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Illicit Financial Flows in Kenya, Ghana, and Tanzania: **Understanding the Law and Opportunities for Reform**

July 2024



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improved citizens' lives and the potential high-level impact is more money available for public services and in the economy, thereby improving public service and incomes. The programme aims to improve the accountability, transparency, and effectiveness of domestic tax systems in target countries by strengthening the capacities of media and civil society and collaboration between them and other stakeholders on IFFs and taxation-related issues.

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Executive summary

A. Focus and Rationale

Every year, Africa is estimated to lose approximately USD 88.6 billion to illicit financial flows (IFFs), accounting for 3.7% of the continent's GDP.¹ These illicit flows significantly impact funds available for the provision of public goods and services needed to drive development. They deplete foreign exchange reserves, stifle competition, reduce government revenue, and, ultimately, enhance illegal activity such as corruption, terrorism financing, and money laundering. IFFs further erode public confidence in the rule of law and in institutional frameworks, increasing political instability in a nation.

There is no consensus on the definition of IFFs. Some limit the definition to illegal activities, while others adopt an expanded view that captures not only illegal activities but also activities that go beyond established rules and norms.² The inconsistency in defining IFFs makes it difficult to identify them, determine their drivers, estimate their extent, and ascertain how to effectively curb them. This report recognises that the definition of IFFs goes beyond illegal activities and therefore adopts the definition by the United Nations Economic Commission for

1 UNCTAD. (2020). *Economic Development in Africa Report 2020: Tackling Illicit Financial Flows for Sustainable Development in Africa*. https://unctad.org/system/files/official-document/aldcafrica2020_en.pdf.

2 UNCTAD. (2020). *Economic Development in Africa Report 2020: Tackling Illicit Financial Flows for Sustainable Development in Africa*. https://unctad.org/system/files/official-document/aldcafrica2020_en.pdf.

Africa of IFFs as activities “that, while not strictly illegal in all cases, go against established rules and norms, including avoiding legal obligations to pay tax”.³

The aim of the research is to examine the legal and institutional frameworks in Kenya, Ghana, and Tanzania to curb IFFs, their strengths, and the gaps within them that are exploited to facilitate IFFs. The report then discusses the opportunities available for civil society organisations (CSOs) to play a role in combatting IFFs.

This report is expected to serve as a useful tool for CSOs and advocacy communities at the forefront of the battle against IFFs. By enhancing the understanding of the legal landscape of IFFs in the three countries, this report hopes to empower CSOs to effectively combat IFFs and increase government transparency and accountability in Kenya, Ghana, and Tanzania.

The report focuses on three forms of IFFs that are prevalent in the study countries: tax-related IFFs, corruption, and money laundering. Commercial activities account for 65% of all IFFs from Africa,⁴ making it imperative to study tax-related practices like aggressive tax planning, abuse of transfer pricing, mis-invoicing, and tax evasion.⁵ The choice to study corruption is informed by the fact that corruption is a significant source of IFFs across the three countries and is endemic in all three, as evidenced by the fact that each currently scores less than 50 in Transparency International’s Corruption Perceptions Index.⁶ This part of the study focuses on the extractive sector in Tanzania and Ghana due to the significance of that sector in the two countries’ economies and, consequently, the potential devastating impact of corruption.⁷

While corruption also contributes significantly to IFFs in Kenya, recent developments placing Kenya on the Financial Action Task Force’s money laundering grey list highlight the urgency of studying this issue in Kenya. The report will focus on the country’s financial and real estate sectors, which have been identified as particularly vulnerable to money laundering.

B. Roadmap

This report provides an overview of the legal and institutional frameworks governing IFFs in Kenya, Ghana, and Tanzania at the international, regional, and national levels. It examines three forms of IFFs that are prevalent in the study countries: tax-related IFFs, corruption, and money laundering. The first part of the report focuses on IFFs stemming from commercial activities, specifically tax-related IFFs from aggressive tax planning and tax evasion in the three countries. While the study on tax-related IFFs in Kenya is not specific to any sector, this section of the report focuses on the extractive sector in Ghana and Tanzania where tax-related IFFs have a significant impact. The next section explores corruption, which is a major source of IFFs across all three countries but will be studied specifically in Ghana and Tanzania’s extractive sector. The report then examines money laundering in Kenya, with a focus on the banking and real estate sectors. It concludes with a discussion on the role of CSOs in combating IFFs, identifies the challenges they may encounter, and provides recommendations for addressing these challenges effectively.

3 AU/ECA Conference of Ministers. (2015). *Report of the High-Level Panel on Illicit Financial Flows from Africa*. https://au.int/sites/default/files/documents/40545-doc-IFFs_REPORT.pdf.

4 AU/ECA Conference of Ministers, *Report of the High-Level Panel*, (pp. 24–34). https://au.int/sites/default/files/documents/40545-doc-IFFs_REPORT.pdf.

5 AU/ECA Conference of Ministers, *Report of the High-Level Panel*, (p. 24). https://au.int/sites/default/files/documents/40545-doc-IFFs_REPORT.pdf.

6 Transparency International. (2023). *2023 Corruption Perceptions Index*. <https://www.transparency.org/en/cpi/2023>. [Accessed 09 July 2024].

7 Ghana Chamber of Mines. (2023). *Performance of the Mining Industry in 2022*. <https://ghanachamberofmines.org/wp-content/uploads/2023/08/Performance-of-the-Mining-Industry-in-2023-.pdf>.

C. Summary of Key Themes and Issues Discussed

IFFs encompass various activities, including money laundering, corruption, criminal enterprises, and tax-related activities such as tax avoidance and evasion. These activities thrive due to economic, political, environmental, and social factors, such as geographical location, resource exploitation opportunities, levels of international investment, governance quality, and the integrity of governing institutions.

i. Tax-related IFFs

Tax-related IFFs, constituting about 65% of all IFFs, are the most pervasive form of illicit flows from Kenya, Ghana, and Tanzania, driven primarily by tax avoidance and evasion. Kenya is estimated to lose approximately 2.34% of its GDP annually to tax-related IFFs⁸, with Tanzania losing USD 7.6 billion annually⁹ and Ghana suffering losses of USD 8.4 billion in inward and outward IFFs between 2000 and 2012.¹⁰

Tax-related IFFs in Kenya, Ghana, and Tanzania manifest through various channels. These include multinationals manipulating the price of goods and services between related parties to artificially shift profits to low-tax jurisdictions, financing local entities through tax-deductible debt, and disposing of assets indirectly to evade capital gains taxes. Furthermore, entities structure operations to avoid creating a permanent establishment status, exploit tax treaties, and deliberately misreport the quantity and value of their imports or exports. These practices collectively result in substantial revenue losses for the countries involved.

The international framework that exists to combat tax-related IFFs consists of multilateral and bilateral agreements, international guidelines, and action plans. This framework aims to foster international cooperation and implement measures to address cross-border tax avoidance and evasion. In addition, there are international and regional institutions that play an active role in curbing tax-related IFFs by promoting cooperation, issuing model laws and standards for countries to adopt, and providing capacity building for revenue authorities. These institutions include the United Nations Committee of Experts on International Cooperation in Tax Matters (UN Tax Committee), the Organisation for Economic Co-operation and Development (OECD), the African Tax Administration Forum (ATAF), the East African Community (EAC), and the Economic Community of West African States (ECOWAS).

Despite the international and regional frameworks in place, there are gaps that allow IFFs to continue unchecked. This includes the complexity of some solutions recommended by organisations such as the OECD, which can be challenging for countries in the Global South to implement due to capacity constraints and inadequate infrastructure or data. The voluntary nature of multilateral conventions also results in varying levels of participation from countries, which limits cooperation in reducing tax avoidance and evasion. Further, while tax treaties are meant to avoid double non-taxation, they often result in erosion of the tax base in Global South countries as entities shift their profits to countries where they get preferential tax treatment. This is facilitated by the absence of clear treaty negotiating policies to guide government officials. Other obstacles include the rigidity of amending bilateral tax treaties and the lack of harmonisation of the tax system in regional blocks.

8 Turner, G. (2017, March 22). "New Estimates Reveal the Extent of Tax Avoidance by Multinationals." Tax Justice Network. <https://taxjustice.net/2017/03/22/new-estimates-tax-avoidance-multinationals/>.

9 Figue, A. & Mahangila, D. (2021). *Sealing the Gaps: An Analysis of Revenue Forgone within the Tanzania Tax System and How it Could be Used to Fund Public Education*. ActionAid & NORAD. (p. 7). https://tanzania.actionaid.org/sites/tanzania/files/publications/Sealing_the_gaps%20report.pdf.

10 UNCTAD. (2023, June 8). "First-ever Official Data on Illicit Financial Flows Now Available." <https://unctad.org/news/first-ever-official-data-illicit-financial-flows-now-available>.

In recognition of this, Kenya, Ghana, and Tanzania have implemented various legislative measures to combat tax avoidance and tax evasion in their national laws. While these measures have helped curb tax-related IFFs, there remain loopholes that allow tax-related IFFs to continue. Firstly, the rules governing permanent establishments (PEs) — fixed places of business — in the three countries contain gaps that enable multinational entities to avoid tax. Tanzania, for example, does not include providing services in the list of activities that can trigger the creation of a PE, which enables multinational entities to circumvent creating a PE when providing services. Secondly, the PE laws of all the focus countries do not effectively address fragmentation of contracts, when multinational entities split functions among different people in the same jurisdiction to avoid having a taxable presence there. Further, none of the three countries under review have adequate legislative measures to address indirect transfer of interests, which is a common mechanism for tax avoidance. Other gaps identified in national legislation include absence of transfer pricing provisions in key sector laws, such as the extractive sector in Ghana, and complexity of the tax laws in countries such as Tanzania, which make them difficult to apply.

All the countries reviewed have specialised tax administration institutions, as well as other institutions involved in the enactment of laws and the investigation, prosecution, and adjudication of cases. Nevertheless, these institutions are reported to be hindered by resource constraints, poor interagency coordination, the lack of expertise in taxation, and political influence.

ii. Corruption-related IFFs

Corruption is another prevalent form of IFF, playing a three-fold role: It generates IFFs, aids in the movement of IFFs, and enables the occurrence of IFFs. Corruption is a common problem in Kenya, Ghana, and Tanzania, especially in the extractive sector in Ghana and Tanzania due to the significance of the sector to those two countries' economies.¹¹ Corruption is endemic in all three countries reviewed, with each scoring less than 50 out of 100 in Transparency International's 2023 Corruption Perceptions Index.¹²

The United Nations Convention Against Corruption¹³ (UNCAC) is the only legally binding anti-corruption instrument at the international level.¹⁴ Both Ghana and Tanzania are party to the Convention, having ratified it in 2007 and 2005, respectively. While there are no internationally recognised institutions, the Stolen Asset Recovery Initiative (StAR) from the World Bank and the United Nations Office on Drugs and Crime (UNODC) seeks to implement the asset recovery provisions under the UNCAC.

The key regional instruments addressing corruption are the African Union Convention on Preventing and Combating Corruption (AUCPCC), the Economic Community of West African States (ECOWAS) Protocol on the Fight against Corruption, the African Union Special Declaration on Illicit Financial Flows, and the Southern African Development Community Protocol against Corruption 2001. There are no regional institutions mandated to curb corruption, but the African Union Advisory Board under the AUCPCC and the Technical Commission under the ECOWAS Protocol on the Fight against Corruption oversee the implementation of the various instruments. The regional framework nevertheless does not specifically provide for corruption-related IFFs.

11 Ghana Chamber of Mines. (2023). *Performance of the Mining Industry in 2022*. <https://ghanachamberofmines.org/wp-content/uploads/2023/08/Performance-of-the-Mining-Industry-in-2023-.pdf>.

12 Transparency International. (2023). *2023 Corruption Perceptions Index - Explore Ghana's Results*. <https://www.transparency.org/en/cpi/2023/index/gha>. [Accessed 09 July 2024].

13 United Nations. (2003). *United Nations Convention Against Corruption*. Treaty Series, vol. 2349, 41. https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtidsg_no=XVIII-14&chapter=18&clang=en.

14 The World Bank & UNODC. (2004a). *About UNCAC*. <https://starworldbank.org/focus-area/uncac#:~:text=The%20United%20Nations%20Convention%20against>.

Ghana has neither specific legislation nor specialised courts that address corruption. While Tanzania has a legal framework addressing corruption, it contains gaps that hinder its effectiveness. These include low fines and penalties that are insufficient to deter corruption offences, and absence of minimum penalties. Further, the laws do not provide for international cooperation for addressing corruption offences relating to IFFs. The national institutions that deal with corruption-related IFFs in both countries face various challenges, including alleged political influence, delays in prosecution and adjudication of cases, delays in passing of laws, inadequate resources and infrastructure, poor interagency cooperation, and inadequate expertise and knowledge in the institutions.

iii. Money laundering in Kenya

In February 2024, Kenya was grey listed by the Financial Action Task Force (FATF) for weak action on money laundering, underscoring the need to assess the nation's legal and institutional framework for combating this illicit activity. Kenya has lost an estimated USD 10.6 billion in IFFs since 1970, a significant amount of that attributed to money laundering.¹⁵ Kenya's vulnerability to money laundering is facilitated by its strategic geographical location, regional business expansion, its cash-based economy, regional and institutional deficiencies, and corruption. The banking sector and the real estate sector are particularly vulnerable to money laundering, having been assigned a "high" and "medium" threat level respectively in the National Risk Assessment 2023.

The international legal and institutional framework in place to address money laundering includes the FATF, the UN Convention against Transnational Organized Crime (UNTOC, also called the Palermo Convention), and the International Convention for the Suppression of the Financing of Terrorism 1999. The regional framework consists of the AUCPCC and the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). These legal frameworks and institutions have limitations due to the absence of judicial and enforcement powers within the international regime. Another constraint is that Kenya is yet to ratify the protocol granting the African Court of Justice and Human Rights criminal jurisdiction over money laundering cases.

Kenya's national framework is governed by the Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA), which establishes institutions such as the Financial Reporting Centre, the Assets Recovery Agency, and the Anti-Money Laundering Advisory Board. The national framework is key in empowering a wide range of institutions to monitor and implement anti-money laundering laws within their sectors. However, gaps in the framework, such as alleged failure to address foreign politically exposed persons, and the lack of a unified body in the real estate sector to supervise all actors involved in relevant transactions allow money laundering to continue unchecked. The various government institutions struggle to share information consistently or effectively, and the institutional officers are also inadequately equipped to monitor and prevent money laundering in view of technological advancements. This has resulted in a significantly low number of investigations and prosecutions compared to the number of cases reported.

¹⁵ Rudich, D. (2021). *Kenya Illicit Finance Risks and Assessment*. The Sentry. (p. 3) <https://thesentry.org/wp-content/uploads/2021/10/KenyaillicitFinance-The-Sentry-Oct2021.pdf>.

D. Summary of Opportunities for Civil Society Organisations

A review of the existing legal and institutional frameworks in Kenya, Ghana, and Tanzania reveals gaps that perpetuate IFFs. These gaps present opportunities for CSOs to engage in addressing illicit financial practices through various routes, including advocating for enhanced legal and institutional frameworks, transparency, and accountability.

i. Advocacy

At the international level, CSOs can play an active role by lobbying the United Nations Tax Committee for tax laws that reflect the perspectives of African countries. To ensure effectiveness, the proposals submitted should be evidence-based. CSOs such as Tax Justice Network Africa are already involved in such initiatives.

Further, CSOs can take proactive steps by engaging in advocacy to push for the reform of national laws and institutions, to create public awareness about IFFs, and to demand transparency from governments on issues including agreements with multinationals, government spending, and tax incentives information. CSOs can also utilise legal avenues to actively participate in the legislative process, interpret ambiguous laws, and initiate litigation against the government.

ii. Research

CSOs can undertake research to ascertain the extent of IFFs arising from various means. The research should be robust to offer evidence-based recommendations to governments. Additionally, research initiatives should be accompanied by engagements with legislators to increase the likelihood of meaningful legislative reforms.

iii. Capacity building and training

CSOs can mobilise resources for training of government personnel in institutions that address IFFs to enhance their prevention, detection, and prosecution capabilities. Training can be provided through partnerships with international entities or with academics through workshops or education programmes. The trainings may target judicial officers, legislators, and officers involved in investigation, prosecution, and enforcement of IFF-related offences.

iv. Monitoring and oversight

CSOs can monitor the efforts and steps taken by the government agency mandated to address IFFs and act as watchdogs to ensure that laws against IFFs are complied with. This can be achieved by collaborating with the media, as investigative journalism can play an active role in uncovering hidden cases of illicit financial activities.

E. Summary of Barriers to CSO Activities

This report recognises that CSOs face various challenges in fulfilling this mandate, such as susceptibility to government influence, lack of cooperation and coordination among CSOs, inaccessibility of accurate and up-to-date data, limited resources, lack of technical capacity, and legal barriers to action, such as when governments claim national security prerogatives. Despite these challenges, CSOs can take advantage of the opportunities presented by various legal instruments in each country and public goodwill to enhance their efforts to combat IFFs.

F. Conclusion

This report underscores the pervasive impact of IFFs on African economies — with an estimated annual loss of USD 88.6 billion — and highlights the need for comprehensive measures to address the issue. The focus countries of Kenya, Ghana, and Tanzania have made progress in establishing legal frameworks and institutions to address various forms of IFFs. Nonetheless, gaps persist within the legal frameworks which allow IFFs to continue. Additionally, the effectiveness of institutions tasked with monitoring and curbing IFFs is hindered by factors such as inadequate human and financial resources, alleged political influence, and insufficient international cooperation.

CSOs emerge as key stakeholders in the fight against IFFs, with opportunities to leverage their advocacy, research, capacity building, and monitoring capabilities to drive meaningful change. By advocating for stronger legal frameworks, transparency, and accountability in government, and mobilising resources for capacity building of key personnel involved in fighting IFFs, CSOs can contribute to building robust legal frameworks and resilient institutions in Kenya, Ghana, and Tanzania.

Abbreviations

ACJHR - African Court of Justice and Human Rights

AEOI - Automatic Exchange of Information

AML - Anti-money laundering

ARA - Assets Recovery Agency

ATAF - African Tax Administration Forum

AU - African Union

AUCPCC - African Union Convention on Preventing and Combating Corruption

BEPS - Base erosion and profit shifting

CAG - Comptroller and Auditor General

CAP - Chapter

CBK - Central Bank of Kenya

CCIJ - Center for Collaborative Investigative Journalism

CET - Common external tariff

CSO - Civil society organisation

DCI - Directorate of Criminal Investigations

DTA - Double taxation agreements

EAC - East African Community

EACC - Ethics and Anti-Corruption Commission

EACCMA - East African Community Customs Management Act

ECOWAS - Economic Community of West African States

ESAAMLG - Eastern and Southern Africa Anti-Money Laundering Group

EOCO - Economic and Organised Crime Office

EOIR - Exchange of Information on Request

FATF - Financial Action Task Force

FRC - Financial Reporting Centre

GACC - Ghana Anti-Corruption Coalition

GDP - Gross domestic product

GIPC - Ghana Investment Promotion Centre

GRA - Ghana Revenue Authority

IFFs - Illicit financial flows

IMF - International Monetary Fund

KES - Kenya shilling

KRA - Kenya Revenue Authority

LSK - Law Society of Kenya

MAAC - Multilateral Convention on Mutual Administrative Assistance in Tax Matters

MLI - Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent BEPS

MNE - Multinational Enterprise

NACAP - National Anti-Corruption Action Plan

NORAD - Norwegian Agency for Development Cooperation

NRA - National risk assessment

ODPP - Office of the Director of Public Prosecutions

OECD - Organisation for Economic Co-operation and Development

PATF - Fiscal Transition Support Programme in West Africa

PCCB - Prevention and Combating of Corruption Bureau

PE - Permanent establishment

PEP - Politically exposed person

POCAMLA - Proceeds of Crime and Anti-Money Laundering Act, 2009

R.E. - Revised edition

SAAR - Specific Anti-Avoidance Rules

SADC - Southern African Development Community

TAT - Tax Appeals Tribunal

TIEA - Tax information exchange agreement

TJNA - Tax Justice Network Africa

TP - Transfer pricing

TPA - Tax Procedures Act

TRA - Tanzania Revenue Authority

TZS - Tanzanian shilling

UN - United Nations

UNCAC - United Nations Convention Against Corruption

UNCTAD - United Nations Conference on Trade and Development

UNDP - United Nations Development Programme

UNECA - United Nations Economic Commission for Africa

UNODC - United Nations Office on Drugs and Crime

UNTOC - United Nations Convention against Transnational Organized Crime

USD - United States dollar

VAT - Value added tax



REUTERS/ Thomas Mukoya

1. Introduction

In its 2020 *Economic Development in Africa Report*, the United Nations Conference on Trade and Development (UNCTAD) estimates that Africa loses USD 88.6 billion, amounting to 3.7% of its GDP, annually to IFFs.¹⁶ Such losses constitute a potential source of domestic revenue¹⁷ which exceeds the amount that the continent receives in both aid and foreign direct investment combined, indicating the devastating impact that IFFs have on Africa.¹⁸

IFFs do much more damage than just depriving countries of sorely needed resources. They deplete foreign exchange reserves, stifle competition, raise prices — particularly in the real estate industry — and lower overall government revenue.¹⁹ Even more concerning is the ripple effect of IFFs, which lead to an increase in illegal activities, including financing of terrorism, money laundering, and corruption.²⁰ IFFs further weaken the rule of law by empowering those who operate outside of the law.²¹ This erodes public confidence in institutions and jeopardises political stability in a nation.

16 UNCTAD. (2020). *Economic Development in Africa Report 2020*. https://unctad.org/system/files/official-document/aldcafrica2020_en.pdf.

17 Combes, J.L., Minea, A. & Sawadogo, P.N. (2019). "Assessing the Effects of Combating Illicit Financial Flows on Domestic Tax Revenue Mobilisation in Developing Countries." *Études et Documents*, n° 7. CERDI. <https://shs.hal.science/halshs-02019073/file/Combes%20et%20al%202019-7%20à%20PUB-LIER%20OK.pdf>.

18 UNCTAD. (2020). "Quantifying the Impact of Illicit Financial Flows," 127–148. <https://doi.org/10.18356/dbdce3e5-en>.

19 IMF. (2023, February). "The IMF and the Fight Against Illicit Financial Flows." <https://www.imf.org/en/About/Factsheets/Sheets/2023/Fight-against-illicit-financial-flows>.

20 UNCTAD. (2020). *Economic Development in Africa Report 2020*. https://unctad.org/system/files/official-document/aldcafrica2020_en.pdf.

21 Jenkins, M. (2024). *Illicit Financial Flows, Fragility and Conflict*, ed. Maslen, C. & Loureiro-Revilla, R. Transparency International & U4 Anti-Corruption Resource Centre. <https://www.u4.no/publications/illicit-financial-flows-fragility-and-conflict>.

Despite agreement on the significant detrimental impact of IFFs, there is no universally accepted definition for the term. Some scholars define IFFs as the cross-border transfer(s) of money or assets connected to an illegal activity, where the transfer, use, and movement of these funds and assets across borders are illegal in their origin, transfer, or use for purposes of corruption, crimes, or commercial endeavours.²²

The UNCTAD and the United Nations Office on Drugs and Crime (UNODC) define IFFs as “financial flows that are illicit in origin, transfer, or use that reflect an exchange of value and that cross country borders”.²³ The United Nations Development Programme (UNDP) defines IFFs as flows that “include, but are not limited to, cross-border transfers of the proceeds of tax evasion, corruption, trade in contraband goods, and criminal activities such as drug trafficking and counterfeiting”.²⁴

The World Bank seeks to broaden the definition to include capital flight — when assets or money rapidly flow out of a country — resulting from money earned, transferred, or spent illegally, encompassing money flows associated with organised crime, drug trafficking and weapons trafficking, trade mispricing, and corruption, as well as illicit trade in natural resources.²⁵

The United Nations Economic Commission for Africa (UNECA), recognising that the term goes beyond illegal activities, attempts to provide a more encompassing definition. It defines IFFs as activities “that, while not strictly illegal in all cases, go against established rules and norms, including avoiding legal obligations to pay tax.”²⁶

The lack of consensus on their definition makes it challenging to identify IFFs, estimate their volumes, determine their drivers, and develop measures to effectively curb them.²⁷ Despite the inconsistencies in the definitions, what remains indisputable is the significant impact the cross-border flow of illicit finance poses on the stability of the global economy as well as that of a specific country.

To ensure all illicit activities, even those that may not be outrightly illegal, are captured, this report adopts the definition advanced by UNECA, which includes not only the outrightly illegal activities but also the morally grey activities that result in the flows of funds. That definition allows the report to capture activities such as aggressive tax planning and abuse of transfer pricing. These concepts will be discussed in detail later in the report.

22 Musselli, I. & Bonanomi, E.B. (2020). “Illicit Financial Flows: Concepts and Definition.” *Revue Internationale de Politique de Développement*, 12(1). Institut de Hautes Études Internationales et du Développement. <https://doi.org/10.4000/poldev.3296>.

23 U4 Anti-Corruption Resource Centre. (n.d.). Defining Illicit Financial Flows. <https://www.u4.no/topics/illicit-financial-flows/basics>.

24 Aziani, A. (2023). *Illicit Financial Flows: A Contested Concept and a Challenging Measurement*. CrimRxiv. (p. 9). <https://www.crimrxiv.com/pub/8u6vn718>.

25 The World Bank. (2014, October 13). “Illicit Financial Flows: A Global Challenge Underestimated.” [https://www.worldbank.org/en/news/feature/2014/10/13/illicit-financial-flows-a-global-challenge-underestimated#:~:text=Illicit%20financial%20flows%20\(IFFs\)%20is,of%20drugs%2C%20weapons%20and%20humans](https://www.worldbank.org/en/news/feature/2014/10/13/illicit-financial-flows-a-global-challenge-underestimated#:~:text=Illicit%20financial%20flows%20(IFFs)%20is,of%20drugs%2C%20weapons%20and%20humans).

26 AU/ECA Conference of Ministers. (2015). Report of the High-Level Panel on Illicit Financial Flows from Africa. https://au.int/sites/default/files/documents/40545-doc-IFFs_REPORT.pdf.

27 Erskine, A. & Eriksson, F. (2018). *Improving Coherence in the Illicit Financial Flows Agenda*. Bergen: U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute. (U4 Issue 2018:8). <https://www.u4.no/publications/improving-coherence-in-the-illicit-financial-flows-agenda.pdf>.

1.1. DRIVERS OF IFFS

IFFs take various forms, including money laundering, corruption, and criminal activities, as well as commercial activities, which alone account for approximately 65% of all IFFs from Africa.²⁸ Commercial activities, according to the High-Level Panel on Illicit Financial Flows from Africa,²⁹ are business-related activities with their main goal being to maximise profit. In the context of IFFs, these include aggressive tax planning, abuse of transfer pricing, mis-invoicing, and tax evasion.

Various drivers enable funds to move unlawfully across borders, circumventing detection and regulation. Examining these drivers provides insight into the economic, legal, and institutional contexts that support IFF activities. Understanding these underlying drivers is crucial for developing effective strategies to combat and prevent illicit financial flows. The drivers are discussed briefly below.

a. Economic drivers

Investors, both domestic and foreign, are motivated by economic gain and will therefore invest in destinations where they can maximise their returns. The choice of destination for the capital is determined by a range of variables, including the expected rate of return, the stability of the currency, the likelihood of expropriation, and the stability and complexity of the tax regime, among others.³⁰ Increased globalisation has made it easier to move capital around, thereby allowing holders of capital to simply shift their profits to where they can maximise their gain.

A country marred with constant and irregular changes in its tax rates and regimes, as well as a weak and unstable currency, encourages capital outflows. Additionally, high and variable inflation, rising unemployment, high poverty levels, high public debt, and low public investment encourage illicit outflow of finances.³¹ The abundance of natural resources in a country also drives IFFs, as the presence of natural resources creates opportunities for embezzlement and theft.³²

b. Institutional factors

Governance is the process through which state and nonstate actors interact to design and implement policies within a given set of formal and informal rules that shape and are shaped by power.³³ Weak governance manifests

28 AU/ECA Conference of Ministers. (2015). *Report of the High-Level Panel on Illicit Financial Flows from Africa*. (pp. 24–34) https://au.int/sites/default/files/documents/40545-doc-IFFs_REPORT.pdf.

29 The High-Level Panel on Illicit Financial Flows from Africa was set up in February 2012 through a resolution of the AU/ECA Conference of Ministers of Finance, Planning and Economic Development. It was mandated to investigate the nature, extent, and impact of illicit financial outflows from Africa, raise awareness about their effects, and advocate for policies to reverse these flows. AU/ECA Conference of Ministers. (2015). *Report of the High-Level Panel*. [https://www.worldbank.org/en/news/feature/2014/10/13/illicit-financial-flows-a-global-challenge-underestimated#:~:text=Illicit%20financial%20flows%20\(IFFs\)%20is,of%20drugs%2C%20weapons%20and%20humans](https://www.worldbank.org/en/news/feature/2014/10/13/illicit-financial-flows-a-global-challenge-underestimated#:~:text=Illicit%20financial%20flows%20(IFFs)%20is,of%20drugs%2C%20weapons%20and%20humans).

30 Blankenburg, S. & Khan, M. (2012). "Governance and Illicit Flows." *Draining Development? Controlling Flows of Illicit Funds from Developing Countries*, ed. Reuter, P. The World Bank. (pp. 21–68). <https://openknowledge.worldbank.org/server/api/core/bitstreams/1070a58d-8c00-5840-a501-fdab910d0e10/content>.

31 UNDP. (2015). *A Snapshot of Illicit Financial Flows from Eight Developing Countries: Results and Issues for Investigation*. <https://www.undp.org/publications/snapshot-illicit-financial-flows-eight-developing-countries-results-and-issues-investigation>.

32 Ndikumana, L. & Boyce, J. K. (2021). *Capital Flight from Africa 1970–2018: New Estimates with Updated Trade Misinvoicing Methodology*. Political Economy Research Institute. (p. 5). <https://develop-peri.umass.edu/images/CapFlightAfrica-5-28-21.pdf>.

