to anti-corruption compliance, policing and preventing the prosperity of underground and illicit economies, maintaining financial transparency among political elites and corporations, and, most importantly, enforcing taxation. Tax revenues are frequently lost in foreign trade through profit shifting and trade mispricing.[29]

- Inequality: a more skewed distribution of income implies that there are many more high net-worth individuals in a country. According to a GFI study on India, people with the capacity to transfer substantial capital are the primary drivers of IFFs in the private sector (rather than the average citizen).[30]

The relative importance of each of these different factors may, however, vary across countries and across time periods. Some factors may be related to legitimate capital outflows, in other words, the part that is purely motivated by honest portfolio diversification, while others may be associated with illicit outflows motivated by the need to evade regulation and inquiry into the sources of the funds. This indicates the need for detailed empirical research at the country level.[31]

Resources on illicit financial flows

Background studies

Illicit Financial Flows to and from 148 Developing Countries: 2006-2015. Solomon, M., 2019. Washington DC: Global Financial Integrity.
https://www.gfintegrity.org/wp-content/uploads/2019/01/GFI-2019-IFF-Update-Report-1.29.18.pdf

This GFI report is the latest annual global update on country-level estimates of illicit financial flows into and out of 148 developing and emerging market nations as a result of their trade in goods with

[27] Le Billon, P. 2011. *Extractive Sectors and Illicit Financial Flows: What Role for Revenue Governance Initiatives?* Bergen: Chr. Michelsen Institute.
[28] Mossadak Anas. 2018. “Illicit Financial Outflows from Africa. Measurement and Determinants”. International Journal of Economics, Commerce and Management, p. 265.
[29] Sahadat, C. 2015. “Curbing Illicit Financial Flows from Africa: Are Current Initiatives Achieving Enough?”. New Delhi: Centre for Development and Human Rights.
[30] Kar, D. 2010. “The Drivers and Dynamics of Illicit Financial Flows from India: 1948-2008”. Washington DC: Global Financial Integrity.
[31] United Nations Development Programme. 2014. “A Snapshot of Illicit Financial Flows From Eight Developing Countries: Results and Issues for Investigation”, New York: UNDP. pp. 4-5.

advanced economies. In addition to updating the estimated IFFs that GFI presented in the past, this report widens the scope of its research and uses a more detailed database published by the UN along with updated measures from the International Monetary Fund data it has used previously. This study finds that, in the period between 2006 and 2015, IFFs accounted for over 20 per cent of developing country trade, on average, with a nearly even split between outflows and inflows. This study underscores the point that trade-related IFFs appear to be both significant and persistent features of developing country trade with advanced economies and that they remain an obstacle to achieving sustainable and equitable growth in the developing world.

Illicit Financial Flows via Trade Mis-invoicing. 2018.
World Customs Organization. Brussels.
http://www.wcoomd.org/-/media/wco/public/global/pdf/media/newsroom/reports/2018/wco-study-report-on-iffs_tm.pdf?la=en

This report, comissioned by the G20 Development Working Group, is the result of a collaboration between the World Customs Organization, academic, inter-governmental and industry experts and customs administrations. The report contains an overview of the current methods employed in assessing the magnitude of IFFs via trade misinvoicing – using the price filter method (PFM) and partner country method (PCM) – and features pioneering research from Global Financial Integrity and Central Michigan and Pennsylvania State universities. Additional contributions on inter-agency cooperation, best practices and new technologies, such as blockchain, provide a comprehensive account of the scale of IFFs and their wide-ranging impact. The report concludes that existing methods are too unreliable to measure the scale of illicit flows and contends that, rather than disputing the accuracy of individual assessment mechanisms, attention should instead focus on actions to counter IFFs.

Illicit Financial Flows. The Economy of Illicit Trade in West Africa. 2018.
OECD. Paris.
https://doi.org/10.1787/9789264268418-en

Going beyond a traditional analysis of IFFs, which typically emphasises the scale of monetary flows, the report examines the nature of 13 overlapping, and often mutually reinforcing, criminal and illicit economies, with a view to identifying their resulting financial flows and development linkages. In taking this approach, this report identifies the networks and drivers that allow these criminal economies to thrive, with a particular emphasis on the actors and incentives behind them. As a conclusion, the report proposes a series of policy considerations to assist countries to prioritise and focus their responses to reduce the development impacts of IFFs.

Global Governance to Combat Illicit Financial Flows: Measurement, Evaluation, Innovation. Kahler, M. et al., 2018.
Council on Foreign Relations.
https://cfrd8-files.cfr.org/sites/default/files/report_pdf/Discussion_Paper_Collection_Kahler_et_al_IFFs_OR.pdf

The report includes contributions from six authors, who map the contours of global governance in this area and consider how best to define and measure flows of dirty money. Improvements in the evaluation of existing policies as well as innovations that would increase the effectiveness of global governance are among the pressing issues covered in this collection. The authors outline an agenda for future action that should inform collective action to combat IFFs on the part of public, private and non-governmental actors. The topics covered include: mapping the institutions and actors involved the IFF agenda, measuring IFFs, evaluating measures to combat IFFs, security dimensions of IFFs, beneficial ownership information in the extractive sector and cryptocurrencies.

Understanding Illicit Financial Flows and Efforts to Combat them in Europe and Africa. Miyandazi, L. and Ronceray, M., 2018.
Discussion Paper No. 227. ECDPM.
https://euagenda.eu/upload/publications/illicit-financial-flows-in-europe-and-africa.pdf

The authors of this paper analyse policy dynamics and look into the dilemmas related to IFFs, in particular in Africa and Europe, to understand how to increase endeavours to counter IFFs and favour development. The authors examine the issue around the definition of IFFs, look at the evolving landscape of IFF policymaking and offer a set of recommendations as well as an inventory of past European and African approaches to IFFs.

Who Makes the Rules on Illicit Financial Flows? Financial Transparency Coalition, 2017.
https://financialtransparency.org/reports/who-makes-the-rules/

This paper analyses six international institutions that play a key role in developing global financial transparency measures. The brief introduces these institutions, which are generally unknown to the public despite their power in setting global norms, and highlights how decision-making processes within these bodies is dominated by developed countries. The piece concludes with options to make these bodies more inclusive so that global norms and standards are developed with all countries in mind, rather than just those at the decision-making table.

Illicit Financial Flows and Corruption in Asia. Lain, S. et al., 2017.
Royal United Services Institute for Defence and Security Studies (RUSI).
https://rusi.org/sites/default/files/201711_rusi_illicit_financial_flows_and_corruption_in_asia_lain_campbell_moiseinko_nouwens_web.pdf

This paper examines trends in illicit financial flows across eight focus countries in Asia: Kyrgyzstan, Tajikistan, Afghanistan, Pakistan, India, Nepal, Bangladesh and Myanmar. The study provides an assessment of routes, actors and sources of IFFs in and between these Asian countries. The paper is based on desk research carried out by RUSI's regional and thematic experts, as well as two in-country workshops (in New Delhi and Bishkek) and remote telephone interviews. Through an examination of both the national and international risks facing certain countries in Asia, which continues to have the highest levels of illicit outflows in dollars in the developing world, this paper aims to better understand how IFFs work from and between the focus countries, as well as how they link to financial centres elsewhere.

Measurement of Illicit Financial Flows. Cobham, A. and Janský, P., 2017.
UNODC-UNCTAD.
https://www. unodc. org/documents/data-and-analysis/statistics/IFF/Background_paper_B_Measurement_of_Illicit_Financial_Flows_UNCTAD_web. Pdf

The focus of this paper is the legal component of IFFs (tax avoidance or regulatory abuses) as one of two elements of the SDGs' indicator 16.4.1, which, together with the illegal component of IFFs (state assets and the proceeds of crime), captures the global dollar value of measured IFFs. The paper outlines how such an indicator could be selected, provides an overview of all the leading estimates, evaluates two alternative scale indicators, which would provide true measures rather than estimates, of IFF scale and evaluates a range of indicators of IFF-enabling secrecy and of IFF risk exposure.

Building a Statistical Framework to Measure Illicit Financial Flows.. UNODC-UNCTAD, 2017.
https://www.unodc.org/documents/data-and-analysis/statistics/IFF/Background_paper_A_Measurement_of_Illicit_Financial_Flows_UNODC.PDF

This background paper proposes a preliminary approach towards an internationally agreed statistical framework for the measurement of IFFs at the country level. The objective is to develop a statistical methodology for the measurement of the indicator “total value of inward and outward illicit financial flows (in current US dollars)”, which has been defined as a global metric for monitoring target 16.4 of the SDGs. The paper illustrates the overall statistical framework for measuring IFFs and presents a preliminary approach to identifying IFFs associated with drug trafficking and to build a standardised methodology for their measurement.

Europe Beyond Aid: Illicit Financial Flows: Policy Responses in Europe and Implications for Developing Countries. Pérez, A. and Olivié, I., 2015.
Center for Global Development.
http://www.cgdev.org/sites/default/files/Europe-Beyond-Aid-Illicit-Financial-Flows_0.pdf

This paper summarises the current understanding of IFFs and its relevance for developing countries. It analyses European contributions to countering IFFs and, based on three case studies of Belgium, Luxembourg and Spain, it provides in-depth analyses of national policies. The paper concludes that the EU has the tools to ensure a more transparent financial system, and further proposals are currently being discussed, which will likely lead to improved financial transparency within Europe.

Illicit Financial Flows: The Most Damaging Economic Condition Facing the Developing World.
Baker, R., T. Pogge, D. Kar, et al. 2015.
Washington, DC: Global Financial Integrity.
http://www.gfintegrity.org/wp-content/uploads/2015/09/Ford-Book-Final.pdf

This book features five condensed and updated quantitative country studies on illicit financial flows from India, Mexico, Russia, the Philippines and Brazil, as well as chapters on the human rights impact of illicit financial flows. The book examines the evolution of the issue from obscurity to global prominence over the past 10 years and the relationship between illicit flows and development. Though trade misinvoicing is a common theme, the country studies demonstrate that the composition of illicit flows can vary drastically from country to country. Different factors, including the role of organised crime in the underground economy in Mexico and Russia and macroeconomic crises in Brazil, shaped the formation of IFFs in different ways. According to the study, Russia’s illicit outflows were 8.3 per cent of its GDP (1994 to 2012); 4.5 per cent of the GDP of Mexico (1970 to 2012) and the Philippines (1960 to 2012); US$682.2 billion in India (1948 to 2012); and US$561.7 billion in Brazil (1960 to 2012).

A Snapshot of Illicit Financial Flows from Eight Developing Countries: Results and Issues for Investigation. UNDP, 2014.
New York: UNDP.
http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/anti-corruption/a-snapshot-of-illicit-financial-flows-from-eight-developing-coun.html

This issue brief provides a snapshot of the magnitude and main drivers behind IFFs from eight low-income and least developed countries over the last four decades: Bangladesh, Bolivia, Côte d’Ivoire, Guinea, Nepal, Sierra Leone, Tanzania and Zambia. The objective of the issue brief is threefold. It provides policymakers and practitioners at the national level with a methodology to estimate the illicit financial flows. The paper also explores strategic options and contributes to the policy debate within developing countries on initiatives that could stem illicit financial flows and prevent further leakages of scarce resources from these countries.

Illicit Financial Flows and their Developmental Impacts: An Overview, Hakenrath, M., 2014. International Development Policy.
https://poldev.revues.org/1863

This research overview shows that IFFs also favour political changes that go hand in hand with the weakening of state institutions and growing corruption and rent-seeking. As yet, there are no empirical quantitative findings on the exact functioning and significance of these effects. What is clear, however, is that approaches to problem-solving must come not only from the countries where illicit financial flows originate but also from the recipient countries – offshore financial centres with a high level of financial secrecy. These include, among others, the automatic exchange of information in tax matters; extended administrative assistance allowing for supplementary requests for information; the systematic registration and disclosure of beneficial owners of companies and foundations; and country-by-country reporting of multi-national corporations.

Public Debts and Private Assets: Explaining Capital Flight from sub-Saharan African Countries. Ndikumana, L. and Boyce, J.K., 2003.
World Development, Vol. 31, No. 1.
http://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1090&context=econworkingpaper

This article investigates the determinants of capital flight from 30 sub-Saharan African countries, including 24 countries classified as severely indebted low-income countries, for the period 1970 to 1996. The econometric analysis reveals that external borrowing is positively and significantly related to capital flight, suggesting that capital flight is to a large extent debt-fuelled. The authors estimate that for every dollar of external borrowing in the region, roughly 80 cents flowed back as capital flight in the same year. According to the evidence shown here, capital flight also exhibited a high degree of persistence in the sense that past capital flight is correlated with current and future capital flight. This paper also explores the effects of several other factors: inflation, fiscal policy indicators, the interest rate differential, exchange rate appreciation, financial development, and indicators of the political environment and governance.

Practical insights: handbooks and toolkits

Thematic Module on Illicit Financial Flows. OECD, no date.
http://www.oecd.org/gov/pcsd/pcsd-framework-iffs.htm

This module aims to address challenges that policymakers face by providing a simplified framework and self-screening tool for countries to help them plan for, avoid, and resolve the most significant trade-offs or policy inconsistencies, and apply existing international standards in a coherent and effective way. The module consists of a short toolkit, which includes a checklist, and a guidance to enable policymakers to examine their policies and practices and identify key areas where progress is required. The module also contains annotations providing background information corresponding to each section in the toolkit.

Illicit Financial Flows and Governance: The Importance of Disaggregation. Reuter, P., 2017. The World Bank.
http://pubdocs.worldbank.org/en/677011485539750208/WDR17-BP-Illicit-Financial-Flows.pdf

According to the author, the reform agenda for IFFs has four major components: country-by-country reporting of profits; listing of beneficial ownership of assets; automatic exchange of tax information and anti-money laundering (AML) provisions. The paper examines the governance problems confronted by this agenda, drawing primarily on the experience of the 25 year old AML regime. The paper finds that, even though supported by all governments and with a potentially effective enforcement mechanism (blocking non-complying countries from access to the international banking system), AML rules have been consistently poorly implemented. Even governments that have been the principal architects of the Financial Action Task Force (FATF) system, have failed to implement many of the FATF recommendations, while many major international banks have paid large fines for systematically flouting the rule. The IFF reform agenda needs to more carefully assess those governance problems to be effective.

Assessment tools and datasets

Illicit Financial Flows from Developing Countries: Measuring OECD Responses. OECD, 2014. OECD: Paris.
http://www.oecd.org/corruption/IllicitFinancialFlowsfromDevelopingCountries.pdf

The report shows that there has been progress in efforts to counter IFFs in the assessed period. In particular, countries implemented standards and complied with most recommendations of the Financial Action Task Force. There have been 1,300 tax information exchange agreements signed, and hundreds of offenders for foreign bribery have been sanctioned. In addition, almost US$150 million in proceeds of corruption, according to the report, were returned between 2010 and June 2012. While these successes should be applauded, there is also a need to continue to rally international support to tackle existing performance gaps and shortfalls. Without action, OECD countries, for example, are at risk of becoming safe havens for illicit assets by neglecting transparency of ownership: 27 out of 34 OECD countries perform below expectations on beneficial ownership of corporate vehicles and trusts. Furthermore, OECD countries will need to continue to prosecute foreign bribery offenders: the report shows that only approximately half of OECD countries have sanctioned a party for a foreign bribery offence.

Resources from the Anti-Corruption Helpdesk

Improving Coherence in the Illicit Financial Flows' Agenda. Erskine, A. and Eriksson, F., 2018. U4 Issue. Bergen: Chr. Michelsen Institute
https://www.u4.no/publications/improving-coherence-in-the-illicit-financial-flows-agenda.pdf

This paper highlights several weaknesses in the conceptualisation and research on IFFs that have a negative impact on progress in this field, including the lack of a unified definition of IFFs and diverse methodologies used by researchers in global and multi-country studies to estimate the amount of IFFs. Furthermore, the report analyses the role of corruption in IFFs, expands the understanding of the role of corruption in IFFs and proposes a set of practical proposals at the country level intended to advance the IFF agenda, including data identification for country studies.

