Kathmandu Declaration

on

Curbing Illicit Financial Flows: Restoring Justice for Human Rights

2018

*To support this Declaration, kindly sign here.

We, the undersigned[1], call upon the heads of states, governments, international institutions, regional bodies and the global community to take cognisance of the urgent need to curb illicit financial flows (IFFs) for the immediate and progressive realisation of human rights and the Sustainable Development Goals (SDGs). Commonly known as black money, grey economy or dirty money, their linkages to persistent intersecting inequalities, income, wealth, ethnic, age and gender inequality, make illicit financial flows one of the greatest challenges to the financing of development and human rights.

We recognise how illicit financial flows are a major drain on resources and harms the mobilisation of domestic resources to achieve people's social, economic, cultural, civil and political rights and fulfillment of the redistributive needs of the society. IFFs threaten all human rights including but not limited to: political freedoms such as the right to vote, to information and participation, access to justice and an independent judiciary; economic rights, such as the rights to decent work, decent wages; social rights such as the rights to education, health, food, water, sanitation, housing; the right to a life of dignity, and gender equality. The illicit nature of these flows inhibits effect towards measuring, tracking and scholarship of IFFs, and without further transparency efforts also the impact of IFFs on all rights, SDGs, poverty and inequality.

We witness the differentiated impact of IFFs in low-and middle-income countries, where inadequate funding for public services such as primary education, public hospitals, water and sanitation, social protection, gender equality programmes, as well as public infrastructure that especially meets the needs of marginalised communities. IFFs also have a disproportionate impact on women's rights due to unequal position of women in society. It is in the developing countries of the Global South where the impact is the greatest, and where also the need for good quality public financing for public services is the highest for achieving all rights, including social and economic rights and commitments made under Agenda 2030 including the SDGs, as well as the Addis Ababa Action Agenda (AAAA) in areas such as implementing Universal Health Coverage (UHC), social protection floors.

---

[1] We express our gratitude towards the Nepal Social Forum (NSF) held in Kathmandu 8-10 March, 2018 for providing us with a platform to launch the Independent Working Group on Illicit Financial Flows under the Financial Transparency Coalition and highlight the gravity of this issue which is paramount to all countries, particularly in the Global South. The struggle to end illicit financial flows is closely linked to social justice movements which focus on the rights and livelihoods of Dalits, farmers, fisherfolk, women, youth, the marginalised, persecuted and indigenous communities. The Declaration deeply reflects the spirit of the NSF bringing together different actors under the banner of "another world is possible".

We consider that Illicit financial flows are generated from financial activities and practices that cause harm, or that are illegal, and are abusive in their use of instruments and agreements in the international financial and economic system. These include issues such as tax abuse, abusive tax incentives, abusive use of bilateral or multilateral trade treaties, misuse of double tax treaties, odious debt, abusive use of mutual arbitration procedures, harmful tax practices, and unjust investment agreements, money laundering, trade misinvoicing, abusive transfer pricing, illicit money transfers, crime, bribery, illicit drug trade, corruption, and the 'offshore' trust industry. IFFs thrive upon political and civil unrest and maneuver resources to fund the conflict in order to sustain criminal markets.

We express our deepest concern over how developing countries have lesser administrative, financial, human and technological resources in taxation departments, customs authorities, police forces, financial intelligence units, oversight institutions and regulatory bodies to investigate, legislate and stop illicit financial flows. Furthermore, due to their dependence on foreign direct investment (FDI) and corporate income taxation in mobilising domestic revenues, developing countries are at a greater risk of tax, trade and investment-related illicit outflows. These reduce available domestic capital for investment. This disproportionate impact of IFFs also leads to other vulnerabilities, partly due to the use of tax incentives to attract FDI via Special Economic Zones, Free Trade Zones or Export Processing Zones where MNCs also take advantage of the difficulty developing countries face to enforce laws effectively and are able to violate the right to decent work, environmental regulations and other similar laws.