33 International Bank for Reconstruction and Development / The World Bank. (2017). *World Development Report 2017: Governance and the Law*. The World Bank. (p. 3). <https://doi.org/10.1596/978-1-4648-0950-7>.

in unsuccessful implementation of policies that are beneficial to a country. For instance, due to weak governance a country is unable to fight corruption, which promotes IFFs and undermines the country's wellbeing. Weak governance is characterised by low institutional capabilities, low regulatory capacity, and uncertainty relating to the political environment. Weak legal and institutional frameworks incentivise multinational companies to engage in IFFs.³⁴ They create room for theft and embezzlement of funds and natural resources and open the door to tax avoidance and evasion, which is facilitated by corruption in tax administration.³⁵

Capital flight is further encouraged by the abuse of political authority, which leads to poor governance characterised by corruption. Additionally, corrupt public officials may circumvent or obstruct the enforcement of laws and regulations aimed at curbing IFFs.

c. Political factors

Politics plays a key role in either curbing or driving IFFs. Where there is increased political risk (viewed as the lack of consensus on building an effective state),³⁶ IFFs are likely to increase as investors lack confidence in the sustainability of the state and the protection of their investments. In addition, political patrimonialism (defined as the widespread use of public assets and resources for private gain by those tasked to manage them)³⁷ interferes with the implementation of laws intended to curb IFFs. For example, tax evasion or avoidance becomes prevalent when the individuals involved are in positions of political power or are protected by those with political power.³⁸ This unequal treatment, where the wealthy are perceived as exempt from the rule of law, undermines the social contract and creates political instability leading to increased IFFs.³⁹

d. Lack of transparency and access to information

The lack of transparency in financial reporting poses challenges for governments in verifying the accuracy of financial information provided by companies, thereby enabling IFFs. Countries with secretive laws on ownership of financial assets provide an environment conducive to facilitating IFFs, as highlighted by the Panama Papers leak.⁴⁰ These laws enable individuals and entities to establish shell companies and offshore accounts with minimal transparency or oversight. This lack of accountability enables tax evasion, money laundering, and other illegal financial activities to occur with relative ease. The Panama Papers revealed the extent of this phenomenon, exposing the involvement of several African elites in offshore dealings to hide their wealth. Such secretive laws not only facilitate the flow of illicit funds out of Africa but also contribute to the perpetuation of economic inequality and hinder efforts to combat corruption and promote financial transparency in the region.

34 Netshisaulu, N.N., Van der Poll, H.M., & Van der Poll, J.A. (2022). "A Conceptual Framework to Analyse Illicit Financial Flows (IFFs)." *Risks*, 10(9), 172. <https://doi.org/10.3390/risks10090172>.

35 UNDP, *A Snapshot of Illicit Financial Flows from Eight Developing Countries*, <https://www.undp.org/publications/snapshot-illicit-financial-flows-eight-developing-countries-results-and-issues-investigation>.

36 Everest-Phillips, M. (2012). "The Political Economy of Controlling Tax Evasion and Illicit Flows." *Draining Development? Controlling Flows of Illicit Funds from Developing Countries*, ed. Reuter, P. The World Bank. (pp. 69–107). <https://openknowledge.worldbank.org/server/api/core/bitstreams/1070a58d-8c00-5840-a501-fdab910d0e10/content>.

37 Hungwe, K.N. & Hungwe, C. (2000). "Essay Review: Africa Works: Disorder as Political Instrument." *Zambezia: The Journal of Humanities of the University of Zimbabwe*, 27(2). (pp. 269–281). https://www.researchgate.net/publication/315077658_Essay_Review_Africa_Works_Disorder_as_political_instrument.

38 Everest-Phillips. "The Political Economy of Controlling Tax Evasion and Illicit Flows." (pp. 69–107). <https://openknowledge.worldbank.org/server/api/core/bitstreams/1070a58d-8c00-5840-a501-fdab910d0e10/content>.

39 *Ibid*.

40 ICIJ. (2016, April 3). "Giant Leak of Offshore Financial Records Exposes Global Array of Crime and Corruption." ICIJ: International Consortium of Investigative Journalists. <https://www.icij.org/investigations/panama-papers/20160403-panama-papers-global-overview/>.

1.2. CONCLUSION

The drivers of IFFs are multifaceted and interconnected and may operate simultaneously in a country or emerge at different times. Identifying the prevailing IFF driver(s) is crucial for developing strategies and adequate legal and institutional frameworks to curb them. The next part of the report focuses on these frameworks specifically around tax, corruption, and money laundering.



Reuters/ Hollie Adams

2. Tax-Related IFFs

Tax-related IFFs are any tax abuse practices that undermine the object and purpose of a tax system and deprive countries of resources that could be used for financing public goods, and that foster inequalities and undermine trust in governance.⁴¹ They take place through tax evasion and tax avoidance.

- *Tax evasion* is the use of illegal means to reduce tax liability. It is the deliberate attempt to obtain a tax benefit by intentionally subverting the rule of law to pay little or no tax by overreporting costs or underreporting income⁴² and is therefore punishable by law.⁴³ Tax evasion mechanisms include mis-invoicing, trade in illicit products, and/or reduction of tax liability through corruption.
- *Tax avoidance*, on the other hand, is an arrangement that mainly seeks to avoid a tax liability by exploiting a taxation law to obtain a tax advantage that the law did not intend. It is the act of avoiding the payment of tax

41 Daba, B.T., Kusters, B., Ferwerda, J., & Mpoha, J. (2023). *ATI Partner Countries' Perspectives on Tackling Tax-Related Illicit Financial Flows*. Addis Tax Initiative. (p 16). <https://www.addistaxinitiative.net/sites/default/files/resources/ATI%20study%20-%20ATI%20partner%20countries%27%20perspectives%20on%20tackling%20tax-related%20illicit%20financial%20flows.pdf>.

42 Kasibwa, A. "Tax Avoidance and Tax Evasion: A Tale of Two Errors." Kenya Revenue Authority. <https://kra.go.ke/news-center/blog/1869-tax-avoidance-and-tax-evasion-a-tale-of-two-errors>.

43 Alleyne, P. & Harris, T. (2017). "Antecedents of Taxpayers' Intentions to Engage in Tax Evasion: Evidence from Barbados." *Journal of Financial Reporting and Accounting*, vol. 15, no. 1. (pp. 2–21). <https://www.emerald.com/insight/content/doi/10.1108/JFRA-12-2015-0107/full/html>.

without breaking the law.⁴⁴ A valid transaction may be considered as tax avoidance if it is carried out by related persons with the sole intention of avoiding taxes.⁴⁵ Tax avoidance mechanisms include abuse of transfer pricing, avoidance of permanent establishment, tax treaty abuse, and others.

Given the pivotal role tax-related activities play in facilitating IFFs, this part of the report will explore this domain in depth. It will examine the mechanisms through which tax-related IFFs occur, the legislative frameworks that each country under review has designed to counteract them, the effectiveness of the existing laws, and areas where civil society organisations (CSOs) can potentially contribute to strengthening them.

2.1. MECHANISMS THROUGH WHICH TAX-RELATED IFFS OCCUR

To combat tax-related IFFs, it is important to first understand how they occur. This section looks at some of the ways in which laws and loopholes in the laws can be manipulated to avoid or evade tax. It also explores how the avoided or evaded tax is often transferred to countries with lower tax rates, contributing to IFFs.

a. Abuse of transfer pricing

Transfer pricing refers to the price at which related parties in a global group transact. For example, when a company in country A licenses its software to its subsidiary in country B, the price at which it charges for the license is the transfer price. Transfer pricing is not, in itself, a form of tax avoidance or evasion. However, when the transfer price does not reflect what the price would be if the transaction was undertaken by non-related parties questions of “mispricing”, “incorrect pricing”, “unjustified pricing”, or similar issues of tax avoidance may arise.⁴⁶ An example of transfer mispricing includes charging exorbitant management fees or selling products at inflated prices to a subsidiary.

Transfer mispricing is common in transactions involving intangible goods and services as well as minerals, as they are hard to value. The complexities of valuing intellectual property and rights such as trademarks, copyrights, and patents allow multinational entities (MNEs) to charge exorbitant royalties to their subsidiaries then transfer these fees to their related companies registered in jurisdictions with either no tax or incredibly low tax rates on such income.

b. Abuse of foreign debt financing

Thin capitalisation is a tax planning method where a parent company invests in a subsidiary through debt instead of equity.⁴⁷ Utilising debt financing offers tax advantages for companies since they can deduct the interest paid

44 Filho, R. de M. P. (2014). *The Ethics of Tax Avoidance*. George Washington University Institute of Brazilian Issues. (pp. 8–14). https://www2.gwu.edu/~ibi/minerva/Fall2014/Ronaldo_Parreira.pdf.

45 Gomułowicz, A. (2006). “Principle of Tax Justice and Tax System.” *Public Policy and Administration*, vol. 1, no. 15. (pp. 57–61). <https://ojs.mruni.eu/ojs/public-policy-and-administration/article/view/2370>.

46 UN Tax Committee’s Subcommittee on Practical Transfer Pricing Issues. *An Introduction to Transfer Pricing*. (2011). Background Paper. (p 2). https://www.un.org/esa/ffd/wp-content/uploads/2011/06/20110607_TP_ChapterI_Introduction.pdf.

47 Hearson, M. (2014). *Tax-Motivated Illicit Financial Flows: A Guide for Development Practitioners*. U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute. (U4 Issue January 2014, no. 2). (p. 9). <https://www.u4.no/publications/tax-motivated-illicit-financial-flows-a-guide-for-development-practitioners.pdf>.

on loans, reducing the taxable income. Additionally, investors can receive income through interest payments even if the company operates at a loss, as opposed to dividends which are paid only if the business makes a profit. The high rates of interest in Global South countries — as high as 30% in Ghana, for instance — create incentives for multinational companies to shift profits through debt financing.⁴⁸

c. Tax treaty abuse

Tax treaties are agreements between countries that assign and restrict the right to tax economic activities that span two countries.⁴⁹ Tax treaties were originally intended to eliminate double taxation by ensuring the same income is not being taxed by different countries.⁵⁰

Loopholes contained in tax treaties can be manipulated to result in instances where neither of the countries taxes the income effectively, resulting in double non-taxation. Similarly, though intended to be used by residents of the countries that are party to the treaty, it is possible for a person to access the benefits of the treaty without being a resident of either country. This is known as treaty shopping.⁵¹

By claiming treaty benefits in circumstances where they are not meant to, taxpayers who engage in treaty shopping and other treaty abuse practices undermine fiscal sovereignty and deprive governments of tax revenues. For example, it is estimated that in 2015, African countries lost approximately USD 3.4 billion due to tax treaty shopping.⁵²

d. Trade mis-invoicing and mispricing

The think tank Global Financial Integrity estimates that mis-invoicing drains USD 800 billion from Global South economies annually.⁵³ Trade mis-invoicing is when importers and exporters deliberately provide inaccurate information about the quantity, quality, or value of goods or services during commercial transactions.⁵⁴ This deceptive practice involves importers inflating the value of imports or exporters deflating the value of exports to avoid paying custom duties.⁵⁵ Additionally, trade may be rerouted through a third country, resulting in two separate invoices, known as triangulation. Trade mis-invoicing in the extractive sector in Global South countries is exacerbated by the complexity in valuing natural resources and the lack of capacity to determine the purity of the extractives.⁵⁶

48 Djokoto, G. (2013). *Legislative Trajectory and Judicial Interventions on Interest Rates in Ghana*. University of Ghana School of Law. https://sollib.ug.edu.gh/index.php?p=show_detail&id=2628&keywords=

49 Hearson, M. & Kangave, J. (2016). *A Review of Uganda's Tax Treaties and Recommendations for Action*. Institute of Development Studies, International Centre for Tax and Development. (p6) https://eprints.lse.ac.uk/67868/1/Hearson_A_Review_of_Uganda_Tax.pdf.

50 Arnold, B. (2015). *An Introduction to Tax Treaties*. United Nations Financing for Sustainable Development Office. <https://financing.desa.un.org/document/introduction-tax-treaties-brian-arnold>.

51 OECD. (2024). *Prevention of Tax Treaty Abuse – Sixth Peer Review Report on Treaty Shopping: Inclusive Framework on BEPS: Action 6*. OECD/G20 Base Erosion and Profit Shifting Project. OECD Publishing. <https://doi.org/10.1787/36cebf8e-en>.

52 UNCTAD, *Tackling Illicit Financial Flows for Sustainable Development in Africa*, (p. 87). <https://unctad.org/system/files/official-document/aldcafrica2020-en.pdf>.

53 Forstater, M. (2018). *Illicit Financial Flows, Trade Misinvoicing, and Multinational Tax Avoidance: The Same or Different?* CGD policy paper, 123, 29. (p. 11). <https://www.cgdev.org/sites/default/files/illicit-financial-flows-trade-misinvoicing-and-multinational-tax-avoidance.pdf>.

54 Forstater, *Illicit Financial Flows*, <https://www.cgdev.org/sites/default/files/illicit-financial-flows-trade-misinvoicing-and-multinational-tax-avoidance.pdf>.

55 *Ibid*.

56 Controllor and Auditor General. (2022). *Performance Audit Report on the Management of Mechanisms for Revenue Collection in the Mining Sector*. United Republic of Tanzania, National Audit Office. https://www.nao.go.tz/uploads/reports/DEVELOPMENT_AND_MANAGEMENT_OF_MECHANISMS_FOR_COLLECTION_OF_REVENUE_IN_MINING_SECTOR.pdf.

e. Artificial avoidance of permanent establishments

Permanent establishment (PE) is a concept that determines whether a foreign entity is liable to pay taxes in a country where it is engaged in commercial practices. Countries either adopt a source-based approach, where income is taxed in the country where it is earned, or a residency-based approach, where income is taxed based on the location of the recipient. When a foreign entity conducts business in another country, the concept of PE determines which country has the right to tax the income: the country where the money was made or the country where the entity is based.

A PE traditionally refers to a fixed place of business, such as an office or construction site. However, due to advancement in technology, digital companies can generate income from countries without a physical presence, bypassing PE rules. Taxpayers also avoid creating PEs to evade taxes by fragmenting contracts, where multinational enterprises divide projects into different parts and assign them to different entities within the same multinational group to stay below the PE threshold in certain countries.

f. Offshore indirect transfers of interest

This arises when assets located in a country are indirectly sold by selling the shares of the entity holding them rather than selling the assets themselves. For example, a company registered in Mauritius, a tax haven, could be the registered owner of intellectual property for a business operating in Ghana. Rather than sell the intellectual property in Ghana, the shares in the Mauritius entity are transferred to a new buyer and with it, the intellectual property. Depending on Ghana's tax laws, such a transfer of shares may be exempt from tax in Ghana, whereas a direct sale of the intellectual property would have been taxable. This creates opportunities for multinationals to undertake tax planning in a way that disadvantages the country where the intellectual property is developed.

2.2. INTERNATIONAL LAWS ADDRESSING TAX-RELATED IFFS

International law encompasses a body of rules, agreements, and principles that regulate interactions among sovereign states and other global entities. There are several international tax instruments in place to ensure that tax systems are efficient and fair. These may be broadly classified under multilateral treaties and bilateral treaties. Other instruments that do not fall under these broad categorisations include the model tax treaties, international standards, guidelines, and action plans, among others.

a. Multilateral tax instruments

Multilateral tax instruments are agreements or frameworks involving many countries addressing various tax-related issues. These agreements promote cooperation and transparency among countries in addressing global tax matters. Some of the multilateral instruments are discussed below.

i. Multilateral Convention on Mutual Administrative Assistance in Tax Matters

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC) is a tax

cooperation agreement developed by the Organisation for Economic Co-operation and Development (OECD) and the Council of Europe.⁵⁷ Ghana and Kenya ratified the MAAC in 2014 and 2020 respectively, while Tanzania is yet to ratify it.

Having ratified the agreement, Ghana and Kenya can automatically receive financial information from other member countries regarding their taxpayers. This enables them to identify taxpayers carrying on business or holding funds in offshore accounts. The information can then be used to determine if any taxes are due.

Additionally, the MAAC assists member countries in the collection of taxes owed to them. This is particularly useful when the taxpayers involved are non-residents with minimal or no assets in these countries that could otherwise be leveraged for enforcement.

ii. Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent BEPS (MLI)⁵⁸

As a global measure to prevent shifting of profits through aggressive tax planning, the OECD, in collaboration with countries in the Global South, developed the Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting (MLI) in 2016. The Convention contains measures to prevent tax avoidance through the abuse of tax treaties. It also enables countries to amend existing tax treaties, which is ordinarily a long and complex process. Countries that sign the MLI are required to adopt the provisions identified as minimum standards while other proposed provisions remain optional.



REUTERS/
Francis Kokoroko

57 OECD. "Convention on Mutual Administrative Assistance in Tax Matters". <https://www.oecd.org/tax/exchange-of-tax-information/backgroundbrieftheconventiononmutualadministrativeassistanceintaxmattersandnewprotocol.htm>.

58 OECD. (2016). *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*. https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/beeps-ml/multilateral-instrument-beeps-tax-treaty-information-brochure.pdf/jcr_content/renditions/original/multilateral-instrument-beeps-tax-treaty-information-brochure.pdf.

Kenya signed the MLI in 2019, engaged in the public participation process, and now awaits ratification by Parliament. Ghana and Tanzania are yet to sign the MLI.

iii. Bilateral tax

Bilateral tax agreements include tax treaties, which are binding agreements between two countries that govern taxation of transactions between the two states. Bilateral treaties take precedence over domestic legislation. Sub-Saharan African countries have in place about 300 bilateral tax treaties with Global North economies. Almost half of these treaties were signed largely due to colonial ties.⁵⁹ Ghana has 13 tax treaties in force, Tanzania has concluded nine tax treaties, and Kenya has 15 tax treaties, as indicated below:

	GHANA	TANZANIA	KENYA
1	Belgium	Canada	Canada
2	Czech Republic	Denmark	Denmark
3	Denmark	Finland	France
4	France	India	Germany
5	Germany	Italy	India
6	Mauritius	Norway	Iran
7	Morocco	South Africa	Korea (Rep.)
8	Netherlands	Sweden	Norway
9	Singapore	Zambia	Qatar
10	South Africa		Seychelles
11	Switzerland		South Africa
12	United Kingdom		Sweden
13	Economic Community of West African States		United Arab Emirates
14			United Kingdom
15			Zambia

59 Hearson, M. (2015). *Tax Treaties in Sub-Saharan Africa: A Critical Review*. Tax Justice Network - Africa. <https://core.ac.uk/download/pdf/46580692.pdf>.

None of the countries under review have bilateral tax information exchange agreements that are in force. Ghana has signed two TIEAs with Liberia and Guernsey, though neither has come into effect yet. Kenya has negotiated TIEAs with Liberia, Jersey, Guernsey, and the Cayman Islands, but these agreements are still not in force. Tanzania has not negotiated any TIEAs.

b. Other international tax instruments

There are other international tax instruments which, although non-binding, have shaped the international tax landscape. These include:

i. The OECD Transfer Pricing Guidelines⁶⁶

The OECD Transfer Pricing Guidelines provide guidance on how to apply the “arm’s length principle”. This principle requires that related companies treat each other as independent parties when pricing their transactions. Consequently, the price they charge each other for goods or services should be similar to what they would charge a company that is not related to them. Though not binding, the guidelines are useful in establishing the arm’s length price between related parties.

ii. Model tax treaties

Model treaties are non-binding instruments that lay a foundation for negotiations of double tax agreements. The available model treaties are:

- OECD Model Tax Convention on Income and on Capital — This model treaty is aimed at guiding Global North countries in their treaty negotiations. It generally favours residence-based taxation, which benefits wealthier Global North countries as the main source of capital that flows to Global South countries. By allocating the right to tax income generated from these overseas investments to the countries where the investors are resident, the OECD Model, in turn, requires the Global South countries where the income is earned to give up some of their taxing rights.⁶⁷
- UN Model Double Taxation Convention between Developed and Developing Countries — This model treaty was developed to guide treaty negotiations between countries in the Global North and the Global South. It favours source-based taxation, which benefits Global South countries because they are often the recipients of capital and host the investments. It also contains variations to the OECD Model Treaty which benefit Global South countries by allocating or retaining more taxing rights to countries where the income is earned.⁶⁸
- ATAF Model Agreement for the Elimination of Double Taxation with Respect to Taxes on Income and the Prevention of Tax Avoidance and Evasion — This treaty model convention was developed to guide African countries in their tax treaty negotiations, borrowing from both the UN and the OECD model treaties. It takes into account the specific circumstances of African countries as Global South countries and includes provisions that protect the tax base of its member states and seal loopholes that allow for tax-related IFFs.

66 OECD. (2022). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*. https://www.oecd.org/en/publications/2022/01/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2022_57104b3a.html.

67 Arnold, B. (2015). *An Introduction to Tax Treaties*. United Nations Financing for Sustainable Development Office. https://financing.desa.un.org/sites/default/files/2023-03/TT_Introduction_Eng.pdf.

68 United Nations. (2017). *United Nations Model Double Taxation Convention Between Developed and Developing Countries 2017 Update*. (p. iii). https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf.

2.3. INTERNATIONAL INSTITUTIONS INVOLVED IN ADDRESSING TAX-RELATED IFFS

a. UN Committee of Experts on International Cooperation in Tax Matters

The UN Committee of Experts on International Cooperation in Tax Matters, commonly known as the UN Tax Committee, is a subsidiary body of the UN Economic and Social Council. The Committee, which comprises 25 members nominated by governments and selected by the UN Secretary General, serves as a platform for fostering international dialogue and cooperation on tax matters among member states.⁶⁹

The UN Tax Committee develops guidelines and recommendations on areas such as transfer pricing, double tax treaty provisions, and negotiation of tax treaties, among others. These are particularly useful for Global South countries, which often lack the necessary expertise in addressing international tax matters.

b. The Organisation for Economic Co-operation and Development (OECD)

The OECD⁷⁰ is an international organisation whose membership is made up of high- and upper-middle-income countries. It aims to enhance economic development and the creation of jobs, and to curb international tax evasion and avoidance in collaboration with governments and policymakers.⁷¹ Though Kenya, Ghana, and Tanzania are not members of the OECD, they participate in some of the organisation's initiatives. For example, all three countries are members of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum), which promotes the implementation of global transparency and exchange of information standards around the world.⁷²

2.4. REGIONAL LAWS ADDRESSING TAX-RELATED IFFS

A regional law is legislation or a set of regulations that apply to a particular geographic area. These are formulated by regional organisations or entities — such as regional economic blocs, political unions, or intergovernmental organisations — to govern the interactions and activities of member states within the defined area. The regional laws that govern taxation in this report's focus countries are discussed below.

a. East African Customs Union Protocol

The East African Customs Union Protocol, signed in 2004, transformed the East African Community (EAC) member states into a customs union. The agreement facilitates free movement of goods within the EAC region,

69 IISD SDG Knowledge Hub. (2024). 28th Session of the Committee of Experts on International Cooperation in Tax Matters. <https://sdg.iisd.org/events/28th-session-of-the-committee-of-experts-on-international-cooperation-in-tax-matters/>.

70 OECD. (2024). The OECD: Better Policies for Better Lives. <https://www.oecd.org/about/>.

71 OECD. (2021). *OECD Work on Taxation*. <https://www.oecd.org/tax/centre-for-tax-policy-and-administration-brochure.pdf>.

72 OECD. Global Forum on Transparency and Exchange of Information for Tax Purposes - Peer Reviews. https://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-peer-reviews_2219469x.

exempting them from customs duty. Goods entering the region are subjected to uniform customs duties regardless of the port of entry. The protocol aims to simplify trade by enabling unrestricted movement of goods within the territory, which promotes economic integration among the member states. Being members of the EAC, Kenya and Tanzania are party to the East African Customs Union Protocol.

b. East African Community Customs Management Act

The EAC passed the East African Community Customs Management Act (EACCMA) in 2004 to govern the administration of customs matters. The legislation provides for measures to prevent tax evasion and avoidance by empowering the various authorities to carry out audits after an importer has received delivery of goods to confirm that the appropriate duty was paid for goods that entered the customs union. If it is determined that the importer paid less duty than is due, the EACCMA empowers the respective authority to issue an assessment.

c. The common external tariff of ECOWAS

The common external tariff (CET) of the Economic Community of West African States (ECOWAS), of which Ghana is a member, was adopted in 2013.⁷³ This framework establishes consistent import duty rates for goods entering the ECOWAS region from non-member countries. By aligning tariffs across member states, the CET aims to eliminate trade barriers, stimulate intra-regional trade, and enhance the competitiveness of industries in West Africa. The standardised tariff system reduces opportunities for companies to exploit differences in tariff rates between countries to evade taxes.⁷⁴ Standardisation of tariffs also simplifies the calculation of applicable import duties, making it difficult for businesses to engage in practices such as mis-invoicing or transfer pricing manipulation.

2.5. REGIONAL INSTITUTIONS ADDRESSING TAX-RELATED IFFS

a. The African Tax Administration Forum (ATAF)

The ATAF serves as a platform for African tax authorities to exchange information, experiences, and expertise on tax matters, and share knowledge and best practices in combating tax evasion and avoidance.

To achieve this, ATAF provides platforms for collaboration and capacity building of tax authorities through training, workshops, and seminars on various aspects of tax administration. ATAF also engages in policy discussions, research, and advocacy to promote effective tax policies, regulations, and enforcement mechanisms that prevent tax evasion and avoidance. Notably, ATAF has taken a lead in helping its members comply with the BEPS action plans. ATAF's role is however limited to capacity building and collaboration and does not extend to enforcement of tax laws.

73 Uexkull, E. von & Shui, L. (2014). *Implementing the ECOWAS Common External Tariff: Challenges and Opportunities for Nigeria*. World Bank. <https://documents1.worldbank.org/curated/en/456741468298475824/pdf/888430REPLACEM0Box385245B00PUBLIC0.pdf>.

74 Azuka, A.I. (2015). "Achieving Sustainable Development Through Tax Harmonization: Potentials, Paradoxes and Policy Imperatives." *Journal of Sustainable Development Law and Policy (The)*, vol. 6, no. 1, 272. (pp. 80-81) <https://doi.org/10.4314/jsdlp.v6i1.12>.



REUTERS/ Thomas Mukoya

b. East African Community (EAC)

The EAC is a regional body consisting of states within Eastern Africa that aims to widen and deepen economic, social, cultural, and political integration through increased trade and investment, competitiveness, and value-added production.⁷⁵ Within the EAC, the East African Revenue Authorities Commissioners General Assembly is established. This institution is made up of revenue authorities within East Africa (Burundi, Kenya, Rwanda, South Sudan, Tanzania, and Uganda) who meet annually to share information and build capacity on how to curb cross-border crime, particularly tax evasion.

c. Economic Community of West African States (ECOWAS)

ECOWAS is a regional community established by the Treaty of Lagos to promote cooperation and integration and, hence, the economic development of the States. The objectives of ECOWAS include the harmonisation and co-ordination of national policies and the promotion of integration programmes, projects, and activities in various aspects of the economy, such as taxation. ECOWAS also seeks to establish a common market and an economic union by adopting common policies in the financial and economic sectors, and by creating a monetary union.⁷⁶

⁷⁵ East African Community. Overview of EAC. <https://www.eac.int/overview-of-eac>.

⁷⁶ Pan African Chamber of Commerce and Industry. Economic Community of West African States–ECOWAS. <https://www.pacci.org/economic-community-of-west-african-states-ecowas/>.

2.6. STRENGTHS OF INTERNATIONAL AND REGIONAL TAX INSTRUMENTS AND INSTITUTIONS

International and regional tax instruments and institutions have various strengths that make them effective in tackling tax-related IFFs. These strengths are discussed below.

a. Enhanced cooperation and transparency

The globalisation of financial systems has made it easier for funds to move across borders, leading to challenges in tracing tax-related IFFs. International and regional laws and institutions, such as the MAAC and TIEAs, facilitate cooperation and transparency among revenue authorities. This makes it easier to detect transactions that were undertaken without the knowledge of the revenue authorities but should have been taxed, helping to prevent tax-related IFFs.

b. Development of laws and regulations

Tax laws are constantly evolving, especially with the rise of digital transactions that facilitate global trade. This changing landscape presents challenges for tax authorities as they work to keep up with transactions that are structured to exploit loopholes in existing regulations. International organisations like the OECD, the UN, and ATAF play a crucial role in developing minimum standards and model laws and regulations that countries can adopt to combat tax-avoidance practices. This assistance is particularly valuable for Global South countries with limited resources.

For example, initiatives such as the OECD's base erosion and profit shifting (BEPS) project have resulted in the creation of new laws aimed at tackling tax avoidance. One important outcome of the BEPS project is the Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent BEPS (MLI), which is discussed in section 2.2.

Additionally, organisations like ATAF have been instrumental in assisting African countries in adapting these recommendations to their specific circumstances and needs.

c. Technical support and capacity building

International and regional institutions provide Global South countries with access to the technical assistance, capacity building, and resources needed to enhance their tax systems. This support empowers those nations to participate in the global tax framework and address tax-related challenges effectively.

2.7. GAPS IN INTERNATIONAL AND REGIONAL TAX LAWS AND INSTRUMENTS

a. Influence of Global North countries in international tax bodies

The OECD, which has a significant influence on the development of international tax laws, is mainly comprised of Global North countries. Consequently, some of the organisation's recommendations overlook the unique circumstances of Global South nations and are sometimes complex, making them difficult to implement with limited resources.

Moreover, some OECD recommendations address tax avoidance and evasion from the perspective of investors, which may not align with the realities faced by Global South countries. Those nations receive investments rather than being the originators of investments, which complicates the application of OECD recommendations. Though some of the recommendations may work well in limiting tax avoidance in Global North countries, they may have the opposite effect in Global South countries. For example, the insistence by the OECD that service PEs should not be included in tax treaties creates a loophole for multinational entities to provide technical services in Global South countries without paying corporate income tax.

b. Voluntary nature of multilateral conventions

Multilateral conventions, such as the MAAC and the MLI, are not mandatory, leaving countries to choose whether to ratify them. This flexibility leads to varying levels of participation by countries, which impacts the effectiveness of global efforts to curb tax evasion and avoidance.

c. Negotiating power disparities and policy deficits

Model tax treaties form the basis for negotiation of treaty terms such as tax rates, which can result in disparities in outcomes based on the negotiating power of the parties. Tax treaty negotiations between Global North and Global South countries are often skewed in favour of Global North countries due to the economic power they yield.⁷⁷ Moreover, many African countries lack clear tax treaty negotiating policies to guide government officials. Treaties are also sometimes used for political rather than economic purposes, resulting in agreements that omit essential clauses to safeguard tax bases.⁷⁸

d. Complex legislation

While international standards such as transfer pricing guidelines are useful for developing national legislation, they are complex. They require technical understanding of the various transfer pricing methods and their application to diverse transactions. Global South countries often lack comparable data to benchmark transactions and establish arm's length prices and end up relying on data from Global North countries which is not comparable. This can lead to incidences of transfer mispricing, which is one of the ways tax-related IFFs occur.

77 Hearson, M. (2018, March). "When Do Developing Countries Negotiate Away Their Corporate Tax Base?" *Journal of International Development*, vol. 30, no. 2. (pp. 233–255). <https://onlinelibrary.wiley.com/doi/10.1002/jid.3351>.