Illicit Financial Flows in Ethiopia. Kukutschka, R. M. B., 2018. U4 Helpdesk Answer. Bergen: Chr. Michelsen Institute.
https://www.u4.no/publications/illicit-financial-flows-in-ethiopia.pdf

The report shows that, as in to other countries, trade misinvoicing is the main source of illicit financial outflows leaving Ethiopia. According to data from Global Financial Integrity, misinvoicing represents between 55 per cent and 80 per cent of IFFs. Among other sources of IFFs in Ethiopia are the informal remittance systems, by which Ethiopia loses access to an important source of foreign currency, price transferring, which allows foreign investors to transfer profits out of Ethiopia, embasisses and diplomatic channels, which are said to assist their citizens and companies to illicitly transfer funds out of the country, and corruption. The report also summarises legal and institutional framework against IFFs in Ethiopia.

Putting the IFF Agenda in Action at the Country Level. Eriksson, F., 2017.
Blog series. U4 Anti-Corruption Resource Centre, Bergen: Chr. Michelsen Institute.
https://www.u4.no/putting-the-iff-agenda-into-action-at-the-country-level-blog-series

Illicit financial flows became an international concern in the late 2000s and are now an established policy concern in the development context. Still, policymakers have yet to address important questions about putting anti-IFF programmes into practice. This comprehensive blog series is a policy critique with reflections on where the anti-IFF agenda can progress to and contribute to achieving the Sustainable Development Goals. In nine diferent blog posts, the author discusses: the IFFs definition, the losses for international development as a result of IFFs, IFFs and country level legitimacy, the blind spots in anti-IFF strategies, strategies for effective anti-IFF efforts, coordinating an attack on secrecy, rethinking policies to remove secrecy, expanding the role of corruption in IFFs, and country-level IFF research for counter-IFF support.

Illicit Financial Flow: Report of the High-Level Panel on Illicit Financial Flows from Africa. High Level Panel on Illicit Financial Flows from Africa, 2015.
African Union and UN Economic Commission for Africa: Addis Ababa.
http://uneca.org/sites/default /files/PublicationFiles/iff_main_report_26feb_en.pdf

This report reflects the work that the High Level Panel on Illicit Financial Flows has carried out since it was established in February 2012. Particularly, the report: develops a realistic and accurate assessment of the volumes and sources of these outflows; gains a concrete understanding of how these outflows occur in Africa, based on case studies of a sample of African countries; and makes specific recommendations for practical, realistic, short- to medium-term actions that should be taken both by African countries and by the rest of the world to effectively confront what is in fact a global challenge. Using a mirror trade analysis method, the report finds that trade misinvoicing is the dominant form of IFF and is responsible for US$50 billion of illicit flows from Africa.

Combating Illicit Financial Flows: the Role of the International Community. Martini, M., 2014.
U4 Expert Answer, Bergen: Chr. Michelsen Institute.
https://www.transparency.org/whatwedo/answer/combating_illicit_financial_flows_the_role_of_the_international_community

This report focuses on the role that the international community and particularly countries that are members of the G20 and the OECD Development Assistance Committee (DAC) have in the fight against illicit financial flows. It highlights the importance of global standards to identify and prevent cases of money laundering and the need to strengthen and fully enforce these standards, including rules to identify politically exposed persons and beneficial owners. The author also mentions the importance of advancing international standards related to tax evasion and avoidance, such as rules requiring multi-national companies to report on their country of operation and tax authorities to automatically exchange information, while maintaining policy coherence. The report also highlights the need to enforce the anti-bribery and asset recovery legislations in order to send the message that corruption is not tolerated by the international community.

Corruption and Illicit Financial Flows: The Limits and Possibilities of Current Approaches, Reed, Q. and Fontana, A., 2011.
U4 Issue, Bergen: U4 Anti-Corruption Resource Centre/Chr. Michelsen Institute.
http://www.u4.no/publications/corruption-and-illicit-financial-flows-the-limits-and-possibilities-of-current-approaches-2/

This paper attempts to clarify the links between illicit financial flows and corruption, and how corruption may be countered by stemming such flows. It clarifies the terminology surrounding illicit flows, describes the impact of such flows, outlines the techniques used to launder them (with a particular focus on laundering the proceeds of corruption), and critically analyses existing policies designed to tackle illicit flows. This paper contributes to the regulatory debate that is emerging in response to the financial crisis, as the accepted wisdom of deregulated global financial markets is being challenged. A major change in approach to tackling illicit flows is recommended. Such an approach should be more evidence-based and consider the costs and benefits of policy choices. It should also go beyond the current reliance on anti-money laundering policies and embrace more fully other policies to tackle illicit flows, including good governance reforms to tackle corruption as a source of illicit funds, but also more decisive efforts by rich countries that shelter secrecy havens or the proceeds of grand corruption.

Extractive Sectors and Illicit Financial Flows: What Role for Revenue Governance Initiatives? Le Billon, P., 2011.
U4 Issue, Bergen: Chr. Michelsen Institute.
http://www.u4.no/publications/extractive-sectors-and-illicit-financial-flows-what-role-for-revenue-governance-initiatives/

This paper shows that countries highly dependent on natural resources are among the most severely affected by the problem of IFFs. Despite a lack of definite studies proving the correlation between higher dependency on natural resources and higher levels of illicit flows, there are grounds to believe extractive industries' revenues provide a large contribution to these flows. The author also addresses the problem of how most of the existing initiatives to address governance issues in extractive sectors have not been designed with the problem of illicit financial flows in mind and points out that, although these intitiatives have generally contributed to increased transparency in the sector, they have not significantly influenced the likelihood that revenues from natural resources will be misappropriated and illicitly transferred. The paper also provides recommendations to improve extractive industries' initiatives in this regard, including transparency initiatives that demand higher disaggregation of information and integrate elements of the tax justice and tax evasion agendas to expand their relevance in the effort to reduce IFFs.

Actors and stakeholders

Global Financial Integrity (GFI)
https://www.gfintegrity.org

Global Financial Integrity (GFI) works to curtail illicit financial flows by producing research, promoting pragmatic policy solutions and advising governments. GFI annually publishes a series of reports on illicit financial flows that include annual estimates for individual developing countries, and global estimates among the most quoted. It uses mirror trade methodology that tries to identify IFFs that take place through trade misinvoicing by identifying mismatches between the declared price and quantity of goods at the point of shipment and at the point of reaching its destination. This methodology has been criticised for leading to overestimates whose underlying reasons is often inaccuracies in data or differences recording of goods by authorities in different countries.

Financial Accountability and Corporate Transparency Coalition (FACT)
https://financialtransparency.org

The Financial Accountability and Corporate Transparency (FACT) Coalition, founded in 2011 in the US, is a non-partisan alliance of more than 100 state, national, and international organisations working towards a fair tax system that addresses the challenges of a global economy and promoting policies to combat the harmful impacts of corrupt financial practices.

Financial Transparency Coalition (FTC)
https://financialtransparency.org

The Financial Transparency Coalition is a global network of organisations working on illicit financial flows. The FTC was founded in 2009 under the name of the Task Force on Financial Integrity and Economic Development, and its coordinating committtee currently comprises of 12 NGOs. In its research and advocacy efforts, the FTC focuses on six issue areas: country by country reporting, beneficial ownership, automatic exchange of information, open data, international insitutional architecture and gatekeepers.

The High Level Panel on Illicit Financial Flows from Africa
https://www.uneca.org/iff

The High Level Panel on Illicit Financial Flows from Africa was set up by the African Union and the UN Economic Commission for Africa (UNECA) to ensure that Africa's progress towards the development goals is fuelled as much as possible by its own resources. In 2015, the High Level Panel produced a report *Illicit Financial Flow: Report of the High Level Panel on Illicit Financial Flows From Africa,* also known as the also known as the Mbeki Report. Using a mirror trade analysis method, the report found that trade misinvoicing is the dominant form of IFF and is responsible for US$50 billion of illicit flows from Africa. Subsequently, the Consortium Stakeholders to Stem IFFs from Africa was established to coordinate and oversee the implementation of the recommendations of the High Level Panel.

CONTROLLING ILLICIT FINANCIAL FLOWS

With the increased interest in illicit financial flows in the development community, national and international efforts to design anti-IFF policies have also grown significantly. As seen, the definition of IFFs is very broad, and there is no consensus on its scope yet. Consequently, policymakers have struggled to define coherent and comprehensive strategies to tackle IFFs. Virtually any effort to curb corruption, money laundering and tax evasion could fall into the scope of fighting illicit financial flows. Yet, researchers agree that by focusing on the core reasons that allow the outflow of money abroad and keeping in mind the national political and economic contexts and the different areas of intervention can lead to the development of useful and coherent anti-IFF strategies[32].

Policy recommendations for curbing illicit financial flows must start from an in-depth study of the drivers and dynamics of these flows that are specific to each country. Illicit financial flows are a systemic, complex problem, enabled by financial secrecy, weak institutions and corruption. Its perpetrators have powerful resources to block any effort to limit the disappearence of money. As such, researchers agree that approaches to counter IFFs need to be multi-pronged and phased, with policy coordination playing a key role for success: adressing only one of its aspects or one side of the spectrum in the out- and inflow of illicit funds will inevitably lead to failure.[33]

Moreover, IFFs and corruption are deeply inter-linked[34]: without access to the international financial system, corrupt regimes would not be able to place the proceeds of looted state assets in secure locations. As a result, the effective implementation of anti-corruption policies at national and international levels can prevent the generation of corruption-related illicit flows. Enforcing stricter anti-money laundering provisions, for example, can help to prevent the transfer of ill-gotten proceedings abroad.

One main way to distinguish IFF policies focuses on the role of countries; thus, the illicit actions shift according to the countries involved. In the country of origin, the crimes will typically involve embezzlement, corruption, tax evasion or trade misinvoicing, in the destination country it will involve money laundering offences. In both cases, actions may involve preventing criminal activity through reform, or identifying and sanctioning financial crimes. Coordinated action among different government agencies and institutions working to counter corruption and tax evasion is fundamental. It entails designing common inter-agency anti-IFF goals, regular communication and joint initiatives, something the research refers to as policy coherence.[35]

At the international level, strenghtening the transparency of the global financial system that enables IFFs – that is, countering financial secrecy – will require a different, specific set of solutions and

[32] Eriksson, F. 2017. "The Blind Spots in Anti-IFF Strategies". U4 Anti-Corruption Research Center, https://medium.com/u4-anti-corruption-resource-centre/the-blind-spots-in-anti-iff-strategies-77e5e216d35a
[33] Ndikumana, L., 2017. "Curtailing Capital Flight from Africa. The Time for Action is Now". Friedrich Ebert Stiftung, p. 7.
[34] Lemaitre, S. 2019. Illicit Financial Flows Within the Extractive Industries Sector: a Glance At How Legal Requirements Can Be Manipulated and Diverted. *Crime, Law and Social Change*, *71*(1), 107-128; Alemu, A. M. 2018. The Effects of Corruption Control, Political Stability and Tax Level on Illicit Financial Flows from African Countries. *International Journal of Global Business*, *11*(2), 1-8; Rose-Ackerman, S., & Palifka, B. J. 2018. "Corruption, Organized Crime, and Money Laundering". In *Institutions, Governance and the Control of Corruption* (pp. 75-111). Palgrave Macmillan, Cham.
[35] Eriksson, F. 2017. "Strategies for Anti-IFF Efforts", U4 Anti-corruption Research Center, https://medium.com/u4-anti-corruption-resource-centre/strategies-for-effective-anti-iff-efforts-11b4bb7744f6

coordinated international efforts. Developed countries, particularly the members of the G20 and of the OECD Development Assistance Committee (DAC) have a dual role to play in this area. On the one hand, as major destinations for IFFs from developing countries, these countries have the responsibility to build strong domestic and international frameworks against these flows. On the other hand, as development aid donors, these countries can (and do) help developing countries build the relevant capacities to fight IFFs. In the debate around IFFs, the role of developing countries in the decision-making process of policies has gained more and more importance, with several international actors criticising the fact that for too long important decisions were taken by rich countries and imposed on the South.[36]

In recognition of the importance of IFFs, the fight against illicit financial flows has been included in the Sustainable Development Goals, and in particular Goal 16.4, which aims to "significantly reduce illicit financial and arms flows, strengthen recovery and return of stolen assets … by 2030". Since the Panama Papers revelations in 2016, which showed the world the extent of secrecy in the global financial system, governments increased their joint efforts to prevent illicit financial flows, especially with regard to enhancing beneficial ownership transparency and returning stolen assets. One of the main challenges in this sense is related to the creation of suitable indicators to measure the impact of anti-IFF policies necessary to reach SDG 16.4.[37]

Key international actors and researchers involved in curbing illicit financial flows – such as the OECD, FATF and GFI – typically build anti-IFF strategies around key areas of intervention. One of the most common approaches was introduced by the OECD and divides anti-IFF strategies in four main policy areas:

- legislation against tax evasion
- regulation and increased transparency of the financial sector through anti-money laundering
- stolen asset recovery
- effective anti-bribery legislation and prosecution[38]

GFI's approach, on the other hand, focuses on closing loopholes that allow corrupt officials, tax evaders and criminals to easily move illegal funds abroad. This entails joint international efforts to

- create strong anti-money laundering regimes
- eliminate anonymous shell companies through beneficial ownership transparency
- introduce transparent country-by-country reporting of companies, especially by multinational corporations
- facilitate the automatic exchange of tax information between governments
- increase custom controls to counter trade misinvoicing[39]

The following sections uses these two approaches as a basis to describe the most important debates and international best practices to counter IFFs based on key challenges and areas of intervention, including: i) the prevention of money laundering; ii) beneficial ownership transparency and country-by-country reporting; iii) automatic exchange of tax information; and iv) stolen asset recovery. It is important to note that these policies are all closely interconnected and all contribute to countering the core issues that constitute IFFs: corruption, tax evasion and money laundering. Beneficial ownership transparency, for example, is key to end anonymous companies used to hide corrupt money but also to evade taxes and transparent country-by-country reporting helps increase the accountability of multinational corporations and deter bribery of multinational corporations in developing countries.

[36] See for example Financial Transparency Coalition (2017), "Who Makes the Rules on Illicit Financial Flows?".
[37] See Cobham, A. 2018. Target 2030: Illicit Financial Flows, Elcano Royal Institute, http://www.realinstitutoelcano.org/wps/wcm/connect/cbdd779a-ba6f-4610-a1d3-64b79052735a/ARI81-2018-Cobham-Target-2030-illicit-financial-flows.pdf?MOD=AJPERES&CACHEID=cbdd779a-ba6f-4610-a1d3-64b79052735a
[38] OECD. 2014. "Illicit Financial Flows from Developing Countries: Measuring OECD Responses".
[39] Global Financial Integrity. "Illicit Financial Flows" available at: http://www.gfintegrity.org/issue/illicit-financial-flows/.

1. PREVENTING MONEY LAUNDERING

Since the late-1980s, anti-money laundering policies have become the main policy instrument worldwide for countering IFFs[40]. Money laundering can be defined in a number of ways. Most countries subscribe to the definition adopted by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances from 1988 (Vienna Convention) and the United Nations Convention Against Transnational Organized Crime from 2000 (Palermo Convention). These international agreements define money laundering as:

- The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of their actions
- The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime
- The acquisition, possession or use of property, knowing at the time of receipt that such property was derived from an offence or offences or from an act of participation in such offence … or offences.[41]

The Financial Action Task Force on Money Laundering (FATF) defines the term "money laundering" concisely as "the processing of … criminal proceeds to disguise their illegal origin".