We recognise that a crucial aspect of generating, abetting and layering illicit cross-border financial flows is the complex network of enablers that hide these funds through various channels, practices and structures from authorities whose task it is to tackle such abuses. These enablers and gatekeepers include banks which do not conduct adequate 'Know Your Customer' checks; investors including public development banks that do not conduct adequate risk assessment and due diligence on illicit practices; development aid agencies that support other enablers such as audit firms or channel money through tax havens; misconduct by audit and accounting firms resulting in financial irregularities such as trade misinvoicing, customs fraud, and abusive transfer pricing; export service providers who facilitate trade misinvoicing; offshore service providers including lawyers that help individuals set up offshore legal entities and bank accounts for a nominal fee; and *hawaladars* or *Hundi* who do not monitor or report illicit financial flows to public authorities.

We take the view that the neoliberal architecture of the international economic system undermines tax sovereignty and does not allow Southern countries to have decisive autonomy over directing the terms of profit attribution, and in turn taxing rights, thus contributing to the loss of national revenue. Developing countries are often at the forefront of fighting IFFs from trade misinvoicing to tax avoidance and evasion, while many such activities continue to be deemed legal and legitimate activity in many developed nations and tax havens. Therefore, there is a critical need for developing countries to inform and frame the discourse and politics of language around the issue of IFFs in ensuring that the various identified modalities through which IFFs are generated are made illegal in all jurisdictions and strong international norms are established to curb them. Therefore, IFFs require constant monitoring, both in terms of defining abusive practices and assessing the impact of these activities on the realisation of human rights. An economic activity should be considered illicit if it is harmful to people's rights, or has a harmful or abusive motivation.

We consider that abuse and crime related to illicit financial flows should be addressed from the viewpoint of those whose human rights are denied or undermined. Tackling IFFs and other forms of tax abuse should focus on offering meaningful access to remedy for all victims - especially most marginalised communities in society who face disproportionate burdens from IFFs and other tax abuses. People's right to an effective remedy may include various forms, including restitution, compensation, rehabilitation, and guarantees of non-repetition, and may involve judicial, quasi-judicial, non-judicial accountability mechanisms. Preventive and mitigating actions are especially crucial to prevent further illicit financial flows in the future including greater transparency of corporate and private wealth ownership, corporate tax transparency on a disaggregated, country-by-country basis.

We recognize that governments especially those most responsible for IFFs and other tax abuses have the duty to respect human rights abroad by refraining from making laws and policies which directly or indirectly result in the denial of the equal enjoyment of human rights extraterritorially. Therefore, those jurisdictions most responsible for IFFs must undertake independent, participatory and periodic impact assessments of the extraterritorial or "spillover" effects of their financial secrecy and tax policies on human rights and substantive equality to uphold extraterritorial duties under international human rights law. Governments also have the duty to protect against private conduct that has such an effect, including through the regulation of the banking sector and other private actors subject to its jurisdiction. Finally, governments have the obligation to cooperate internationally to mobilize the maximum available resources for the universal fulfillment of economic, social, and cultural rights and to create an international enabling environment conducive to this goal.

We recognize that, the current tax transparency measures backed by the G20, and implemented by the OECD push the burden of compliance onto developing countries instead of offshore havens. Instead, financial and tax transparency measures should be framed as ways to prevent illicit financial flows that disproportionately affect developing countries and especially vulnerable persons and those living in poverty within developing countries. Such a framing would allow giving preference to measures that more readily benefit developing countries.

We call on governments to ensure:

- For collective actions under the SDGs and the Financing for Development (FfD) framework to ensure that the scope and definition of illicit financial flows include legally ambiguous yet abusive tax practices through avoidance, dodging and evasion. In this regard, there is a need to include definitions of Illicit Financial Flows concerning indicators and targets under SDG Goals 16 and 17 - in particular targets 16.4, 16.5, 16.7 and 17.1 as there is no internationally agreed definition IFFs in these relevant targets, and indicators that fall under them. The UN as a representative and inclusive organisation needs to establish structures to define IFFs, with clear leadership of developing countries experiences and concerns driving action.
- Ensure that the UN human rights council conducts periodic assessment of illicit financial flows as human rights abuses, taking place both by government and private sector activities

through its periodic country monitoring reports, especially via the work of its special rapporteurs and commissions, and based on these assessment passes resolutions to fight IFFs.