78 Mutava, C. (2019). *Review of Tax Treaty Practices and Policy Framework in Africa – Working Paper 102*. International Centre for Tax and Development. <https://www.ictd.ac/publication/review-tax-treaties-policy-framework-africa/>.

e. Rigidity of bilateral tax treaties

Amending bilateral tax treaties is a lengthy and arduous process, requiring extensive negotiations and political will from both parties. This inflexibility makes it difficult to adapt treaties to changing tax landscapes or address emerging tax challenges effectively. Thus, even when it is evident that a tax treaty has loopholes that allow for tax avoidance, amending the treaty to cover those loopholes is a complicated process that can take years. Meanwhile, tax avoidance continues during the prolonged period of renegotiating the treaty.

f. Lack of harmonisation in regional blocks

Regional blocks have not yet harmonised their domestic laws. Applying a harmonised regional law without harmonisation of domestic laws may benefit some countries and result in adverse consequences for others. For example, though both the ECOWAS and the EAC have harmonised their import duties by adopting common external tariffs (CETs), their member countries have not harmonised the other taxes that impact importation, such as excise duty, value added tax (VAT), and other import levies. Disparities in these tax regimes create opportunities for tax avoidance, as some taxpayers may choose to import goods through countries with significantly lower tax rates. Moreover, inconsistencies in administrative procedures and coordination among member states hinder the effectiveness of the CETs. Variations in the interpretation and application of tariff regulations further create loopholes that businesses may exploit to evade taxes. These gaps are reflected in both the EAC and the ECOWAS CETs.

2.8. OPPORTUNITIES TO STRENGTHEN INTERNATIONAL LAWS AND INSTRUMENTS

a. Advocacy for law reform

Individual African countries have limited influence in shaping international laws and instruments, especially those formulated by the OECD. However, CSOs can and should take an active role in the activities of the UN Tax Committee, which has positioned itself as an advocate for Global South countries. The Committee is comprised of government officials, tax practitioners, academics, and representatives from international organisations and civil society from around the world. The Tax Justice Network Africa, for example, has been active in making presentations during UN Tax Committee meetings to advocate for fair taxation principles. The Network has been particularly active in advocating for inclusiveness and efficiency in international tax cooperation by making the UN the official authority responsible for developing international tax rules.⁷⁹

By making presentations on tax avoidance and evasion before the UN Tax Committee, CSOs have the opportunity to advocate for tax laws and standards that reflect the perspectives and contexts of African countries. For instance, the proposal under BEPS Pillar 2, which seeks to address the challenges of taxing the digital economy, is to establish a global minimum corporate income tax rate of 15%. This proposal ignores the socioeconomic realities of African countries by restricting their ability to provide incentives intended to attract investments. If

⁷⁹ Tax Justice Network Africa. (2023, April 11). "Tax Justice Network Africa's Inputs to the Tax Report 2023 on Promotion of Inclusive and Effective Tax Cooperation at the United Nations." <https://www.taxjusticeafrica.net/resources/blog/tjnas-inputs-tax-report-2023-promotion-inclusive-and-effective-tax-cooperation>.

such incentives are already contained in concluded investment agreements, the introduction of a new minimum corporate income tax rate may result in a breach of those agreements, resulting in expensive arbitration.⁸⁰ In such a case, through the UN Tax Committee, CSOs can explore alternatives that best suit their country's interests.

The UN Tax Committee holds two meetings each year, in March and October. Prior to each meeting, an agenda is made public and the Committee makes a call for written submissions, noting the deadline. With the exception of parts of the agenda marked as "closed", the meetings are open to participation by observers, including international and regional organisations, academia, civil society, and the private sector.⁸¹ Received submissions are published on the UN website.⁸²

CASE STUDY: SUCCESS OF ADVOCACY EFFORTS AT THE INTERNATIONAL LEVEL

Civil society organisations (CSOs) have been instrumental in advocating for a shift towards more inclusive and transparent global tax cooperation. Through concerted advocacy efforts, CSOs⁸³ supported initiatives led by the African Group⁸⁴ to empower the UN as the official authority responsible for developing international tax rules and coordinating cooperation in this area. This advocacy culminated in a significant milestone when the UN General Assembly passed a resolution in 2023 to establish a tax convention aimed at granting the UN the mandate to monitor, evaluate, and set global tax rules, as well as support the creation of a global tax body.⁸⁵

If implemented, this convention would represent a step towards conferring upon the UN the authority to establish international tax norms, a role historically dominated by the OECD. As its membership comprises both Global North and Global South countries, the UN is a more representative body than the OECD, which is dominated by Global North countries, making the UN better placed to address the interests of Global South nations.

80 Brown, C. (2023, July 19). "A Global Minimum Tax: Is Pillar Two Fair for Developing Countries?" International Centre for Tax & Development. <https://www.ictd.ac/blog/global-minimum-tax-pillar-two-fair-developing-countries/>.

81 United Nations. 28th Session of the Committee of Experts on International Cooperation in Tax Matters. United Nations Financing for Sustainable Development Office. <https://financing.desa.un.org/events/28th-session-committee-experts-international-cooperation-tax-matters#:~:text=With%20the%20exception%20of%20those>.

82 United Nations. Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation. United Nations Financing for Sustainable Development Office. <https://financing.desa.un.org/un-tax-convention/inputs>.

83 Eurodad. (2023, November 7). "More Than 200 Organisations and Trade Unions Call for the Adoption of the Africa Group Resolution on a UN Tax Convention." <https://www.eurodad.org/more-than-200-civil-society-organisations-support-the-draft-resolution-on-promotion-of-inclusive-and-effective-international-tax-cooperation-at-the-un>.

Global Alliance for Tax Justice. (2023, October 17). "GATJ Stands Firmly Behind Africa Group's Draft Resolution Calling for a UN Tax Convention." <https://globaltaxjustice.org/news/gatj-stands-firmly-behind-africa-groups-draft-resolution-calling-for-a-un-tax-convention/>.

84 The African Group at the United Nations is made up of the 54 African Union Member States.

85 United Nations. (2023, November 22). "Second Committee Approves Nine Draft Resolutions, Including Texts on International Tax Cooperation, External Debt, Global Climate, Poverty Eradication." <https://press.un.org/en/2023/gaef3597.doc.htm>.

b. Research and policy analysis

Research and policy analysis is critical to ensuring that CSO advocacy is effective. By producing credible research and policy briefs, CSOs can provide evidence-based recommendations to policymakers and contribute to informed government decision-making. CSOs can help develop policy by conducting research and analysis on tax-related issues. This can include researching tax treaty provisions and analysing the adequacy of tax treaty policies, among other areas.

The Tax Justice Network Africa, for example, has conducted research on tax treaties negotiated and concluded by Kenya.⁸⁶ This research serves as a basis for presentations made to Kenya's Parliament, highlighting key clauses that should be included or removed in tax treaties. By engaging in this process, CSOs could influence the negotiation and adoption of tax treaties which include clauses that promote transparency, prevent tax avoidance, and protect the tax bases of Global South countries. This advocacy is crucial, as poorly structured tax treaties can facilitate tax avoidance, resulting in significant revenue losses for Global South nations.

86 Maranga, J. (2018). *Trick or Treat(y)? Kenya's Tax Treaty Giveaways to Tax Havens*. Tax Justice Network Africa. <https://taxjusticeafrica.net/sites/default/files/publications/TJNA-DTA-Analysis-FA7.pdf>.
Tax Justice Network Africa. (2022). *The Good, the Bad and the Ugly: An Examination of Kenya's Double Taxation Agreements with Portugal and Turkey*. <https://taxjusticeafrica.net/sites/default/files/publications/The-Good-the-Bad-and-the-Ugly-An-Examination-of-Kenyas-DTAs-with-Turkey-and-Portugal-1.pdf>.



REUTERS/ Thomas Mukoya

3. Tax-Related IFFs: Country Focus

3.1. TAX-RELATED IFFS IN KENYA

Tax avoidance and evasion are a significant source of IFFs in Kenya. It is estimated that Kenya loses USD 1.06 billion, approximately 2.34% of its GDP, annually to tax-related IFFs.⁸⁷ The amounts are significant and would, if applied towards development, play a key role in improving the education, health care, sanitation, and housing of Kenyans. For instance, one year of lost taxes is the equivalent of Kenya's budgetary allocation towards healthcare in the 2023/2024 budget.⁸⁸ In a country where an estimated 83% of the population lack financial protection from healthcare costs and paying for healthcare pushes about 1.5 million Kenyans into poverty each year⁸⁹, such losses significantly hinder the financing of universal healthcare for citizens.

In Kenya, IFFs via tax evasion and/or tax avoidance have been largely attributed to mis-invoicing, transfer pricing, and trade in illicit products. Unlike Ghana and Tanzania, Kenya does not have a well-developed extractive sector. Since there is no dominant sector in Kenya which has been linked to tax-related IFFs, this section analyses the

87 Turner, G. (2017, March 22). "New Estimates Reveal the Extent of Tax Avoidance by Multinationals." Tax Justice Network. <https://taxjustice.net/2017/03/22/new-estimates-tax-avoidance-multinationals/>.

88 Ngaira, D. (2023, June 30). "Evidence and Data Should Inform Financing of Kenya's Healthcare Systems, Stakeholders Urge at National Dialogue." African Institute for Development Policy (AFIDEP). <https://www.afidep.org/press-release-evidence-and-data-should-inform-financing-of-kenyas-healthcare-systems-stakeholders-urge-at-national-dialogue/>.

89 Okungu, V., Chuma, J. & McIntyre, D. (2017, February 17). "The Cost of Free Health Care for All Kenyans: Assessing the Financial Sustainability of Contributory and Non-Contributory Financing Mechanisms." *International Journal for Equity in Health*, vol. 16, no. 1. (p. 2). <https://doi.org/10.1186/s12939-017-0535-9>.

existing legal and institutional frameworks governing tax-related IFFs in general. The section highlights the strengths and inherent gaps of the current framework while exploring the roles CSOs can play in curbing tax-related IFFs.

3.1.1. National Laws Addressing Tax-Related IFFs in Kenya

The laws that govern taxation and tax administration in Kenya include the Income Tax Act 1974⁹⁰, the Value Added Tax (VAT) Act 2013,⁹¹ the Excise Duty Act 2015,⁹² and the Tax Procedures Act 2015⁹³. These laws contain, among other things, provisions on when tax is charged, the amount of tax, and provisions that tackle tax-related IFFs such as tax avoidance and tax evasion. These provisions are discussed below.

a. General anti-avoidance provision

The Income Tax Act, VAT Act, and Excise Duty Act contain general anti-avoidance provisions aimed at addressing transactions structured solely to avoid paying taxes. This means that transactions and organisational structures must have genuine substance beyond tax considerations.

Tax planning schemes that aim to shift profits to jurisdictions with lower tax rates can be disregarded under these laws, requiring taxpayers to pay taxes based on the ordinary business principles. This allows the Kenya Revenue Authority (KRA) to demand the taxes that would have been paid if the taxpayer had not created complex structures to hide their income. By conferring this authority, the provisions empower the KRA to identify and prevent tax avoidance facilitated by such structures.

b. Legislative measures to address abusive transfer pricing

i. Transfer pricing rules

Transfer pricing is governed by the Income Tax Act and the Income Tax (Transfer Pricing) Rules (2006). Transfer pricing rules govern transactions between a local entity and a related non-resident entity. The transfer pricing rules in Kenya require that transactions between related parties be conducted at arm's length. They also require taxpayers to maintain transfer pricing documentation with details of the transactions and these should be made available to the revenue authority on request. Additionally, Kenyan tax law empowers the revenue authority to adjust the profits declared by an entity where transactions between related entities result in profits that are lower than what would be expected from independent trading. The transfer pricing rules prevent tax-related IFFs by ensuring that multinationals cannot shift profits to other countries by inflating the costs paid to related parties.

90 Cap 470 of the Laws of Kenya.

91 Cap 476 of the Laws of Kenya.

92 Cap 472 of the Laws of Kenya.

93 Cap 469B of the Laws of Kenya.

ii. Country-by-country reporting

The Income Tax Act was amended in 2022 to introduce country-by-country reporting (CbC) rules in a bid to increase transparency and ensure fair tax distribution.⁹⁴ Under the rules, multinational entities are required to submit reports to the KRA each year, detailing their income, taxes paid, and economic activities in each country of operation. These rules apply to multinationals with a turnover of KES 95 billion (USD 720 million) or more. The aim is to improve transparency in global tax allocation. This data enables countries to assess whether taxes paid align with income generated, potentially identifying transfer mispricing by multinational entities.⁹⁵ The CbC rules prevent tax-related IFFs by ensuring that a multinational entity operating in Kenya pays the tax it ought to pay in Kenya. It reduces the opportunities available for the multinational to shift profits to other countries without accounting for the taxes that are due in Kenya.

CASE STUDY: MISPRICING OF ROYALTIES AND TECHNICAL SERVICES⁹⁶

In De La Rue Currency and Security Print Limited vs The Commissioner of Domestic Taxes (Tax Appeal No. 395 of 2018), one of the issues that the Tax Appeals Tribunal (the Tribunal) had to determine was whether there was transfer mispricing in the transactions between De La Rue Kenya and its related companies.

In the case, De La Rue Kenya was involved in the printing of notes for the Kenyan government. De La Rue Kenya argued that it did not undertake substantial functions in its role as a manufacturer and for that reason it only received a small amount of the profits shared. It further argued that it did not hold the substantial assets needed to fulfil its contractual obligations and had to rely on its related party in the UK to carry out research and development. Thus, the UK-based related entity had to be compensated for its research services, as well as other services.

When the Tribunal analysed the functions carried out by De La Rue, it was not convinced that the technical services the UK entity provided to De La Rue in Kenya were substantial enough to warrant the payment of the royalties that had been flowing to the UK entity. The Tribunal decided that the amounts paid to the UK entity were a case of transfer mispricing, resulting in monies flowing illicitly from Kenya to the UK.

c. Legislative measures to address abusive debt financing

Kenya introduced thin capitalisation rules in 2006. The rules sought to restrict the amount of interest paid on corporate debt that could be declared tax deductible when a company's debt exceeded three times its capital.

⁹⁴ Section 18D of the Income Tax Act, Cap 470 of the Laws of Kenya.

⁹⁵ OECD. (2019). *Country-by-Country Reporting for Tax Purposes*. Action 13, OECD BEPS. <https://www.oecd.org/tax/beps/beps-actions/action13/>.

⁹⁶ [JUDGEMENT-DE-LA-RUE-CURRENCY-AND-SECURITY-PRINT-LIMITED-vs-COMMISSIONER-OF-DOMESTIC-TAXES-TAT-NO-395-OF-2018.pdf](#)

Amendments introduced in 2022 and 2023 updated the rules to limit the amount of interest on foreign debt that can be deducted to 30% of earnings before interest, taxes, depreciation, and amortisation of the borrower in any financial year.⁹⁷ In addition, foreign exchange losses relating to the loan cannot be deducted as an expense until the state of thin capitalisation passes.

The amended rule is in line with the BEPS recommendations to prevent the use of interest to shift profits from Kenya to other countries. The new rule simplifies the process of determining the interest that can and cannot be deducted, since the KRA does not have to delve into issues of distinguishing debt and equity as well as hybrid instruments.⁹⁸

The amended rule prevents multinational entities (MNEs) from using substantial loans to finance the operations of the companies in the group structure. By restricting the ability to deduct interest on such loans, the rule does not allow MNEs to reduce their taxable income in Kenya. Thus, tax-related IFFs are prevented.

Companies engaged in manufacturing human vaccines have been exempted from thin capitalisation rules to attract foreign direct investment.⁹⁹ This exemption undermines the intended purpose of the law by creating opportunities for tax avoidance by those entities.

d. Legislative measures to address treaty abuse

Tax treaty benefits such as reduced tax rates are intended to be enjoyed by companies and individuals who are residents of the countries that conclude the tax treaty. Section 41(3) of Kenya's Income Tax Act contains a "limitation of benefits" provision to prevent treaty abuse. Under this provision, for a company to enjoy the benefits of a treaty, at least half of its ownership must be held by residents of the other party to the treaty. The law therefore prevents tax avoidance by ensuring that only companies that meet the criteria enjoy the treaty benefits.

Although this law is useful in limiting who enjoys the benefits offered under a tax treaty, it still has gaps. The definition of ownership in the law, for example, is ambiguous and can be exploited to minimise taxes. The law does not specify if ownership is based on voting rights or value of shareholding. MNEs can manipulate ownership criteria by choosing between voting rights or value depending on which is more advantageous. Therefore, it is crucial to clarify whether ownership should be based on the higher of voting rights or value.¹⁰⁰

Furthermore, Kenya's law only considers the first level of ownership, potentially overlooking complex ownership structures and the creation of intricate ownership arrangements that allow for tax avoidance.

e. Legislative measures to address avoidance of permanent establishment (PE) status

Kenya's definition of a PE has been updated over the years to reflect international standards. The current

⁹⁷ See Section 16(2)(j) of the Income Tax Act, Cap 470 of the Laws of Kenya.

⁹⁸ International Monetary Fund. (2018). *Kenya: Selected Issues*. IMF Staff Country Reports, vol. 18, no. 296. (pp. 61-62). <https://doi.org/10.5089/9781484381342.002>.

⁹⁹ See Section 16(2)(j) of the Income Tax Act, Cap 470 of the Laws of Kenya.

¹⁰⁰ International Monetary Fund, *Kenya: Selected Issues*, (p. 58). <https://doi.org/10.5089/9781484381342.002>.

definition in Section 2 of the Income Tax Act provides for the creation of a services PE as recommended by the UN in order to capture tax avoidance practices by MNEs. Additionally, Kenya amended its PE rules in 2021 in a bid to prevent MNEs from artificially avoiding PEs through practices such as splitting contracts so that each stays below the threshold of what qualifies as a PE.

To capture digital companies, Kenya also introduced digital services tax, which is payable by companies that derive money from Kenya by providing services through a digital marketplace.¹⁰¹ As such, entities that offer services through the internet, for example, are required to pay taxes on the services they provide in Kenya despite them not meeting the traditional PE threshold. KRA declared the law to be effective as it managed to raise KES 5.328 billion (USD 40.5 million) in 2022.¹⁰²

Despite updating its PE definition to address tax avoidance, there are still gaps in Kenya's law that allow companies to avoid tax obligations. The PE definition, for example, currently only covers fragmentation of contracts by construction companies, although the practice can occur in any sector.¹⁰³ For instance, in flower farming a company might split a contract so that one entity handles farming operations and another manages marketing and logistics. This approach allows companies to avoid triggering PE status and related tax liabilities.

f. Legislative measures to address indirect transfers of interests

Kenya amended its provisions on taxation of capital gains in 2023 to include gains made from offshore indirect transfers, relating to immovable property.¹⁰⁴ The new amendments will curb tax avoidance arising from the indirect transfer of shares, which was rampant.

Despite the amendments, the law currently only taxes the indirect transfer of shares where the value of the shares is derived from immovable properties and excludes other types of properties. This loophole can be exploited by setting up another offshore company and transferring shares in that company instead of the Kenyan company, thereby avoiding taxation.¹⁰⁵ To address this issue, a broader definition of immovable properties should be adopted to cover indirect transfers, including licenses and other assets beyond just land and mining rights.¹⁰⁶ Additionally, Kenya should ensure that its tax treaties align with domestic law to maintain the right to tax indirect gains.

g. Legislative frameworks for addressing trade mis-invoicing and mispricing

The KRA estimates that between 2015 and 2016, the use of fraudulent invoices to avoid taxes and missing trader schemes¹⁰⁷ resulted in a loss of tax revenue totalling KES 97 billion (USD 735 million).¹⁰⁸ Trade mis-

¹⁰¹ Section 12E of the Income Tax Act.

¹⁰² Abuya, K. (2023, July 17). "Despite Public Outcry, Kenya has Received Billions from Recently Introduced Digital Service Tax." *TechCabal*. <https://techcabal.com/2023/07/17/kenya-rakes-in-billions-from-digital-service-tax/#:~:text=Despite%20public%20outcry%2C%20Kenya%20has,recently%20introduced%20digital%20service%20tax&text=Kenya%20added%20digital%20economy%20taxes,%2C%20so%20far%2C%20paid%20off%2C%20so%20far%2C%20paid%20off>.

¹⁰³ Fragmentation occurs when a company splits its contracts into smaller parts, each managed by a different entity within an MNE structure. This division makes each contract segment appear independent, helping the MNE avoid meeting the PE threshold.

¹⁰⁴ See the Eighth Schedule of the Income Tax Act, Cap 470 of the Laws of Kenya.

¹⁰⁵ International Monetary Fund, *Kenya: Selected Issues*, (pp. 56-57). <https://doi.org/10.5089/9781484381342.002>.

¹⁰⁶ *Ibid*.

¹⁰⁷ As part of these fraud schemes, goods are imported and sold through a series of companies before being exported again. The first company in the domestic chain charges VAT to a customer, but does not pay this to the government, becoming what is known as a "missing trader". Europol. MTIC (Missing Trader Intra Community) Fraud. <https://www.europol.europa.eu/crime-areas/economic-crime/mtic-missing-trader-intra-community-fraud>.

¹⁰⁸ Kenya Revenue Authority. (2022). *Tax Matters: Understanding Tax Evasion*. <https://kra.go.ke/images/publications/TaxMatters-Bulletin-Tax-Evasion-Edition.pdf>.

invoicing and mispricing is addressed through transfer pricing laws and the general anti-avoidance rule. This is complemented by enhancing international cooperation on tax matters such as the MAAC. Through the MAAC, Kenya can automatically receive certain financial and accounting information from members who are party to the agreement regarding its taxpayers.

h. Other legislative measures in Kenya to curb tax-related IFFs

Article 210 of the Constitution requires public records of all waivers granted and the reason for the waiver, with the aim of increasing transparency and accountability. This is important as waivers can be abused by the those in power to avoid tax and facilitate IFFs.

The Tax Procedures Act (TPA) imposes a penalty of double the tax amount that was avoided and also creates an offence for tax agents who assist taxpayers to create tax avoidance schemes.

While the Constitution requires the publication of waivers and recipients, there is no mechanism to ensure enforcement. As it stands, no waivers have been published since the country's new Constitution was adopted in 2010. Further, although the TPA provides for criminal liability for tax-related offences, conviction requires a person to go through the trial process in Kenya. For tax fraud, the burden of proof is usually beyond reasonable doubt, which is a challenging standard to meet.



REUTERS/
Baz Ratner

3.1.2. National Institutions Addressing Tax-Related IFFs in Kenya

Various institutions are involved in addressing tax-related IFFs. The institutions, their mandates, and their strengths and weaknesses are outlined below.

INSTITUTION	POWER/MANDATE	STRENGTHS	GAPS
The Kenya Revenue Authority (KRA)	<ul style="list-style-type: none"> Established under the Kenya Revenue Authority Act. Responsible for implementing tax laws. Has the authority to review taxpayer records to ensure correct tax declaration and payment. If discrepancies are found, the TPA empowers the KRA to assess the taxpayer. Is authorised to enforce payment through measures such as seizing bank accounts, selling taxpayer-owned property, or requiring debtors to pay the KRA directly. 	<ul style="list-style-type: none"> Has specialised units dedicated to detecting and preventing tax avoidance, including those dealing with cross-border aspects of taxation. Through rigorous training, KRA officers are equipped with the necessary skills to navigate complex tax planning structures. 	<ul style="list-style-type: none"> Staffing constraints that hinder its efficiency in combating tax avoidance and evasion.¹⁰⁹ Underfunding impacts its ability to invest in necessary enforcement tools.¹¹⁰ Changes in regime lead to turnover in senior leadership, creating uncertainty and potentially fostering non-compliance among political elites.¹¹¹

109 Kenya Revenue Authority. (2021). Kenya Revenue Authority 8th Corporate Plan 2021/2022 – 2023/2024. (p. 11). <https://kra.go.ke/images/publications/KRA-8TH-CORPORATE-PLAN-.pdf>.

110 Kenya Revenue Authority, Kenya Revenue Authority 8th Corporate Plan 2021/2022 – 2023/2024. <https://kra.go.ke/images/publications/KRA-8TH-CORPORATE-PLAN-.pdf>.

111 Tyce, M. (2020, December 18). *'KRA Has the Capacity, but It Is Kept on a Tight Leash': The Politics of Tax Administration and Policy in Kenya*. Effective States and Inclusive Development Research Centre, The University of Manchester. <https://doi.org/10.2139/ssrn.3716827>.

INSTITUTION	POWER/MANDATE	STRENGTHS	GAPS
The Tax Appeals Tribunal (TAT)	<ul style="list-style-type: none"> Set up by the Tax Appeals Tribunal Act to hear and determine tax disputes. The Tribunal was intended to be a specialised entity whose role is to determine the technical aspects of tax disputes. All tax disputes must first be heard by the TAT before an appeal can be lodged with the courts. 	<ul style="list-style-type: none"> Offers a more expedient alternative to traditional courts for resolving tax disputes, with shorter procedures and accessibility for disputing parties. Members come from diverse backgrounds such as law, economics, and accounting, ensuring expertise in complex tax issues. The requirement for reasoned judgments has led to the development of tax jurisprudence, clarifying the law and reducing ambiguities used for tax avoidance. 	<ul style="list-style-type: none"> Members require a high level of expertise in tax and tax law. Such expertise takes years of training. Despite this, membership is limited to two three-year terms.¹¹² This means the training members get during their tenure is often lost once their tenures expire and new members have to be trained again. Delays in member appointments have led to case backlogs,¹¹³ compounded by the inability to increase member numbers without legal amendments, hindering prompt dispute resolution.
Parliament	<ul style="list-style-type: none"> Established under Article 93 of the Constitution. Enacts the tax laws and thereafter subjects them to public participation. 	<ul style="list-style-type: none"> Parliament is a representative and independent body that acts as a watch dog. Its powers, which include the power to summon KRA officials, enables it to provide oversight over the KRA's activities, as well as that of the executive in matters related to tax IFFs. 	<ul style="list-style-type: none"> Comprised of members with diverse backgrounds, and few of them possess expertise or interest in taxation. Although Parliament is ideally meant to operate independently from the executive branch, it has been found to be open to influence by their parties.¹¹⁴ This executive influence over Parliament undermines its ability to effectively conduct oversight duties.

¹¹² Section 5 of the Tax Appeals Tribunal Act.

¹¹³ Mukora, T. (2020, September 23). "Tax Tribunal Dying Slow but Avoidable Death." *Business Daily*. <https://www.businessdailyafrica.com/bd/opinion-analysis/ideas-debate/tax-tribunal-dying-slow-but-avoidable-death-2234774>.

¹¹⁴ Kinyanjui, M. (2024, March 5). "Voting Under Duress? Questions as MPs Who Voted for Tax Law Now Oppose It." *Citizen Digital*. <https://www.citizen.digital/news/voting-under-duress-questions-as-mps-who-voted-for-tax-law-now-oppose-it-n337879>.
 Maureen Kinyanjui. (2023, June 15). "Cherargei: Kenya Kwanza MPs to Face Disciplinary Action for Opposing Finance Bill." *The Star*. <https://www.the-star.co.ke/news/realtime/2023-06-15-cherargei-kenya-kwanza-mps-to-face-disciplinary-action-for-opposing-finance-bill/>.

3.1.3. Opportunities to Strengthen National Laws and Institutions

a. Advocacy for transparency in tax matters

CSOs could advocate for greater transparency in tax matters by pushing for the publication of tax waivers granted by the government. Waivers in the past have exempted individuals and entities from tax obligations, including foreigners and multinational entities. The publication of the waivers would allow for scrutiny by Parliament and the public and help prevent the granting of waivers that result in tax-related IFFs. Advocacy on this issue could take the form of public campaigns and litigation. Litigation can be pursued through the Constitution as well as through the Access to Information Act.¹¹⁵ Various CSOs have used litigation as a means to obtain information from the government as illustrated in the example below.

CASE STUDY: WHO CAN REQUEST INFORMATION FROM THE GOVERNMENT — KATIBA INSTITUTE CASE¹¹⁶

The Katiba Institute (Katiba), a Kenyan CSO focused on constitutional rights, requested information from the Presidential Delivery Unit (PDU) regarding a government advertising campaign. The role of the PDU is to monitor, evaluate, and report on the fulfilment of development priorities and projects. According to Katiba, the PDU published various advertisements in the media, on billboards, and on social media. Katiba requested information on how many advertisements had been published, through what media, the schedule and publication dates of the advertisements, copies of the documents advertised, costs incurred, and the government agency that met the cost. When the PDU did not provide the requested information, Katiba approached the High Court seeking a declaration that the PDU's failure to disclose the information violated the right to freedom of expression and transparency under the Kenyan Constitution.

The High Court determined that Katiba had the right to access information under Article 35 of the Constitution, which guarantees access to information held by the state. The judge emphasised that once a citizen requests information, it should be provided without delay, regardless of the reason for the request. He explained that the right to access information is fundamental to democracy and accountability.

The PDU argued that Katiba, as a juristic person — an entity that the law recognises as having some of the legal rights of a person — and not a citizen was not entitled to access information under Article 35. The courts disagreed, noting that the Access to Information Act defined a citizen to include private entities controlled by Kenyan citizens. Ultimately, the court found that the government's failure to provide the information violated Katiba's rights under the Constitution and ordered the PDU to disclose the requested information.

¹¹⁵ Act No. 31 (2016).

¹¹⁶ Katiba Institute v Presidents Delivery Unit & 3 others (2017) eKLR. <http://kenyalaw.org/caselaw/cases/view/144012/>.

b. Public participation in development of tax laws

The Kenyan Constitution makes provision for public participation in all legal processes, including the tax law-making process.¹¹⁷ Public participation can be an impactful way for CSOs to advocate for the closing of tax avoidance loopholes in existing legislation. Opportunities for public participation on tax matters are published by the National Treasury through its website and in the media. The National Treasury invites the public to make written submissions, including tax proposals to be added to the Finance Bill.¹¹⁸ In addition, once the Finance Bill is published, between the months of April and May, the public is allowed to make written submissions on the proposals contained in the Bill and make oral presentations in Parliament on the same.¹¹⁹

CSOs could consider making submissions to Parliament for the widening of the permanent establishment definition in the Finance Bill to cater for fragmentation of contracts beyond the construction contracts covered under the current law. Similarly, they could also consider making submissions to expand the definition of immovable property under the Income Tax Act to widen the types of properties covered under the new provision on indirect transfer of assets.

Further, CSOs could make submissions to Parliament to amend the law to extend the term limits of Tax Appeals Tribunal members. This could help retain some of the expertise from members who have been trained, ensuring a consistent pool of tax experts involved in decision-making processes. CSOs could also make proposals for amending the law to mandate that the Tribunal include a specified number of tax experts.

¹¹⁷ Constitution of Kenya, Articles 118 and 201 (2010).

¹¹⁸ The National Treasury and Economic Planning. Public Notice: Budget Tips/Suggestions to the Cabinet Secretary, the National Treasury and Economic Planning for Consideration While Preparing the FY 2024/2025 Budget Statement. <https://www.treasury.go.ke/wp-content/uploads/2024/05/Public-Notice-Requesting-Tips-on-the-Budget-Statement-for-FY-2024-25.pdf>.

¹¹⁹ The National Assembly: Departmental Committee on Finance and National Planning. (2023, May 7). "In the Matter of Consideration by the National Assembly of the Finance Bill (National Assembly Bill No. 14 of 2023)." <http://www.parliament.go.ke/sites/default/files/2023-05/SUBMISSION%20OF%20MEMORANDA%20ON%20THE%20FINANCE%20BILL%202023.pdf>.