Given that money laundering is an illegal activity carried out by criminals, it occurs outside the normal range of economic and financial statistics. It is therefore hard to quantify its real size, but some estimates exist. According to the United Nations Office on Drugs and Crime (UNODC), criminal proceeds in 2009 amounted to 3.6 per cent of global GDP, with 2.7 per cent (or US$1.6 trillion) being laundered.[42] Other estimates published by the Council of Europe indicated that the amount of money laundered worldwide ranges from US$500 billion to US$1 trillion.[43] These estimates, however, should be treated with caution as the illegal nature of the transactions make it impossible to provide precise statistics or definitive estimates of the amount of money that is globally laundered every year. The FATF therefore does not publish any figures in this regard.

Activities to counter money laundering are important in the broader strategy against corruption and IFFs because they help to deprive people committing corruption and other financial crimes of the proceeds of their crimes, cut the financial flows from criminal organisations and provide developing countries with additional funds for investment. Given that individuals from developing countries whose wealth is of an illicit nature are likely to choose countries with stable and predictable financial systems and weak anti-money laundering regimes to avoid scrutiny, diversify their investment

[40] Reed, Q. and A. Fontana. 2011. "Corruption and Illicit Financial Flows: The Limits and Possibilities of Current Approaches", *U4 Issue*, Bergen: U4 Anti-Corruption Resource Centre / Chr. Michelsen Institute. p. 23.
[41] See United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances articles 3(b) and (c)(i); and United Nations Convention Against Transnational Organized Crime article 6(i).
[42] UNODC. 2011. "Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Organized Crime", Vienna: United Nations Office on Drugs and Crime.
[43] Moneyval Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism. 2018. "Annual Report 2017. Anti-Money Laundering". Council of Europe, p. 9.

portfolios and spread the risks, this task is also a shared responsibility between the developed and the developing world.[44]

Money laundering is classically divided into three main phases which may not necessarily follow a chronological order.[45] The first phase of money laundering occurs at placement where the proceeds of crime are deposited in a bank, smuggled over a border or infused in the turnover of a legitimate business. This phase can be called the placement or pre-wash phase. The second phase is the layering phase (the main wash) where money is circulated many times, either nationally or all over the globe to hide its illegal source. In this phase, complex financial constructions such as complicated hedging and derivative constructions can occur. The third phase is the reintegration phase, where the money is parked permanently, like in the bond market or in the real estate sector.[46]

The relationship between money laundering and corruption

Corruption and money laundering do have a symbiothic relationship: not only they tend to occur together but the presence of one tends to facilitate the incidence of the other. Corruption produces enormous profits to be laundered, estimated at more than US$1 trillion of illicit funds annually, funds that are increasingly laundered in the international system. At the same time, bribery, trading in influence and embezzlement can compromise the working of anti-money laundering systems.[47]

Laundering of corruption proceeds can take a variety of forms, depending on the nature of the corrupt act. In the grand corruption context, the most prevalent forms of proceeds are those arising from: i) bribe-taking or kickbacks; ii) extortion; iii) self-dealing and conflict of interest; and iv) embezzlement from the country's treasury by a variety of fraudulent means.[48] According to a report from FATF, the techniques to launder the proceeds of corruption coincide with those used to launder the earnings obtained from other crimes and include the use of[49]:

- Trust and company service providers (TCSP): individuals may use TCSPs to assist with illicit activities by seeking professional services and advice on the most appropriate vehicles or jurisdictions to use to further their ill-intended agendas.

- "Straw men" or nominees: nominee services are used to keep the true ownership or control of a company confidential. Nominee directors and secretaries may do little to manage or administer the company, or they may play an active role, but act on the instructions of others. Nominee shareholders are the registered holders of the shares in a company, but they hold them on behalf of others.

- Gatekeepers: money launderers often seek out the advice or services of specialised professionals, or gatekeepters, to help facilitate their financial operations. Cases of laundering proceeds of corruption often involve schemes of notable sophistication, which are possible only as a result of the assistance of skilled professionals to set up corporate structures to disguise the source and ownership of the money.[50]

- Offshore accounts/foreign jurisdictions: according to FATF, nearly every case of

[44] OECD. 2014. *Illicit Financial Flows from Developing Countries: Measuring OECD Responses*. Paris: OECD.
[45] Reed, Q. and A. Fontana. 2011. "Corruption and Illicit Financial Flows: The Limits and Possibilities of Current Approaches", *U4 Issue*, Bergen: U4 Anti-Corruption Resource Centre / Chr. Michelsen Institute. p. 12.
[46] Unger 2007: 10-11
[47] Chaikin, D. and J.C. Sharman. 2009. Corruption and Money Laundering. New York: Palgrave Macmillan. p.1.
[48] Financial Action Task Force. 2011. Laundering the Proceeds of Corruption. Paris: OECD. p. 16
[49] Financial Action Task Force. 2011. Specific Risk Factors in Laundering the Proceeds of Corruption: Assistance to Reporting institutions. Paris: OECD.
[50] Financial Action Task Force. 2011. Laundering the Proceeds of Corruption. Paris: OECD. p. 16

laundering the proceeds of corruption involves the use of foreign bank accounts as part of the scheme. This is because foreign accounts have the advantage of being harder to investigate for the victim country and are thus perceived as more stable and safer. These accounts are also more easily accessed by politically exposed persons (PEP) than accounts held in their home country. Moreover, offshore accounts and foreign jurisdictions help add complexity to a scheme, making detection harder: a bank account in one country could be owned by a corporation in another jurisdiction, which is in turn owned by a trust in a third jurisdiction. Each additional country multiplies the complexity of the investigation, reduces the chances of a detection and extends the time needed to complete the investigation.[51]

- Domestic financial institutions: much of the focus on PEPs to date has been to ensure that foreign PEPs are subject to enhanced due diligence regarding the source of funds deposited into financial institutions; in other words, measures to prevent corrupt PEPs from laundering their proceeds in foreign bank accounts. However, PEPs are also using domestic financial institutions to launder funds.[52]

- Cash: the use of cash, and its placement into the financial system, has long been identified as a method for the laundering of proceeds of crime. The anonymous nature of cash, with its lack of a paper trail, is what makes it so attrative and the reason why some predicate crimes, such as drug trafficking, are historically cash businesses. The analysis of money laundering cases related to corruption shows that corrupt PEPs often want cash and are often able to place it in the financial system without attracting undue attention.[53]

As can be seen from the techniques listed above, anti-money laundering entities must be on the lookout for those patterns in typical money laundering if they are to counter corruption; these are transactions that vary from those the client would be expected to make, that appear to lack a legitimate business purpose or are by their very nature higher risk. Any activity that increases the potential to wipe identifying information or commingle funds in a transaction warrants additional review from the reporting institution. Moreover, any transaction which appears to be overly and uselessly complex, with an unclear economic purpose, involving multiple parties or tools – such as multiple corporate vehicles and/or nominees, or transactions involving multiple jurisdictions for no apparent economic purpose – should be cause for further investigation.[54]

Building an international anti-money laundering regime

As a result of the increasing concern in the international community surrounding money laundering, the G7 created the Financial Action Task Force (FATF) during its 1989 summit in Paris. The task of this inter-governmental body was to set standards and promote effective implementation of legal, regulatory and operational measures for countering money laundering, terrorist financing and other related threats to the integrity of the international financial system. In April 1990, less than one year after its creation, FATF issued a report containing a set of 40 recommendations intended to provide a comprehensive plan of action needed to counter money laundering. The recommendations have been reviewed several times, most recently in 2012 with an assessment methodology in 2013.

The FATF 40 recommendations have been endorsed by more than 190 countries[55] and have become

[51] Financial Action Task Force. 2011. Laundering the Proceeds of Corruption. Paris: OECD. p. 23.
[52] Financial Action Task Force. 2011. Laundering the Proceeds of Corruption. Paris: OECD. pp. 21-22.
[53] Financial Action Task Force. 2011. Laundering the Proceeds of Corruption. Paris: OECD. p. 24.
[54] Financial Action Task Force. 2011. Specific Risk Factors in Laundering the Proceeds of Corruption: Assistance to Reporting institutions. Paris: OECD, p. 39.
[55] Financial Action Task Force. 2014. Annual Report 2013-2014. Paris: FATF/OECD. p. 38.

the international anti-money laundering standard as they mirror several international agreements.[56]

The FATF recommendations also have an important role to play in countering corruption because corruption is more likely to go unpunished in opaque circumstances where the proceeds of such crimes are laundered and cannot be traced back to the underlying corrupt activity, as is the case when the ownership of assets is obscured, and transactions and transfers leave incomplete (or no) audit trail. Effective implementation of the FATF recommendations increases the transparency of the financial system by creating a reliable paper trail of business relationships and transactions, and discloses the true ownership and movement of assets.[57] The main recommendations from the FATF standards and other international treaties can be grouped into six categories:

- Criminalisation of money laundering: include the widest range of criminal offences as predicate offences

- Record keeping: require financial institutions to keep records of all transactions for a period of at least five years

- Customer due diligence/know your customer: keep financial institutions from allowing anonymous accounts or accounts held in obviously fictitious names. The FATF also calls for the identification of the beneficial owner of accounts opened for legal entities, that means the natural person who ultimately owns or controls them.

- Politically exposed persons (PEPs): conduct additional due diligence with regard to PEPs; these are individuals who are or have been entrusted with prominent public functions in a foreign country, for example heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, important political party officials

- Notification of large and/or suspicious transactions: require financial institutions and a range of non-financial businesses and professions to report certain transactions to the appropriate authority, especially transactions that exceed a certain size or when there are grounds to suspect that the funds involved are the proceeds of criminal activity. Provided corruption is a predicate offence for money laundering in a particular country, such notification also applies to the proceeds of corruption.

- Establish a system of regulation and oversight: form financial intelligence units to oversee the fulfilment of the international standards, process notifications and forward them to law enforcement bodies where appropriate.

Given that money laundering allows corrupt public officials and other criminals to re-integrate stolen assets into the global financial network in a manner that does not raise suspicion, means to counter corruption and money laundering are closely intertwined.[58] Since many of the banks that receive, transfer and manage the illicit funds from developing nations are located in OECD countries, the developed world has a particularly important role to play in preventing money laundering.

However, research shows that despite the progress made in terms of legislation against money laundering, compliance is still defective. According to the Basel Institute on Governance, progress in

[56] Including the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, which in 2005 became the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism; the 1998 Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; The 2000 Palermo Convention Against Transnational Organised Crime and the 2003 United Nations Convention against Corruption, which also covers money laundering in its articles 14 and 23.
[57] FATF. 2012. Corruption A Reference Guide and Information Note on the Use of the FATF Recommendations to Support the Fight Against Corruption. Paris: OECD. p. 4.
[58] Martini, M. 2014. Combating Illicit Financial Flows: The Role of the International Community. U4 Expert Answer. Bergen: Chr. Michelsen Institute. p. 3.

improving AML regimes of countries assessed in the AML Basel Index between 2011 and 2018 has been consistently slow. According to the Index, 64 per cent of the 129 countries assessed have a significant risk of money laundering and terrorist financing, with the minimum score of money laundering risks actually increasing between 2017 and 2018. Using the updated methodology of assessing the implementation of the FATF recommendations in 2013, which tackles not only the adoption of AML laws but their implementation, the Basel Index found that:

- 77 per cent of countries assessed have not achieved outcomes for investigating ML activities and prosecuting offenders;
- 47 per cent have achieved a low level of effectiveness in investigating and prosecuting ML offences;
- 40 per cent have not achieved outcomes in confiscating the proceeds of crime.[59]

In its most recent assessment of 2019, FATF also evidenced a clear need for more effective AML policies across its members, with a large majority of countries scoring “major” or “fundamental improvements” needed.[60]

Another assessment conducted by the OECD in 2014 found that OECD country compliance with the FATF recommendations varied significantly across the 13 topics covered by the recommendations, but the lowest average scores can be found in the following categories: transparency of legal persons and arrangements; regulation and supervision; measures taken towards high-risk jurisdictions; customer due diligence and record keeping; and reporting of suspicious transactions and compliance. The lowest scores can be observed on recommendations 6 (politically exposed persons), 7 (correspondent banking), and 33 and 34 (beneficial ownership).[61]

According to the OECD, to advance the prevention of money laundering and corruption, developed countries should focus on:

- fully implementing the 2012 FATF recommendations to adapt their anti-money laundering regimes to current challenges
- ensuring that financial institutions and designated non-financial institutions conduct proper customer due diligence
- requiring institutions to determine beneficial owners and ensure that this information is available to the relevant authorities (see next section)
- strengthening their regulatory and supervision regimes, particularly for non-financial institutions, and enforce these rules consistently[62]

Civil society plays an essential role in preventing money laundering, “making the lives of criminals more difficult and their actions impossible”[63]. In this sense, advocacy to governments is crucial.

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[59] Basel Institute on Governance, AML Index 2018. https://www.baselgovernance.org/asset-recovery/basel-aml-index
[60] Financial Action Task Force. 2019. Consolidated Assessment Ratings. http://www.fatf-gafi.org/media/fatf/documents/4th-Round-Ratings.pdf
[61] OECD. 2014 *Illicit Financial Flows from Developing Countries: Measuring OECD Responses*. OECD: Paris. p. 13.
[62] OECD. 2014 *Illicit Financial Flows from Developing Countries: Measuring OECD Responses*. OECD: Paris. p. 17.
[63] https://www.eesc.europa.eu/news-media/press-releases/civil-society-proposes-step-measures-fight-money-laundering-and-terrorist-financing

Additional resources

Background studies

Under the Shell: Ending Money Laundering in Europe. Brillaud, L., 2017. Berlin: Transparency International.
https://transparency.eu/wp-content/uploads/2017/04/EBOT-REPORT-TIE-014-16_clean.pdf

This report examines how European countries perform on different aspects of beneficial ownership transparency and identifies gaps and good practices in legislation and enforcement based on the experience of selected European countries, namely Czech Republic, Italy, Luxembourg, the Netherlands, Portugal and Slovenia. The report also identifies areas known to be high risk in the countries covered by the study and possible corresponding mitigation measures.

Money Laundering and Its Regulation. Chong, A. and Lopez-de-Silanes, F. 2015. Economics and Politics, Vol. 27 No. 1
http://onlinelibrary.wiley.com/doi/10.1111/ecpo.12051/full

This paper investigates empirically the determinants of money laundering and its regulation in almost 100 countries. The authors use various methodologies to put together a cross-country dataset on proxies for money laundering and construct specific money laundering regulation indices based on specific laws and their enforcement. Results show that tougher money laundering regulation, particularly those that criminalise such activities and improve disclosure, are linked to lower levels of money laundering across countries. The relevance of historical factors in explaining the variation of money laundering regulation across countries sheds light on the theories of institutions and provides room for further action, particularly in the areas of the law that reduce the burden of proof, increase the liability of intermediaries and improve disclosure.

Water Always Finds its Way: Identifying New Forms of Money Laundering. Unger, B. and Den Hertog, J., 2012. Crime, Law and Social Change, Vol. 57 No.3.

Money laundering regulations have become stricter over time and involve more and more actors. This means that the accountability of laundering regulation will become more important; theoretically, money laundering should have decreased with the implementation of new regulations. However, as this paper shows, it is difficult to estimate even the sign of the trend in the proceeds of crime and of laundering over time with particular reference to the drug trade. There seems to be a substitution from hard to softer drugs, and no substantial decline in the proceeds of crime and likewise no substantial decline in money laundering. Criminals seem to switch from the more controlled banking sector into still less controlled parts of financial markets, and from financial markets to other sectors. These new sectors include electronic payments, trade and real estate. The paper shows how one can empirically approach the latter two by using economic information of unusual prices and other characteristics to identify the amount of laundering in these sectors. Combining economic information with criminological data facilitates the development of a new tool for identifying money laundering in some important sectors.