- Ensure that regional and national bodies such as United Nations economic commissions, national human rights commissions and independent watch dogs, and institutions monitoring SDGs investigate and monitor illicit financial flows and provide recommendations to stop any financial flows deemed harmful, illegal or illicit.
- The need to conduct spillover analysis by all countries of their corporate tax regime, tax treaties, and tax incentives among other elements of their international tax regime to ensure that they do not cause harm in terms of achieving SDGs and ensuring the enjoyment of human rights of citizens in other countries, as well as limiting the scope of other states in fulfilling their duties towards these and other international frameworks.
- The need to substantially increase the space for collecting progressive taxes and other revenue through levying taxes and levies on wealth and property transactions and assets, accompanied with fiscal justice measures on the expenditure side that fulfill the obligation of States to mobilise the maximum available resources for the realisation of SDG goals and human rights obligations, and especially economic and social rights, backed by concrete and prioritised resource mobilisation plans.
- That all revenue systems collect taxes in a socially just manner so revenue mobilisation is focused on those with greater capacity to contribute while ensuring that tax systems are designed with the goal of gender equality and that they take into account and are responsive to the way tax policies can affect women's disproportionate burden of unpaid care work.
- Greater efforts must be made at the global level to refine comparable data on tax abuse for example with gender disaggregated data that shows the gender biases of certain tax systems and gendered impact of tax abuses.
- Restore the integrity of democratic institutions through transparency reforms including public registries of all beneficial and direct owners of all companies and trusts (listed or private), and ensuring all medium and large companies publish public country by country reporting of their financial and tax operations.
- Ensure that money laundering laws are established on all agents, who need to check beneficial owners of all companies, trusts and other legal entities before transacting with them, and that individuals and companies need to show the source of income while purchasing expensive property, depositing money in banks and purchasing vehicles among high risk transactions.
- Strengthen national and global justice systems to be able to hold individuals and entities to account for illicit financial flows.
- That one of the functions of all monitoring bodies is to oversee repatriation of lost assets and illicit funds based on clear, well-established guidelines along with speedy repatriation in order to compensate the victims of IFFs.
- Strengthen the integrity and spirit of right to information laws for public accountability and governance and enable adequate protection of whistleblowers and journalists who are the pillars of democracy.
- Review of restrictive bilateral trade, investment, tax and any such agreements or treaties that provide scope for multinational corporations to bypass registration compliance and

abuse tax exemption provisions thereby reducing payments to government thus, perpetuating inequality and gender, caste, racial and similar social biases. The contents and nature of any mutual assistance agreements signed must be disclosed for public consumption.

- Adoption of international standards like the Extractive Industries Transparency Initiative, timely updated public disclosure of beneficial ownership, asset ownership and other registries are reported in an open data format for all jurisdictions.
- Ensure that appropriate mechanisms are in place to tackle customs and tax abuse and fraud by making double invoicing illegal (where a different invoice value is presented at two or more customs borders), while ensuring that all types of trade mispricing is made transparent to the relevant authorities where the company operates so that authorities can establish a fair and efficient way to tax international trade transactions.
- No jurisdiction should enact ring-fenced capital gains tax, or corporate taxation regimes in order to create artificial financial services centres that ensue a fierce race to the bottom and encourage untaxed and undeclared non-resident and private assets that end up as illicit financial flows.
- That tax incentives and exemptions are provided on the basis of economic policy in an accountable and transparent manner to minimise preferential treatment and abusive practices through constant monitoring of activities and are subjected to a human rights assessment and a spillover analysis. Governments should also endeavour to exclude susceptible firms and sectors from being given tax related concessions.
- National governments and regional organisations support the establishment of an inclusive intergovernmental Tax Commission under the United Nations, where all countries, not confined solely to G20 and OECD members, have an equal status and a levelled playing field in setting international tax norms and policies as well as regional tax bodies to address tax related concerns of IFF. The proposed Commission and bodies like the Human Rights Council, UN Office on Drugs and Crime, UN Conference on Trade and Development, and other such bodies should align themselves to put an end to IFFs for once and all.
- Reward workers and businesses for entering the formal reported economy with meaningful support, while not encouraging the use of punitive tax compliance and regulatory measures for actors under the poverty line.

The undersigned coalitions, alliances, activists, groups, organisations and individuals endorse the Kathmandu Declaration on Illicit Financial Flows: Restoring Justice for Human Rights, and pledge to continue collaborating to analyse, monitor, stop and reverse lost revenue through illicit financial flows to achieve development justice.

*To support this Declaration, kindly sign here.