REUTERS/ Sala Lewis

3.2. TAX-RELATED IFFS IN TANZANIA

Tax evasion and tax avoidance result in IFFs that inflict significant revenue losses in Tanzania, especially in the mining sector. According to the findings of the *One Billion Dollar Question Revisited* report published in 2017, Tanzania loses an estimated USD 1.83 billion per year to IFFs through tax evasion and tax avoidance in the mining industry.¹²⁰ Additionally, the *Sealing the Gaps* report highlights that from 2013 to 2020, Tanzania lost approximately TZS 17.4 trillion (USD 7.6 billion) annually, due to factors such as international inefficiencies in revenue administration, tax evasion, detrimental tax incentives, and tax treaties.¹²¹

Tax-related IFFs in Tanzania are driven by the complexity and loopholes in tax laws, which create opportunities for tax evasion or aggressive tax planning. Transfer pricing manipulation is prevalent, where companies artificially adjust prices in transactions between related entities to shift profits to low-tax jurisdictions, thereby diminishing tax liabilities in Tanzania. Moreover, the lack of transparency in financial reporting impedes the tax authority's ability to verify the accuracy of financial information provided by mining companies, enabling potential tax evasion practices. Additionally, the mining sector benefits from generous tax incentives and exemptions, which reduces their tax obligations and ultimately leads to diminished tax revenues for the government.

Limited tax administration capacity in Tanzania hinders efficient tax enforcement and monitoring, potentially allowing companies to engage in tax evasion practices without thorough oversight. Corruption within the extractive industry and regulatory bodies exacerbates the issue, as companies may resort to bribery or

¹²⁰ Curtis, M. & Ngowi, P. (2017, May). *The One Billion Dollar Question - Revisited 5 Years Later: How Much is Tanzania Now Losing in Potential Tax Revenues?* Tanzania Episcopal Conference, National Muslim Council of Tanzania & Christian Council of Tanzania. (p. v). <https://www.kirkensnodhjelp.no/globalassets/lanserte-rapporter/2017/one-billion-dollar-question-f.pdf>.

¹²¹ Figue, A. & D. Mahangila. (2021). *Sealing the Gaps: An Analysis of Revenue Forgone Within the Tanzania Tax System and How it Could be Used to Fund Public Education*. ActionAid & NORAD. (p. 7). https://tanzania.actionaid.org/sites/tanzania/files/publications/Sealing_the_gaps%20report.pdf.

manipulation to evade taxes. Additionally, the complexity of mining contracts, coupled with ambiguous clauses and provisions, provides opportunities for companies to exploit loopholes and engage in tax avoidance practices.¹²² International cooperation and information sharing between countries is also limited, complicating efforts to track cross-border financial transactions and prevent tax evasion schemes involving offshore entities.

To address these challenges, Tanzania needs robust legal and regulatory frameworks to enhance transparency, strengthen tax administration capacity, and promote international cooperation in combating tax evasion and avoidance. Additionally, effective enforcement mechanisms and measures to curb corruption within the extractive industry are crucial in safeguarding tax revenues and promoting fiscal integrity.

The next part of the report reviews the current legal and institutional framework for curbing IFFs, identifying both its strengths and inherent weaknesses. It also discusses opportunities available for CSOs to engage in reducing these IFFs.

3.2.1. National Laws Addressing Tax-Related IFFs in Tanzania

Tanzania has various laws that address tax avoidance and tax evasion, including the Income Tax Act Cap 332, Value Added Tax Act Cap 148, the Excise (Management and Tariff) Act Cap 147, Tax Administration Act Cap 438, and Tax Administration (Transfer Pricing) Regulations 2018. These laws provide for the general anti-avoidance rule along with specific anti-avoidance rules to prevent tax avoidance. Furthermore, the laws provide for various offences and punitive penalties to curb tax evasion.¹²³

a. General anti-avoidance rule

Section 8 of Tanzania's Tax Administration Act establishes the general anti-avoidance rule. This rule empowers the Commissioner General to adjust the tax liability of any person who conducts business in a manner that is inconsistent with legitimate business practices or transactions. In such instances, the Commissioner General has the authority to determine the tax payable by disregarding the transaction. The rule serves as a safeguard against various forms of tax avoidance, including those associated with IFFs. In addition to the general anti-avoidance rule, there are specific anti-avoidance rules that address specific forms of tax avoidance, which are discussed below.

b. Legislative measures to address abusive transfer pricing

Transfer pricing in Tanzania is governed by the provisions of the Income Tax Act¹²⁴ and Tax Administration (Transfer Pricing) Regulations 2018. Section 33 of the Income Tax Act provides for the arm's length principle, which requires associates to be regarded as independent and business transactions between them be conducted at "arm's length", meaning at the market price.¹²⁵

122 CCE-Admin. (2017, September 11). "Tanzania Releases Damning Report on Diamonds Mining." CCE Online News. <https://cceonlinenews.com/2017/09/11/tanzania-releases-damning-report-on-diamonds-mining/>.

123 Tax Administration Act, Part X (2019) and Tax Administration (Transfer Pricing) Regulations, Regulation 7(4) (2018).

124 Income Tax Act (2019).

125 Tax Administration (Transfer Pricing) Regulations, Regulation 4(1) (2018).

The laws, however, contain gaps that enable tax avoidance. For instance, the definition of associate entities in Section 3 of the Income Tax Act, provides a narrow definition of “associate” based solely on ownership of shares or voting power. This definition does not consider economic conditions such as the quantum of sales, purchases, or loans when determining an association. The absence of these economic conditions in the definition creates loopholes that allow MNEs to avoid taxes through the manipulation of sales, purchases, or loans. India, for example, uses additional criteria such as the volume of sales, purchases, or loans to determine if entities are associates.¹²⁶

The Tax Administration (Transfer Pricing) Regulations outline the methods and procedures for determining the arm’s length price.¹²⁷ The methods are, however, complex and difficult to apply in the extractive industry. The complexity in the transfer pricing rules coupled with lack of comparable data leads to diverse interpretations and applications of the rules which companies can exploit to reduce their tax liabilities. The Controller and Auditor General (CAG) report published in 2021 revealed that the TRA is yet to conduct transfer pricing audits in the extractive sector since the promulgation of the Transfer Pricing Regulations in 2018, due to lack of comparable data.¹²⁸ This creates a loophole for transfer pricing manipulation by MNEs operating in Tanzania’s extractive industry, resulting in substantial loss of government revenue.

To address the unique challenges of the extractive sector, the Income Tax Act includes specific provisions for taxing mining activities.¹²⁹ These provisions cover calculating income tax based on total mining income, treating each mining operation as an independent entity with separate accounts and implementing transfer pricing regulations. The Act also addresses mineral rights, prospecting and mining licenses, and the treatment of operations under various licenses. However, due to lack of transparency in the extractive sector, there is no publicly available information on the extent to which the transfer pricing laws are applied and enforced.

CASE STUDY: THE MAGNITUDE OF TAX-RELATED IFFS IN THE MINING SECTOR

In 2017, Tanzania’s Presidential Committee was commissioned to examine the economic and legal implications of the country’s export of gold and mineral concentrates. The Committee alleged that Acacia Gold Mining PLC, through trade mis-invoicing and transfer pricing, had under-declared revenues and tax payments, leading to a loss of up to USD 84 billion between 1998 and 2017. That amount was about 5.6 times more than the proposed national budget for the year 2017/2018, which was USD 15 billion. Several Tanzanian mining companies were also accused of using their subsidiaries or holding companies in tax havens to reduce their domestic taxes.¹³⁰ No legal action was taken against any mining company following these allegations.

¹²⁶ India Income Tax Act, Section 92A (1961).

¹²⁷ Tax Administration (Transfer Pricing) Regulations, Regulation 5.

¹²⁸ Controller and Auditor General. (2021). *Performance Audit Report on Controls Over Transfer Pricing in Tanzania’s Business Sector, As Performed by Tanzania Revenue Authority*. National Audit Office. (pp. 4-53). [https://www.nao.go.tz/uploads/Controls over Transfer Pricing in Tanzanias Business Sector.pdf](https://www.nao.go.tz/uploads/Controls%20over%20Transfer%20Pricing%20in%20Tanzania%20Business%20Sector.pdf).

¹²⁹ Income Tax Act, Section 65B (2019).

¹³⁰ Inspire Consultants Limited. (2020, December). *A Study on Taxation in the Extractive Industry, Governance and Poverty: The State of Tanzania*. Policy Forum, European Union & Save the Children. (p. 37). [https://www.policyforum-tz.org/sites/default/files/2021-03/Taxation%20in%20the%20Extractive%20Indus-](https://www.policyforum-tz.org/sites/default/files/2021-03/Taxation%20in%20the%20Extractive%20Industry%20Governance%20and%20Poverty%20in%20Tanzania_0.pdf)

c. Legislative measures to address abusive debt financing

The Income Tax Act provides for thin capitalisation rules that limit the tax deduction of interest expense on corporate debt that exceeds a 7:3 debt-to-equity ratio.¹³¹ By setting the ratio limits, the rules prevent multinationals from shifting profits by claiming excessive interest deductions on intra-group loans.

The interconnected and interdependent nature of operations within a multinational group in the mining sector, however, makes it challenging to isolate the debt and equity levels of individual entities for thin capitalisation purposes. The financial performance of one entity may be influenced by the activities of others, making it difficult to determine an appropriate debt-to-equity ratio at the subsidiary level.

d. Legislative framework to address abuse of tax treaties

To prevent abuse of tax treaties, the Income Tax Act stipulates that the benefits provided under a treaty can only be enjoyed by persons who are resident in the countries that concluded the treaty. In addition, at least 50% of the ownership of those resident companies must be held by individuals or entities considered residents of either of the states party to the agreement.¹³² These measures are designed to deter treaty shopping tactics employed by MNEs, which operate through complex organisation structures to improperly access tax treaty benefits.

It is important to note that in the event of a conflict between a tax treaty and the domestic law, the tax treaty will prevail.¹³³ Therefore, when a double tax treaty contains a loophole for treaty abuse or erodes the tax base by giving up taxing rights (as discussed earlier in this report), this cannot be addressed at the national level.¹³⁴

e. Legislative framework to address avoidance of permanent establishment (PE) status

Section 3 of the Income Tax Act defines a PE as a place where a person carries out business. This includes locations where individuals operate their business through an agent, excluding general agents with independent status performing routine business functions. Additionally, it covers sites where substantial equipment or machinery has been or is being utilised or installed. Furthermore, it extends to places where individuals are involved in construction, assembly, or installation projects lasting six months or more, including those where supervisory tasks related to such projects are carried out. The PE concept helps to determine which income is sourced, and therefore taxable, in Tanzania.

The existing legislation, however, lacks provisions for establishing a service PE, a prevalent type of PE in today's global business landscape, particularly among MNEs. It is common for MNEs, including those operating in the extractive sector, to establish service companies that deliver services to other group entities by utilising employees. In absence of a threshold for creating a service PE, MNEs operating in the extractive industry in Tanzania can provide services without having to pay corporate income tax for services provided through employees in the country.

¹³¹ Income Tax Act, Section 12(2) (2019).

¹³² Income Tax Act, 128(4), (5) (2019).

¹³³ Arnold, *An Introduction to Tax Treaties*, (p. 8). https://www.un.org/esa/ffd/wp-content/uploads/2015/10/TT_Introduction_Eng.pdf.

¹³⁴ Income Tax Act, 128(1) (2019).

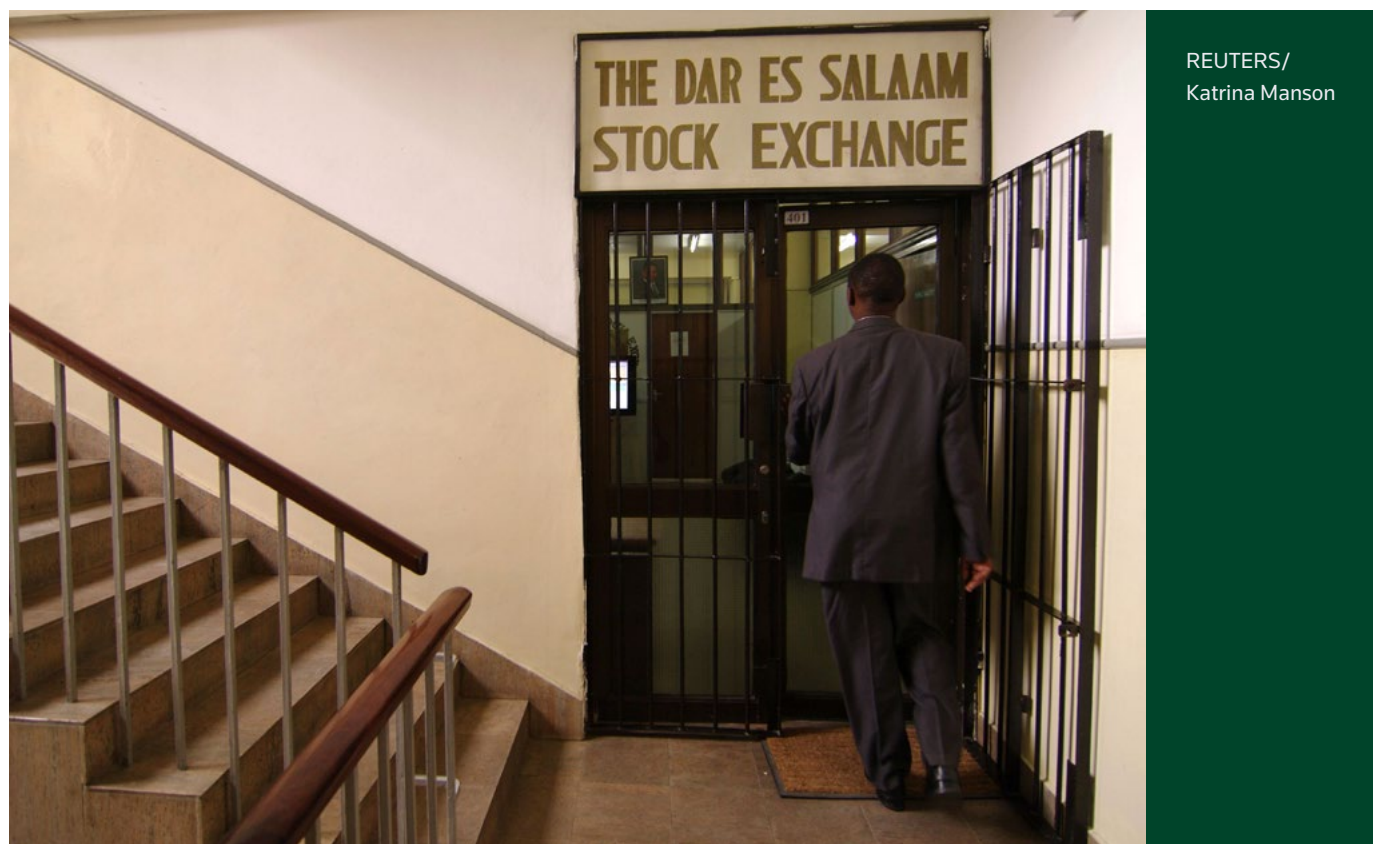
Additionally, the Income Tax Act treats branches and head offices as independent but associated entities. In reality, a branch and the head office are the same legal entity. Prior to 2010, the debate centred on whether branches could be charged interest, royalty, or service fees unless they were reimbursements for actual costs incurred by the head office. Treating branches and head offices as associates creates the misconception that the head office can levy such charges on branches, which are deductible by the branch, hence reducing their income tax liability.

f. Legislative framework for taxing the indirect transfer of assets

Tanzania's Income Tax Act imposes tax on income resulting from changes in the control of a local company.¹³⁵ When the underlying ownership changes by more than 50% within three years, the law considers the entity as having sold its assets and liabilities. This measure prevents tax avoidance by ensuring that any potential gains or profits from the change in ownership are taxed.

Despite this law, some taxpayers employ complex group structures with multiple layers to obscure changes in ownership. At times, the local entity may be unaware of these changes, requiring the local tax authority to be vigilant in recognising shifts in the underlying ownership of a local company.

Due to the opacity in the extractive sector, there are no reported cases that demonstrate whether the TRA enforces this law. It is, therefore, unclear to what extent this law is applied and enforced in the extractive sector.



REUTERS/
Katrina Manson

¹³⁵ Income Tax Act, Section 56 (2019).

g. Legislative framework for addressing trade mis-invoicing

Trade mis-invoicing is addressed through custom laws, transfer pricing laws, and the general anti-avoidance rule. There are also specific provisions that tackle trade mis-invoicing in the extractive sector. These include calculating income tax based on total mining income, treating each mining operation as an independent entity with separate accounts, and implementing transfer pricing regulations.¹³⁶ These laws, however, contain similar gaps as those contained in the transfer pricing legislation and provisions relating to the mining sector.

CASE STUDY: MISPRICING AND MIS-INVOICING IN THE MINING SECTOR

In 2017, the Tanzanian government voiced dissatisfaction with the operations of the mining sector, leading to the establishment of two Special Committees. The first Committee was tasked with examining the mineral content of mineral concentrates in containers in various locations in the country. The Committee's report disclosed that containers seized at the Dar es Salaam port contained genuine minerals valued at TZS 1.4 trillion (USD 520 million), which had neither been declared for taxation nor recorded. The report also revealed that there was an average of 14 kg of gold per tonne of mineral concentrates in the containers, significantly higher than what was reported by the Tanzania Minerals Audit Agency (TMAA). The Committee recommended maintaining a ban on the export of metallic mineral concentrates, installing effective scanners at the port, and constructing smelters in Tanzania to maximise the value of the extracted minerals.¹³⁷ Despite these recommendations, metallic mineral concentrates continue to be exported.

The second Committee investigated the economic impact of mineral concentrates exports and released its findings on 12th June 2017. The Committee estimated that between 44,000 and 61,000 containers of gold and copper were exported from 1998 to March 2017. It projected government revenue losses ranging from TZS 68.59 trillion to TZS 108.5 trillion (USD 25.5 billion to USD 40.4 billion) during this period, due to the under-declaration of export volume and value of gold and copper concentrates. The Committee proposed various recommendations, including the review of all Mining Development Agreements (MDAs) and mining laws, requiring new MDAs to be approved by Parliament, making the terms of MDAs public, eliminating overly generous tax concessions, and enhancing security at mines to combat smuggling.¹³⁸ However, the terms of MDAs are not available for public access.

¹³⁶ Income Tax Act, Section 65B (2019)

¹³⁷ Policy Forum. (2020, January). *Analysis on the Implementation of the Africa Mining Vision (AMV) in Tanzania, 2017-2019*. (p. 19). <https://www.policyforum-tz.org/sites/default/files/AMV%20Report.pdf>.

¹³⁸ Policy Forum, *Analysis on the Implementation of The Africa Mining Vision*, (p. 19). <https://www.policyforum-tz.org/sites/default/files/AMV%20Report.pdf>.

h. Other sectoral legislation for addressing tax-related IFFs

The Mining Act mandates the Mining Commission, in collaboration with the TRA, to conduct expenditure audits on all mining companies operating in Tanzania.¹³⁹ These audits aim to curb tax evasion and tax avoidance in the mining sector by deterring excessive deduction of expenses by mining companies. The Mining Commission, along with other relevant government authorities, is also empowered to counteract mineral smuggling and mineral royalty evasion. These efforts seek to ensure that the government obtains an equitable share of revenue from the companies operating in the mining sector.

The Mining Act also limits the use of stabilisation arrangements that freeze laws or undermine the sovereignty of Tanzania.¹⁴⁰ By preventing the freezing of laws, this provision ensures that tax laws and regulations can be updated and enforced effectively, preventing tax evasion and avoidance that exploit outdated or static legal frameworks. This measure curbs opportunities for mining companies to exploit long-term stability provisions to engage in tax avoidance strategies that provide prolonged tax breaks or exemptions.

When negotiated, the stabilisation provisions must be specific, apply for a specified period, and allow for renegotiation. Additionally, specific stabilisation provisions related to government tax expenditure (i.e., the value of tax incentives guaranteed to a mining company) should include a clear quantification of the tax expenditure and outline how the company will compensate the government.¹⁴¹

Further, Section 87(3) of the Mining Act empowers the Minister to intervene when there is a concern that the realised price of minerals does not align with what would have been paid in a transaction between unrelated parties (an arm's length transaction). In such cases, the Minister can issue a notice to the license holder indicating this discrepancy. This provision seeks to ensure fair pricing and prevent undervaluation or manipulation of prices in mineral transactions.

Despite the robust provisions, the Mining Act faces challenges in enforcement. The CAG report, for example, revealed that the Mining Commission has been unable to conduct effective expenditure audits of mining companies due to inadequate expertise and resources. This gap in enforcement creates a loophole for excessive expenditure deduction by the mining companies operating in Tanzania's mining sector.¹⁴²

3.2.2. National Institutions Addressing Tax-Related IFFs in Tanzania

The table below outlines the diverse institutions in Tanzania that deal with tax-related IFFs, including national institutions and enforcement bodies.

¹³⁹ Mining Act, Section 22(j) (2019).

¹⁴⁰ Mining Act, Section 100E of the Mining Act (2019).

¹⁴¹ Masamba, M. (2017, December 21). "Government Regulatory Space in the Shadow of BITs: The Case of Tanzania's Natural Resource Regulatory Reform." *Investment Treaty News*. IISD https://www.iisd.org/itn/en/2017/12/21/governmentregulatory-space-in-the-shadow-of-bits-the-case-of-tanzanias-natural-resource-regulatory-reform-magalie-masamba/#_edn14.

¹⁴² Controller and Auditor General, *Performance Audit Report on Controls Over Transfer Pricing in Tanzania's Business Sector*. https://www.nao.go.tz/uploads/Controls_over_Transfer_Pricing_in_Tanzanias_Business_Sector.pdf.

INSTITUTION	POWER/MANDATE	STRENGTHS	GAPS
Tanzania Revenue Authority (TRA)	<ul style="list-style-type: none"> Established under Section 4 of the Tanzania Revenue Authority Act Cap 399 R.E. 2019. Mandated to administer all revenue laws, including Mining Act.¹⁴³ Has powers to curb tax evasion and avoidance, including in the mining sector, by ensuring tax compliance through accurate financial reporting by companies.¹⁴⁴ 	<ul style="list-style-type: none"> Has a robust tax administration system, featuring specialised units like the Internal Audit, Transfer Pricing, and Investigation Units, strategically positioned to detect and address tax evasion and tax avoidance. The TRA collaborates with other government agencies to combat tax evasion and tax avoidance. 	<ul style="list-style-type: none"> Insufficient skilled and experienced personnel in the transfer pricing units, as noted in the Controller and Auditor General report, has led to the inability to carry out transfer pricing audits in the extractive industry, including companies in the mining sector.¹⁴⁵ Limited access to reliable data and information because Tanzania is not a MAAC member.¹⁴⁶ Fiscal resource constraints impede the TRA from conducting transfer pricing audits in the extractive industry in Tanzania.¹⁴⁷
Tax Revenue Appeals Board (TRAB)	<ul style="list-style-type: none"> Established under Section 4 of the Tax Revenue Appeals Act Cap 408 R.E. 2019. Holds original jurisdiction over civil disputes arising from revenue laws administered by the TRA. 	<ul style="list-style-type: none"> Composed of tax experts who can interpret tax laws effectively for the purpose of curbing and deterring tax avoidance.¹⁴⁸ 	<ul style="list-style-type: none"> The slow appointment of members, chairpersons, and vice-chairpersons of the TRAB contributes to delays in resolving tax disputes.¹⁴⁹ Budget constraints limit the TRAB from conducting sessions in various regions to address tax disputes, leading to delays in resolving tax disputes.¹⁵⁰

¹⁴³ Tanzania Revenue Authority Act, Section 5 (2019).

¹⁴⁴ Tanzania Revenue Authority Act, Section 5 (2019).

¹⁴⁵ Controller and Auditor General, *Performance Audit Report on Controls Over Transfer Pricing in Tanzania's Business Sector*, (pp. 34-42). https://www.nao.go.tz/uploads/Controls_over_Transfer_Pricing_in_Tanzanias_Business_Sector.pdf.

¹⁴⁶ OECD. (2023). Jurisdictions Participating in the Convention on Mutual Administrative Assistance in Tax Matters. https://www.oecd.org/tax/ex-change-of-tax-information/Status_of_convention.pdf.

¹⁴⁷ Controller and Auditor General, *Performance Audit Report on Controls Over Transfer Pricing in Tanzania's Business Sector*, (pp. 34-36). https://www.nao.go.tz/uploads/Controls_over_Transfer_Pricing_in_Tanzanias_Business_Sector.pdf.

¹⁴⁸ Tax Revenue Appeals Act, Cap 408 R.E. 2019, Section 4.

¹⁴⁹ Controller and Auditor General. (2024). *Annual General Report of the Controller and Auditor General on the Audit of Public Authorities and Other Bodies for the Financial Year 2022/23*. National Audit Office. https://www.nao.go.tz/uploads/Annual_General_Report_on_Audit_of_Public_Authorities_FY_2022-23.pdf.

¹⁵⁰ Controller and Auditor General, *Performance Audit Report on Controls Over Transfer Pricing in Tanzania's Business Sector*, (pp. 34-36). https://www.nao.go.tz/uploads/Controls_over_Transfer_Pricing_in_Tanzanias_Business_Sector.pdf.

INSTITUTION	POWER/MANDATE	STRENGTHS	GAPS
Tax Revenue Appeals Tribunal (TRAT)	<ul style="list-style-type: none"> Established under Section 8 of the Tax Revenue Appeals Act Cap 408 R.E. 2019. Has sole jurisdiction in appeals arising from decisions of the TRAB. Can also supervise the Board, inspect records, and revise decisions. The Tribunal's decisions are enforceable, like decrees from a court. 	<ul style="list-style-type: none"> Composed of tax experts who can interpret tax laws effectively for the purpose of curbing and deterring tax avoidance.¹⁵¹ 	<ul style="list-style-type: none"> Delays in appointing TRAT members, chairpersons, and vice-chairpersons impacts the pace of resolving tax disputes.¹⁵² Budget constraints limit the TRAT from conducting sessions in various regions to address tax disputes, leading to pending tax appeals.¹⁵³
Courts	<ul style="list-style-type: none"> Established under the Constitution of the United Republic of Tanzania and the Magistrates' Courts Act Cap 11 R.E. 2019. Interpret laws, including tax laws, when determining tax evasion offences. The Court of Appeal receives appeals from the TRAT and the High Court, where appeals emanate from subordinate courts on issues relating to tax evasion. 	<ul style="list-style-type: none"> Courts are independent and free from any external pressure when dealing with tax-related IFF cases.¹⁵⁴ Can issue orders for recovery of illicitly acquired assets.¹⁵⁵ Can provide punishment for tax evasion, which deters taxpayers from evading taxes.¹⁵⁶ 	<ul style="list-style-type: none"> While members of the Tax Tribunal and Board possess expertise background in tax matters, not all judges and magistrates may have specialised knowledge of taxation. This could impede effective interpretation of tax laws.¹⁵⁷ Complex tax laws impede the courts from interpreting them effectively to curb tax-related IFFs.¹⁵⁸

151 Tax Revenue Appeals Act, Cap 408 R.E. 2019, Section 8.

152 Controller and Auditor General, *Annual General Report on the Audit of Public Authorities*, (pp. 92-94). https://www.nao.go.tz/uploads/Annual_General_Report_on_Audit_of_Public_Authorities_FY_2022-23.pdf.

153 Controller and Auditor General, *Annual General Report on the Audit of Public Authorities*, (pp. 92-94). https://www.nao.go.tz/uploads/Annual_General_Report_on_Audit_of_Public_Authorities_FY_2022-23.pdf.

154 Constitution of the United Republic of Tanzania, Article 107B (1977).

155 Tax Administration Act, Cap 438, R.E. 2019.

156 Section 84 of the Tax Administration Act, Cap 438, R.E. 2019.

157 Tax Revenue Appeals Act, Cap 408 R.E. 2019, Sections 4 and 8.

158 Kimei, M. (2023). Tax Dispute Resolution System in Tanzania: Mediation as a Way Forward. https://www.iresolve.co.tz/webmak2/wp-content/uploads/2023/08/Tax-Dispute-Resolution-a-system-in-Tanzania_mediation_by-Madeline-Kimei-Final.pdf.

INSTITUTION	POWER/MANDATE	STRENGTHS	GAPS
Financial Intelligence Unit (FIU)	<ul style="list-style-type: none"> Established under Section 3 of the Anti-Money Laundering Act Cap 423 R.E. 2022. The FIU is tasked with receiving, analysing, and disseminating information on illicit financial transactions, including those related to tax-evasion and tax-avoidance IFFs. 	<ul style="list-style-type: none"> Collaborates closely with the TRA by sharing relevant financial transaction information regarding tax-related illicit transactions. FIU is a member of the Egmont Group of Financial Intelligence Units, hence it receives mutual assistance in terms of training on best practice and exchange of information from members.¹⁵⁹ 	<ul style="list-style-type: none"> Limited interagency coordination between the TRA and the FIU restricts the FIU's ability to effectively prevent tax evasion and tax avoidance associated with IFFs.¹⁶⁰ The unit does not have enforcement powers to prevent tax evasion and tax avoidance in the extractive industry in Tanzania.¹⁶¹
Parliament	<ul style="list-style-type: none"> Established under Article 62 of the Constitution of the United Republic of Tanzania, 1977. Mandated to make law, including tax laws.¹⁶² 	<ul style="list-style-type: none"> Enacts and amends tax laws that address loopholes in the tax system.¹⁶³ Represents the people in the law-making process.¹⁶⁴ 	<ul style="list-style-type: none"> Many Members of Parliament may have limited expertise in tax matters, which could potentially impact the effectiveness of enacting comprehensive tax laws to address issues related to tax evasion and tax avoidance.¹⁶⁵

¹⁵⁹ Financial Intelligence Unit. *Annual Report 2014/2015*. <https://www.fiu.go.tz/uploads/documents/en-1712221994-FIUAnnualReport2014-15.pdf>.

¹⁶⁰ *Ibid.*

¹⁶¹ Section 6 of the Anti-Money Laundering Act, Cap 423 R.E. 2022.

¹⁶² Constitution of the United Republic of Tanzania, Article 63, 138 (1977).

¹⁶³ Constitution of the United Republic of Tanzania, Article 63 (1977).

¹⁶⁴ Constitution of the United Republic of Tanzania, Article 21 (1977).

¹⁶⁵ Constitution of the United Republic of Tanzania, Article 67 (1977).