Chasing Dirty Money: The Fight Against Money Laundering. Reuter, P. and Truman, E., 2004. Washington DC: Institute for International Economics.

This book explores the origins of the international efforts to reduce money laundering. It explains how the anti-money laundering legislation broadened over the years to address many other crimes and, most recently, terrorism. Reuter and Truman also explore the scale and characteristics of money laundering and develop a framework for assessing the effectiveness of the regime.

Practical insights: handbooks and toolkits

Money Laundering: A Guide for Criminal Investigators. Madinger, J., 2012.
Boca Raton, USA: CRC Press.

This book provides a clear understanding of money laundering practices and explains the investigative and legislative processes that are essential in detecting and circumventing this activity. In addition to being an informative and straightforward resource for those investigating complex narcotics cases or other cases in which there is a financial component, the book also addresses techniques used to track down the money trail of terrorists.

Specific Risk Factors in Laundering the Proceeds of Corruption: Assistance to Reporting institutions. Financial Action Task Force, 2012.
Paris: OECD.

This report discusses the interrelationship between corruption and money laundering and documents the most common methods used to launder the proceeds of corruption. It highlights the vulnerabilities leading to an increased risk of corruption-related money laundering and lists some of the most significant grand corruption cases. This report also identifies areas in which future work could be done, including gaining an understanding of the correlation between certain risk factors and corruption. It also concludes that, while effective anti-money laundering and countering the financing of terrorism systems can assist in the detection of the proceeds of corruption and prevent the perpetrators of corruption-related offences from enjoying the proceeds of corruption, reporting institutions have not been effective in detecting corruption-related proceeds. Therefore, this report also offers concrete advice for reporting institutions on how to analyse and better understand specific risk factors that may assist them in identifying situations posing a heightened risk of corruption-related money laundering.

The Scale and Impacts of Money Laundering. Unger, B., 2007.
Cheltenham, UK: Edward Elgar Publishing.

This book gives a broad overview of the problem of money laundering. It starts with the difficulties arising from different definitions of what actually constitutes money laundering and its predicate offences and how this affects the prospects of addressing such a transnational phenomenon. It also provides an overview of different techniques used to measure how much money is laundered around the world, and mechanisms and channels used to launder illicit funds. It finishes by assessing the short- and long-term impacts of the problem worldwide.

Assessments and databases

FATF Consolidated Assessment Ratings. Financial Action Task Force, 2019.
Paris: OECD.
http://www.fatf-gafi.org/publications/mutualevaluations/documents/assessment-ratings.html

FATF and FATF-style regional bodies (FSRBs) conduct peer reviews on an ongoing basis to assess how effectively their respective members' anti-money laundering and countering the financing of terrorism (AML/CFT) measures work in practice, and how well they have implemented the technical requirements of the FATF recommendations. This study provides an up-to-date overview of the ratings that assessed countries obtained for effectiveness and technical compliance (last updated in April 2019). Detailed mutual evaluation reports are available on the website as well, and should be read in conjunction with the table included in the publication.

Basel AML Index 2018. International Centre for Asset Recovery, 2018.

Basel: Basel Institute on Governance.
https://www.baselgovernance.org/sites/default/files/2019-02/basel_aml_index_10_09_2018.pdf

This is the seventh edition of the Basel Anti-Money Laundering Index, an independent annual ranking that assesses the risk of money laundering and terrorist financing (ML/TF) around the world. It focuses on AML/CFT frameworks, plus related factors that impact the risk of ML/TF, such as corruption, transparency and the rule of law. Over the seven years since it was first calculated, the Basel AML Index has consistently indicated slow progress among most countries in improving their ML/TF risk scores. In the 2018 ranking, 64 per cent of countries (83/129) have a risk score of 5.0 or above and can be loosely classified as having a significant risk of money laundering and terrorist financing. Less than 4 per cent of countries in the ranking have improved their scores by 1 point or more in the last year (Ghana, Bolivia, Tanzania, Trinidad and Tobago), and 42 per cent of countries have worsened their risk scores between 2017 and 2018. Almost 37 per cent of countries now have a worse risk score than they did in 2012.

Compliance with the AML/CFT International Standard: Lessons from a Cross-Country Analysis.
Verdugo Yepes, C., 2011.
IMF Working Paper WP/11/177.
https://www.imf.org/external/pubs/cat/longres.aspx?sk=25098.0

This paper assesses countries' compliance with the AML/CFT international standard in the period 2004 to 2011 and reveals that overall compliance is low; there is an adverse impact on financial transparency created by the cumulative effects of poor implementation of standards on customer identification; and the current measurements of compliance do not take into account an analysis of ML/FT risk, thereby undermining their credibility and the relevance of some of the policy recommendations taken on their basis. Moreover, the key role of some cultural, institutional, and financial factors in boosting countries' compliance is also examined through an econometric analysis.

Global Money Laundering & Terrorist Financing Threat Assessment: A View of How and Why Criminals and Terrorists Abuse Finances, the Effect of this Abuse and the Steps to Mitigate These Threats. Financial Action Task Force, 2010.
OECD: Paris
https://www.imolin.org/pdf/imolin/Global_Threat_assessment.pdf

This assessment provides a view of the most prevalent money laundering and terrorism financing threats identified over the years. The study is based on the techniques and methods conducted by the FATF and other FATF-style regional bodies and by jurisdictions themselves. By laying out the information in this way, the GTA also provides a framework that can be used by jurisdictions to counter these threats.

Resources from the Anti-Corruption Helpdesk

Using Money Laundering Investigations to Fight Corruption in Developing Countries: Domestic Obstacles and Strategies to Overcome Them. Fontana, A. and Gomes Pereira, P., 2012.
U4 Issue 2012: 9. Bergen: Chr. Michelsen Institute.
http://www.u4.no/publications/using-money-laundering-investigations-to-fight-corruption-in-developing-countries-domestic-obstacles-and-strategies-to-overcome-them/

This report argues that anti-money laundering systems have the potential to curb the use of the proceeds of corruption and other crimes by the perpetrators because an effectively implemented anti-money laundering framework limits the channels through which illicit funds can be laundered, thus making crime riskier and reducing the incentives for corrupt activities. However, those who stand to benefit from corruption have strong incentives to block anti-money laundering programmes.

In addition, these programmes face significant obstacles to effectiveness in most developing countries. Relevant institutions do not trust each other sufficiently to share information necessary for investigations. Countries lack qualified staff and necessary resources, and slow bureaucratic procedures are unable to keep up with the speed of financial transactions. This paper explores these and other domestic obstacles and suggests strategies to overcome them, based on an analysis of the situations in Albania and Tanzania.

International Anti-Money Laundering Laws: Improving External Accountability of Political Leaders.
Chaikin, D., 2010.
U4 Brief, Bergen: U4 Anti-Corruption Resource Centre/Chr. Michelsen Institute.
http://www.u4.no/publications/international-anti-money-laundering-laws-improving-external-accountability-of-political-leaders-2/

The full potential of AML regimes as an anti-corruption tool has yet to be realised. At the international level, AML measures can provide a checks and balance mechanisms for political figures who are "untouchable" in their home jurisdictions. For that to take place, however, developed and developing countries need to improve AML systems by encouraging collaboration between financial intelligence units and anti-corruption agencies, harmonising laws on predicate offences and improving access to information on beneficiary ownership.

Selected actors and stakeholders

Financial Action Task Force (FATF)
http://www.fatf-gafi.org

FATF is an inter-governmental organisations comprised of ministers of its member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for countering money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF has developed a series of recommendations that are recognised as the international standard for countering money laundering, the financing of terrorism and proliferation of weapons of mass destruction. FATF also monitors the progress of its members against these recommendations.

Law Enforcement, Organized Crime and Anti-Money-Laundering Unit of UNODC
https://www.unodc.org/unodc/en/money-laundering

The Law Enforcement, Organized Crime and Anti-Money-Laundering Unit of UNODC is responsible for carrying out the Global Programme against Money-Laundering, Proceeds of Crime and the Financing of Terrorism. The broad objective of the global programme is to strengthen the ability of member states to implement measures against money-laundering and the financing of terrorism and to assist them in detecting, seizing and confiscating illicit proceeds, as required pursuant to United Nations instruments and other globally accepted standards, by providing relevant and appropriate technical assistance upon request.

2. LIMITING FINANCIAL SECRECY

Financial secrecy and anonymous companies

Financial secrecy is universally recognised as one of the key enablers of illicit financial flows. Since the late 1980s, the global financial system has become increasingly interconnected and sophisticated, with millions of financial interactions among countries taking place every day, the emergence of large multinational corporations and the widespread use of legal vehicles – such as shell companies, trusts and foundations – that allow the quick movement and storage of money across borders anonymously. Tax evaders, corrupt officials, terrorists and other criminals acquired these tools and make widespread use of them to hide the proceeds of their crimes, taking advantage of global loopholes, moving these assets from one jurisdiction to the other, making it very difficult and sometimes impossible to trace them and identify their owners.

It is primarily due to the numerous tax havens across regions and secrecy jurisdictions that it has become increasingly easy for individuals and multinational corporations to evade or avoid taxes. There is no consensus on the term "tax haven"; however, policymakers agree that key characteristics include: i) offering low tax rates and confidentiality in financial transactions, including a range of financial vehichles, such as shell or anonymous companies and trusts; ii) lack of transparency in the financial system; and iii) the lack of cooperation on tax matters with other countries. The term "secrecy jurisdiction" often overlaps with tax haven; however, its focus relies on the secrecy of its system, which ensures that the identity of those relocating their money through them cannot be disclosed.[64] Different territories have specialised in different offshore services, with jurisdictions offering stronger advantages for multinational corporations, bank secrecy and other forms of lax financial regulation.[65] Among the growing literature in this field, one of the most comprehensive overviews on the world of tax havens and secrecy jurisdictions is provided by the Tax Justice Network, specifically its Financial Secrecy Index, published every two years.[66]

Although the international civil society, investigative journalists and governments have long been aware of the problem, it was only through journalist investigations and leaks between 2014 and 2017, including the Lux Leaks, the Swiss Leaks, the Panama Papers and the Paradise Papers that the issue of global financial secrecy gained the attention of a global audience and of the international community. Through the analysis of millions of documents, investigative journalists were able to reveal how top politicians from the North and the South, organised crime and multinational corporations make widespread use of tax havens, shell companies and bank secrecy to evade or avoid taxes and hide the proceeds of their crimes. These revelations had an immense impact on global politics: since then, many governments, international organisations, such as the OECD and the EU, as well as NGOs, have shifted the focus of their anti-corruption agendas towards finding ways to counter financial secrecy and through this to put a limit to illicit financial flows.

Researchers and policymakers agree that shell companies and anonymous companies are the most common instrument used to hide illicit financial flows, with about US$1 trillion taken from developing

[64] Transparency International, "Secrecy Jurisdiction", Anti-Corruption Glossary, https://www.transparency.org/glossary/term/secrecy_jurisdiction
[65] See also Tax Justice Network, Tax Havens" https://www.taxjustice.net/faq/tax-havens/
66 https://www.financialsecrecyindex.com/

countries through shell companies every year.[67] Transparency International defines shell companies as “a limited liability entity having no physical presence in their jurisdiction, no employees and no commercial activity”. These companies are “usually formed in a tax haven or secrecy jurisdiction, and its main or sole purpose is to insulate the real beneficial owner from taxes, disclosure”.[68] Therefore, shell companies are specifically created to make it difficult or impossible to identify their real owner, that is, the individual or individuals ultimately benefiting from them – or “beneficial owner” – with the purpose of hiding dirty money or evading taxes. Typically managed by intermediary law firms, these companies are very cheap and easy to open.[69] Information provided in the registration form of the companies – often the only traceable proof that the company exists – may include names of individuals that have no real link to the actual owners, such as nominee shareholders or board members, which can also be other companies. As legal entities, these companies can open bank accounts, own assets and wire large amounts of money to other companies or individuals.[70] Although this kind of instrument is often associated with tax havens in small tropical countries, research in recent years revealed that shell companies are widely found “onshore” in many countries of the global North. The Financial Secrecy Index 2018 ranks Switzerland, USA, Luxembourg, Germany and the Netherlands among the top 10 most secret jurisdictions worldwide offering the use of these instruments.[71]

Limiting secrecy through open beneficial ownership

As anonymity is the defining issue around global financial secrecy, policymakers have in the past decade looked at ways to counter it by creating stronger rules to identify and share information about individuals behind anonymous companies and other secret legal entities: to identify their beneficial owners. FATF defines a beneficial owner as “the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement”.[72] The identification of beneficial ownership is made possible through the creation of national, central databases (or registers) with various details about these individuals and the companies linked to them, as defined by law.

Beneficial ownership registers have been globally recognised as a key element to build strong anti-money laundering regimes. As of 2019, a number of international initiatives provide principles, tools and describe governments’ commitments to introduce beneficial ownership registers, including:

- The UN Convention against Corruption (UNCAC) Articles 12 and 14 calls on states parties to enact measures to identify the legal and natural persons behind companies, particularly as a tool for the prevention of money laundering. These commitments were further elaborated by resolutions 4/4, 5/3 and 5/4 of the UNCAC Conference of State Parties, calling members to require relevant entities to collect and provide beneficial ownership information, to take measures to enable them to obtain reliable information on the beneficial ownership of companies, legal structures or other complex legal mechanisms, including

[67] Business Insider. 2016. “Shell Companies Hide About $1 Trillion Taken from Poor Countries Every Year”, https://www.businessinsider.com/shell-companies-hide-developing-world-moneyl-2016-4?IR=T
[68] Transparency International, “Shell Company”, Anti-Corruption Glossary, https://www.transparency.org/glossary/term/shell_company.
[69] See Global Witness. 2014. An Idiot’s Guide to Money Laundering, https://site-media.globalwitness.org/archive/files/idiot's%20guide%20to%20money%20laundering_for%20web.pdf
[70] GFI, “Anonymous Companies”, https://www.gfintegrity.org/issue/anonymous-companies/
[71] Tax Justice Network, Financial Secrecy Index 2018, https://www.financialsecrecyindex.com/introduction/fsi-2018-results
[72] FATF. 2014. “FATF Guidance: Transparency and Beneficial Ownership”, p. 8

trusts and holdings, and to promote the transparency of legal persons and exchange of best practice on the identification of beneficial owners.

- G8 leaders in 2013 adopted the Action Plan Principles to Prevent the Misuse of Companies and Legal Arrangements, tackling anonymous company ownership.[73]
- G20 countries endorsed in 2014 the High-Level Principles on Beneficial Ownership Transparency, committing to implement them through concrete actions.[74]
- FATF addressed "Transparency and beneficial ownership of legal arrangements" in its anti-money laundering recommendation 25 and provided its member countries with tools to implement this.[75]
- The OECD, through its Global Forum on Transparency and Exchange of Information for Tax Purposes, has developed a toolkit on the implementation of beneficial ownership for its member countries in 2019.[76]
- The Extractive Sector Transparency Initiative (EITI) adopted in 2015 a requirement where its 51 member countries have to ensure that oil, gas and mining companies that bid for, operate or invest in extractive projects in their countries disclose their real owners by 2020.[77]
- The EU has introduced stronger measures to identify and collect information about beneficial owners in its member states, lastly through the revision of the Fourth Anti-Money Laundering Directive in 2017 and the Fifth Directive on the same subject.