INSTITUTION	POWER/MANDATE	STRENGTHS	GAPS
Mining Commission	<ul style="list-style-type: none"> Established under Section 22 of the Mining Act Cap 123 R.E. 2019. The Commission is tasked with supervising and regulating the implementation of mining regulations, including ensuring compliance with tax laws. It is also responsible for conducting expenditure audits on mining companies for tax purposes, as well as for combating minerals smuggling and royalty evasion. 	<ul style="list-style-type: none"> Has a robust organisation structure, including the Mineral Audit and Trade Department, which includes the financial audit, tax review and local content section; the Mineral Audit and Laboratory Services Section; and the Mineral Trade Section.¹⁶⁶ 	<ul style="list-style-type: none"> Resource constraints lead to a lack of expertise among officials and a shortage of mining personnel, which impedes the Commission's ability to conduct expenditure audits of mining companies and creates loopholes for MNEs to avoid taxes through over-deduction.¹⁶⁷
Ministry of Finance	<ul style="list-style-type: none"> Given powers under Section 98 of the Tax Administration Act Cap 438 R.E. 2019. Makes regulations for better implementation of the principles, purposes, and provisions of tax laws. 	<ul style="list-style-type: none"> Enacts regulations to prevent transfer pricing manipulation.¹⁶⁸ Comprises government tax experts and professionals from related fields who advise the Minister on fiscal matters, including the formulation of tax regulations. 	<ul style="list-style-type: none"> Financial constraints restrict Ministry of Finance officials from conducting research on the effectiveness of implementing Transfer Pricing Regulations to address transfer pricing challenges in the extractive industry.¹⁶⁹

¹⁶⁶ The Mining Commission. Organisation Structure. <https://www.tumemadini.go.tz/administration/organisation-structure/>.

¹⁶⁷ Controller and Auditor General, *Performance Audit Report on Controls Over Transfer Pricing in Tanzania's Business Sector* https://www.nao.go.tz/uploads/Controls_over_Transfer_Pricing_in_Tanzanias_Business_Sector.pdf.

¹⁶⁸ Tax Administration (Transfer Pricing) Regulations, 2018.

¹⁶⁹ Controller and Auditor General, *Annual General Report on the Audit of Public Authorities*, (pp. 92-94). https://www.nao.go.tz/uploads/Annual_General_Report_on_Audit_of_Public_Authorities_FY_2022-23.pdf.

CASE STUDY: SUCCESS OF THE TRA IN CURBING TAX EVASION IN THE MINING SECTOR

In a related case to the one featured in the case study above, in 2017 the TRA issued Acacia Gold Mining PLC an assessment totalling USD 190 billion. The company faced allegations of operating unlawfully in the country and failing to fully disclose its export earnings over 17 years from 2000 to 2017.¹⁷⁰ The assessment was broken down as follows:

- *USD 40 billion in unpaid principal taxes: This portion represented the taxes Acacia was found to owe but had not paid during the specified period. It comprised accumulated tax liabilities due to non-compliance or under-reporting of taxable income.*
- *USD 150 billion in penalties and interest: In addition to the unpaid taxes, the assessment included a substantial amount in penalties and interest.*

The company settled the whole amount of assessed tax, penalties, and interest.

This case sent a strong message to the companies operating in the mining sector that non-compliance and lack of transparency would not be tolerated and that they should ensure full compliance with tax laws and regulations to avoid similar consequences.

CASE STUDY: SUCCESS OF THE COURT IN DETERRING TAX AVOIDANCE AND TAX EVASION IN THE MINING SECTOR

Arising from the same facts as above, in 2018 three employees of Acacia Mining were sentenced to jail in Tanzania for tax evasion offences and later released under a plea bargain after paying TZS 1.5 billion (USD 5.5 million) in compensation.¹⁷¹ This sent a strong message that revenue laws would be enforced to help curb tax evasion in Tanzania.

170 Olingo, A. (2017, July 25). "Tanzania Slaps Acacia Mining with \$190b Tax Bill." *The East African*. <https://www.theeastafrican.co.ke/tea/news/east-africa/tanzania-slaps-acacia-mining-with-190b-tax-bill-1370176>.

171 Dausen, N. & Reid, H. (2020, June 17). "Acacia Mining Employees Pay Tanzania \$650,00 in Tax Evasion Case." Reuters. <https://www.reuters.com/article/idUSKBN2301SB/>.

3.2.3. Opportunities to Strengthen National Laws and Institutions

There is opportunity for much-needed tax law reforms to curb tax-related IFFs in Tanzania's extractive industry. Further research and targeted meetings with relevant stakeholders on key areas of concern would enhance reform efforts.

a. Signing international instruments

Signing of international instruments such as the MLI and MAAC, which are useful in enhancing global cooperation, would go a long way in monitoring and stopping tax avoidance. To ensure their effectiveness, further research into collaboration with relevant international organisations should be conducted to analyse the benefits of Tanzania joining MAAC to combat tax-related IFFs in its extractive sector, as well as the drawbacks of Tanzania not becoming a part of MAAC. This research would be useful in crafting evidence-based recommendations which could be presented to policymakers and legislators through targeted meetings, training sessions, or workshops. These initiatives could educate decision-makers and strengthen their comprehension of the importance of enhanced international cooperation through MAAC to address tax-related IFFs in the extractive industry.

b. Advocacy for law reform

- CSOs could consider advocating for the inclusion of a service PE in the Income Tax Act, to seal the loophole that allows for tax avoidance and evasion. Similarly, CSOs could also advocate for an updated definition of "associate" in the Income Tax Act, as the current one does not take into account modern trade dynamics and allows for tax avoidance and evasion. CSOs could highlight the risks associated with multinational entities exploiting these loopholes to avoid taxation in the extractive sector. They can then provide recommendations for the amendment of Section 3 of the Income Tax Act to seal these loopholes.
- Advocacy efforts could outline the loopholes contained in Section 56 of the Income Tax Act which create avenues for tax evasion through changes in ownership. CSOs could highlight the necessity of amending Section 56 to include mandatory disclosure of companies' ownership structures to enhance transparency for the companies operating in the extractive industry.
- CSOs could lobby for the inclusion of anti-abuse clauses in double taxation treaties to prevent MNEs from exploiting these agreements to shift profits and avoid taxation. They could also call for greater transparency and public scrutiny in the negotiation and implementation of tax treaties.
- CSOs could highlight the challenges that impede the effective application of Transfer Pricing Regulations in the extractive industry, and the impact of transfer pricing manipulations on governance, accountability, and sustainable development. They can then provide recommendations for amendment.
- CSOs could also lobby for the development and implementation of stronger legal frameworks to address cross-border asset recovery and legal complexities. This could involve lobbying for international cooperation agreements and legal mechanisms to facilitate the recovery of illicit assets and improve legal cooperation between jurisdictions.

c. Advocacy around budgets

Advocacy efforts could focus on increasing budget allocations to the various institutions tasked with tackling IFFs to strengthen their capacity to prevent tax-related IFFs in the extractive industry.

d. Advocacy to improve coordination

CSOs could consider advocating for improved interagency coordination between the FIU and TRA by mandating the TRA to act on information provided by the FIU and to provide feedback on their enforcement actions. This would ensure accountability and effectiveness in addressing tax evasion and avoidance in the mining sector.

CASE STUDY: ADVOCACY EFFORTS IN TANZANIA

In 2019, CSOs conducted a study on the state of beneficial ownership disclosure in the extractive industry.¹⁷² A beneficial owner is the person who ultimately owns, controls, or benefits from a company and the income it generates. The findings revealed a lack of transparency on the beneficial ownership of the companies operating in the extractive industry. After CSOs recommended transparency on this issue, Parliament amended Section 2 of the Income Tax Act in 2020, broadening the definition of “beneficial owner” to curb tax-related IFFs and enhance transparency in the extractive industry.¹⁷³

CASE STUDY: CSOS IN TANZANIA ADVOCATE FOR THE ESTABLISHMENT OF A REFINERY PLANT IN DODOMA

In 2020, CSOs in Tanzania conducted a study to assess the alignment of Tanzania’s mining fiscal regime with the African Mining Vision (AMV), a policy framework created by the African Union to ensure that Africa uses its mineral resources strategically for broader, more equitable development. The study’s findings uncovered policy gaps hindering the implementation of the AMV in Tanzania. CSOs formulated evidence-based recommendations and presented them to policymakers and legislators, including the Parliamentary Committee for Energy and Minerals. One of the recommendations focused on investing in the construction of a refinery to encourage further investment and job creation. The government responded positively to these recommendations, leading to the establishment of the first refinery plant in Dodoma.¹⁷⁴

172 Policy Forum. (2020), *Annual Report: January–December 2020*. <https://www.policyforum-tz.org/sites/default/files/2022-11/2020%20Annual%20Report.pdf>.

173 Policy Forum, *Annual Report: January–December 2020*, (pp. 16-17), <https://www.policyforum-tz.org/sites/default/files/2022-11/2020%20Annual%20Report.pdf>.

174 Policy Forum, *Annual Report: January–December 2020*, (p. 7), <https://www.policyforum-tz.org/sites/default/files/2022-11/2020%20Annual%20Report.pdf>.



REUTERS/ Zohra Bensemra

3.3. TAX-RELATED IFFS IN GHANA

Tax-related IFFs constitute a significant portion of illicit flows in Ghana. Despite limited data on the magnitude of these flows, preliminary unofficial estimates on tax and commercial IFFs published by UNCTAD in 2023 suggest that trade mis-invoicing in Ghana alone accounted for approximately USD 8.4 billion in inward and outward IFFs with the US and the European Union between 2000 and 2012.¹⁷⁵ Ghana is currently in the process of refining these estimates for inclusion in the UN's Global SDG Indicators Database, with plans to extend the analysis of tax-related IFFs up to 2020, as recommended.¹⁷⁶

Tax-related IFFs in Ghana stem from various sectors of the economy, with commodity trading and the extractive industry being significant contributors. Notably, the extraction of gold has emerged as a focal point in discussions on tax-related IFFs. Studies conducted by the Ghana Revenue Authority (GRA) from 2011 to 2017 highlighted a substantial loss of tax revenues due to undervaluation of gold exports¹⁷⁷, totalling approximately USD 957 million. The available data on undervaluation of exports represents only one aspect of tax-related IFFs in Ghana.

This section discusses the various forms of tax-related IFFs in Ghana, with a specific focus on the extractive sector. It examines the existing legal and institutional framework for curbing these IFFs, highlighting the strengths of the current framework and its inherent weaknesses. Additionally, it explores the potential roles CSOs can play in mitigating these forms of IFFs within the existing framework.

¹⁷⁵ UNCTAD, "First-Ever Official Data on Illicit Financial Flows." <https://unctad.org/news/first-ever-official-data-illicit-financial-flows-now-available>.

¹⁷⁶ Akolgo, B. & Abugre, C. (2021). *Illicit Financial Flows: Ghana Experience*. ISODEC & Tax Justice Africa. https://unctad.org/system/files/non-official-document/20210216_IFFs_online_2_session_1_IFFs%20in%20Ghana_Akolgo.pdf.

¹⁷⁷ Ahene-Codjoe, A.A., Alu, A.A. & Mehrotra, R. (2022, December). "Abnormal Pricing in International Commodity Trading: Evidence from Ghana." *International Economics*, vol. 172. (pp. 331–348). <https://doi.org/10.1016/j.inteco.2022.01.002>.

3.3.1. National Laws Addressing Tax-Related IFFs in Ghana

The following laws address the various forms of tax-related IFFs in Ghana: Income Tax Act 2015 (Act 896), Customs Act 2015 (Act 891), and Companies Act 2019 (Act 992). The following section discusses the provisions in these laws that specifically address tax-related IFFs.

a. Legislative measures to address abusive transfer pricing

Ghana's Income Tax Act¹⁷⁸ and its Transfer Pricing (TP) Regulations¹⁷⁹ require that income from the sale of petroleum and mineral products, as well as commodities, between related parties be calculated in line with the arm's length principle and that supporting documents be maintained. Companies must also file Transfer Pricing Returns with the GRA no later than four months after the end of their year of assessment.

Despite the enactment of transfer pricing laws, some sectors have operated under the presumption that these regulations do not apply to them.¹⁸⁰ This misconception stems from the fact that certain sector-specific laws, such as those governing mining, do not explicitly incorporate transfer pricing rules or the arm's length principle. Consequently, some companies exploit this gap by leveraging sector-specific regulations to avoid adhering to transfer pricing rules. While the GRA claims to have dispelled this misconception,¹⁸¹ there has been no judicial clarification on the application of transfer pricing regulations in the mining and petroleum industries.

Ghana's Model Petroleum Agreement requires that the arm's length principle be applied to the sale of crude oil.¹⁸² However, there are several transactions along the value chain of the petroleum industry, such as the sale and purchase of equipment, which are not covered by the arm's length principle. This creates a loophole for companies to exploit by deliberately excluding transactions beyond crude oil sales from the arm's length principle's purview.

b. Legislative measures to address abusive debt financing

Multinational corporations in Ghana justify borrowing from related companies located in countries with lower interest rates by citing the high interest rates in Ghana, which can climb up to 30%. Section 33 of the Income Tax Act allows for deductions of interest on loans, provided the debt-to-equity ratio does not exceed 3:1. The law further limits the deductibility of foreign currency exchange losses when the debt-to-equity ratio is exceeded.

However, the primary law in the extractive sector, the Minerals and Mining Act, does not limit the deductible interest to the debt-to-equity ratio of 3:1. By relying on debt financing, multinational companies in the sector can exploit this gap in the law and deduct unlimited amounts of interest expense on their loans, resulting in loss of revenues to the government.

¹⁷⁸ Income Tax Act, Sections 66(2)(b) and 80(a) (2015).

¹⁷⁹ Transfer Pricing Regulations, (2012). (L.I. 2188).

¹⁸⁰ Readhead, A. (2016, March). *Transfer Pricing in the Extractive Sector in Ghana*. Natural Resource Governance Institute. https://resourcegovernance.org/sites/default/files/documents/nrgi_ghana_transfer-pricing-study.pdf.

¹⁸¹ Readhead, *Transfer Pricing in the Extractive Sector in Ghana*, https://resourcegovernance.org/sites/default/files/documents/nrgi_ghana_transfer-pricing-study.pdf.

¹⁸² Model Petroleum Agreement of Ghana, Article 11.7 (2000).

CASE STUDY: MINING COMPANIES BARGAINING THEIR WAY OUT OF STATUTORY PROVISIONS – NEWMONT RETAINS PREFERENTIAL TREATMENT OF 4:1 DEBT-TO-EQUITY RATIO

Ghana has been inconsistent in the enforcement of the 3:1 debt-to-equity ratio provided under the Income Tax Act. This is largely due to the fact that the primary laws governing various sectors such as mining do not incorporate this debt-to-equity ratio. As a result, companies with strong bargaining power, often due to their size, are able to rely on primary laws such as the Minerals and Mining Act to negotiate favourable arrangements.

For instance, in 2015, Ghana signed an investment agreement with Newmont Corporation, a gold mining company. The agreement included a stabilisation clause granting the company preferential treatment in its capitalisation requirements. This clause allowed Newmont to maintain a 4:1 debt-to-equity ratio, contrary to Section 33 of the Income Tax Act which provides for a debt-to-equity ratio of 3:1. Newmont's debt-to-equity ratio of 4:1 has remained in place and is unchallenged.¹⁸³

c. Legislative framework to address avoidance of permanent establishment (PE) status

Ghana's Income Tax Act 2015 defines a PE to include a place where a non-resident person conducts business, or where substantial equipment or machinery is used or installed. It is also a place where construction, assembly, or installation projects last for 90 days or more, as well as a place where an agent acts on behalf of a non-resident person's business except in business arrangements involving an independent general agent.

A non-resident person carrying out business in Ghana through a PE is required to pay branch profit tax on the repatriated profits.¹⁸⁴ This provision treats a non-resident person as though they were a subsidiary of a foreign company, allowing Ghana to tax its repatriated profits, which addresses potential tax avoidance by non-residents not permanently established in Ghana.

Under the law, a non-resident person will be considered to have a PE if their business is carried out within 90 days or more. However, non-residents can stay below this PE threshold by fragmenting contracts to cover distinct functions or engaging subcontractors to undertake some of the functions. The risk of PE avoidance is higher during exploration since the vessels conducting seismic surveys are constantly moving within the exploration area. This has been identified as a reason for the payment of low royalties, taxes, and dividends to Ghana's government.

¹⁸³ The Republic of Ghana and Newmont Golden Ridge Limited. (2015, May 4). "Revised Investment Agreement." <https://www.mincom.gov.gh/wp-content/uploads/2021/06/20150501-Newmont-Golden-Ridge-Limited-Revised-Investment-Agreement-Final-01-05.pdf>.

¹⁸⁴ Section 60 of the Income Tax Act.

d. Legislative framework for taxing the indirect transfer of assets

Ghana does not have a comprehensive law on indirect transfer of assets, creating an opportunity for companies to avoid tax. A notable example of how a company can take advantage of this lack of regulation is the case of MTN discussed below.

e. Legislative framework for addressing trade mis-invoicing

Trade mis-invoicing is addressed through the Value Added Tax (VAT) Act 2013,¹⁸⁵ the Value Added Tax Regulations 2016,¹⁸⁶ transfer pricing rules,¹⁸⁷ and laws governing customs.¹⁸⁸

Nonetheless, mis-invoicing is common along Ghana's gold value chain.¹⁸⁹ Exporters may misreport the price, value, nature, and quality of goods in commercial transactions.¹⁹⁰ Several factors contribute to this, including poor valuation of gold in the country. Previously, the regulatory regime contained loopholes that permitted large-scale miners to independently assay their gold.¹⁹¹ This resulted in the loss of billions of dollars in government revenue due to smuggling. To prevent this, the government appointed the Precious Minerals Marketing Company as the official government assayer in 2016, mandating it to determine the content and quality of any gold leaving Ghana.¹⁹²

Tax IFFs in the petroleum sector arise from failure by companies to accurately receipt their transactions and maintain proper financial records. This practice persists despite Ghana's Petroleum Act being a relatively recent legislation with a much higher index score in revenue mobilisation compared to the Mining Act. The issue of incorrect receipting may potentially be due to policy decisions by the government and not gaps in law. For instance, Parliament granted an amnesty to petroleum companies that self-declared non-compliance with receipting and proper bookkeeping. Under the amnesty, interest for the period of 2017 to 2018 was waived for at least nine months. Given the significant turnovers reported by petroleum firms, granting amnesty for non-compliance is a potential tax leakage.

185 Value Added Tax Act 2013, Act 870.

186 Value Added Tax Regulations, 1998 (L.I. 1646).

187 Transfer pricing regulations, 2012 (L.I. 2188).

188 Customs Regulations, 2016 (L.I. 2248).

189 Africa Centre for Energy Policy. (2015). *Illicit Financial Flows and the Extractive Industry in Ghana*. (p. 4). <https://s3.amazonaws.com/new-acep-static1/reports/Illicit-Financial-Flow-in-Ghanas-extractives.pdf>.

190 Forstater, *Illicit Financial Flows*, (p. 10). <https://www.cgdev.org/sites/default/files/illicit-financial-flows-trade-misinvoicing-and-multinational-tax-avoidance.pdf>.

191 Baku, A. W. M. (2021). *Gold-Related Illicit Financial Flow Threats and How to Mitigate Them: The Case of Ghana*. R4D-IFF Working Paper Series, R4D-IFF-WP01-2021. (p. 10). https://curbing-iffs.org/wp-content/uploads/2021/04/ghana_goldiffs_ab_220421_ed.pdf.

192 Baku, *Gold-Related Illicit Financial Flow Threats*, (p. 10). https://curbing-iffs.org/wp-content/uploads/2021/04/ghana_goldiffs_ab_220421_ed.pdf.

3.3.2. National Institutions Addressing Tax-Related IFFs

The institutions tasked with curbing tax-related IFFs in Ghana are discussed in the table below.

INSTITUTION	POWER/MANDATE	STRENGTHS	GAPS
Ghana Revenue Authority (GRA)	<ul style="list-style-type: none"> The GRA was established by the Ghana Revenue Authority Act 2009 (Act 791). Tasked with tax administration, enforcing tax laws, and combating tax evasion, which is often a precursor to IFFs. 	<ul style="list-style-type: none"> The consolidation of the Revenue Authority has facilitated a comprehensive approach to tax and customs administration to streamline processes and improve services by offering a one-stop service for taxpayers.¹⁹³ 	<ul style="list-style-type: none"> Insufficient modern technological infrastructure to administer compliance, weak enforcement due to the large informal sector in Ghana, and dearth of skilled personnel limit the GRA's capacity to investigate and combat illicit financial activities effectively.¹⁹⁴
Financial Intelligence Centre (FIC)	<ul style="list-style-type: none"> Established by the Anti-Money Laundering Act 2008 (Act 749). The Act gives the FIC powers to collect, analyse, and disseminate financial intelligence to combat money laundering, terrorist financing, and other illicit financial activities.¹⁹⁵ 	<ul style="list-style-type: none"> Operates in accordance with international standards, such as those set by FATF.¹⁹⁶ 	<ul style="list-style-type: none"> Very limited in its scope of operation as a lot of activities outside of banking transactions are not likely to be detected by the FIC. At the same time, many IFF-related activities may not necessarily involve flagged banking transactions.¹⁹⁷

193 Ahinsah-Wobil, I. (2021 October 4). "The Reform Mechanisms Policy in Ghana's Public Financial Management." SSRN. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3922133.

194 Ghana Revenue Authority. (2023). *2022 Annual Report*. <https://gra.gov.gh/wp-content/uploads/2023/08/GRA-2022-Annual-Report.pdf>.

195 Anti-Money Laundering Act, 2008 (Act 749), Section 4.

196 Financial Intelligence Centre. Home. <https://www.fic.gov.gh/>. [Accessed 1 July 2024].

197 Mekpor, E. S. (2019). "Anti-Money Laundering and Combating the Financing of Terrorism Compliance: Are FATF Member States Just Scratching the Surface?" *Journal of Money Laundering Control*, vol. 22, no. 3. (pp. 451-471). <https://www.emerald.com/insight/content/doi/10.1108/JMLC-09-2018-0057/full/html>.

INSTITUTION	POWER/MANDATE	STRENGTHS	GAPS
Economic and Organised Crime Office (EOCO)	<ul style="list-style-type: none"> Established by the Economic and Organised Crime Office Act 2010 (Act 804) The Act empowers the EOCO to investigate and prosecute economic and organised crimes, including corruption, money laundering, and fraud. 	<ul style="list-style-type: none"> EOCO's core strengths are its ability to investigate, trace, and freeze financial assets that have been tainted with illicit activities.¹⁹⁸ This capability is critical in disrupting illicit enterprises, thereby reducing the financial incentives for engaging in illicit activities. 	<ul style="list-style-type: none"> Limited resources in terms of insufficient funding, technology, and skilled personnel, as well as alleged political interference.¹⁹⁹
Bank of Ghana (BoG)	<ul style="list-style-type: none"> Established under the Bank of Ghana Act 2002 (Act 612). Mandated to regulate the banking and financial sector to ensure the integrity of the financial system and prevent money laundering and other illicit financial activities.²⁰⁰ 	<ul style="list-style-type: none"> Has regulatory oversight, including licensing and revocation of licenses and enforcement capabilities. This strength is pivotal in ensuring that financial institutions adhere to regulations.²⁰¹ 	<ul style="list-style-type: none"> Limited accountability and transparency, which is hampering its role in curbing IFFs.²⁰² Also, though it has oversight responsibility, it has a weakness in enforcement which is further exacerbated by poor mechanisms in place for detecting early warning signs.²⁰³

3.3.3. Opportunities to Strengthen National Laws and Institutions in Ghana

a. Instituting legal actions

CSOs could seek interpretation from Ghana's courts on whether the rules in the Income Tax Act take precedence over the stabilisation clauses in various sector-specific agreements. These stabilisation clauses are contractual terms negotiated by foreign investors which seek to shield them from changes in tax laws that could be against

198 Norman, I.D., Binka, F.N. & Awiah, B.M. (2015). "Mapping the Laws on Anti-Money Laundering and Combating Financing Terrorism to Determine Appraisal Skills of Accountable Institutions for the Twin Challenges." *Issues in Business Management and Economics*, vol. 3, no. 6. (pp. 87-99). https://www.researchgate.net/publication/281408172_Norman_I_D_Binka_F_N_and_Blandina_M_Awiah_2015_Mapping_the_Laws_on_Anti-Money_Laundering_and_Combating_Financing_Terrorism_To_determine_appraisal_skills_of_Accountable_Institutions_for_the_twin_challe/link/588a2af1a6fdccb538f1f094/download?tp=eyJjb-250ZXh0ljp7ImZpcnNOUGFnZSI6InB1YmxpY2F0aW9uliwicGFnZSI6InB1YmxpY2F0aW9uli19.

199 Kavanagh, C. et al. (2013, January 1). *Getting Smart and Scaling Up. Responding to the Impact of Organized Crime on Governance in Developing Countries*. Center on International Cooperation, New York University. https://assets.publishing.service.gov.uk/media/57a08a4ced915d622c000681/61000-kavana-gh_crime_developing_countries_report.pdf.

200 Bank of Ghana. (2023). *Regulatory Role of the Bank of Ghana in the Financial Intermediation Industry*. <https://www.bog.gov.gh/wp-content/uploads/2023/03/REGULATORY-ROLE-OF-THE-BANK-OF-GHANA-IN-GHANAS-FINANCIAL-INTERMEDIATION-INDUSTRY-13-03-23-1.pdf>.

201 Abdallah, M. I. (2015). "Financial Sector Regulatory and Supervisory Framework in Ghana." *International Journal of Economics, Commerce and Management*, vol. 3, no. 5. (pp. 1043-1055). <https://ijecm.co.uk/wp-content/uploads/2015/05/3568.pdf>.

202 Akosah, N., Alagidede, P. & Schaling, E. (2019). "Monetary Policy Transparency in Ghana: Recent Evidence." MPRA Paper No. 96998. Bank of Ghana. <https://mpra.ub.uni-muenchen.de/96998/>.

203 Amenu-Tekaa, K. S. (2022). "Financial Sector Regulatory and Supervisory Framework in Ghana: The Pre and Post 2017 Banking Crisis." *International Journal of Economics, Commerce and Management*, vol. 10, no. 1. https://www.researchgate.net/publication/357839492_Financial_Sector_Regulatory_And_Supervisory_Framework_in_Ghana_-_The_Pre_And_Post_2017_Banking_Crisis.

their commercial interest. Seeking an interpretation on this would help clarify whether sector-specific laws and stabilisation clauses override the provisions of the Income Tax Act. This clarification would prevent companies from lobbying for stabilisation clauses to avoid tax obligations whenever there are amendments to the Income Tax Act which they consider as overly stringent.

Further, CSOs could institute legal action using a special court order called a mandamus. This order compels government officials to perform their legal duties as provided by statute. An affected or interested party must initiate the lawsuit. CSOs have legal standing in court as interested parties and, therefore, have a right to take legal action to address IFFs. These types of legal actions help to change outcomes through the courts and also increase public awareness of issues related to IFFs.

b. Advocacy for transparency and accountability

Ghana's Right to Information Act²⁰⁴ compels state institutions to provide information on request. CSOs can request access to the government's meeting minutes and the basis for tax exemptions. It is worth noting the Right to Information Act contains exemptions that limit access to information, such as the exemption from disclosure of tax information.²⁰⁵ CSOs can advocate for an amendment of these exemptions to allow for disclosures that will support efforts to mitigate IFFs. Additionally, although Section 12 precludes requests for information that affects tax liability, seeking clarification on why a company is exempted from tax may not be privileged within the meaning of the section and should, therefore, be explored by CSOs. This information can assist CSOs in conveying to the government and the public how certain decisions result in IFFs and their economic consequences. Raising awareness can generate public pressure on the government to refrain from granting tax waivers.

CSOs can also consider requesting information to highlight dealings between oil and mining companies and the government. This includes requesting detailed disclosures about the negotiations and the specific financial concessions on the part of the government.

3.4. CONCLUSION

Kenya, Tanzania, and Ghana lose substantial amounts of money through tax evasion, avoidance, and mis-invoicing. A range of factors facilitate these IFFs, including economic, institutional, and political factors, among others. These outflows negatively impact domestic resource mobilisation, affecting public finances, worsening inequality, and hindering sustainable development efforts.

Addressing tax-related IFFs requires the enactment and implementation of robust laws and the establishment of effective institutions. CSOs play a critical role in this endeavour. Leveraging their expertise, networks, and commitment to social justice, CSOs can advocate for tax reforms, promote transparency, raise public awareness, conduct research and analysis, and build capacities.

CSOs can enhance their impact by collaborating with other stakeholders, such as academia and the media, to mitigate challenges such as knowledge gaps and ensure broader engagement in combating tax-related IFFs.

204 Right to Information Act, Section 12 (2019).

205 Right to Information Act, Section 12 (2019).



REUTERS/ Francis Kokoroko

4. Corruption

UNCTAD defines corruption as the use or misuse of public power for private gain.²⁰⁶ The International Classification of Crime for Statistical Purposes by UNODC adopts a wider definition of corruption to include promising, offering, giving, soliciting, or accepting an undue advantage to or from a public official or a person who directs or works in a private sector entity, directly or indirectly, in order that the person act or refrain from acting in the exercise of their official duties.²⁰⁷ This report will adopt the latter definition, which captures activities that take place in both the private and public sectors. Corruption-related IFFs occur when the economic gains from these corrupt acts are moved cross-border.

Corruption is a common form of IFF, particularly within the extractive sector.²⁰⁸ It contributes to IFFs in three main ways:²⁰⁹

206 UNCTAD, *Tackling Illicit Financial Flows for Sustainable Development in Africa*, (p. 90). https://unctad.org/system/files/official-document/aldcafrica2020_en.pdf.

207 Gibbons, J. (Ed.). (2015). *International Classification of Crime for Statistical Purposes (ICCS)*. UNODC. (p. 71). <https://unstats.un.org/unsd/statcom/doc15/BG-ICCS-UNODC.pdf>.

208 Africa Centre for Energy Policy, *Illicit Financial Flows and the Extractive Industry in Ghana*. <https://s3.amazonaws.com/new-acep-static1/reports/Illicit-Financial-Flow-in-Ghanas-extractives.pdf>.

209 Duri, J. (2018). "Combating Corruption-Related Illicit Financial Flows from Africa: Legal Approaches and Challenges." *African Human Rights Yearbook*, vol. 2, (pp. 321–346). <https://upjournals.up.ac.za/index.php/ahry/article/view/3874>.

- It directly generates IFFs through activities such as bribery and embezzlement.
- It helps create other types of IFFs. Through bribery, corruption can allow for other IFFs such as tax avoidance and evasion to be created and to exist.
- It facilitates movement of IFFs. Once IFFs are created, corruption provides a way for the funds to move across borders by bribing those charged with implementing anti-money laundering laws, for example.²¹⁰

Corruption-related IFFs are estimated to constitute 5% of IFFs from Africa.²¹¹ However, due to the secrecy surrounding corruption, quantifying the value of IFFs is difficult and the 5% figure is likely an underestimate.²¹² Corruption-related IFFs adversely affect the economy and society of countries by draining public resources through misappropriation and cross-border transfers.²¹³ Corruption weakens the rule of law and erodes public trust in government institutions. Consequently, robust anti-corruption measures are essential to promote transparency, accountability, and sustainable development.

This part of the report discusses the international, regional, and national legal and institutional frameworks that address corruption-related IFFs, with a particular focus on Ghana and Tanzania. Although corruption is also widespread in Kenya, there has been extensive research and reporting on this topic already.²¹⁴

4.1. INTERNATIONAL LAWS ADDRESSING CORRUPTION-RELATED IFFS

International anti-corruption laws and institutions play a vital role in mitigating the occurrence of IFFs, as discussed below.

a. The United Nations Convention against Corruption (UNCAC)

The UNCAC²¹⁵ is the only legally binding international anti-corruption instrument.²¹⁶ While no direct correlation is expressly established between corruption and the contemporary conceptualisation of IFFs, the preamble to the Convention acknowledges the instrument's significance in addressing certain manifestations of IFFs. For instance, the preamble recognises that there are links between corruption and other forms of crimes such as economic crimes and money laundering. It also recognises that corruption involves significant amounts which

210 Reed, Q. & Fontana, A. (2011). "Corruption and Illicit Financial Flows: The Limits and Possibilities of Current Approaches." *U4 Issue*, vol. 2. U4 Anti-Corruption Resource Centre. (pp. 19-20). <https://www.u4.no/publications/corruption-and-illicit-financial-flows-the-limits-and-possibilities-of-current-approaches-2>.

211 AU/ECA Conference of Ministers, *Report of the High-Level Panel on Illicit Financial Flows from Africa*, (p.32). https://au.int/sites/default/files/documents/40545-doc-IFFs_REPORT.pdf.

212 *Ibid*.

213 Reed & Fontana, "Corruption and Illicit Financial Flows," <https://www.u4.no/publications/corruption-and-illicit-financial-flows-the-limits-and-possibilities-of-current-approaches-2>.

214 Benard, K.K. & Deshmukh, R.B. (2023). *A Review of Corruption in Kenya Last Decade (2012-2022)*, vol. 12, no. 2. (pp. 53-65). https://www.researchgate.net/publication/373990226_A_Review_Of_Corruption_In_Kenya_Last_Decade_2012-2022.

Duri, J. (2021, April 22). "Kenya: Corruption and Devolution." Bergen: U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute. <https://www.u4.no/publications/kenya-corruption-and-devolution>.

Waithaka, M. "Maladies of Public Administration: Factors That Exacerbate Corruption in Kenya." (2022). *Dissertations*. 1281. University of Missouri-St. Louis. <https://irl.umslo.edu/dissertation/1281>.

Van Rij, A. (2021). *Corruption in Kenya. Understanding a Multifaceted Phenomenon*. https://www.ifri.org/sites/default/files/atoms/files/van_rij_corruption_kenya_septembre2021_okac_en.pdf.

215 UN. Treaty Series, vol. 2349. (p. 41).

216 World Bank & UNODC. About UNCAC. <https://star.worldbank.org/focus-area/uncac#:~:text=The%20United%20Nations%20Convention%20against>.

may constitute a substantial proportion of a state's resources. The UNCAC provides a legal framework for preventing corruption in the public and private sectors. Articles 15 to 25 of the Convention proscribe conduct constituting corruption and establish criminal liability for such actions. A significant aspect of the Convention pertains to the provisions on asset recovery.²¹⁷

Ghana became a party to the UNCAC in December 2004 and ratified it in June 2007. The provisions of the Convention are, however, yet to be domesticated. Ghana, being a dualist state, is obligated not only to ratify a convention but also to take steps to domesticate the provisions of said convention to render it enforceable within its domestic legal framework. Technically, since the provisions of the UNCAC have not been domesticated, they do not form part of Ghana's domestic laws.

Tanzania signed the UNCAC in December 2003 and ratified it in May 2005. As a state party to the Convention, Tanzania is legally bound by it and has the obligation to honour and implement its provisions.²¹⁸

4.2. INTERNATIONAL ANTI-CORRUPTION INSTITUTIONS

While no internationally recognised institution specifically addresses IFFs related to corruption, organisations like the International Monetary Fund and the World Bank have incorporated anti-corruption measures into their operations.

Also, the Stolen Asset Recovery Initiative (StAR), which was established in 2007,²¹⁹ plays a significant role in facilitating the implementation of the UNCAC's asset recovery provisions in 141 jurisdictions, including Ghana and Tanzania.²²⁰

4.3. REGIONAL LEGISLATIVE FRAMEWORK

There are regional governance frameworks that recognise the connection between corruption and IFFs. Key regional instruments are discussed below.

a. The African Union Convention on Preventing and Combating Corruption (AUCPCC)

Adopted in 2003, the AUCPCC assists African nations in formulating strategies to prevent, detect, penalise, and eradicate corrupt practices.²²¹ The Convention aims to foster cooperation among African countries in the fight against corruption by establishing uniform anti-corruption laws and enforcement measures. This harmonisation

²¹⁷ United Nations Convention Against Corruption, Chapter V.

²¹⁸ United Nations Convention Against Corruption, Article 4 (2003).

²¹⁹ The Stolen Asset Recovery Initiative was established by UNODC in partnership with the World Bank. *Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan*. The International Bank for Reconstruction and Development/The World Bank. (2007). https://www.unodc.org/pdf/Star_Report.pdf.

²²⁰ The World Bank & UNODC. Asset Recovery Watch Database. Stolen Asset Recovery Initiative (StAR). <https://star.worldbank.org/asset-recovery-watch-data-base#:~:text=StAR%20Asset%20Recovery%20Watch%20is,assets%20that%20stem%20from%20corruption>.

²²¹ African Union Convention on Preventing and Combating Corruption. Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, 11 July 2003. Entered into force on 5 August 2006.

promotes transparency and accountability in public governance, thereby enhancing the overall integrity and effectiveness of anti-corruption initiatives in Africa.²²²

The AUCPCC recognises acts such as illicit enrichment, laundering, concealing proceeds of corruption, and diverting public funds for unintended purposes as forms of corruption. The Convention also has provisions on asset recovery which can support efforts to retrieve funds that have been illicitly transferred to other African countries through international cooperation and mutual legal assistance.

Tanzania signed the Convention in 2003 and ratified it in 2005. Ghana signed the Convention in 2003, ratified it in 2007, but is yet to domesticate it.

b. The Economic Community of West African States (ECOWAS) Protocol on the Fight against Corruption

The Protocol on the Fight against Corruption was adopted by ECOWAS member states in 2001, but faced challenges in reaching the required threshold to come into force until 2019.²²³ The provisions of the protocol are similar to the provisions in the UNCAC and the AUCPCC. Ghana signed it in 2003 but has yet to domesticate it.

c. The African Union Special Declaration on Illicit Financial Flows

The African Union Special Declaration on Illicit Financial Flows (2015) is a non-binding legal instrument that embodies African countries' resolve to "ensure that all the financial resources lost through illicit capital flight and IFFs are identified and returned to Africa to finance the continent's development agenda".²²⁴ The declaration affirms the high levels of IFFs in the extractive and natural resources sectors, noting that corrupt government agencies and weak institutions worsen the problem. It identifies the role of fighting corruption as a means of curtailing IFFs.²²⁵

d. Southern African Development Community Protocol Against Corruption

In acknowledging that corruption is a serious problem affecting the Southern African Development Community (SADC) countries, the SADC Protocol Against Corruption was adopted in 2001²²⁶ and came into force in 2005 once two-thirds of the member states ratified it.²²⁷ Tanzania signed the Protocol on 14th August 2001 and ratified it on 6th August 2003.²²⁸ The Protocol seeks to:

222 African Union Convention on Preventing and Combating Corruption, Article 2 (2006).

223 Duri, J. (2021). ECOWAS Protocol on the Fight Against Corruption (2001). International Anti-Corruption Commitments. Transparency International. <https://knowledgehub.transparency.org/guide/international-anti-corruption-commitments/8008>.

224 African Union. (2015). Assembly Special Declaration on Illicit Financial Flows. Doc. Assembly/AU/17(XXIV). https://au.int/sites/default/files/documents/29831-doc-assembly_declaration_on_illicit_financial_flow_-_english.pdf.

225 African Union, Assembly Special Declaration on Illicit Financial Flows, https://au.int/sites/default/files/documents/29831-doc-assembly_declaration_on_illicit_financial_flow_-_english.pdf.

226 Nserekwe, D.D.N & Kebonang, Z. (2005). "The SADC Protocol Against Corruption: Example of the Region's Response to an International Scourge." *University of Botswana Law Journal*, vol. 1, no. 6. (pp. 85–119). https://journals.co.za/doi/pdf/10.10520/AJA18172733_182.

227 SADC Protocol Against Corruption. (2001). <https://www.jus.uio.no/english/services/library/treaties/04/4-04/sads-against-corruption.html>.

228 *Ibid*.

- promote and strengthen the development of mechanisms within each state party to prevent, detect, punish, and eradicate corruption in both the public and private sectors.
- promote, facilitate, and regulate cooperation among the state parties to ensure the effectiveness of anti-corruption measures. This includes fostering collaboration in preventing, detecting, punishing, and eradicating corruption across different sectors.
- foster the development and harmonisation of policies and domestic legislation among the state parties concerning the prevention, detection, punishment, and eradication of corruption in both the public and private sectors.

4.4. REGIONAL ANTI-CORRUPTION INSTITUTIONS

While there is no regional institution with a specific mandate to address general IFFs or corruption-related IFFs, institutions such as the African Union Advisory Board Against Corruption under the AUCPCC and the Anti-Corruption Commission under the ECOWAS Protocol on the Fight against Corruption have mandates to oversee implementation of the anti-corruption measures detailed in the various instruments.

4.5. STRENGTHS OF THE INTERNATIONAL AND REGIONAL FRAMEWORKS TO ADDRESS CORRUPTION-RELATED IFFS

a. Fostering cooperation

The UNCAC enhances international cooperation in addressing cross-border corruption cases through mutual legal assistance and extradition. It also provides for cooperation in law enforcement, joint investigations, and special investigative techniques.²²⁹ Meetings of member states also provide a platform for sharing experiences and learning best practices.²³⁰

b. Monitoring and accountability

The AUCPCC establishes a follow-up mechanism through the Advisory Board Against Corruption within the African Union. The board, composed of experts in anti-corruption matters, monitors the implementation of the Convention and facilitates dialogue. This enhances the Convention's impact on preventing corruption in Africa by promoting transparency, accountability, and best practices among member states.

²²⁹ United Nations. International Cooperation (Chapter IV). UNODC. <https://www.unodc.org/unodc/es/corruption/international-cooperation.html>.

²³⁰ *Ibid.*

c. Stolen asset recovery

Corruption-related IFFs often involve assets spread across multiple jurisdictions, necessitating international efforts for their recovery. Such efforts are hampered by sovereignty restrictions which make it difficult for national laws and institutions to operate in a different country.

The Stolen Asset Recovery Initiative (StAR) facilitates asset recovery by promoting partnerships between countries and international institutions with an interest in this issue.²³¹ The initiative also enhances the capacity of those entrusted with combating corruption by providing knowledge and tools for combating corruption, drawing from international best practices.²³²

4.6. GAPS IN INTERNATIONAL AND REGIONAL LEGAL AND INSTITUTIONAL FRAMEWORKS TO ADDRESS CORRUPTION-RELATED IFFS

a. Lack of dedicated international law to address corruption-related IFFs

Currently, there is no dedicated international law that specifically addresses corruption-related IFFs. Though the UNCAC addresses corruption, it does not explicitly establish a link between corruption and IFFs. Similarly, despite recommendations from the High-Level Panel on IFFs from Africa,²³³ no steps have been taken to explicitly integrate IFFs into the AUCPCC. Further, the Advisory Board Against Corruption lacks a dedicated policy to tackle corruption-related IFFs.

b. Lack of dedicated oversight and weak enforcement mechanisms

Both the UNCAC and regional frameworks lack dedicated oversight and enforcement mechanisms. The UNCAC does not have a central institution to monitor and ensure the implementation of its provisions, making it difficult to enforce adherence to the Convention's guidelines and commitments among member states.

Similarly, regional frameworks lack robust enforcement and oversight mechanisms. They also do not provide clear guidance on preventive measures that countries should adopt, nor do they have effective means to ensure compliance. The lack of oversight and enforcement mandates weakens the overall impact of anti-corruption initiatives and hinders their consistent application across jurisdictions.

231 Gilman, S. (2009). "Ending the Impunity of Corrupt Officials and Returning the Proceeds of Corruption: The Stolen Asset Recovery Initiative (StAR)." *Freedom from Fear*. <https://www.un-ilibrary.org/content/journals/25190709/2009/4/9>.

232 Gray, L.A., Hansen, K., Pranvera, R.-K. & Mills, L.C. (2014). *Few and Far: The Hard Facts on Stolen Asset Recovery*. World Bank Group. <http://documents.worldbank.org/curated/en/379871468146375164/Few-and-far-the-hard-facts-on-stolen-asset-recovery>.

233 The High-Level Panel on Illicit Financial Flows (IFFs) is a group established by the United Nations Economic Commission for Africa (UNECA) to investigate and propose solutions to the issue of IFFs from Africa. The panel consists of experts, policymakers, and stakeholders from various fields. The resolution to establish the High-Level Panel on IFFs was made during the Fourth Joint Annual Meetings of the AU/ECA Conference of Ministers of Finance, Planning and Economic Development in 2011. Economic Commission for Africa and the African Union Commission. (2011). *Proceedings of the Fourth Joint Annual Meetings of the AU Conference of Ministers of the Economy and Finance and ECA Conference of African Ministers of Finance, Planning and Economic Development*. https://archive.uneca.org/sites/default/files/uploaded-documents/CoM/cfm2011/com2011_proceedings_en.pdf.

4.7. OPPORTUNITIES TO STRENGTHEN INTERNATIONAL AND REGIONAL LAWS AND INSTITUTIONS

a. International exposure of corruption through shadow reports

International and regional frameworks against corruption can be enhanced through shadow reports. In Ghana, for example, the Ghana Anti-Corruption Coalition's shadow report on the implementation of the UNCAC reveals low levels of corruption reporting.²³⁴ This highlights the need for independent assessments.

CSOs could play a pivotal role in this area by investigating and documenting the true extent of corruption. Shadow reports offer critical insights and additional information on specific issues within a country. These reports can uncover and publicise details omitted or misrepresented by official government reports. By focusing on corruption-related IFFs, CSOs can expose these practices and advocate for stronger anti-corruption measures. Through thorough investigation, reporting, and dissemination of these findings, CSOs can help ensure greater transparency and accountability, thereby strengthening the overall impact of anti-corruption initiatives.

4.8. CORRUPTION-RELATED IFFS IN GHANA

Ghana ranks 70th in Transparency International's Corruption Perceptions Index, with a score of 43 out of 100.²³⁵ Scores below 50 indicate endemic corruption. Ghana's score has fluctuated around the 40s since a high of 48 in 2014.²³⁶

The extractive sector in Ghana, dominated by oil and gold production, plays a significant role in the country's economy. Ranking as the highest gold producer in Africa²³⁷, the sector contributes approximately 18.6% of Ghana's direct income tax²³⁸ and approximately 96.9% of its mineral revenue.²³⁹ This underscores the critical role played by mining in the country's economy.

Despite its importance, the extractive industry, like other sectors, grapples with endemic corruption. IFFs in the sector primarily stem from the illegal exploitation of minerals and the smuggling of resources out of the country. This is said to be enabled by corrupt public officials who receive bribes to facilitate the movement of the funds and minerals, as well as allowing tax evasion. The illicit funds are potentially utilised for illegal purposes, including financing terrorism or purchasing properties outside Ghana.

234 Ghana Anti-Corruption Coalition. (2021). "An Input to the UNCAC Implementation Review Mechanism: Third Year of Review of UNCAC Chapters II and V." <https://uncaccoalition.org/wp-content/uploads/COSP9-submission-UNCAC-Coalition-GACC-Civil-society-parallel-report-Executive-summary-Ghana.pdf>.

235 Transparency International. (2023). *2023 Corruption Perceptions Index - Explore Ghana's Results*. <https://www.transparency.org/en/cpi/2023/index/gha>. [Accessed 09 July 2024].

236 *Ibid.*

237 Oluwole, V. (2023, June 13). "Ghana Reclaims Throne as Africa's Premier Gold Producer." Business Insider Africa. <https://africa.businessinsider.com/local/markets/ghana-reclaims-throne-as-africas-premier-gold-producer/tzegtfn>.

238 Ghana Chamber of Mines, *Performance of the Mining Industry in 2022*, (pp. 28-29). <https://ghanachamberofmines.org/wp-content/uploads/2023/08/Performance-of-the-Mining-Industry-in-2023-.pdf>.

239 Ghana Chamber of Mines, *Performance of the Mining Industry in 2022*, (pp. 30-31). <https://ghanachamberofmines.org/wp-content/uploads/2023/08/Performance-of-the-Mining-Industry-in-2023-.pdf>.



REUTERS/ Luc Gnago

4.8.1. National Laws to Address Corruption-Related IFFs

Ghana currently lacks specific legislation dedicated to addressing corruption. Instead, anti-corruption measures are found in various laws and policy documents, resulting in a fragmented legal framework. Laws that address corruption include: the 1992 Constitution of Ghana 1992, Criminal Offences Act 1960 (Act 29), Office of the Special Prosecutor Act 2017 (Act 959), Public Procurement Act 2016 (Act 914), Public Office Holders (Declaration of Assets and Disqualification) Act 1998 (Act 550), and the Anti-Money Laundering Act 2008 (Act 749). Additionally, the National Anti-Corruption Action Plan (NACAP) outlines the strategic approach to combating corruption. It is, however, noteworthy that none of these laws directly address corruption-related IFFs.

a. The Constitution of Ghana 1992

Chapter 24 of the 1992 Constitution outlines the Code of Conduct for Public Officers, establishing a broad framework for dealing with conflicts of interest as well as the illicit enrichment of public officers. The chapter, however, does not explicitly prohibit acts that constitute corruption, but focuses on related aspects such as the declaration of conflicts of interest and the declaration of assets by public officers. Attempts to enact an elaborate law to give full effect to the provisions of Chapter 24 have been frustrated, most likely because of lack of political will.²⁴⁰

b. National Anti-Corruption Action Plan (NACAP)

The NACAP is a policy document that outlines Ghana's national framework for combating corruption in the country. It contains strategic plans that were identified and agreed upon by various stakeholders following nationwide consultations. Though the action plan has been instrumental in addressing issues of corruption in the country, it does not adequately bring the issue of IFFs into its framework.²⁴¹

c. Criminal Offences Act 1960 (Act 29)

The Criminal Offences Act is one of the few laws in Ghana that explicitly criminalises corruption. The Act adopts a narrowed view, limiting its scope to corrupt practices by public officers while excluding misconduct by private sector actors. The Act does not, however, establish direct links between corruption and IFFs. Therefore, while it addresses corruption by public officials, it fails to tackle the broader issues of how these corrupt activities contribute to and facilitate IFFs.

240 Quayson R.A. (2022). "2022 International Anti-Corruption Day Symposium Topic: Curbing Corruption Through a Rigorous Conduct of Public Officers Law: the Perspective of CHRAJ" (pp. 7-10). <https://chraj.gov.gh/wp-content/uploads/2022/12/SPEECH-BY-MR-RICHARD-A.-QUAYSON-DEPUTY-COMMISSIONER-CHRAJ-ON-IACD2022-.pdf>.

241 Republic of Ghana. (2011). *National Anti-Corruption Action Plan (NACAP)*. <https://chraj.gov.gh/wp-content/uploads/2022/03/NACAP-DOCUMENT-2015-2024.pdf>.

d. Public Procurement Act 2016 (Act 914)

The Public Procurement Act exists to ensure transparency and accountability in the use of public funds. The law requires public officials to adhere to strict rules on tendering and the awarding of contracts to minimise corruption throughout the procurement process.

4.8.2. National Institutions to Address Corruption-Related IFFs

National institutions play a pivotal role in addressing corruption-related IFFs. These institutions are tasked with enforcing anti-corruption laws, investigating financial crimes, and implementing measures to prevent the illicit movement of funds across borders. While national institutions possess significant strengths and capabilities in combatting corruption-related IFFs, they also have gaps that present opportunities for CSOs to enhance their effectiveness. The table below outlines the strengths and areas of weakness of Ghana's national institutions in addressing corruption-related IFFs.

INSTITUTION	POWER/MANDATE	STRENGTHS	GAPS
Commission on Human Rights and Administrative Justice (CHRAJ)	<ul style="list-style-type: none"> Established in 1993 by Act 456 pursuant to Article 216 of the 1992 Constitution, with triple mandate as a National Human Rights Institution (NHRI), the public services ombudsman (administrative justice), and an anti-corruption agency and ethics office for the public sector.²⁴² 	<ul style="list-style-type: none"> Instrumental in coordinating the implementation of the National Anti-Corruption Action Plan (NACAP).²⁴³ Has investigative powers and has exercised them to investigate sitting presidents and their ministers on both grand and petty corruption-related cases.²⁴⁴ 	<ul style="list-style-type: none"> Faces significant gaps in addressing IFFs due to delays in resolving corruption-related cases, inadequate human expertise in identifying different forms of IFFs, and financial and human resource constraints in implementing its mandate.²⁴⁵

²⁴² Commission on Human Rights and Administrative Justice Act, 1993 (Act 456).

²⁴³ CHRAJ. (2015). *National Anti-Corruption Action Plan (NACAP) Progress Report (January-September 2015)*. <https://chraj.gov.gh/wp-content/uploads/2021/09/NACAP-APR-2015.pdf>.

²⁴⁴ Ayamdoo, C. (2018, June 11). "The Experience of the Commission on Human Rights and Administrative Justice in Addressing Corruption." <https://www.ohchr.org/Documents/Issues/Development/GoodPracticesagainstCorruption/CHRAJ.docx>.

²⁴⁵ Engmann, R. (2023, July 6). "Inadequate Funding Constraining Our Mandate - CHRAJ." Commission on Human Rights and Administrative Justice. <https://chraj.gov.gh/news/inadequate-funding-constraining-our-mandate-chraj/>.

INSTITUTION	POWER/MANDATE	STRENGTHS	GAPS
The Public Procurement Authority (PPA)	<ul style="list-style-type: none"> Mandated by the PPA Act 2003 (Act 663) to regulate public procurement processes in Ghana. 	<ul style="list-style-type: none"> Ensures adherence to global standards in government procurement processes.²⁴⁶ The PPA Act recommends the establishment of Entity Tender Committees and Tender Review Boards within public institutions to monitor and ensure compliance of procurement processes and the avoidance of possible corrupt practices that may result in IFFs.²⁴⁷ 	<ul style="list-style-type: none"> Faces significant gaps in addressing IFFs due to the low-level capacity of public procurement officers, leading to inefficiencies in monitoring and enforcement, lack of transparency in public procurement activities.²⁴⁸ Logistical and financial challenges make monitoring and evaluation of annual procurement activities of public institutions ineffective.²⁴⁹
The Office of the Special Prosecutor (OSP)	<ul style="list-style-type: none"> Established by the OSP Act 2017 (959) to conduct investigations and prosecute cases independently. 	<ul style="list-style-type: none"> Has investigated a number of alleged corruption-related cases and suspended illegal financial activities which can lead to IFFs.²⁵⁰ 	<ul style="list-style-type: none"> Reported challenges include inadequate staff and financial resources to investigate alleged or suspected cases of corruption. Also faces delays in the judiciary's prosecution of alleged corruption cases after its investigations, impeding the OSP's efforts in the fight against corruption.²⁵¹

246 Matto, M. C., Ame, A. M. & Nsimbila Kabelele, P. M. (2023). "Measuring Compliance in Public Procurement: The Case of Tanzania." *International Journal of Procurement Management*, vol. 18, no. 2. (pp. 188-212). https://www.researchgate.net/publication/360606971_Measuring_compliance_in_public_procurement_the_case_of_Tanzania.

247 Public Procurement Authority. (2011). "Building Blocks for Effective Procurement Management." *E-Procurement Bulletin*. <https://ppa.gov.gh/wp-content/uploads/2019/01/20110506-PPA-E-Bulletin-May-Jun-2011.pdf>.

248 Public Procurement Authority, "Building Blocks for Effective Procurement Management," <https://ppa.gov.gh/wp-content/uploads/2019/01/20110506-PPA-E-Bulletin-May-Jun-2011.pdf>.

249 *Ibid*.

250 Office of the Special Prosecutor. About Us. <https://osp.gov.gh/>.

251 Anku-Tsede, O., Arthur, R. & Amankwah, M. O. (2023, April 18). "Special Prosecutor: Panacea or Facade to Institutionalised Corruption in Ghana?" *Cogent Social Sciences*, vol. 9, no. 1. <https://www.tandfonline.com/doi/full/10.1080/23311886.2022.2161185>.

INSTITUTION	POWER/MANDATE	STRENGTHS	GAPS
Parliament	<ul style="list-style-type: none"> Enacts laws and regulations aimed at preventing corruption and IFFs. 	<ul style="list-style-type: none"> Has enacted various anti-corruption legislations, including the Code of Conduct Amendment Act, the Right to Information Act, the Whistle Blowers Act, and the NACAP.²⁵² With hearings that are held transparently and open to the public, the Public Accounts Committee of Parliament sheds light on the mismanagement of public funds by public officials. 	<ul style="list-style-type: none"> Has limited human and financial resources, as well as alleged political interference and delays in passing anti-corruption bills into law.²⁵³
Judicial Service of Ghana	<ul style="list-style-type: none"> Responsible for adjudicating corruption cases and ensuring the rule of law in the country. 	<ul style="list-style-type: none"> Prosecutes and undertakes activities to prevent corruption and IFFs. Also collaborates with other agencies such as CHRAJ, the Office of the Special Prosecutor, and CSOs to address corruption. 	<ul style="list-style-type: none"> Some of its challenges include alleged political interference in adjudicating justice on corruption-related cases coupled with excessive delays in passing judgments, high costs, and alleged corruption within the organisation.²⁵⁴
Financial Intelligence Centre (FIC)	<ul style="list-style-type: none"> Established by the Anti-Money Laundering Act 2008 (Act 749). 	<ul style="list-style-type: none"> Provides financial intelligence to partners on illicit financial transactions. 	<ul style="list-style-type: none"> Inadequate technological infrastructure and insufficient staff expertise and skills.²⁵⁵

252 Draman, R. (2020). "Weakening Parliamentary Oversight, Increasing Corruption: Ghana." *Anti-Corruption Evidence: The Role of Parliaments in Curbing Corruption*. (pp. 51-67). https://www.researchgate.net/publication/332864219_Weakening_Parliamentary_Oversight_Increasing_Corruption_Ghana.

253 Dauda, H., Sayibu Suhuyini, A. & Antwi-Boasiako, J. (2020). "Challenges of the Public Accounts Committee of Ghana's Parliament in Ensuring an Efficient Public Financial Management." *The Journal of Legislative Studies*, vol. 26, no. 4. (pp. 542-557). <https://www.tandfonline.com/doi/pdf/10.1080/13572334.2020.1784527#:~:text=The%20study%20had%20found%20four,these%20challenges%20must%20be%20overcome>.

254 Osse, L. & Asiamah, G. B. (2020). "Ghanaians Cite High Cost, Bias, and Long Delays as Barriers to Using Formal Justice System." *Afrobarometer*. https://www.afrobarometer.org/wp-content/uploads/2022/02/ab_r8_dispatchno347_high_cost_bias_delays_prevent_ghanaians_from_using_justice_system.pdf.

255 Stonecipher, E. (2020). *Strengthening Action Against Corruption (STAAC) Briefing: Transforming Ghana's Financial Intelligence Centre*. STAAC & Adam Smith International. <https://adamsmithinternational.com/app/uploads/2021/06/5.-STAAC-Briefing-FIC-17Dec2020.pdf>.

INSTITUTION	POWER/MANDATE	STRENGTHS	GAPS
Economic and Organised Crime Office (EOCO)	<ul style="list-style-type: none"> The EOCO ACT 2010 (Act 804) mandates it to investigate economic and organised crime offences, including corruption-related offences. 	<ul style="list-style-type: none"> Contributes to the detection and prosecution of IFFs by enhancing financial integrity and combating financial crimes in Ghana.²⁵⁶ 	<ul style="list-style-type: none"> Faces inadequate human and technological infrastructure. Also alleged political interference in dealing with IFF-related corruption cases. Inability to gather evidence to support allegations of corruption.²⁵⁷

4.8.3. Opportunities to Strengthen National Laws and Institutions in Ghana

a. Advocacy for legislation on corruption-related IFFs

CSOs in Ghana could advocate for the enactment of laws that specifically address corruption-related IFFs. The advocacy might focus on the enactment of new laws or amendment of existing laws to incorporate provisions that address corruption-related IFFs.

Historically, CSOs in Ghana have played a role in influencing legislative changes. For instance, they were instrumental in the enactment of the Right to Information Act²⁵⁸ in 2019, following prolonged delays by successive governments to enact this legislation.

b. Strengthen calls for specialised courts

The Ghana Anti-Corruption Coalition recently advocated for the establishment of a specialised anti-corruption court.²⁵⁹ This advocacy could be strategically achieved by submitting a formal proposal to the Chief Justice, outlining the benefits and operational framework for such a court and emphasising its potential to streamline and intensify efforts against corruption. Borrowing from countries where anti-corruption courts have expanded jurisdiction over related matters such as organised crime and money laundering,²⁶⁰ CSOs could push for the specialised court, staffed with skilled personnel, to have jurisdiction over IFFs. This would enable cases involving corruption-related IFFs to be heard and adjudicated by the specialised court, thereby enhancing the legal framework's ability to tackle the complex and intertwined nature of corruption and IFFs effectively.

²⁵⁶ Bank of Ghana. (2022). *Financial Stability Review – Theme: Managing Financial Stability Risks in the Midst of a Difficult Macroeconomic Environment and Domestic Debt Exchange Programme*. <https://www.bog.gov.gh/wp-content/uploads/2023/09/Financial-Stability-Review-2022.pdf>

²⁵⁷ Mawutormyo Dzodzegbe, C. (2024, January 30). "Evidence Gathering is a Major Challenge - EOCO Boss on Fighting Crime." MyJoyOnline. <https://www.myjoyonline.com/evidence-gathering-is-a-major-challenge-eoco-boss-on-fighting-crime/>

²⁵⁸ Act No. 989.

²⁵⁹ MyJoyOnline.com. (2023, December 11). "Ghana Needs Specialised Anti-Graft Court to Deal with Corruption – GACC." <https://www.myjoyonline.com/gha-na-needs-specialised-anti-graft-court-to-deal-with-corruption-gacc/>.