Building on the FATF recommendations, the G20 High Level Principles on Beneficial Ownership Transparency best summarise the standards developed internationally on beneficial ownership. They require, among other measures, that countries:

- have a definition of "beneficial owner" that captures the natural person who ultimately owns or controls the legal person or legal arrangement. Transparency International noted in this regard that the definition should go beyond quantitative analysis of controlling shareholders based on a threshold, which should not be too high.[78]
- ensure that legal persons maintain beneficial ownership information onshore and that information is adequate, accurate and current. In this regard, NGOs note that data needs to be verified, especially when registers rely on companies self-reporting.[79]
- ensure that competent authorities have timely access to adequate, accurate and current information regarding the beneficial ownership of legal persons. This could be realised through central registries of beneficial ownership of legal persons or other appropriate mechanisms. According to Transparency International, "registries should have the mandate and sufficient human, technical and financial resources to collect, verify and maintain beneficial ownership information and have the power to request information and sanction legal entities for non-compliance". Companies that provide false or out-of-date information should be subject to sanctions.[80]
- prohibit the use of bearer shares and the creation of new bearer shares, or to take other effective measures to ensure that bearer shares and bearer share warrants are not misused

[73] https://www.gov.uk/government/publications/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements
[74] https://star.worldbank.org/sites/star/files/g20_high-level_principles_beneficial_ownership_transparency.pdf
[75] FATF. 2014. "FATF Guidance: Transparency and Beneficial Ownership".
[76] The Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes (OECD) and Inter-American Development Bank. 2019. A Beneficial Ownership Implementation Toolkit.
[77] See https://eiti.org/beneficial-ownership
[78] Transparency International. 2015. G20 Position Paper on Beneficial Ownership Principles.
[79] Transparency UK. Beneficial Ownership Transparency, https://www.wiltonpark.org.uk/wp-content/uploads/WP1654-Beneficial-Ownership-Transparency.pdf
[80] Transparency UK. Beneficial Ownership Transparency, https://www.wiltonpark.org.uk/wp-content/uploads/WP1654-Beneficial-Ownership-Transparency.pdf

- take effective measures to ensure that legal persons which allow nominee shareholders or nominee directors are not misused

A key aspect in developing a global framework on transparent beneficial ownership – which was not targeted by the G20 High Principles – is that beneficial ownership registers are made public, which civil society globally has vocally called for. In this regard, FATF recommended that public registers become the international standard by 2023, while the EU committed to introducing public registers in 2019, as foreseen by the Fifth EU Anti-Money Laundering Directive. EITI also requires that its member states ensure that oil, gas and mining companies publish company beneficial ownership data by 2020. During the London Anti-Corruption Summit in 2016, 15 countries committed to adopt public registers.[81]

International civil society lists a number of advantages of publicly available beneficial ownership registries, including that: tax officials and law enforcement inspectors domestically and abroad can access key information when investigating tax evasion and money laundering; businesses know who they do business with; citizens, covil society organisations (CSOs) and journalists know who is ultimately providing their services and can hold them accountable; oversight on the registries to increase the opportunity to verify and adjust the information.[82]

Besides transparency and the accessibility of data, researchers highlighted other elements that beneficial ownership registers should include:

- Lists of "legal owners", besides beneficial owners, should be registered centrally and made public. The term refers to the first, immediate and direct tiers of an entity in complex business structures made of several layers of companies.
- Legal vehicles registered should not only include shell companies but also other, equally important financial tools to hide money, such as trusts, foundations and partnerships.[83]
- Take privacy issues into consideration and balance them with the need for transparency, for example, through case-by-case exemptions for personal security reasons.[84]
- Data validation: experience showed that in databases, free text entry of names, nationalities and location can make it difficult to search through them, hence this should be limited or replaced by pre-populated drop-down boxes.[85]
- Sanctions should be foreseen for the submission of false data in registries.[86]

Implementation of beneficial ownership transparency

Since 2015, and increasingly since the release of the Panama Papers in 2016, many countries worldwide have started considering or have introduced beneficial ownership registries in different forms. Beneficial ownership transparency has now become a cornerstone in global efforts to end anonymous companies and money laundering. While these developments are positive, international NGOs such as the Tax Justice Network and Transparency International argue that this progress is too slow and still inadequate.[87]

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81 Transparency UK. Beneficial Ownership Transparency, https://www.wiltonpark.org.uk/wp-content/uploads/WP1654-Beneficial-Ownership-Transparency.pdf
82 CiFAR. 2017. Public Registries of Beneficial Ownership: The State of Play, p.1
83 Tax Justice Network. 2018. "Ending Secret Ownership: We Assess the Progress and Challenges", https://www.taxjustice.net/2018/06/28/ending-secret-ownership-we-assess-the-progress-and-challenges/
84 Transparency UK. Beneficial Ownership Transparency
85 CiFAR. 2017. Public Registries of Beneficial Ownership: The State of Play.
86 Transparency UK. Beneficial Ownership Transparency
87 See for example: Tax Justice Network. 2018. "Ending Secret Ownership: We Assess the Progress and Challenges", https://www.taxjustice.net/2018/06/28/ending-secret-ownership-we-assess-the-progress-and-challenges/ and

As of mid-2018, according to the Tax Justice Network, out of 112 countries assessed, 34 adopted laws on beneficial ownership registration – the majority of which were in Europe; 11 are set to adopt them by 2020 and 67 did not have any laws on beneficial ownership or plans to adopt them. Where beneficial ownership registers have been introduced, significant loopholes remain. For example, the Tax Justice Network reports that many of these laws do not cover all existing types of legal vehicles. Many of these laws also do not guarantee effective registration of so-called "legal ownership". Finally, only a minority of countries with relevant laws make the access to beneficial or legal ownership registers public and accessible.[88]

Among the G20 countries, according to a Transparency International study of 2018, Brazil, France, Germany, Italy, the United Kingdom and Spain had central beneficial ownership registers, while all the 23 countries analysed required financial institutions to identify the beneficial ownership of customers. However only the UK law fully grants public access to these registers – which made the law a case of best practice among policymakers. Eleven G20 countries scored "weak" or "average" on their beneficial ownership frameworks, a modest increase since the last assessment in 2015. The most significant challenges among G20 countries include: the absence of anti-money laundering risk assessments within the previous six years (six countries); financial institutions can still proceed with a transaction even if they cannot identify the beneficial owner (nine countries); lawyers are not required to identify the beneficial owner of clients (nine countries); individuals can still act as nominee shareholders without any requirement to disclose on whose behalf they are actually working (eight countries).[89]

Automatic exchange of financial information

Many countries have undertaken a number of steps to limit financial secrecy by including regulations to exchange financial information with other governments. However, according to GFI, this system shows two main difficulties: first, it demands the requesting government to know exactly what type of information they need – this makes it difficult to trace money flows passing through anonymous shell companies; second, a government might have access to the information being regulated.

A solution can be represented by automatic exchange of financial information, specifically bank accounts, transactions and financial flows, on a regular basis, enabling law enforcement to follow up on any clue they may find. This solution has become increasingly feasible considering the progress made in data collection, and, in 2013, the G20 welcomed automatic exchange as "the new global standard, "while committing to exchanging financial information automatically by the end of 2015. Furthermore, in 2014, every OECD member state and a group of several other countries endorsed a standard system for multilateral automatic exchange of financial information.[90]

However, while certainly benefiting from the introduction of the automatic exchange of information, developing countries may show technical difficulties in the implementation of well-designed systems. According to the available data, these countries are the most damaged by illicit financial flows. According to GFI, any multilateral system of automatic exchange should take into account the capacity of developing countries to collect and effectively use the data. The role of capacity-building programmes and technical support in this regard is therefore essential.

Transparency International. 2018. G20 Leaders or Laggards? Reviewing G20 Promises on Ending Anonymous Companies.

[88] Transparency International. 2018. G20 Leaders or Laggards? Reviewing G20 Promises on Ending Anonymous Companies.

[89] Transparency International. 2018. G20 Leaders or Laggards? Reviewing G20 Promises on Ending Anonymous Companies.

[90] http://www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-of-financial-account-information.htm

Additional resources

Background studies

Privacy or Public Interest? Making the Case for Public Information on Company Ownership. 2019.
OpenOwnership, The B Team and The Engine Room
https://www.openownership.org/uploads/privacy-report-summary.pdf

This is a summary of a research report from international NGOs OpenOwnership, the B-Team and The Engine Room in which they consider the legal implications of beneficial ownership data to the public, evaluated from both the perspective of the companies holding that information and the authorities requiring it to be disclosed publicly, and the relationship with data protection and privacy laws.

Improving Beneficial Ownership Transparency in Ukraine: Review and Recommendations.
Sztykowski, Z. and Mayne, T., 2018.
OpenOwnership
https://www.openownership.org/uploads/improving-beneficial-ownership-transparency-in-ukraine.pdf

This report assess the progress made so far and provides recommendations for strengthening Ukraine's beneficial ownership regime. The report's findings are based on in-depth research and meetings with key oficials and stakeholders in Ukraine, and suggest number of improvements including: a need for beneficial ownership data in machine-readable format: a need for a stronger system of sanctions and robust enforcement to ensure compliance; more reliable systems of disambiguation for individuals and companies; and a lack of granularity in the data, in particular on the means of control, and more.

Learning the Lessons from the UK's Public Beneficial Ownership Register. 2017.
OpenOwnership and Global Witness.
https://www.openownership.org/uploads/learning-the-lessons.pdf

This joint briefing from OpenOwnership and Global Witness seeks to learn the lessons from the experience of the UK beneficial ownership register, both where it is a model of best practice and where there is room for improvement. These lessons can help improve the UK register and provide guidance to other countries establishing registers to ensure that they are effective in tackling the money laundering risks that anonymous companies pose. It concludes that the UK register has demonstrated that it is possible to establish a public register of company beneficial ownership that is workable, effective and balances the legitimate needs of vulnerable individuals for privacy against the wider benefit of placing beneficial ownership information in the public domain.

Ending Secrecy to End Impunity: Tracing the Beneficial Owner. 2014.
Transparency International.
https://www.transparency.org/whatwedo/publication/policy_brief_02_2014_ending_secrecy_to_end_impunity_tracing_the_beneficial

This paper discusses the issue of anonymous corporate vehicles, why it is important to identify beneficial owners of corporations, and makes recommendations for governments, financial institutions and civil society for the creation of publicly accessible registries of beneficial ownership information and break the cycle of impunity that hidden ownership allows.

Standards and guidelines

Guidance note 22 on How to Plan for Beneficial Ownership Disclosure. EITI, 2016.

https://eiti.org/document/guidance-on-how-to-plan-for-beneficial-ownership-disclosure-roadmap

This note guides multi-stakeholder groups in developing their roadmaps to implement the beneficial ownership requirement (2.5) of the 2016 EITI standard, highlighting 12 issues that should be considered. The development of the roadmaps and the subsequent implementation of actions in the roadmaps are likely to require considerable consultation with government ministries and agencies, companies and civil society organisations.

Guidance on Transparency and Beneficial Ownership. FATF, 2014.
Paris: OECD.
http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf

FATF guidance assists countries in the design and implemention of measures that will deter and prevent the misuse of corporate vehicles – such as companies, trusts and other types of legal persons and arrangements – for money laundering, terrorist financing and other illicit purposes. Countries should take measures to prevent the misuse of legal persons and arrangements from being misused for criminal purposes, including by: assessing the risks associated with legal persons and legal arrangements; making legal persons and legal arrangements sufficiently transparent; and ensuring that accurate and up-to-date basic and beneficial ownership information is available to competent authorities in a timely fashion.

Technical Guide: Implementing the G20 Beneficial Ownership Principles. Martini, M., 2015.
Berlin: Transparency International.
https://www.transparency.org/whatwedo/publication/technical_guide_implementing_the_g20_beneficial_ownership_principles

This technical guide takes each of the 10 G20 principles in turn and describes the applicable international standards on beneficial ownership. In cases where the principles provide for flexibility in interpretation and implementation, or in cases where Transparency International considers that the standards may not be sufficiently strong, the additional steps that countries should take for a principle to be implemented most effectively are also stated. At the end of each section, a summary of recommendations on how to implement the principle is provided.

Practical insights: handbooks and toolkits

A Beneficial Ownership Implementation Toolkit. OECD and IDB, 2019.
https://www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf

This toolkit was jointly developed by the Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) and the Inter-American Development Bank. This toolkit contains policy considerations that Global Forum member jurisdictions can use to implement legal and supervisory frameworks to identify and collect beneficial ownership information. This will ensure that law enforcement officials have access to reliable information on who the ultimate beneficial owners are behind a company or other legal entity so that criminals can no longer hide their illicit activities behind opaque legal structures, something that is now a requirement in the international standards.

Assessments and databases

G20 Leaders or Laggards? Reviewing G20 Promises on Anonymous Companies. Martini, M. and Murphy, M., 2018.
Berlin: Transparency International.
https://knowledgehub.transparency.org/assets/uploads/kproducts/2018_G20-Leaders-or-Laggards_EN.pdf

This publication is an update of a progress assessment made in implementing the G20 Beneficial Ownership Principles by G20 members. The report finds that eleven G20 countries have “weak” or “average” beneficial ownership legal frameworks. This has dropped from 15 in 2015, but progress is too slow. Eight G20 countries (Argentina, Australia, Brazil, Germany, India, Saudi Arabia, South Africa and Turkey) have still not conducted an anti-money laundering risk assessment within the last six years. Canada, the United States and China all score zero points on requiring companies to collect and maintain accurate and up-to-date beneficial ownership information.

Selected actors and stakeholders

FATF: *see section: preventing money laundering*

OpenOwnership
https://www.openownership.org/

OpenOwnership is a global civil society initiative funded by UK Aid that links data from corporate registries and other sources to create a single, accessible source of information on worldwide beneficial ownership. OpenOwnership’s central goal is to build an open global beneficial ownership register, which will serve as an authoritative source of data about who owns companies, for the benefit of all. This data will be global and linked across jurisdictions, industries, and linkable to other datasets too.

3. COUNTERING TAX EVASION AND AVOIDANCE

Tax evasion and avoidance represent one of the major obstacles to countries' development. With tax evasion and tax avoidance accounting for up to 65 per cent of all illicit financial flows from developing countries, according to GFI, efforts to counter these malpractices is a fundamental aspect of countering illicit financial flows. Therefore, these two issues are important not only for tax justice and corporate accountability but because they have serious implications on domestic resource mobilisation – and therefore on the economies and societies – of developing countries: GFI estimated that the value of trade misinvoicing in developing countries was between US$0.9 and US$1.6 trillion in 2015 alone.[91]

As this has significant impact on anti-IFF policy design, it is important to distinguish between tax evasion – when a taxpayer escapes tax liability foreseen by the law of a country – and tax avoidance – obtaining a tax advantage by contravening the intention of legislation, but not its letter.[92] As seen at the start of this guide, this distinction is crucial when choosing to adopt a broader or narrower definition of the term "illicit" in illicit financial flows. Both tax avoidance and evasion typically entail disguising income or assets as passing through a tax heaven or secrecy jurisdiction, and consequently failing to report the income to the home country's tax authorities. Tax evaders and avoiders make great use of loopholes in tax treaties between different countries or in the tax systems of their countries of origin to claim that their income is untaxable there. Some of the world's largest multinational corporations – including banks and other financial service providers – specialised in so-called "aggressive tax avoidance" use complex corporate structures involving numerous layers in tax havens and secret bank accounts as well as exploiting loopholes and mismatches between different tax systems. These methods are highly successful, with some of these corporations worth billions being able to pay taxes of less than 1 per cent of their income.[93] This has a huge negative effect on the world's economy, with US$100 to US$240 billion revenue lost every year, according to G20/OECD.[94]

Typical methods used to evade or avoid taxes, which the OECD refers to as "base erosion and profit shifting (BEPS)", include:

- trade misinvoicing: according to GFI, this is "the deliberate falsification of the value, volume, and/or type of commodity in an international commercial transaction of goods or services by at least one party to the transaction". It is the largest component of IFFs in the most recent estimations published by GFI[95]

[91] GFI. 2019. Illicit Financial Flows to and from 148 Developing Countries: 2006-2015.
[92] Hearson, M. 2014. "Tax-motivated Illicit Financial Flows: a Guide for Development Practitioners", U4 Anti-Corruption Resource Centre.
[93] Financial Transparency Coalition, "Country by Country Reporting", https://financialtransparency.org/issues/country-by-country-reporting/
[94] G20/OECD. 2018. "Inclusive Framework on BEPS. A Global Answer to a Global Issue", http://www.oecd.org/tax/flyer-inclusive-framework-on-beps.pdf
[95] GFI. "Trade Misinvoicing", https://www.gfintegrity.org/issue/trade-misinvoicing/

- transfer mispricing: the use of a false transfer price when products are imported or exported from one country to the other to shift profits, usually from a higher-tax to a lower-tax jurisdiction[96]
- transfer pricing: takes place when two companies that are part of the same multinational group establish a price for the transaction. Transfer pricing is usually not illegal but represents one of the most common ways for multinational corporations to avoid taxes[97]
- treaty shopping: the practice of taxpayers to choose to conduct a cross-border transaction in a country with tax treaties that give more favourable tax treatment.

Corporate transparency: country-by-country reporting

A large portion of the issue of multinational corporation tax evasion and avoidance and their role in IFFs is linked to the lack of transparency in corporate finances. Although this is slowly changing, for a long time it was only thanks to leaks and whistleblowers that some light was shed on these practices. This is why policymakers, the private sector and civil society worldwide have dedicated growing attention to strengthening the transparency of these large companies. Multinational corporations have long reported their profits, revenue, number of employees and taxes paid – usually through annual reports – to investors and to authorities. However this information is usually provided in an aggregated manner for all their subsidiaries on a global or regional basis, making it very difficult to analyse the company's operation at the country level. To increase corporate transparency and allow accountability checks for the citizens of the country in which the companies and their subsidiaries operate, global standards on country-by-country reporting (CBCR) have emerged in the past decade.

Transparency International defines country-by-country reporting as "a form of financial reporting in which multinational corporations produce certain financial data disaggregated by country and for each country in which they operate. This data includes sales and purchases within the corporation and externally, profits, losses, number of employees and staffing costs, taxes paid and tax obligations, summaries of assets and liabilities".[98] Disaggregated data is therefore essential to detect suspicious activities – tax evasion, tax avoidance, money laundering and corruption – and mitigates political, legal and reputational risks with investors and other stakeholders. Research also highlighted that transparent CBCR could benefit the economies of countries.[99] Moreover, while this is still in progress, CBCR is increasingly referred to as a key indicator to measure the impact of anti-IFF policies and fulfilling SDG 16.4.

Importantly, civil society argues that CBCR should be publicly available, for example, on company websites to be accessible to citizens and all relevant stakeholders. However, there is no clear consensus in the international community yet on which information should be publicly available and which not, as certain information, such as tax returns, is usually kept confidential.[100] Those opposed

[96] Hearson, M. 2014. "Tax-motivated Illicit Financial Flows: A Guide for Development Practitioners", U4 Anti-Corruption Resource Centre.
[97] Tax Justice Network, "Transfer pricing", https://www.taxjustice.net/topics/corporate-tax/transfer-pricing/
[98] Transparency International, Anti-Corruption Glossary, https://www.transparency.org/glossary/term/country_by_country_reporting
[99] Financial Transparency Coalition, "Country by Country Reporting", https://financialtransparency.org/issues/country-by-country-reporting/
[100] Forstater, M. 2019. "A New Standard for Country-by-Country Reporting on Tax?", Center for Global Development, https://www.cgdev.org/blog/new-standard-country-country-reporting-tax

to CBCR also argue that this kind of reporting can be costly as it requires time investment, but this position seems to have become less prominent.[101]

At the civil society level, according to Tax Justice Network, the information provided and published should include:

- the name of each country where the company operates
- the names of all its subsidiaries and affiliates in the operation countries
- the performance of each subsidiary and affiliate, without exception
- the tax charge in its accounts of each subsidiary and affiliate in each country
- details of the cost and net book value of its fixed assets in each country
- details of the gross and net assets for each country[102]

At the inter-governmental level, the G20 group and OECD countries – over 125 countries as of 2019 – developed standards for countering base erosion and profit shifting in the Inclusive Framework on BEPS, first adopted in 2013.[103] Action 13 of this framework relates to CBCR and provides multinational enterprises with CBCR templates and guidelines to use them.[104] Although these standards require companies to report tax and other information to relevant authorities and make them available to other governments too, there is no requirement to make the information public.[105] At the EU level, a 2013 directive introduced CBCR requirements for logging and extractive industries in resources-rich countries.[106] Political discussions about the introduction of a new directive on public CBCR for companies operating within and outside the EU have been slow, while a proposal by the EU Commission in 2017 has been criticised by civil society for not being comprehensive enough.[107]

In terms of implementation of CBCR, multinational corporations are making slow progress too. Research by Transparency International in 2014 indicated that the average score on publishing CBCR by the 50 large multinational corporations assessed was only 6 per cent, with 100 per cent being the maximum score. Companies were keener to publish information on revenues rather than on pre-tax profits, with telecommunications being the best-performing sector on CBCR, followed by oil and gas.[108]

Automatic exchange of information on tax purposes

While country-by-country reporting remains a key tool to fight tax evasion and tax avoidance, and therefore IFFs too, international cooperation on tax issues and money laundering remains a fundamental prerequisite to address an inherently cross-national problem. In the past, many countries' treaties took steps to introduce the exchange of financial information between governments, which is key for law enforcement to conduct investigations and find evidence.

[101] Garcia Ojeda, M. 2010. "Country by Country Reporting Hailed by World Bank, But Can It Practice What It Preaches?", Eurodad, https://eurodad.org/Entries/view/4224
[102] Tax Justice Network, "Country-by-Country Reporting", https://www.taxjustice.net/topics/corporate-tax/country-by-country/
[103] http://www.oecd.org/tax/flyer-inclusive-framework-on-beps.pdf
[104] OECD. "Country-by-Country Reporting", BEPS, http://www.oecd.org/tax/beps/country-by-country-reporting.htm
[105] For a comprehensive analysis of restrictions to CBCR in the OECD framework, see Cobham, A. 2016. Country-by-Country Reporting: How Restricted Access Exacerbates Global Inequalities in Taxing Rights", Tax Justice Network, https://financialtransparency.org/wp-content/uploads/2016/12/TNJ_AccesstoCBCRreport.pdf
[106] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013L0034
[107] Gaita, E. 2017. "Illuminating the Shadows: Why Country-by-Country Reporting Benefits Us All", Transparency International EU Office, https://transparency.eu/illuminating-the-shadows/
[108] Transparency International. 2014. Transparency in Corporate Reporting. Assessing the World's Largest Companies", p. 28-30.

However, this approach can be time consuming and often inefficient as requests have to made individually and can be very detailed for each case.

Therefore, a growing practice among governments is the automatic exchange of information for tax purposes. This tool consists of periodically exchanging information on financial transactions, bank accounts and other information between law enforcement and tax agencies of different countries. Automatic tax exchange has emerged as a new global standard among G20 countries since 2013, while the OECD has developed new initiatives and toolkits to implement it since 2014.[109] The Global Forum on Transparency and Exchange of Information for Tax Purposes, an OECD-coordinated body made up of 128 countries, has been monitoring the progress towards the automatic exchange of information, developed common reporting standards and supported developing countries in implementing them.[110] While this initiative has made important progress in providing countries with a common framework and improved international cooperation on taxes, it has also been criticised because it still requires countries to establish bilateral agreements and is therefore time-consuming and, perhaps most importantly, for excluding developing countries in the decision-making process during the setup of the framework.[111]

The automatic exchange of tax information would be especially beneficial for developing countries, from where most of the proceeds of tax evasion and corruption stem, significant challenges remain due to weak technical capacity to collect information centrally, investigate tax evasion in the global South, as well as in the differences in tax systems between jurisdictions. Therefore, the development community has increasingly focused on building the capacity of tax authorities in developing countries. One of the most important initiatives in this regard has been the Addis Tax Initiative, a group of around 55 countries and international organisations that, building on the development-focused Addis Ababa Action Agenda, aims to step up technical cooperation on tax information, improve domestic resource mobilisation and integrate the voices of developing countries in the global debate on taxes.[112]

Additional resources

Background studies

Country by Country Reporting: How Restricted Access Exacerbates Global Inequalities in Taxing Rights. Cobham, A., 2016. Tax Justice Network.
https://financialtransparency.org/wp-content/uploads/2016/12/TNJ_AccesstoCBCRreport.pdf

The report explains obstacles around sharing country-by-country reporting information and shows the extent of the inequality in access that has been created by the OECD approach. However, the report also provides examples of jurisdictions that have, in their domestic laws, legislated to obtain CBCR in one way or another, and suggests alternative access methods that would save time and reduce compliance costs across the board. Ultimately, the original aim of full access – including for journalists and civil society – should be achieved through the requirement for multinationals to publish their details online in an open data format.

Automatic Exchange of Tax Information. A Primer on Concepts, Loopholes and Developing Countries'. 2017.

[109] http://www.oecd.org/tax/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-account-information-in-tax-matters-second-edition-9789264267992-en.htm
[110] http://www.oecd.org/tax/transparency/abouttheglobalforum.htm
[111] Financial Transparency Coalition. 2017. Automatic Exchange of Tax Information. A Primer on Concepts, Loopholes and Developing Countries', p. 23.
[112] https://www.addistaxinitiative.net/

Centre for Budget and Governance Accountability and Financial Transparency Coalition
https://financialtransparency.org/wp-content/uploads/2018/05/Automatic-Exchange-of-Tax-Information.pdf

This report examines why the automatic exchange of tax information is a vital component to addressing illicit financial flows and looks at the current standards in this field, as well as some of the shortcomings of the current discussion, and cites some concerns from the developing country perspective. Among other challenges, the study finds that member countries of the OECD framework for the automatic exchange of tax information need to go through an unnecessarily lengthy process to establish automatic exchange bilaterally. Moreover, the current standards were designed by 35 rich and powerful OECD member countries, not reflecting the differentiated realities and concerns of developing countries. This resulted in only one developing country signing agreements under the OECD standard.

Transparency in Corporate Reporting. Assessing the World's Largest Companies. Transparency International, 2014.
https://www.transparency.org/whatwedo/publication/transparency_in_corporate_reporting_assessing_worlds_largest_companies_2014

This Transparency International report evaluates the transparency of corporate reporting by the world's 124 largest publicly listed companies. The study assesses the disclosure practices of companies with respect to their anti-corruption programmes, company holdings and the disclosure of key financial information on a country-by-country basis. It follows on from a 2012 report which focused on the world's 105 largest publicly traded companies. The report was part of a series of studies based on a similar methodology aimed at assessing the transparency practices of companies. It finds that a vast majority of the assessed corporations do not provide sufficient information according to the methodology.

Standards and guidelines

Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13. OECD, 2018.
http://www.oecd.org/ctp/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf

The Inclusive Framework on BEPS has created this guidance to address certain key questions of interpretation of the base erosion and profit shifting (BEPS) framework in the interests of consistent implementation and certainty for both tax administrations and taxpayers. The guidance has been clustered around key issue areas and is periodically updated.

BEPS Action 13 on Country-by-Country Reporting. Guidance on the Appropriate Use of Information Contained in Country-by-Country reports. OECD, 2017.
http://www.oecd.org/ctp/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf

One of the conditions for receiving and using CBCR reports is that a jurisdiction must have in place the necessary framework and infrastructure to ensure the appropriate use of CBCR information. To assist jurisdictions in complying with this condition, the OECD has released guidance on the meaning of "appropriate use", the consequences of non-compliance with the appropriate use condition and approaches that may be used by tax authorities to ensure the appropriate use of CBCR information.

Standard for Automatic Exchange of Financial Account Information in Tax Matters, Second Edition. OECD, 2017.
http://www.oecd.org/tax/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-account-information-in-tax-matters-second-edition-9789264267992-en.htm

This toolkit introduces the OECD Common Reporting Standards (CRS) for automatic tax exchange between countries, which are currently the globally recognised framework on tax information exchange. It calls on participating jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. It sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions.

Resources from the Anti-Corruption Helpdesk

Tax-Motivated Illicit Financial Flows. a Guide for Development Practitioners. Hearson, M., 2014. U4 Issue, Bergen: Chr. Michelsen Institute.
https://www.u4.no/publications/tax-motivated-illicit-financial-flows-a-guide-for-development-practitioners

This study explains the terms and helps development practitioners and policymakers navigate the tax and illicit financial flow debates. It also gives an overview of donors' interventions in this area. There is a growing recognition that tax-motivated illicit financial flows are facilitated in part by the policies of donor countries, hence policy coherence emerges as an important goal for the future.

Selected actors and stakeholders

OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS)
http://www.oecd.org/tax/beps/beps-about.htm

This initiative brings together over 125 countries and jurisdictions to collaborate on the implementation of the BEPS standards. BEPS refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity. The standards include 15 actions to provide governments with the domestic and international instruments needed to tackle BEPS.

Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD.
http://www.oecd.org/tax/transparency/abouttheglobalforum.htm

The Global Forum on Transparency and Exchange of Information for Tax Purposes is an international organisation founded in 2000 that aims to support and coordinate the exchange of information between its 128 member countries, the EU and 15 observers (as of May 2019). Membership of the Global Forum is open to all countries willing to: i) commit to implementing the international standard on transparency and exchange of information on request; ii) participate and contribute to the peer review process; and iii) contribute to the budget. The forum focuses primarily on monitoring the process and standards for the exchange of information and supporting developing countries adopting the standards on tax information exchange. The forum functions through a peer review process, through which its members evaluate how selected countries implemented the common reporting standards developed by OECD.

4. RECOVERING STOLEN ASSETS

The theft of public assets from developing countries is a prevalent development problem. The amount of money stolen from developing and transition jurisdictions and hidden in foreign jurisdictions each year is approximately US$20 to uS$40 billion dollars, equivalent to 20 per cent to 40 per cent of official development assistance. The societal costs of corruption far exceed the value of assets stolen by public leaders as it weakens confidence in public institutions, damages the private investment climate and ruins delivery mechanisms for such poverty alleviation programmes as public health and education.[113] Therefore, the recovery of stolen assets has emerged in the past decades as an important tool in fighting cross-border corruption and preventing illicit financial flows linked to grand corruption. Asset recovery is broadly defined as the legal process through which a country, government and/or its citizens recover from another jurisdiction the resources and other assets that were stolen through corruption. It consists of identifying, freezing, confiscating and returning assets from where they were originally stolen, typically a developing country.[114]

Unlike the more traditional anti-corruption policies of the international development community that focus on addressing corruption and weak governance within the developing countries, asset recovery focuses on the fact that developed countries also hold a certain responsibility given that: the stolen assets are often hidden in the financial centres of developed countries; bribes to public officials from developing countries often originate from multinational corporations; and the intermediary services (lawyers, accountants and so on) used to launder or hide the proceeds of asset theft by developing country rulers are often located in developed countries.[115] Traditionally, an asset recovery process starts when a government asks another government to freeze assets it suspects are related to a case of grand corruption. This is then followed by a mutual legal assistance request, bilateral cooperation to find evidence on the case, then the prosecution and confiscation of the assets. In the classic approach, this usually results in a conviction for corruption in the country where the assets were stolen. A case of asset recovery can also be initiated by sanctions from international organisations, such as the EU or the UN Security Council. In this case, these bodies require their member states to freeze any assets that are linked to a suspected case of grand corruption, typically following major political developments such as regime change.