²⁶⁰ Judiciaries Worldwide. Specialized Courts. <https://judiciariesworldwide.fjc.gov/specialized-courts>.

c. Advocacy for transparency and accountability

CSOs could advocate for the implementation of advanced information verification systems to enhance transparency and accountability in asset ownership and transfer in Ghana. These systems can help verify the submission of asset declaration information and beneficial ownership information by public officials, thereby reducing the risk of IFFs. CSOs could engage with relevant stakeholders, including government agencies and international partners, to promote the adoption of such systems.

d. Monitoring and oversight

CSOs could monitor the implementation of existing anti-corruption laws and initiatives. They can also provide oversight to ensure that government agencies and institutions adhere to anti-corruption standards and effectively combat corruption-related IFFs. CSOs could track government spending to ensure that funds allocated for development projects are not diverted or misused due to corruption-related IFFs or kept in safe havens.

4.9. CORRUPTION-RELATED IFFS IN TANZANIA

Tanzania is a resource-rich country endowed with a variety of minerals, including gold, diamonds, tanzanite, and rubies. Despite this wealth, the country struggles to receive an equitable share of revenue from the mining sector due to corruption and tax-related IFFs. The mining sector contributes only 9.1% of the national GDP, a small fraction of the potential revenue the country could be generating from its abundant minerals.²⁶¹

The severity of corruption in Tanzania is highlighted by its low scores on Transparency International's Corruption Perceptions Index 2023. The country scored 40 out of 100, ranking 87 out of 180 countries and territories.²⁶² A score below 50 denotes a corruption crisis.²⁶³ The *One Billion Dollar Question Revisited* report further underscores the problem, estimating that Tanzania could be losing about USD 1.3 billion (TZS 2.9 trillion) annually from its national budget due to corruption.²⁶⁴ This significant financial drain diverts crucial resources away from funding essential public services, severely impacting the nation's development and economic growth.

One common form of corruption in the mining sector involves trading in influence, where individuals and entities leverage their connections or power to negotiate with corrupt government officials who subvert the law to divert profits from the sector to other jurisdictions.²⁶⁵ The prevalence of corruption within the Tanzania Revenue Authority (TRA) is reflected in its fourth-place ranking in a survey asking which public institutions are perceived to be most prone to corruption.²⁶⁶

261 Nashon, P. (2023, August 19). "Mining Contribution to GDP Increases." *Daily News*. <https://dailynews.co.tz/mining-contribution-to-gdp-increases/#:~:text=DODOMA%3A%20THE%20mining%20sector%27s%20contribution>.

262 Transparency International. (2023). *2023 Corruption Perceptions Index*. <https://www.transparency.org/en/cpi/2023>. [Accessed 09 July 2024].

263 *Ibid*.

264 Curtis & Ngowi, *The One Billion Dollar Question*, (p.9), <https://www.kirkensnodhjelp.no/globalassets/lanserte-rapporter/2017/one-billion-dollar-question-f.pdf>.

265 Daghar, M. (2021, May 25). "Mining and Extractives — All That Glitters is Not Gold in Tanzania." *ENACT Observer*. <https://enactafrica.org/enact-observer/all-that-glitters-is-not-gold-in-tanzania>.

266 Prevention and Combating of Corruption Bureau. (2020). *National Governance and Corruption Survey: Volume 1: Analysis of Main Findings, Conclusions and Recommendations*. <https://www.pccb.go.tz/wp-content/uploads/2022/07/NGACS-2020-Vol-1-Analysis-of-Main-Findings-Conclusions-and-Recommendations.pdf>.



Reuters/George Mulala

Corruption plays a key role in facilitating the movement of illicit money from Tanzania's mining sector to other jurisdictions, resulting in substantial loss of revenue. That lost revenue could go towards improving the lives of its citizens, for example by financing the government social service budget to ensure equitable access to social services. The government has implemented legislative and institutional measures to combat corruption in general and within the mining sector, and these are discussed in the subsequent section.

4.9.1. National Laws to Address Corruption-Related IFFs

There are various laws and regulations addressing corruption in Tanzania. The principal law that specifically addresses corruption is the Prevention and Combating of Corruption Act.²⁶⁷ This Act is implemented alongside the Economic and Organised Crime Control Act²⁶⁸, which provides for the punishment of economic crimes, including corruption. The two laws are discussed in detail below.

a. The Prevention and Combating of Corruption Act

The Prevention and Combating of Corruption Act²⁶⁹ addresses a wide range of corruption offences including those related to IFFs, whether minor or serious. One of the main strengths of the law is the establishment of

²⁶⁷ Cap 329 R.E. 2022.

²⁶⁸ Cap 200 R.E. 2022.

²⁶⁹ Cap 329 R.E. 2022.

an independent Prevention and Combating of Corruption Bureau (PCCB).²⁷⁰ The PCCB was established to implement anti-corruption measures in public and private sectors, foster public support, and advise on ways to curb corrupt practices. Further, the law prescribes penalties for petty and grand corruption offences.

There are, however, gaps in the law that hinder its effectiveness in curbing corruption. The law does not establish the minimum penalty for corruption offences, including those related to IFFs, and when provided, the penalties are lenient, therefore insufficient to deter corrupt practices.²⁷¹ For instance, the penalty for the offence of trading in influence is a maximum of TZS 3 million (about USD 1,130), which is too low considering the high amounts involved in corruption-related IFFs.²⁷² Additionally, research shows that the enforcement of the PCCB Act is ineffective in addressing grand corruption, potentially worsening corruption in Tanzania.²⁷³

b. The Economic and Organised Crime Control Act

The Economic and Organised Crime Control Act²⁷⁴ is a critical instrument in the battle against corruption. The Act establishes a Corruption and Economic Crimes Division of the High Court that deals with all organised economic crimes, including corruption offences.²⁷⁵ The court has jurisdiction to determine corruption offences where the value is TZS 1 billion (USD 372,000) or more.²⁷⁶ Further, the Act provides for strict penalties for all corruption offences, including those related to IFFs.

This law, however, does not have provisions for international cooperation in preventing corruption offences relating to IFFs. This gap hinders access to crucial information for detecting, investigating, and prosecuting such offences, thereby impeding the effective implementation of the law in Tanzania.

4.9.2. Institutions Addressing Corruption-Related IFFs

The PCCB is the principal institution established to prevent and combat corruption. The Bureau collaborates with a range of private and national institutions, as well as law enforcement agencies, to enhance the effectiveness of anti-corruption efforts in the country.²⁷⁷ The table below outlines the institutions involved, and their respective powers, strengths, and identified gaps in addressing corruption in Tanzania.

²⁷⁰ Prevention and Combating of Corruption Act Cap 329 R.E., Section 4 (2022).

²⁷¹ Prevention and Combating of Corruption Act Cap 329 R.E., Section 33 and 31, (2022).

²⁷² Prevention and Combating of Corruption Act.

²⁷³ Gan Integrity. (2020, November 4). Tanzania Risk Report. <https://www.ganintegrity.com/country-profiles/tanzania/>.

²⁷⁴ Cap 200 R.E 2022.

²⁷⁵ Economic and Organised Crime Act Cap 200 R.E., Section 3 (2022).

²⁷⁶ Economic and Organised Crime Act Cap 200 R.E., Section 3 (3)(a), (2022).

²⁷⁷ Prevention and Combating of Corruption Bureau Act Cap 329 R.E., Sections 45 and 46, (2022).

INSTITUTION	POWER/MANDATE	STRENGTHS	GAPS
Prevention and Combating of Corruption Bureau (PCCB)	<ul style="list-style-type: none"> Established under Section 5(1) of the PCCB Act Cap 329 R.E. 2022. Deals with all corruption offences in general, including corruption offences which may be attributed to IFFs. Has the power to investigate and prosecute corruption offences. With a court order, the Bureau can forfeit assets and freeze accounts of corruption offenders.²⁷⁸ 	<ul style="list-style-type: none"> Collaborates with various national, international, and non-state actors in combating corruption. Has the capacity to establish memorandums of understanding (MoU) with other institutions to collaborate in efforts to prevent corruption.²⁷⁹ Existence of PCCB offices countrywide enables the Bureau to prevent corruption starting at the local level.²⁸⁰ Available use of the PCCB Information and Communications Technology (ICT) support system.²⁸¹ Anti-corruption clubs in secondary schools and academic institutions aid in raising awareness on corruption. 	<ul style="list-style-type: none"> Lacks staff with the necessary expertise to efficiently identify, detect, investigate, and prosecute corruption offences related to IFFs.²⁸² Limited interagency cooperation with law enforcement agencies, other national institutions, and private institutions in the prevention of corruption.²⁸³ Inadequate communication between PCCB units and among staff weakens the ability of the Bureau to prevent corruption.²⁸⁴ Inadequate monitoring and evaluation of the effectiveness of anti-corruption programmes.²⁸⁵ Inadequate training policy.²⁸⁶ Does not currently have a dedicated specialised unit to address corruption offences associated with IFFs.²⁸⁷ Shortage of funds to investigate grand corruption cases related to IFFs.²⁸⁸ Alleged political interference impedes the Bureau from performing its functions effectively.²⁸⁹

278 Prevention and Combating of Corruption Bureau Act.

279 Prevention and Combating of Corruption Bureau. *Strategic Plan 2022/23-2025/26*. <https://www.pccb.go.tz/index.php/2022/11/09/2834/>.

280 Prevention and Combating of Corruption Bureau, *Strategic Plan 2022/23-2025/26*, (p. 15), <https://www.pccb.go.tz/index.php/2022/11/09/2834/>.

281 *Ibid*.

282 Policy Forum. (2018, December 7). "A Review of the Performance of Tanzania's Prevention and Combating of Corruption Bureau, 2007-16." (pp. 58-63) <https://www.policyforum-tz.org/news/2018-12-07/review-performance-tanzanias-prevention-and-combating-corruption-bureau-2007-16>.

283 Policy Forum, "A Review of the Performance of Tanzania's Prevention and Combating of Corruption Bureau", <https://www.policyforum-tz.org/news/2018-12-07/review-performance-tanzanias-prevention-and-combating-corruption-bureau-2007-16>.

284 Prevention and Combating of Corruption Bureau, *Strategic Plan 2022/23-2025/26*, (p.16), <https://www.pccb.go.tz/index.php/2022/11/09/2834/>.

285 Prevention and Combating of Corruption Bureau, *Strategic Plan 2022/23-2025/26*, (p.15), <https://www.pccb.go.tz/index.php/2022/11/09/2834/>.

286 *Ibid*.

287 The Prevention and Combating of Corruption Bureau Act, Cap 329 R.E (2022).

288 Rahman, K., Martinez, R., Kukutschka, B., Banoba, P. & Cooksey, B. (2019). *Overview of Corruption and Anti-Corruption in Tanzania*. Transparency International. https://knowledgehub.transparency.org/assets/uploads/helpdesk/Country-profile-Tanzania-2019_PR.pdf.

289 Policy Forum. "A Review of the Performance of Tanzania's Prevention and Combating of Corruption Bureau." (p. 7). <https://www.policyforum-tz.org/news/2018-12-07/review-performance-tanzanias-prevention-and-combating-corruption-bureau-2007-16>.

INSTITUTION	POWER/MANDATE	STRENGTHS	GAPS
National Prosecutions Services, headed by the Director of Public Prosecutions (DPP)	<ul style="list-style-type: none"> Established under Section 4 of the National Prosecutions Service Act Cap 430 R.E. 2022. Has the power to investigate and prosecute all criminal offences, including corruption offences. 	<ul style="list-style-type: none"> Collaborates with other agencies, such as the PCCB, to prosecute corruption offenders. 	<ul style="list-style-type: none"> Proportion of corruption cases taken to court is low compared to the number of cases reported and investigated.²⁹⁰ Shortage of legal professionals with the expertise to investigate and prosecute corruption cases linked to IFFs.²⁹¹
Financial Intelligence Unit (FIU)	<ul style="list-style-type: none"> Established under Section 4 of the Anti-Money Laundering Act Cap 423 R.E. 2022. Mandated to receive, collect, analyse, and disseminate information on IFF-related financial transactions, including those related to corruption offences. 	<ul style="list-style-type: none"> Cooperates with the PCCB to address corruption within the financial sector. Possesses skilled professionals who are proficient in investigating financial crimes associated with corruption and IFFs. 	<ul style="list-style-type: none"> Lacks the enforcement authority to prevent and prosecute corruption offences linked to IFFs.²⁹² Poor interagency coordination and cooperation with enforcement agencies, including the PCCB.²⁹³
Parliament	<ul style="list-style-type: none"> Established under Article 62 of the Constitution of the United Republic of Tanzania. Mandated with the power to make laws, including corruption laws.²⁹⁴ 	<ul style="list-style-type: none"> Represents the people's views and decisions in making laws, including anti-corruption laws. 	<ul style="list-style-type: none"> Members of Parliament have varying levels of understanding regarding IFFs.²⁹⁵ Alleged lack of political will to make robust anti-corruption laws and enforce them to prevent and combat corruption.²⁹⁶

290 Policy Forum, "A Review of the Performance of Tanzania's Prevention and Combating of Corruption Bureau," <https://www.policyforum-tz.org/news/2018-12-07/review-performance-tanzanias-prevention-and-combating-corruption-bureau-2007-16>.

291 *Ibid.*

292 Anti-Money Laundering Act, Cap 423 R.E., Section 4 (2022).

293 Controller and Auditor General. (2020). *Performance Audit Report on the Implementation of National Initiatives to Combat Money Laundering*. https://www.nao.go.tz/uploads/IMPLEMENTATION_OF_NATIONAL_INITIATIVES_TO_COMBAT_MONEY_LAUNDERING.pdf.

294 Article 64 of the Constitution of the United Republic of Tanzania, 1977.

295 Article 67(1)(a) of the Constitution of the United Republic of Tanzania, 1977 outlines the eligibility criteria for individuals to become Members of Parliament, stipulating that proficiency in reading and writing Kiswahili is a requirement irrespective of educational attainment. This provision poses a challenge to the Parliament in formulating robust anti-corruption legislations.

296 Section 7(4) of the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2020 grants immunity to senior government officials, including the President, Vice President, Prime Minister, the Speaker, Deputy Speaker, and Chief Justice, shielding them from being prosecuted in their personal capacity in any court for actions taken or neglected in the course of performing their official duties.

INSTITUTION	POWER/MANDATE	STRENGTHS	GAPS
Courts	<ul style="list-style-type: none"> Subordinate courts are established under the Magistrates' Courts Act Cap 11 R.E. 2019, and the Corruption and Economic Crimes Division of the High Court established under Section 3 of the Economic and Organised Crime Control Act Cap 200 R.E. 2022. Vested with the power to determine corruption cases including corruption offences relating to IFFs. 	<ul style="list-style-type: none"> Determine corruption cases, including those related to IFFs. There is a special High Court Division established to deal with corruption cases and economic crime cases. 	<ul style="list-style-type: none"> Some magistrates and judges have limited understanding of IFFs and their connection to corruption.²⁹⁷ Delay in adjudicating corruption cases related to IFFs.²⁹⁸
Controller and Auditor General (CAG)	<ul style="list-style-type: none"> Established under Article 143 of the Constitution of the United Republic of Tanzania 1977. Audits government finances for transparency and accountability. The CAG report helps in detecting corruption transactions. 	<ul style="list-style-type: none"> Is an independent office free from any political influence in performing its duties, including detection of corruption.²⁹⁹ Can submit the CAG report to the speaker of the National Assembly³⁰⁰ if the President fails to do so. 	<ul style="list-style-type: none"> Has no power to enforce its report to prevent corruption.³⁰¹

297 Policy Forum, "A Review of the Performance of Tanzania's Prevention and Combating of Corruption Bureau," <https://www.policyforum-tz.org/news/2018-12-07/review-performance-tanzanias-prevention-and-combating-corruption-bureau-2007-16>.

298 *Ibid.*

299 Constitution of the United Republic of Tanzania, Article 143(6) (1977).

300 Constitution of the United Republic of Tanzania, Article 143(4) (1977).

301 Article 143, of the Constitution of the United Republic of Tanzania, 1977.

INSTITUTION	POWER/MANDATE	STRENGTHS	GAPS
Public Procurement Regulatory Authorities (PPRA)	<ul style="list-style-type: none"> Established under Section 7 of the Public Procurement Act Cap 410 R.E. 2022. Monitor the awarding and implementation of public contracts to ensure contracts are awarded impartially and on merit. 	<ul style="list-style-type: none"> Use the automated National e-Procurement System of Tanzania (NeST) in all procurement procedures to prevent and combat corruption in public procurements.³⁰² 	<ul style="list-style-type: none"> Poor technology and network systems affect the effective monitoring of the procurement process.³⁰³
Civil society organisations (CSOs)	<ul style="list-style-type: none"> Established under the Societies Act and Non-Governmental Organisations Act. Play a significant role in raising awareness of the impact of corruption, conducting research on corruption, and capacity building on IFFs. These efforts contribute to preventing corruption in Tanzania. 	<ul style="list-style-type: none"> Collaborate with the government in preventing corruption through research, capacity building trainings, lobbying, and public awareness to reform anti-corruption laws and expand public awareness on corruption related to IFFs. 	<ul style="list-style-type: none"> Resource constraints limit ability to conduct corruption research. Alleged political interference.³⁰⁴ Limited access to reliable information as the PCCB report is not a public document.³⁰⁵

302 Public Procurement Act, Cap 410 R.E, Section 63, (2022).

303 Mchopa, A. *The Adoption Of E-Procurement in Tanzania Public Procurement: Progress, Challenges and the Way Forward*. https://www.academia.edu/4991452/THE_ADOPTION_OF_E_PROCUREMENT_IN_TANZANIA_PUBLIC PROCUREMENT PROGRESS CHALLENGES AND THE WAY FORWARD.

304 Ilunde, I. (2013, August 27). "How Can CSOs And Government Collaborate to Enhance Good Governance and Accountability?" Presented at the Social Accountability Practitioners' Conference, Dar es Salaam. https://www.policyforum-tz.org/sites/default/files/IsraellIlunde_0.pdf.

305 Ilunde, "How Can CSOS And Government Collaborate to Enhance Good Governance and Accountability?," https://www.policyforum-tz.org/sites/default/files/IsraellIlunde_0.pdf.

CASE STUDY: MINING COMMISSION CORRUPTION IN PROCUREMENT

The Mining Commission of Tanzania signed a contract with the construction company MCB Company Limited of Mbeya University of Science and Technology on 7th January, 2021. The contract entailed the construction of a new office building for the Commission's headquarters in Dodoma, with a completion timeline of 12 months and a contract price of TZS 4.07 billion (USD 1.5 million). However, an audit conducted by the Controller and Auditor General (CAG) uncovered significant noncompliance with the Public Procurement Act 2011 and its subsequent amendments in 2016, as well as the Regulations of 2013.

The areas of noncompliance identified by the CAG included using the single-source method of procurement without reasonable justification of why no other vendor could perform the same service, failing to submit performance security for the contract, and conducting the tendering process offline (not through the Tanzania National e-Procurement System, the predecessor to NeST). This failure by Mining Commission officials to adhere to the prescribed procurement procedures amounted to an abuse of position, which is a corruption offence under Section 31 of the Prevention and Combating of Corruption Act.³⁰⁶

CASE STUDY: EFFORTS BY PCCB TO PREVENT AND PROSECUTE CORRUPTION CASES³⁰⁷

According to statistics from the Prevention and Combating of Corruption Bureau (PCCB), the number of administrative actions taken against public servants engaged in bribery and other corrupt behaviour from 2015/2016 to June 2020/2021 was 408. In addition, the number of new cases filed in courts in that same time frame was 3,000, while the number of convictions against corrupt offenders in courts was 1,406. The money recovered by the PCCB between 2015/2016 and 2020/2021 was more than TZS 289 billion (USD 107.7 million).

306 Cap 329 R.E. 2022.

307 Prevention and Combating of Corruption Bureau. (2022). PCCB Statistics. <https://www.pccb.go.tz/wp-content/uploads/2022/05/Takwimu-Uchunguzi-2015-hadi-2021.pdf>.

4.9.3. Opportunities to Strengthen National Laws and Institutions in Tanzania

CSOs in Tanzania have various key opportunities to advocate for addressing the gaps identified in the laws and institutions dealing with corruption. Some are detailed below.

a. Advocacy for specialised unit

CSOs could advocate for the establishment of a specialised unit within the PCCB dedicated to investigating and prosecuting corruption offences related to IFFs. This unit should be staffed with skilled professionals with expertise in financial crimes and corruption investigations.

b. Increased budgetary allocation

CSOs could push for increased funding and resources for the Bureau to enhance its capacity to effectively address corruption offences in complex sectors like mining. To ensure resources are not diverted, CSOs could advocate for budgetary allocations specifically earmarked for combating corruption-related IFFs.

4.10. CONCLUSION

Both Ghana and Tanzania grapple with reported weak governance and transparency, as well as gaps in the legal frameworks that facilitate corruption-related IFFs. These IFFs deplete government revenues, undermining development, and erode public trust. Addressing corruption-related IFFs requires immediate and coordinated action, and strong legal and institutional frameworks are essential. CSOs can play a crucial role by acting as watchdogs to promote accountability, advocating for legislative changes, conducting research, raising awareness through campaigns, and advocating for transparency. Additionally, by fostering partnerships with other CSOs, the academia, and the government, CSOs can amplify their impact in the fight against corruption-related IFFs.



5. Money Laundering in Kenya

It is estimated that Kenya has lost approximately USD 11 billion in IFFs since 1970, a significant portion of which has been through money laundering. This has adversely affected the country's economic stability and hindered its growth trajectory.³⁰⁸ Between 2021 and 2023, the Financial Reporting Centre (FRC) and the Directorate of Criminal Investigations (DCI) investigated the laundering of an estimated KES 86 billion (USD 653 million) into the Kenyan financial system from suspected illicit activities. These funds were proceeds of various crimes, including corruption, fraud, and tax-related crimes.³⁰⁹

There are various definitions of money laundering. This report adopts the wide definition proffered by the UNTOC: "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 his or her action [or] 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."³¹⁰

308 Rudich, *Kenya Illicit Finance Risks and Assessment*, (p.16), <https://thesentry.org/wp-content/uploads/2021/10/KenyaIllicitFinance-TheSentry-Oct2021.pdf>.

309 Alushula, P. (2024, February 21). "Kenyans Under Probe Over Sh86bn 'Illicit' Transactions." *Nation*. <https://nation.africa/kenya/business/kenyans-under-probe-over-sh86bn-illicit-transactions-4531854>.

310 UNODC. (2004). *United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*. Article 6 (1) (a). https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf.

The FATF recommends that countries criminalise money laundering and apply the crime of money laundering to all serious offences to adopt the widest range of predicate³¹¹ offences.³¹²

Money laundering not only reduces tax revenue due to laundered cash going untaxed but also erodes confidence in financial institutions and can deter international investors and trading partners, potentially harming Kenya's banking system and overall economic development.

In February 2024, Kenya was added to the FATF's grey list. This designation signals significant shortcomings in the country's anti-money laundering (AML) framework, necessitating enhanced monitoring measures to ensure Kenya takes appropriate actions to rectify these deficiencies. Being on the grey list has several critical implications. It erodes confidence in Kenya's financial system, as it indicates that the country may not be fully equipped to manage the risks associated with financial transactions. This loss of confidence can damage Kenya's international reputation, making it more challenging to secure funding from global markets and potentially stalling economic growth.

Further, grey listing indicates vulnerabilities within the country's AML framework, making it attractive to criminal elements seeking to exploit these loopholes for illicit financial activities. The grey list status underscores the urgent need to scrutinise the existing AML framework in Kenya and to identify opportunities for stakeholders, such as CSOs, to strengthen it. By addressing these gaps, stakeholders can help mitigate the occurrence of IFFs through money laundering.

While money laundering activities have been reported in multiple sectors, this report focuses on the real estate and banking sectors. The focus on real estate is due to its vulnerability to money laundering activities, as well as deficiencies within the AML regulatory framework that enhance its risk profile. The banking sector, while well-regulated, has been consistently identified by the taskforce on the National Risk Assessment on Money Laundering and Terrorism Financing (NRA Taskforce) as a high-risk sector for AML purposes due to its size, both in value and cross-national potential. The banking sector's products, services, and business process are rapidly evolving due to advancement in financial technology, making the sector vulnerable to exploitation as technology often advances faster than regulation.

5.1. KENYA'S VULNERABILITIES TO MONEY LAUNDERING

Multiple factors, separately and collectively, enhance Kenya's vulnerability to IFFs through money laundering activities. Some of the factors that enable money-laundering activities in Kenya are economically beneficial but can still be exploited. Efforts to combat money laundering must be carefully considered, targeted, and persistent to avoid undermining the benefits of these factors to the Kenyan economy. These factors include, but are not limited to, the following:

311 JX. (2023, November 27). Predicate Offence. AML-CFT. <https://aml-cft.net/library/predicate-offence/>.

312 FATF. (2023). *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations*. <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>.

a. Geographical location

Kenya's geographical location and accessible entry points have positioned it as a strategic gateway to many countries inside and outside Africa. This increases Kenya's vulnerability to IFFs through money laundering activities, making it easier to move the proceeds of crime across borders through the country. Further, Kenya shares direct borders with countries that have historically been prone to conflict, including Somalia, Ethiopia, and South Sudan, which makes it susceptible to the entry of foreign politically exposed persons (PEPs) as well as the proceeds of crimes from neighbouring countries.

b. Regional business expansion

In the recent past, various Kenyan entities, including those operating in sectors prone to money laundering such as financial services, have expanded their operations into other countries in the region. This increased regional footprint, while generally positive, also enhances the risk for IFFs through cross-border money laundering activities.

c. Technological advancement and adoption

Kenya is experiencing rapid technological advancements and innovations, particularly in financial technology ("fintech") and technology-backed trade services and solutions. Rapid technological advancements increase the risk of money laundering activities as technology often advances faster than the law, potentially resulting in gaps in the legal framework and oversight mechanisms.

d. Cash-based economy

Notwithstanding the growth and adoption of digital financial services in Kenya, cash transactions are still widely utilised in the country, including high-value transactions such as the purchase of real estate property and luxury cars. Cash transactions enhance the risk for money laundering activities due to their limited record trail and difficulty in tracing the transactions.

e. Regulatory and institutional deficiencies

The existence of deficiencies in Kenya's AML framework was highlighted in the country's grey listing by the FATF early this year. This potentially increases Kenya's vulnerability to criminal actors in relation to money laundering.

f. Corruption

Corruption is a high-risk predicate offence in Kenya. It is reportedly one of the most pervasive crimes linked to money laundering, generating the highest value of proceeds through laundered money, according to the Update on the National Risk Assessment 2023.³¹³ The offences within this scope relate to bribery, embezzlement of

³¹³ National Treasury and Economic Planning. *Update on the National Risk Assessment of Money Laundering Report*. (2023). "Table 4: Values of Proceeds Generating Predicates Investigated from 2021-2023." <https://www.frc.go.ke/wp-content/uploads/2024/02/Update-on-NRA-of-ML-1-1.pdf>.

public funds, and kickbacks. In addition, Kenya's geographical and economic position increases its vulnerability to foreign corruption, to distance the money from the source.³¹⁴ Efforts to curb corruption in money laundering are often hindered by the lack of political will and exercise of arbitrary powers by the executive, which undermine the structures designed to combat AML. Major perpetrators of corruption in Kenya are mainly local and foreign political elite who have established an entrenched system of political patronage, facilitating the laundering of illicit funds by those in power.³¹⁵ The factors together create a conducive environment for IFF through money laundering.

5.2. VULNERABLE SECTORS

Assessments undertaken by the NRA Task Force³¹⁶, as well as the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), identified various sectors in Kenya that are vulnerable to money laundering. The banking and real estate sectors were of particular interest to the assessors, due to their material contributions to the Kenyan GDP. In 2021, the banking sector was assigned a "high" threat level and the real estate sector a "medium" threat level.

314 Rudich, *Kenya Illicit Finance Risks and Assessment*, <https://thesentry.org/wp-content/uploads/2021/10/KenyaillicitFinance-TheSentry-Oct2021.pdf>.

315 Barasa, T. (2018). *Illicit Financial Flows in Kenya: Mapping of the Literature and Synthesis of the Evidence*. Partnership for African Social and Governance Research (PASGR). <https://www.pasgr.org/wp-content/uploads/2018/09/Kenya-Illicit-Financial-Flows-Report.pdf>.

316 Gazette Notice No. 2577. (2019, March 13). Taskforce on the National Risk Assessment on Money Laundering and Terrorism Financing.

CASE STUDY: MONEY LAUNDERING IN THE BANKING SECTOR

Kenya has one of the largest and most complex financial systems in Africa.³¹⁷ The banking sector's customer base, deposits, assets, capital base, and contribution to GDP are all large compared to other financial sectors. As of December 2020, the total net asset of the banking sector was KES 5.4 trillion (USD 50 billion).³¹⁸

The banking sector is particularly vulnerable due to its cross-border networks, interbank ties, and products and services. Some Kenyan banks have subsidiaries and other connections with multiple African countries, and several are subsidiaries of global banks.³¹⁹ Nearly half of the Kenyan banks are subsidiaries of Pan-African banks. This cross-border connectivity increases the number of cross-border payments and creates opportunities for exploitation for purposes of money laundering and IFFs, through the illicit movement of funds across bank accounts, including cross-border transfers.³²⁰ Most large financial transactions occur through banks,³²¹ and while the reporting threshold is set at USD 15,000³²² criminal perpetrators can carry out transfers just below the reporting threshold to avoid them being flagged. The widespread adoption of financial technological solutions and rapid innovations increases the risk of money laundering activities. For instance, the adoption of mobile applications, which require no face-to-face interaction.³²³

A sectoral risk assessment of money laundering, terrorism financing, and proliferation financing carried out by the Central Bank of Kenya (CBK) in 2023³²⁴ revealed that the banking sector exhibited the highest susceptibility to these illicit activities.³²⁵ This vulnerability stems from factors such as the sector's size, diversity in products and services offered, and expansive customer base, as well as the lack of strict compliance by banks and deficiencies in Kenya's AML regulatory and institutional framework. These findings align with the findings of the NRA Taskforce and ESAAMLG's Mutual Evaluation Report, which identified the banking sector as a vulnerable sector and, therefore, a facilitator of IFFs. For instance, in 2020³²⁶ five banks were fined through plea agreements with the Office of the Director of Public Prosecutions on account of failing to report suspicious transactions as required under Kenya's AML laws.

317 Republic of Kenya. (2021). *Money Laundering and Terrorism Financing National Risk Assessment Report*. Financial Reporting Centre. <https://www.centralbank.go.ke/wp-content/uploads/2023/06/Money-Laundering-and-Terrorism-Financing-National-Risk-Assessment-Report.pdf>.

318 ESAAMLG. (2022). *Anti-Money Laundering and Counter-Terrorist Financing Measures – Kenya, Mutual Evaluation Report*. <https://www.esaamlg.org/reports/MER%20of%20Kenya-%20September%202022.pdf>.

319 ESAAMLG. *Anti-Money Laundering and Counter-Terrorist Financing Measures*, <https://www.esaamlg.org/reports/MER%20of%20Kenya-%20September%202022.pdf>.