The main legal framework for asset recovery is provided by the UNCAC: chapter V of the convention requires state parties to take measures to restrain, seize, confiscate and return the proceeds of corruption. To do so, the convention stipulates the use of a variety of mechanisms, such as:

- direct enforcement of freezing or confiscation orders made by the court of another state party
- non-conviction based asset confiscation, particularly in cases of death, flight or absence of the offender or in other cases
- civil actions initiated by another state party, allowing that party to recover the proceeds as plaintiff
- confiscation of property of a foreign origin by adjudication of an offence of money laundering or other offences;
- court orders of compensation or damages to another state party and recognition by

[113] World Bank. 2007. Stolen Asset Recovery Initiative (StAR): Challenges, Opportunities, and Action Plan. Washington DC: World Bank. p. 1.
[114] Transparency International, "Asset Recovery", https://www.transparency.org/glossary/term/asset_recovery, Anti-Corruption Glossary.
[115] Transparency International, "Asset Recovery", https://www.transparency.org/glossary/term/asset_recovery, Anti-Corruption Glossary.

courts of another state party's claim as a legitimate owner of assets acquired through corruption
- spontaneous disclosure of information to another state party without prior request
- international cooperation and asset return[116]

More recently, asset recovery was included in the Sustainable Development Goals, with Goal 16.4 requiring states to "strengthen the recovery and return of stolen assets".

Main obstacles to asset recovery

Recovering stolen assets may often be difficult. Even though several countries as diverse as Nigeria, Peru, Malaysia and the Philippines have obtained important results in asset recovery, the process remains time-consuming and costly. Generalising from the experience of these countries, developing countries are likely to encounter serious obstacles in recovering stolen assets. Even where the political will to pursue stolen assets exists, limited legal, investigative, and judicial capacity and inadequate financial resources could hamper the process. Moreover, jurisdictions where stolen assets are hidden, often developed countries, may not be responsive to requests for legal assistance. Finally, the recognition of court decisions from other countries, contradicting definitions of corruption as a crime, difficult diplomatic relationships, conditionality in the return of assets further make this process lengthy and challening, with a case taking five to ten years on average to reach the return phase.[117]

In general, the asset recovery process can be divided into four main phases:

- Pre-investigative phase: the investigator verifies the accuracy of the information and initiates the investigation. This includes the verification of inconsistencies in the story or incorrect statements and assumptions.
- Investigative phase: the proceeds of crime are identified and located and evidence regarding ownership is collated. This phase usually integrates different sources of information, such as mutual legal assistance requests to obtain information relating to offshore bank and other records, witness statements and so on. The result of this investigation can be a temporary measure (seizure) to secure later confiscation ordered by the court.
- Judicial phase: the charged person is convicted (or acquitted) and the decision on confiscation is final.
- Disposal phase: the property is confiscated and disposed of by the state in accordance with the law, while taking into account international asset sharing.

The main sources of complication in such a procedure are the high levels of coordination and collaboration required between several domestic agencies and ministries in multiple jurisdictions with different legal systems and procedures. The process also calls for special investigative techniques and skills to "follow the money" beyond national borders and the ability to act quickly to avoid dissipation of the assets. To ensure effectiveness, the competent authority must have the capacity to launch and conduct legal proceedings in domestic and foreign courts or to provide the authorities in another jurisdiction with evidence or intelligence for investigations. The authorities also require the capacity to choose between different legal strategies. For these reasons, technical capacity and sufficient resources are critical to asset recovery actions.[118]

[116] Articles 52-55 and 57 of UNCAC.
[117] Camarda, A., Oldfield. J. 2019. The Stolen Wealth. Opportunities and Challenges for Civil Society in Asset Recovery. Friedrich Ebert Foundation, p.3
[118] International Centre for Asset Recovery. 2009. *Tracing Stolen Assets: A Practitioner's Handbook*. Basel: Basel Institute of Governance. p. 13. See also: Brun, J. P., Gray, L., Scott, C., & Stephenson, K. 2011. *Asset Recovery Handbook: a Guide for Practitioners*. The World Bank.

According to the International Centre for Asset Recovery, another major obstacle to recovering stolen assets is the fact that the person who committed the crimes may be dead, a fugitive from justice or enjoying some form of immunity. Furthermore, the beneficial owner of the assets may not be known due to the complexity of the methods used to hide the true ownership or nature of the assets. The criminal justice system traditionally does not allow a prosecution in such cases to be initiated or continued. To make matters more complex, the illegal activities are often commited under the name of a company, making it impossible for some jurisdictions to criminally prosecute that company. In such cases, the prosecution must determine the responsible person within the company and prosecutors must overcome the corporate veil to reach the criminal assets legally owned by the company. This situation adds a layer of convolution to the already complex asset recovery process.[119]

Given the complexity of the asset recovery process, the World Bank and the United Nations Office on Drugs and Crime (UNODC) established the Stolen Asset Recovery initiative (StAR) to help countries create the legal tools and institutions required to recover the proceeds of corruption. StAR also helps these countries develop the specific skills needed to pursue asset recovery cases, through sharing knowledge and information, and providing hands-on training in asset tracing and international cooperation on legal matters. The StAR initiative currently focuses on three core components: lowering the barriers to asset recovery through global knowledge sharing and advocacy; building national capacity for asset recovery; and preparatory assistance in the recovery of assets. As a part of this three-pronged approach, they have devoted a lot of resources to the issue of asset declarations, declaration of interests and financial disclosures of politically exposed persons.[120] Following the so-called Arab Spring demonstrations in North Africa and the revolution in Ukaine, the new governments from those countires started discussing asset recovery cooperation with their counterparts in Europe and the US in various regional fora. This process culminated in the first Global Forum for Asset Recovery, hosted by the US and the UK in 2017 and focused on asset recovery in Nigeria, Sri Lanka, Tunisia and Ukraine. The UNCAC State Party conferences additionally discuss ways to improve cooperation of asset recovery frameworks. Further commitments to asset recovery were made in the framework of G20 meetings and at the London Anti-Corruption Summit in 2016.

Impact of asset recovery procedures

Despite the growing international efforts, the progress and impact of asset recovery initiatives has been relatively modest, with only a limited number of countries having frozen or returned assets. In terms of returns, the latest available data was provided by OECD/UNODC: between 2006 and 2012, four OECD countries reported the return of corruption-related assets for a total of UD$420 million approximately. More than half of the money returned between 2006 and 2009 (53 per cent) was returned by Switzerland, and another large share (44 per cent), by the US, while Australia (with 3 per cent) and the United Kingdom (with 1 per cent) accounted for much smaller returned amounts. Moreover, only three OECD countries had returned corruption-related assets between 2010 and 2012: the United Kingdom (45 per cent of total assets returned) followed by the US (41 per cent) and Switzerland (14 per cent).

Although the countries most successful in tracing, freezing and repatriating assets have made asset recovery a clear priority by dedicating resources and expertise to this issue:

- General Sani Abacha of Nigeria is suspected to have looted between US$3 and US$5 billion dollars of public money. However, the recovery processes that started

[119] International Centre for Asset Recovery. 2009. *Tracing Stolen Assets: A Practitioner's Handbook*. Basel: Basel Institute of Governance. p.14
[120] Nawaz, F. 2010. "Impact of International Asset Recovery and Anti-Money Laundering Efforts on Poverty Reduction and Political Accountability". U4 Expert Answer. Bergen: Chr. Michelsen Institute.

in 1999 and took over 10 years to resolve, managed to recover approximately US$1.3 billion.[121]

- In the Philippines, Ferdinand Marcos siphoned off between US$5 and US$10 billion during his reign (1965 to 1986). As a result of asset recovery procedures, the country received US$624 million back from the government of Switzerland in 2004.[122]

The role of asset destination countries

In 2012, the G20 launched an asset tracing country profile, containing information on how to find information about a natural person or legal persons' assets. In addition, the group also published a step-by-step guide that provides states seeking mutual legal assistance from G20 countries with an overview of the requisite procedures in these countries to ensure requests are received and processed as efficiently as possible (Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries). Developed countries can support asset recovery by:

- fully implementing the United Nations Convention against Corruption (UNCAC). UNCAC requires state parties to establish "the widest measure of cooperation and assistance" relating to the return of assets acquired through criminal offences covered by the convention. This includes setting clear rules on mutual legal assistance. National authorities play an important role in facilitating this process by deciding how the principles of, for example, proportionality, dual criminality and reciprocity will be applied. At the same time, the international community can support these efforts by developing international standards, promoting appropriate avenues for formal cooperation and developing guidelines on the use of alternative legal instruments.

- following international best practices for tracing, freezing and returning assets. Countries should facilitate the process of tracing, freezing and returning assets by allowing non-conviction based asset confiscation, permitting authorities to freeze funds based on requests from a foreign jurisdiction, allowing foreign countries to initiate civil actions in their courts, and enabling courts to order compensation, restitution or damages to the benefit of a foreign jurisdiction. This also includes establishing mechanisms for the systematic exchange of information to ensure that law enforcement authorities in other countries also have access to information on ongoing asset recovery cases.[123]

- denying safe haven to proceeds of corruption. The UNCAC Coalition calls on signatory countries to introduce legal frameworks that enable them to take legal action against money launderers even in the absence of a request from another country.[124]

- allowing citizens and civil society organisations to seek redress in cases where public prosecutions do not take place. Article 35 of the UNCAC requires state parties to take all measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a

[121] Nawaz, F. 2010. "Impact of International Asset Recovery and Anti-Money Laundering Efforts on Poverty Reduction and Political Accountability". U4 Expert Answer. Bergen: Chr. Michelsen Institute. p. 2.
[122] Nawaz, F. 2010. "Impact of International Asset Recovery and Anti-Money Laundering Efforts on Poverty Reduction and Political Accountability". U4 Expert Answer. Bergen: Chr. Michelsen Institute. p. 4.
[123] UNCAC Coalition. 2013. Proposals for Improving Asset Recovery Efforts. Available online at: http://uncaccoalition.org/enUS/proposals-for-improving-asset-recovery-efforts/
[124] UNCAC Coalition. 2013. Proposals for Improving Asset Recovery Efforts. Available online at: http://uncaccoalition.org/enUS/proposals-for-improving-asset-recovery-efforts/

result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

- ensuring the ability to proactively identify and freeze the assets of allegedly corrupt officials and establishing incentives for domestic practitioners to initiate cases. Such domestic actions should be followed by international cooperation with the relevant foreign jurisdiction, including spontaneous disclosures and actions to build capacity and trust. Developing countries need to initiate their own investigations and communicate and cooperate with foreign counterparts.

On the other hand, development agencies could expand the efforts to recover by incorporating anti-corruption and asset recovery efforts into their development policies. Some of these efforts might include:

- building capacity in developing countries. Asset recovery requires effective investigations in both the requested and requesting countries, and many developing countries may need technical assistance to take such action. Development agencies can support the training and mentoring of developing country practitioners, especially given that capacity development is a priority of the Accra Agenda and is key to achieving development results.[125]

- ensuring that a wide range of asset recovery tools are available and implemented. Both developed and developing countries need to ensure that they have a broad range of mechanisms in place, such as the abilities to rapidly freeze assets, to confiscate in the absence of a conviction, to return assets as part of a settlement agreement and to reverse or shift the burden of proof.[126]

- supporting domestic law enforcement's pursuit of cases. To complement incentives from other government departments, development agencies may consider allocating development assistance funds to support domestic law enforcement units dedicated to investigating and prosecuting corruption cases that may secure the return of illegally acquired assets to developing countries.[127]

- Ensure adequate financing for prevention and capacity building in developing countries. Adequate funding is needed to support asset recovery, including funding for investigations, prosecutions, international cooperation, training of domestic and foreign practitioners, policy development work and institutions. Development agencies can allocate development funds to support these programmes, both domestically and in foreign jurisdictions.[128]

- Facilitating data collection. Statistics on law enforcement activities are essential for showing that countries are fulfilling their high-level commitments; they also help to guide domestic policy development, resource allocation and strategic planning.[129]

- Communicating asset recovery policies, actions and results. Making progress

[125] Gray, L. K. Hansen, P. Recica-Kirkbride, L. Mills. 2014. *Few and Far: The Hard Facts on Stolen Asset Recovery.* Washington DC: International Bank for Reconstruction and Development / The World Bank / OECD. p. 59
[126] Gray, L. K. Hansen, P. Recica-Kirkbride, L. Mills. 2014. *Few and Far: The Hard Facts on Stolen Asset Recovery.* Washington DC: International Bank for Reconstruction and Development / The World Bank / OECD. p. 3.
[127] Gray, L.K. Hansen, P. Recica-Kirkbride, L. Mills (2014). *Few and Far: The Hard Facts on Stolen Asset Recovery.* Washington DC: International Bank for Reconstruction and Development / The World Bank / OECD. p. 56.
[128] Gray, L. K. Hansen, P. Recica-Kirkbride, L. Mills. 2014. *Few and Far: The Hard Facts on Stolen Asset Recovery.* Washington DC: International Bank for Reconstruction and Development / The World Bank / OECD. p. 57.
[129] Gray, L. K. Hansen, P. Recica-Kirkbride, L. Mills. 2014. *Few and Far: The Hard Facts on Stolen Asset Recovery.* Washington DC: International Bank for Reconstruction and Development / The World Bank / OECD. p. 58.

publicly available highlights results and also supports transparency and accountability.[130]

- Advocating for pertinent policies, laws and institutional development. Development agencies can use their position and financing to advocate for the policies, laws and institutional developments that this report recommends, both at home and abroad. They can also support the efforts of civil society organisations and the media in knowledge development and sharing and advocacy.[131]

Recent trends in asset recovery best practices

Alternative legal approaches to asset recovery

To overcome challenges in asset recovery, a number of countries (such as Colombia, Mexico, United Kingdom and the United States) have sought legislative changes that allow the prosecution to seize and confiscate such assets through the criminal liability of companies, the reversal of the burden of proof in criminal cases and through civil proceedings known as non-conviction based forfeiture (NCB). The latter is achieved through proceedings against the criminal assets themselves, without actually initiating legal proceedings against a person. The advantage is the simplification of the asset recovery process since civil proceedings require a lower standard of proof compared to a criminal prosecution. Some of the most relevant recommendations on how to introduce non-conviction based forfeiture, developed by FATF and the StAR initiative include that:

- NCB laws should state that they are complementary to and not a replacement for criminal convictions and should have a clearly defined relationship to criminal proceedings
- they should not include immunity provisions
- procedural rules should be clearly outlined in the law
- they should have retroactive effect and include long statute of limitations periods[132]

Another promising approach that has emerged recently is the case of the UK Unexplained Wealth Orders bill. This law, passed in 2018, requires the person suspected to explain their interest in an asset and how that asset was obtained. If information is provided, it may result in criminal or civil cases (NCB forfeiture proceedings), although evidence provided under the order cannot be used for criminal proceedings. If no information is provided, it can create a presumption by the court that the asset should be recovered under civil proceedings brought by prosecutors. Important to note is that these orders can only be made when the suspicious asset has a value of over GB£50,000.[133]

Transparency and accountability in asset recovery and the role of CSOs

At the Global Forum for Asset Recovery (GFAR) Conference in December 2017, participating countries agreed on 10 principles that are likely to shape future discussions on asset recovery procedures. These principles include important commitments from governments to work together more efficiently, make asset recovery more transparent and accountable and strenghthen the role of

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[130] Gray, L. K. Hansen, P. Recica-Kirkbride, L. Mills. 2014. *Few and Far: The Hard Facts on Stolen Asset Recovery.* Washington DC: International Bank for Reconstruction and Development / The World Bank / OECD.
[131] Gray, L. K. Hansen, P. Recica-Kirkbride, L. Mills. 2014. *Few and Far: The Hard Facts on Stolen Asset Recovery.* Washington DC: International Bank for Reconstruction and Development / The World Bank / OECD.
[132] See Greenberg et al. 2009. Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture, World Bank/UNODC StAR Initiative and FATF/OECD. 2012. Best Practices on Confiscation (Recommendations 4 And 38) and a “Framework for Ongoing Work on Asset Recovery”.
[133] UK Government. 2018. Circular 003/2018: Unexplained Wealth Orders.

civil society.[134]

Indeed, the lack of transparency and accountability have been a key challenge to improve asset recovery procedures, traditionally an exclusevely inter-governmental matter. Principle four of the GFAR principles commits countries to "guarantee transparency and accountability in the return and disposition of recovered assets. Information on the transfer and administration of returned assets should be made public and be available to the people in both the transferring and receiving country". Elaborating on this, civil society, through the UNCAC Coalition, asked governments that this should include:

- "collecting, maintaining and publishing comprehensive data on investigations and prosecutions of grand corruption and associated asset recovery cases, including: publication of all court decisions and indictments; the volume of assets frozen, confiscated and returned by jurisdiction; volume of compensation in foreign bribery cases; sanctions taken against financial intermediaries; and statistical data on the timeframe within which mutual legal assistance requests for grand corruption cases are dealt with
- providing regular updates on progress in investigations that are in the public domain and creating avenues of communication with non-state actors, such as CSOs and whistleblowers, who can provide crucial information for investigations
- working to harmonise statistical measurements for data on asset recovery at a global level and standards for transparency".[135]

One area that has recently gained attention in this context is transparency and accountability in the managament of returned assets. Asset return processes carry the significant risk that assets disappear again once repatriated, as allegedly happened in the case of Nigeria.[136] International initiatives in this sense, including those formulated during the GFAR Conference and by international civil society, focus on the importance of: i) timely and accessible information on agreed processes, amounts returned, timing of the return and most importantly on the disposition and administration of these assets; ii) creating special funds rather than including them in the general state budget, in order to ensure traceability; iii) focusing on compensting the victims of corruption.[137]

To achieve this, the involvement of civil society in the overall asset recovery process is essential. This role was recognised at the GFAR Conference in 2017 through principle 10 and previously at the third Arab Forum for Asset Recovery in 2013. On this occasion, guidelines were presented suggesting a number of ways CSOs and investigative journalists can contribute to asset recovery:

- Awareness raising and research. NGOs and citizens can generate demand for asset recovery and help other CSOs and key stakeholders better understand their roles and responsibilities in asset recovery.
- Investigations. As shown by the Panama Papers, investigative journalists have significantly helped expose evidence of corruption, traced illicit financial flows and contributed to initiating new asset recovery processes
- In one promising case, CSOs were able to launch judicial proceedings to require authorities to start proceedings, with Vice President Teodorin Obiang of Equatorial Guinea found guilty

134 https://star.worldbank.org/sites/star/files/the-gfar-principles.pdf
135 UNCAC Coalition. 2017. "Civil Society Statement for the Global Forum on Asset Recovery". https://uncaccoalition.org/en_US/civil-society-statement-for-the-global-forum-on-asset-recovery/
136 Crawford, J. 2018. "Is the Abacha Accord a Model for Returning 'Dictator Funds'?" https://www.swissinfo.ch/eng/business/switzerland-and-nigeria_is-the-abacha-accord-a-model-for-returning--dictator-funds--/43938016, SWI swissinfo.ch
137 See among others Transparency International France. 2017. " Le sort des biens mal acquis et autres avoirs illicites issus de la grande corruption : Plaidoyer pour une procédure adaptée, au service des populations victimes", https://transparency-france.org/wp-content/uploads/2017/10/Rapport_BMA_restitution_avoirs_corruption.pdf

of corruption in 2017, and asset recovery procedures are ongoing.

- Monitoring the return of confiscated assets. NGOs can campaign for the transparent and accountable return of assets and to advocate for and participate in return mechanisms established to reuse returned assets. CSOs are in a unique position to represent the voice of the victims of grand corruption and to involve citizens in monitoring how returned funds are used. Promising initiatives in this regard have recently started in Nigeria, with the return of US$322 million from Switzerland.[138]

Additional resources

Background studies

The Stolen Wealth. Opportunities and challenges for civil society in asset recovery. Camarda, A. and Oldfield, J., 2019
Friedrich Ebert Stiftung.
http://library.fes.de/pdf-files/iez/15285.pdf

This paper explores the role that civil society organisations, independent journalists and researchers can and should play in making asset recovery more transparent and accountable. Through an analysis of five of the most important current cases of cross-border corruption and asset recovery – Moldova, Nigeria, Mozambique, Nigeria and Mexico – it outlines how civil society can contribute to the tracing of stolen assets through independent investigations, ensure the transparent and accountable use of assets once they are returned, and help the public make sense of the complexities involved in cross-border corruption and asset recovery.

Few and Far: The Hard Facts on Stolen Asset Recovery. Gray, L., Hansen, K., Recica-Kirkbride, P., Mills, L., 2014.
International Bank for Reconstruction and Development / The World Bank / OECD.
http://star.worldbank.org/star/publication/few-and-far-hard-facts-stolen-asset-recovery

This publication reports on how OECD countries performed on asset recovery between 2006 and 2012. The report provides recommendations and good practices and suggests specific actions for development agencies. The objective of this publication is to support the anti-corruption and asset recovery efforts of developed and developing jurisdictions and keeps a particular focus on actions for development agencies. The report also includes recommendations for civil society organisations engaged in governance and development issues on how to improve their advocacy efforts in topics related to corruption and money laundering.

Emerging Trends in Asset Recovery. Fenner Zinkernagel, G., Monteith, C. and Gomes Pereira, P., 2013.
Bern: Peter Lang

This book looks at the time that has passed since the ratification of UNCAC and explores the reasons why, despite the progress achieved in streamlining legal and institutional frameworks, successful asset recovery stories remain few and far between, and largely limited to a handful of countries. This collection of articles by practitioners from a broad range of affected countries analyses challenges and the obstacles that have hampered the recovery stolen assets and the proceeds of corruption. The authors also discuss practical solutions that are being tested with a view to overcoming the current obstacles.

[138] ICAR and UK Government. 2013. Guide to the Role of Civil Society Organisations in Asset Recovery https://cso.assetrecovery.org/

The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It. Van der Does, E., de Willebois, J.C. Sharman, R.H., Park, J.W. and Halter, E., 2011. Washington DC: International Bank for Reconstruction and Development / The World Bank / OECD
https://star.worldbank.org/sites/star/files/puppetmastersv1.pdf

This report deals with the corporate and financial structures that form the building blocks of hidden money trails. In particular, it focuses on the ease with which corrupt actors hide their interests behind a corporate veil and the difficulties investigators face in trying to lift that veil. It also serves as a reminder that recovering the proceeds of corruption is a collective responsibility that involves both the public and private sector. Law enforcement and prosecution cannot go after stolen assets, confiscate and then return them if they are hidden behind the corporate veil. All financial centres and developed countries have committed, through the UN Convention against Corruption and international anti-money laundering and countering the financing of terrorism standards, to improving the transparency of legal entities and other arrangements. This report provides evidence of how far we still have to go to make these commitments a reality. Narrowing the gap between stated commitments and practice on the ground has a direct impact on the actual recovery of assets.

Comprehensive Study on the Negative Impact of the Non-Repatriation of Funds of Illicit Origin to the Countries of Origin on the Enjoyment of Human Rights, in Particular Economic, Social and Cultural Rights. UN Human Rights Council, 2011.
https://cifar.eu/wp-content/uploads/2018/10/G1117366.pdf

This UN study discusses how the non-repatriation of funds of illicit origin affects states' capacities to fulfil their human rights obligations, in particular with regard to economic, social and cultural rights. It analyses ways by which a human rights-based approach to asset recovery enhances existing procedures by addressing its most problematic issues and existing barriers. The report concludes with policy recommendations directed at improving repatriation processes with a view to enhancing those capacities to better fulfil their human rights obligations.

Practical insights: handbooks and toolkits

Asset Recovery Handbook: A Guide for Practitioners. Brun, J.P., Gray, L., Scott, C. and Stephenson, K., 2011.
Washington DC: International Bank for Reconstruction and Development / World Bank / OECD
http://star.worldbank.org/star/publication/asset-recovery-handbook

This handbook draws on the experience of a wide range of countries and legal traditions. It also serves as a quick reference guide to asset recovery as it describes approaches to recovering proceeds of corruption located in foreign jurisdictions, identifies the difficulties that practitioners are likely to encounter, suggests strategic and tactical options to address the challenges, and introduces good practices. It also provides reference tools, case studies and practical resources, such as sample intelligence reports, applications for court orders and mutual legal assistance requests.

Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action.
Stephenson, K., Gray, L. and Power, R., 2011.
Washington DC: International Bank for Reconstruction and Development / World Bank / OECD.

This study incorporates the experience of dozens of practitioners around the world who have practical experience in asset recovery. The report is directed towards policymakers and addresses the existing difficulties in stolen asset recovery actions, including institutional issues, legal barriers and requirements that delay assistance, as well as operational barriers and communication issues.

Tracing Stolen Assets: A Practitioner's Handbook. International Centre for Asset Recovery, 2009. Basel: Basel Institute of Governance.
http://www.baselgovernance.org/publications/421

This handbook provides practical guidance for investigators on how to institute judicial proceedings aimed at the forfeiture or confiscation of the proceeds of crime. It covers the pre-investigative and investigative stages during which information is collated and verified and assets are identified and located. It also provides guidance aimed at the freezing or seizing assets. The authors also highlight some of the major steps an investigator needs to take to ensure a thorough and effective asset tracing investigation.

Standards, principles and guidelines

GFAR Principles on Accountable Asset Return. Various governments, 2017.
https://star.worldbank.org/sites/star/files/the-gfar-principles.pdf

These 10 principles were the main outcome of the Global Forum on Asset Recover held in Washington DC in December 2017. They outline commitments the hosts and focus country governments made in their further work on asset recovery. These principles were not agreed to as binding commitments and are referenced as "approaches and mechanisms for enhancing coordination and cooperation, and for strengthening transparency and accountability of the processes involved". Similarly the wording of each principle is vague in many cases and lacks the specificity needed to be seen as clearly binding. Nevertheless, they do contain key measures to which the participating governments have agreed to act and should be seen as strongly influential in guiding their actions with respect to asset recovery.

Le Sort des Biens Mal Acquis et Autres Avoirs Illicites Issus de la Grande Corruption. Plaidoyer Pour Une Procédure Adaptée, au service des Populations Victimes, Transparency International France, 2017.
https://transparency-france.org/wp-content/uploads/2017/10/Rapport_BMA_restitution_avoirs_corruption.pdf

This paper by TI France introduces current global challenges in the repatriation of stolen assets through grand corruption, with a focus on France as a destination coutry, and builds the case for focusing the reutilisation of returned assets on the compensation of the victims of corruption. It sets out guidelines on how the repatration process should take place around five key principles: transparency, solidarity, efficiency, integrity and accountability. These principles reflect the approach taken by governments during the GFAR Conference as well as other civil society initiatives on the topic, such as the UNCAC Coalition.

Arab Forum for Asset Recovery: Guide to the Role of Civil Society Organisations in Asset Recovery, International Centre for Asset Recovery and UK Government, 2013.
https://cso.assetrecovery.org/sites/collective.localhost/files/documents/cso_guide_e.pdf

This paper, prepared by the International Centre for Asset Recovery at the third Arab Forum on Asset Recovery in 2013 is a guide for CSOs willing to engage in stolen asset recovery. While it is recognised the potential role of civil society in overcoming the challenges of asset recovery, it provides CSOs with suggestions and recommendations on the areas of engagement,approaches that can be used and an introduction to the topic of asset recovery. The paper mentions that, among others, NGOs can play an important role in making asset recovery accessible to the public and cooperating with authorities on asset recovery processes such as in monitoring the asset repatriations to ensure their transparency and accountability.

Assessments and databases

StAR Asset Recovery Watch Database & Settlements Database. StAR Initiative.
https://star.worldbank.org/corruption-cases/home

The Asset Recovery Watch is a public database that tracks efforts by prosecution authorities worldwide to go after assets that stem from corruption. The database compiles and systematises information about completed and ongoing (active) corruption cases that involve international asset recovery. It is currently the only comprehensive global database providing, to some extent, information about current and past asset recovery cases between asset originating and destination countries – such as PEPs involved, amounts frozen, confiscated or returned, historical background and so on. It currently lists 116 ongoing asset recovery cases (May 2019).

Resources from the Anti-Corruption Helpdesk

Overview of Asset Recovery in Germany. Oldfield, J. And Camarda, A., 2016.
U4 Expert Answer.
Bergen: Chr. Michelsen Institute.
https://www.u4.no/publications/overview-of-asset-recovery-in-germany.pdf

This report collates publicly available information on asset recovery cases and efforts in Germany, one of the world's largest economies, with an important role in supporting developing countries to recover stolen assets hidden abroad. While estimates about stolen assets stored in German bank accounts are not publicly available, anecdotal evidence detailed in the report shows that the country has been attractive to corrupt individuals due to the secrecy of its financial system. The report analyses the progress of Germany in improving its assistance in asset recovery processes and provides overview of important iinternational instruments and treaties that Germany is part of, as well as details of German asset recovery-focused domestic legal famework.

Lessons Learnt in Recovering Assets from Egypt, Libya and Tunisia. Martini, M., 2014.
Transparency International Helpdesk
Berlin: Transparency International.
http://www.transparency.org/files/content/corruptiongas/Lessons_Learnt_in_recovering_assets_from_Egypt_Libya_and_Tunisia_2014.pdf

This Transparency International Anti-Corruption Helpdesk answer shows that the success of Egypt, Libya and Tunisia in recovering assets after the Arab Spring has been limited. The author argues that the process of recovering the proceeds of corruption offers many challenges: Assets are often hidden through the use of shell companies and in countries with strong bank secrecy provisions. In addition, the difference in legal systems, ambiguity in legislation, complexity and costs involved, weak investigative capacity, as well as a lack of political will can pose even greater challenges for the effective recovery of assets. In particular, an analysis of asset recovery efforts in the region shows that the identification, freeze, confiscation and repatriation of stolen assets is hindered by the indiscriminate use of mutual legal assistance requests and the insufficient use of informal channels for requesting assistance.

Impact of International Asset Recovery and Anti-Money Laundering Efforts on Poverty Reduction and Political Accountability. Nawas, F., 2010. U4 Expert Answer.
Bergen: Chr. Michelsen Institute.
http://www.u4.no/publications/impact-of-international-asset-recovery-and-anti-money-laundering-efforts-on-poverty-reduction/

This report collects empirical evidence of the impact of international asset recovery and anti-money laundering efforts on poverty reduction and accountability of political elites and points out that evidence of the effectiveness of these mechanisms to alleviate poverty and increase accountability of the political elite is lacking. The document also provides evidence from a few successful cases of asset repatriation that show that utilisation of these funds to reduce poverty depends on factors such as political will and clear assignment to priority areas. The use of the funds needs to be monitored at the disbursement stage and throughout the project implementation process since case studies show that the lack of safeguards can lead to funds being misappropriated again.

Selected actors and stakeholders

Stolen Asset Recovery Initiative (StAR)

https://star.worldbank.org/

The Stolen Asset Recovery Initiative is a partnership created in 2010 between the World Bank Group and the United Nations Office on Drugs and Crime (UNODC) and the leading inter-governmental initiative worldwide on asset recovery. Its main purpose is to support developing countries and financial centres to facilitate more systematic and timely returns of stolen assets. It provides this support through bilateral and multilateral initiatives, such as capacity building on legal frameworks and technical skills, organising international and regional conferences on asset recovery and working with key anti-corruption related global organisations, including the UNCAC Conference of State Parties, G8, G20 and FATF. It also produces a number of key reference documents on asset recovery frameworks, listed above.

International Centre for Asset Recovery/Basel Institute on Governance

https://www.baselgovernance.org/asset-recovery

The International Centre for Asset Recovery (ICAR) is a programme of the Basel Institute on Governance, a think-tank that specialises in providing technical support on asset recovery, mainly to developing countries. It offers various training programmes and e-learning courses adressed to law enforcement, judiciary and other actors on investigative skills and international cooperation. It also produces a number of reference materials on asset recovery-related matters, such as the Basel Anti-Money Laundering Index and guidelines for the efficient recovery of stolen assets.

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