320 Rudich, Kenya Illicit Finance Risks and Assessment, <https://thesentry.org/wp-content/uploads/2021/10/KenyaillicitFinance-TheSentry-Oct2021.pdf>.

321 The Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act, 44(6) (2023).

322 The Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act (2023) Proceeds of Crime and Anti-money Laundering Act, 44(6) (2009).

323 Republic of Kenya. (2023). *Update on the National Risk Assessment of Money Laundering Report*. <https://www.frc.go.ke/wp-content/uploads/2024/02/Update-on-NRA-of-ML-1-1.pdf>.

324 Republic of Kenya, *Money Laundering and Terrorism Financing National Risk Assessment Report*, <https://www.centralbank.go.ke/wp-content/uploads/2023/06/Money-Laundering-and-Terrorism-Financing-National-Risk-Assessment-Report.pdf>.

325 Central Bank of Kenya. (2023). Central Bank of Kenya Circular No. 11 of 2023: Dissemination of Money Laundering, Terrorism Financing, and Proliferation Financing Sectoral Risk Assessment Report. https://www.centralbank.go.ke/uploads/banking_circulars/1366238125_Central%20Bank%20of%20Kenya%20Circular%20No.%2011%20of%202023%20-%20Dissemination%20of%20ML-TF-PF%20Sectoral%20Risk%20Assessment%20Report.pdf.

326 Ngugi, B. (2020, September 20). "Bank Executives Still Open to Prosecution After NYS Fraud Fines." *Business Daily*. <https://www.businessdailyafrica.com/bd/corporate/companies/bank-executives-still-open-to-prosecution-after-nys-fraud-fines-2283028>.

CASE STUDY: MONEY LAUNDERING IN THE REAL ESTATE SECTOR

The real estate sector is a significant contributor to Kenya's GDP. As of December 2020, the sector contributed 8.8% of the GDP, more than the financial sector at 7.1%.³²⁷ However, the purchase of high-value real estate also contributed to 10% of the reviewed money laundering cases between 2021 and 2023.³²⁸

The real estate sector has been flagged in several reports as being an area of high risk with regards to money laundering in Kenya due to several factors. First, the high and escalating cost of real estate in the country enables the laundering of large amounts of proceeds of crime through the purchase of high-value real estate property. Several reports have stated that politically exposed persons from conflict-stricken neighbouring countries, such as South Sudan, use the proceeds of crime to purchase high-value property in affluent areas of Kenya.³²⁹ Further, the value of real estate tends to appreciate, making it a valuable investment for people seeking to launder the proceeds of crime.

In addition, lawyers, who play a key role in the buying and selling of real estate, are enablers of IFFs in the sector. Lawyers handle money placed in client accounts on behalf of clients and often take charge of negotiating sale agreements, allowing those engaging in criminal activity to shield themselves. This shield is reinforced by the strict confidentiality principles upheld in advocate-client privilege relationships. Notably, the 2023 Mutual Evaluation Report highlights how the proceeds of corruption from government structures and public procurement reportedly passed through lawyers and ended up in the real estate sector.³³⁰

The vulnerabilities of this sector are further evidenced by the low number of suspicious transaction reports that are made to the Financial Reporting Sector. Out of the 20,087 reports made between 2016 and 2020, only one was made by a real estate player. Between 2021 and 2023, only 13,699 suspicious transaction reports were made, the majority from the banking sector.³³¹

The gaps in the legal and legislative framework governing Kenya's real estate sector make it an attractive avenue for money laundering. The NRA gave a low rating to the comprehensiveness of the AML legal framework in this sector, the effectiveness of suspicious activity monitoring and reporting, and the effectiveness of supervision procedures and practices.

327 ESAAMLG, *Anti-Money Laundering and Counter-Terrorist Financing Measures*, (p.24), <https://www.esaamlg.org/reports/MER%20of%20Kenya-%20September%202022.pdf>.

328 Republic of Kenya, *Update on the National Risk Assessment of Money Laundering Report*, (p. 11), <https://www.frc.go.ke/wp-content/uploads/2024/02/Update-on-NRA-of-ML-1-1.pdf>.

329 Rudich, *Kenya Illicit Finance Risks and Assessment*, (pp. 5-6), <https://thesentry.org/wp-content/uploads/2021/10/KenyaIllicitFinance-TheSentry-Oct2021.pdf>.

330 ESAAMLG, *Anti-Money Laundering and Counter-Terrorist Financing Measures*, (p.24), <https://www.esaamlg.org/reports/MER%20of%20Kenya-%20September%202022.pdf>.

331 Republic of Kenya, *Update on the National Risk Assessment of Money Laundering Report*, (p. 40), <https://www.frc.go.ke/wp-content/uploads/2024/02/Update-on-NRA-of-ML-1-1.pdf>.

5.3. INTERNATIONAL LAWS ADDRESSING IFFS RELATED TO MONEY LAUNDERING

Currently, Kenya has ratified two international treaties that form part of the legal regime that seeks to curb money-laundering and related activities, thereby minimising IFFs through such activities. These international treaties include:

a. UN Convention against Transnational Organized Crime (UNTOC)

Kenya ratified the UNTOC in 2004. The Convention criminalises the laundering of proceeds of crime and requires state parties to take measures to combat money laundering offences described in the Convention. Additionally, the Convention requires state parties to train law enforcement personnel on detecting and monitoring the movement of proceeds of crime; methods used to transfer, conceal, or disguise such proceeds; and how to combat money-laundering and other financial crimes.³³²

b. International Convention for the Suppression of the Financing of Terrorism 1999

The Convention, which was ratified by Kenya in 2001, requires state parties to identify and immobilise funds utilised or intended for terrorism-related activities and to cooperate in sharing information on the movement of such funds. This Convention is key to Kenya as it addresses the matter of terrorism financing, which has been linked with deficiencies in the AML framework. The international regime, however, currently lacks judicial enforcement measures.

5.4. INTERNATIONAL INSTITUTIONS ADDRESSING IFFS RELATED TO MONEY LAUNDERING

a. The Financial Action Task Force (FATF)

This is an intergovernmental body mandated to assist countries in combating money laundering by setting international standards for legal and institutional frameworks. The FATF has established “best practice” model AML standards, which form the basis of Kenya’s AML laws. The FATF has monitored compliance by Kenya through the regional body ESAAMLG.

³³² Article 29 (1)(d).

5.5. REGIONAL AML LEGAL FRAMEWORK

a. African Union Convention on Preventing and Combating Corruption (AUCPCC)

Kenya ratified the AUCPCC in 2007. The Convention provides for the development of mechanisms to prevent, detect, punish, and eradicate corruption and related offences in Africa. By creating mechanisms to address the issue of corruption, this Convention is important as corruption is not only a high-risk predicate offence in money laundering³³³ but also the highest contributor to the total value of proceeds generated from illicit activities.³³⁴ Further, by criminalising the conversion, transfer, or disposal of property from the proceeds of corruption or related offences to conceal or disguise the illicit origin of the property,³³⁵ the AUCPCC creates an additional layer of deterrence from the commission of these money laundering activities, thus reducing IFFs.

The African Court of Justice and Human Rights (ACJHR) Amendment Protocol that seeks to grant the Court the criminal jurisdiction to hear and determine international criminal cases (including on money laundering) is yet to be ratified and to operationalise. This creates a judicial enforcement gap in the regional AML framework.

5.6. REGIONAL AML INSTITUTIONAL FRAMEWORK

a. The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)

Kenya is a member of the ESAAMLG, an associate member of the FATF. The ESAAMLG is mandated to support countries towards achievement of FATF AML standards. The Group conducted an evaluation of Kenya's AML regime and provided recommendations, which have formed the basis of legislative amendments aimed at tightening the country's AML legal and institutional framework. The ESAAMLG monitors and recommends changes but does not have power to enforce, which limits its scope of actions.

5.7. OPPORTUNITIES FOR CSOS TO STRENGTHEN INTERNATIONAL AND REGIONAL LAWS

a. Advocacy

In a bid to strengthen the international AML regime, CSOs could lobby for the establishment of judicial enforcement measures within the international legal regime. These measures would enable citizens to bring

333 Republic of Kenya, *Money Laundering and Terrorism Financing National Risk Assessment Report*, <https://www.centralbank.go.ke/wp-content/uploads/2023/06/Money-Laundering-and-Terrorism-Financing-National-Risk-Assessment-Report.pdf>.

334 Alushula, "Kenyans Under Probe Over Sh86bn 'Illicit' Transactions," <https://nation.africa/kenya/business/kenyans-under-probe-over-sh86bn-illicit-transactions-4531854>.

335 African Union Convention on Preventing and Combating Corruption, 6(a). (2003). https://au.int/sites/default/files/treaties/36382-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf.

judicial action against member states, particularly persons in political positions who fail to adhere to the AML requirements and escape domestic judicial systems, or where there is lack of political will to take appropriate action. The International Criminal Court, for instance, has been effective in prosecuting various crimes against humanity where national judicial systems do not adequately pursue the matter.³³⁶ The adoption of a similar structure for money laundering offences would contribute significantly to the combating of IFFs through money laundering activities.

CSOs could also engage the national government in cooperation with other CSOs within the region to lobby for the ratification of the ACJHR Protocol. This would strengthen the enforcement measures within the regional AML framework and enhance its effectiveness in curbing IFFs through money laundering.

b. Monitor government's commitment to address money laundering

The Kenyan government has expressed its commitment to implement the FATF recommendations to strengthen its AML legal and institutional framework. CSOs could support that commitment by monitoring the implementation of the FATF recommendations and engaging key policymakers where implementation is lacking.

5.8. NATIONAL AML LEGAL FRAMEWORK

a. The Proceeds of Crime and Anti-Money Laundering Act 2009 (POCAMLA)

The POCAMLA is the primary legislation on money laundering in Kenya. It defines the crime and provides for the identification, tracing, freezing, seizure, and confiscation of the proceeds of crime. It establishes critical institutions such as the Financial Reporting Centre, the Asset Recovery Agency, and the Anti-Money Laundering Advisory Board, and designates reporting institutions.

b. Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act 2023

Kenya enacted this Act in 2023 to bolster its legal framework on money laundering. Key amendments introduced include designating money laundering as an economic crime under existing laws, requiring a risk-based approach to AML regulations, and increasing penalties for non-compliance. The Act designates the Law Society of Kenya as a self-reporting body for money laundering issues involving lawyers. It also reduces reporting time for suspicious transactions and increases the reporting threshold. Additionally, the Act tightens requirements for identifying beneficial ownership in companies and partnerships.

³³⁶ The Prosecutor v Francis Kirimi Muthaura, Uhuru Muigai Kenyatta, and Mohammed Hussein Ali, (ICC-01/09-02/11-383). <https://www.icc-cpi.int/court-record/icc-01/09-02/11-383>.

c. The Prevention of Terrorism Act 2012

The Act provides measures for the detection and prevention of terrorism activities. It prohibits and penalises the collection or provision of property, funds, and services for the commission of terrorist acts. This is important due to the link identified between money laundering activities and terrorism activities in Kenya.

d. Supporting statutes

Kenya has enacted other statutes that support the framework within which money laundering is prevented and detected. Many of these statutes mandate sector regulators to supervise, monitor, and enforce laws, rules, and regulations on money laundering in the specific sectors they regulate or otherwise enhance the capacity of such entities to contribute to AML efforts. Some of these include the Central Bank of Kenya Act, the Companies Act, and the Limited Partnerships Act, among others.

5.9. NATIONAL AML INSTITUTIONAL FRAMEWORK

There are several institutions in Kenya tasked with preventing, detecting, investigating, and prosecuting money laundering activities, thereby playing a key role in combating IFFs through money laundering activities. Some of these institutions, their powers, strengths, and gaps are as follows:

INSTITUTION	POWER/MANDATE	STRENGTHS	GAPS
Financial Reporting Centre (FRC)	<ul style="list-style-type: none"> Tasked with identifying proceeds of crime and combating money laundering, receiving reports of suspicious transactions and referring them to law enforcement or supervisory bodies for action, monitoring entities for AML purposes, maintaining a database of suspicious transactions, and disseminating information to and training reporting institutions on detecting money laundering activities. 	<ul style="list-style-type: none"> Has adopted a risk-based approach to developing and enforcing AML guidelines and regulations for all financial institutions within its scope This supports the prevention function of the AML framework, thus minimising the occurrence of IFFs through money laundering. 	<p>There are some gaps in the institutional framework that criminals can exploit towards money laundering. Examples of these include:</p> <ul style="list-style-type: none"> Real estate sector gap: There is no overall institution that is tasked with implementing and enforcing AML laws and guidelines. The existing AML provisions in the real estate sector target regulators of separate actors involved in a real estate transaction, e.g. estate agents.³³⁷ Investigation and prosecution gap: The number of investigations and prosecutions on money laundering cases are relatively low compared to reported cases and associated predicate offences such as corruption. This is attributed to capacity constraints, with both the prosecution and investigative agencies prioritising predicate offences over money laundering charges.³³⁸

337 Republic of Kenya, *Money Laundering and Terrorism Financing National Risk Assessment Report*, (pp. 97-99). <https://www.centralbank.go.ke/wp-content/uploads/2023/06/Money-Laundering-and-Terrorism-Financing-National-Risk-Assessment-Report.pdf>.

Proceeds of Crime and Anti-Money Laundering Act, First Schedule (2009). <http://kenyalaw.org/8181/exist/kenyalex/actview.xql?actid=CAP.%2059A>.

338 ESAAMLG, *Anti-Money Laundering and Counter-Terrorist Financing Measures*, <https://www.esaamlg.org/reports/MER%20of%20Kenya-%20September%202022.pdf>.

INSTITUTION	POWER/MANDATE	STRENGTHS	GAPS
Assets Recovery Agency (ARA)	<ul style="list-style-type: none"> Empowered to exercise civil and criminal forfeiture in respect of proceeds of crime and any property acquired as a result of crime. 	<ul style="list-style-type: none"> Has implemented the forfeiture of funds declared as proceeds of crime in multiple cases. 	<ul style="list-style-type: none"> Information sharing gap: The involvement of different institutional players within the AML framework necessitates effective and continuous sharing of information in mutually understandable formats. While this is partly in place, more work needs to be done to optimise institutional sharing of information in order to strengthen AML monitoring and detection tools.³³⁹ Training and capacity gap: In view of rapid technological advancement and development of business processes, institutional officers tasked with identification and monitoring of money laundering activities may not be adequately equipped to identify these activities as technology and methods change.³⁴⁰
Central Bank of Kenya (CBK)	<ul style="list-style-type: none"> As a supervisory body under the POCAMLA, the CBK regulates commercial banks and other financial institutions, including mortgage finance companies, microfinance banks, money remittance providers, digital credit providers, payment service providers, foreign exchange bureaus, and mortgage refinance companies for the purposes of AML, among other activities. Supervises and ensures compliance and enforcement of the POCAMLA by all reporting institutions it supervises. 	<ul style="list-style-type: none"> Periodically publishes guidelines to all its licensees in relation to conduct and handling of suspected money laundering activities. Utilises its licensing function to enforce compliance by licensees. 	
Ethics and Anti-Corruption Commission (EACC)	<ul style="list-style-type: none"> Investigates and recommends prosecution by the Office of the Director of Public Prosecutions of criminal activities, including money laundering. 	<ul style="list-style-type: none"> Has been involved in a number of high-profile investigations in relation to money laundering activities, including the inquiry into allegations of money laundering of public funds worth nearly KES 228 million (USD 1.7 million) by the Kiambu County Government in the financial year 2020/2021. 	

339 Government of Kenya. (2023). *Update on the National Risk Assessment of Money Laundering Report, 2023*. <https://www.frc.go.ke/wp-content/uploads/2024/02/Update-on-NRA-of-ML-1-1.pdf>.

340 *Ibid.*

INSTITUTION	POWER/MANDATE	STRENGTHS	GAPS
Law Society of Kenya (LSK)	<ul style="list-style-type: none"> Self-regulatory body that regulates, supervises, and enforces compliance with anti-money laundering, countering the financing of terrorism, and proliferation of weapons of mass destruction (AML/CFT/CPF) policies for lawyers, notaries, and other legal professionals. 	<ul style="list-style-type: none"> The LSK carries out reviews and grants approval to legal professionals for the issuance of practising certificates applied for annually.³⁴¹ The LSK has internal disciplinary mechanisms that can be exercised against legal professionals who violate AML, Countering the Financing of Terrorism, and Countering Proliferation Financing regulations.³⁴² 	<ul style="list-style-type: none"> The designation of the LSK as a self-regulating body for AML purposes is relatively new and LSK is currently in the process of formulating operation guidelines in this respect. In the meantime, a gap remains in relation to regulation of lawyers, which can be exploited for money laundering.³⁴³
Directorate of Criminal Investigations (DCI) and The Office of the Director of Public Prosecutions (ODPP)	<ul style="list-style-type: none"> Tasked with investigating and prosecuting cases in which money laundering is suspected or alleged. Operationalise criminal sanctions imposed with regards to money laundering, strengthening the deterrent effect of the AML framework. 	<ul style="list-style-type: none"> In 2021, the DCI arrested three individuals in possession of fake local and international currency, forged anti-money laundering clearance certificates, and a forged letter from the CBK notifying receipt of KES 10 billion (USD 76 million).³⁴⁴ In addition, the DCI has launched investigations on various Nairobi³⁴⁵ and Nyamira³⁴⁶ County officials for money laundering, corruption, and fraud allegations. 	<ul style="list-style-type: none"> The mandate of these two institutions is heavily dependent on information sharing, particularly from institutions that refer matters for investigation and prosecution. Therefore, there is need to strengthen the requirement and format of cross-institution information sharing to improve the effectiveness of investigation and prosecution of money laundering cases.³⁴⁷

341 Advocates Act, Sections 22,23 and 24 (1989).

342 Advocates Act, Sections 60 and 60A (1989).
Law Society of Kenya Act, Section 28 (2) (b) (2014).

343 Republic of Kenya, *Update on the National Risk Assessment of Money Laundering Report*, (pp. 31), <https://www.frc.go.ke/wp-content/uploads/2024/02/Update-on-NRA-of-ML-1-1.pdf>.

344 ESAAMLG, *Anti-Money Laundering and Counter-Terrorist Financing Measures*, <https://www.esaamlg.org/reports/MER%20of%20Kenya-%20September%202022.pdf>.

345 Muchira, C. (2023, July 31). "Nairobi County: DCI Launches Probe into Suspected Money Laundering Case." KBC. <https://www.kbc.co.ke/nairobi-county-dci-launches-probe-into-suspected-money-laundering-case/>.

346 Nyakundi, E. (2024, February 14). "DCI Summons Nyamira Quartet to Nairobi Over Abuse of Office". *People Daily*. <https://peopledaily.digital/dci-summons-nyamira-quartet-to-nairobi-over-abuse-of-office/>.

347 Republic of Kenya, *Update on the National Risk Assessment of Money Laundering Report*, (pp. 39-44), <https://www.frc.go.ke/wp-content/uploads/2024/02/Update-on-NRA-of-ML-1-1.pdf>.



Reuters/ Thomas Mukoya

a. Strengths in National AML Framework

The current AML legal framework has, through consistent review and enhancements, incorporated global best practices in relation to money laundering. The framework also brings together a wide range of institutions in different sectors of Kenya's economy and assigns the power and mandate to monitor and detect AML activities to key sector players (such as the CBK).

b. Gaps in National AML Framework

The definition of politically exposed persons (PEPs) within POCAMLA does not include foreign heads of state, their family, or close associates. This is a challenge considering Kenya's proximity to conflict-prone countries, which increases the risk of these individuals seeking refuge in Kenya and potentially engaging in money laundering activities.

Additionally, there is lack of a centralised regulatory body tasked with overseeing real estate transactions in Kenya to mitigate money laundering risks, similar to the role fulfilled by the CBK in the financial services sector. Moreover, the absence of specific anti-money laundering guidelines and regulations tailored to the real estate sector impedes real estate agencies' capacity to effectively enforce AML requirements.

5.10. OPPORTUNITIES TO STRENGTHEN NATIONAL LAWS AND INSTITUTIONS TO ADDRESS IFFS RELATED TO MONEY LAUNDERING

In view of the identified legal and institutional gaps in Kenya's AML framework, we outline below potential avenues for CSOs to contribute towards strengthening the existing framework and position it to effectively curb IFFs through money laundering activities.

a. Promote public awareness on money laundering

Due to close connection with the general public, CSOs could play an important role in disseminating information to members of the public on the impact of money laundering and related IFFs, as well as the existing framework to curb the activity. An important aspect of this would be training individuals and organisations on how to detect suspicious activities in the ordinary course of their business transactions, their duty in respect of such activities (e.g. reporting), and how they can report to relevant authorities.

b. Training on evolving methods of money laundering

CSOs could partner with the government, academia, and international organisations to develop training that covers the interplay between technological advancements, the existing law, and the risk of money laundering. This would help enforcement officers better understand the evolving ways of doing business that contribute to IFFs through money laundering and equip them to detect and curb money laundering activities. Such partnerships could also be a crucial tool for the training of enforcement officers, citizens, and business communities in Kenya on the incidence, evolving methods, and negative impact of money laundering activities.

c. Lobbying and public participation

CSOs could participate in public participation forums within the legislative process to push for the creation and strengthening of institutions, particularly in the real estate sector given its risk profile within Kenya's AML space.

5.11. CONCLUSION

It is evident that, while Kenya has made progress in establishing and implementing a legal and institutional framework to combat money laundering and curb related IFFs, there are still gaps, particularly in the real estate sector which, if not addressed, will continue to be exploited to enable IFFs through the laundering of illicit funds.

As outlined above, CSOs can participate in curbing money laundering by playing a role in strengthening Kenya's legal and institutional framework, both in its establishment and effective implementation. This would minimise IFFs arising from money laundering activities in Kenya and alleviate the adverse effects of IFFs to the country's economy and its citizenry.



6. Tools Available to CSOs Working to Curb IFFs, Opportunities, and Challenges

Having discussed the incidence and impact of IFFs arising from tax-related activities, corruption, and money laundering in the focus countries covered by this report, the next section focuses on the tools and opportunities available to CSOs within the legal and institutional frameworks in the three focus countries which CSOs can use and leverage to actively participate in combating of IFFs, particularly in the sectors discussed. It also acknowledges and highlights challenges that CSOs may encounter when undertaking this work. CSOs should be aware of these and weigh up the risks when undertaking advocacy in certain areas, including IFFs.

It is noteworthy that each of the three focus countries has in place a legal framework within which CSOs are established and empowered to effectively operate. The laws supporting CSOs' existence and operations in Ghana include the Constitution of Ghana, which allows individuals and organisations to participate in civic activities such as advocacy against IFFs, as well as the Right to Information Act.³⁴⁸ Another relevant law is the Companies Act, 2019 (Act 992).

The Constitution of the United Republic of Tanzania provides for freedoms that empower CSO activities such as the freedoms of expression, information, association, and participation in government affairs. Laws that provide frameworks for the establishment of CSOs include the Non-Governmental Organizations Act,³⁴⁹ Trustees' Incorporation Act,³⁵⁰ and Societies Act.³⁵¹

348 Act No. 989. (2019).

349 Act No. 4 (2002).

350 Cap 318 R.E. 2002.

351 Cap 337 R: E 2002.

The Constitution of Kenya provides for fundamental freedoms such as freedom of expression, freedom of association, and right of access to information. These rights, though not absolute, go a long way in empowering CSOs to undertake their duties of advocacy and public awareness, as well as monitoring. The laws that provide frameworks for the establishment of CSOs include the recently enacted Public Benefit Organisations Act 2013 (which replaces the Non-Governmental Organisation Co-ordination Act),³⁵² the Companies Act,³⁵³ and the Societies Act.³⁵⁴

CSOs in the three focus countries are well placed to participate in and even play a critical role in curbing illicit financial flows in their respective countries and, potentially, beyond.

6.1. TOOLS AVAILABLE TO CSOS

The tools that CSOs can utilise in a bid to alleviate the gaps and challenges discussed and thus strengthen the legal and institutional frameworks designed to curb IFFs are summarised below.

a. Advocacy and policy influence

CSOs can advocate for policy reforms and measures to strengthen tax transparency, enhance anti-corruption and anti-money laundering efforts, and improve tax administration.³⁵⁵ They can engage with government institutions, policymakers, and other stakeholders to push for legislative changes and policy initiatives aimed at curbing IFFs. They may do so by lobbying policymakers, crafting policy recommendations, and developing tools that may be utilised in addressing IFFs.³⁵⁶ Through such actions, CSOs can play a crucial role in shaping a regulatory landscape that is more resilient to illicit financial activities.

At the international level, certain international institutions provide opportunities to CSOs to influence laws and policies. The UN Tax Committee for example, allows for presentations from CSOs on international tax proposals.

352 Cap 134. (2002).

353 Cap 486. (2015).

354 Cap 108. (2022).

355 Ofosu-Peasah, G. (2022). "CSO and Media Contributions to the Fight Against Corruption in Ghana's Extractive Sector: A Political Economy Analysis." *Star Ghana Foundation Political Economy Series*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4092927.

356 Tax Justice Network Africa. (2023, October 5). "AU Member States, CSOs Validate Anti-IFF Tracker Tool at Regional Meeting." <https://taxjusticeafrica.net/resources/blog/au-member-states-csos-validate-anti-iff-tracker-tool-regional-meeting>.

CASE STUDY: STOP THE BLEEDING CAMPAIGN

An example of the utilisation of this method is the Stop the Bleeding Campaign that was launched in 2015 by several African CSOs.³⁵⁷ The campaign aimed to address IFFs, which the CSOs argued could free substantial financial resources that could be utilised to build sustainable economic growth. This, in turn, would generate employment opportunities, reduce socioeconomic inequalities, alleviate poverty, and bolster efforts to mitigate the impacts of climate change.

CASE STUDY: THE PUBLISH WHAT YOU PAY COALITION

Ghana was one of the first countries to express its intention to join the Extractive Industries Transparency Initiative (EITI) in 2003. Ghana established a multi-stakeholder National Steering Committee (NSC) to implement the EITI. The NSC includes representatives of the Ministry of Lands and Natural Resources (Mines Department), the Chamber of Mines, the GHEITI Secretariat, Office of the Administrator of Stool Lands, the Internal Revenue Service (now part of the Ghana Revenue Authority), and civil society represented through the Publish What You Pay Coalition (PWYP), chaired by the Ministry of Finance.

PWYP consists of a consortium of 30 CSOs dedicated to advocating for transparent oil exploration and revenue management. The Coalition actively engages in the national EITI and continues to broaden avenues for civil society involvement in decision-making processes within the oil, gas, and mining sectors, calling for published reports of revenue from mineral resources.

Additionally, the Coalition has focused on tracking and scrutinising petroleum revenue expenditure. PWYP Ghana has conducted a gender analysis within the Coalition and is exploring strategies to enhance the meaningful participation and representation of women in the Coalition's activities and organisational framework, as well as fostering increased collaboration with women's rights organisations. Furthermore, the Coalition is enhancing its capacity to examine company beneficial ownership registers, aiming to identify and highlight corruption risks associated with the sector.

357 African Forum and Network on Debt and Development. Stop The Bleeding Campaign. AFRODAD. <https://afrodad.org/campaigns/stop-the-bleeding-campaign>.

b. Monitoring and oversight

CSOs serve as crucial watchdogs by monitoring and evaluating government actions and initiatives and their compliance with national objectives, other existing statutes, and international norms and standards addressing IFFs. Further, CSOs can conduct independent audits and reviews of government actions and initiatives, including evaluation of the impact of government actions in order to promote those that are effective in addressing IFFs and oppose those that facilitate IFFs.

CASE STUDY: COMPELLING COUNTRIES TO CONFORM WITH INTERNATIONAL STANDARDS

In 2016, the Global Justice Clinic of New York University's School of Law, the Tax Justice Network, and the Swiss CSOs Alliance Sud and Public Eye submitted a shadow report to the Committee on the Elimination of Discrimination Against Women (CEDAW) suggesting that it should assess the negative impact of Swiss financial regulations on Switzerland's extraterritorial obligations to combat gender inequality and promote sustainable development. This was done to address the problem of tax evasion by companies who illegally kept their assets in Switzerland to avoid paying taxes. This led the CEDAW Committee to make recommendations that Switzerland "undertake independent, participatory, and periodic impact assessments of the extraterritorial effects of its financial secrecy and corporate tax policies on women's rights and substantive equality, ensuring that such assessments are conducted impartially, with public disclosure of the methodology and findings."³⁵⁸ It has been noted that, although the Swiss government did not implement the recommendations immediately, they increased public pressure on the government to undertake reforms domestically.

CSOs can undertake similar initiatives and advocate for adherence to the international standards on asset recovery. These standards include establishing a robust domestic legal framework to detect and prevent illegal transfer of assets, especially across borders, and imposing sanctions on offenders.

CSOs can collaborate with the media to uncover instances of corruption and illicit financial activities. Through investigative journalism, CSOs and the media can bring to light cases of tax evasion, corruption, or money laundering, including those involving government officials and multinational corporations. Media reporting could raise public awareness on the illicit financial activities and exposed offenders could be held to account for their actions. The media exposure could also deter future illicit activities.

358 Center for Economic and Social Rights. (2022). *Engaging Human Rights Treaty Bodies*. (p. 7). https://cesr.org/sites/default/files/2022/Inspire_2_-_HR_Treaty_Bodies.pdf.

CASE STUDY: MISPRICING OF FLOWERS

In a story published in 2020, investigative journalists uncovered tax avoidance and evasion by a flower farm in Kenya. Karuturi Limited, a Kenyan company that was part of a multinational enterprise group, was a flower growing and exporting company. Reporting on the case indicated that the roses grown by Karuturi were exported at an extremely low price to their own company in Dubai, from where they were further distributed throughout the market.³⁵⁹ As a result of the low transfer price, the Kenyan branch reported losses and therefore did not pay taxes, while, at the time, the United Arab Emirates did not levy income taxes or import duties on transit goods. The investigative piece resulted in the Kenya Revenue Authority (KRA) questioning Karuturi's transfer pricing. The KRA then raised an assessment of KES 962 million (USD 7.3 million).³⁶⁰ A settlement was reached which reduced the tax bill to KES 340 million (USD 2.5 million).³⁶¹

c. Capacity building

CSOs can provide training and education of public officials on IFFs. The activities can include training sessions, workshops, and dialogues with decision-makers, including Members of Parliament, judges, and Ministry of Finance officials. Capacity building could enhance the capacity of the institutions tasked with interpreting or implementing the law to effectively combat IFFs. Additionally, the capacity building programmes could equip the institutions vested with investigative powers with the necessary skills to detect and investigate financial crimes associated with IFFs efficiently. Specifically, CSOs in the three countries can train law makers on the importance of ratifying the ACJHR Protocol, which will create a regional judicial enforcement mechanism against money laundering and related IFFs. Through capacity building, CSOs could enhance the awareness and understanding of key stakeholders on IFFs and influence them to initiate law reforms to address them.

To strengthen the capacity building initiatives, CSOs can consider collaborating with international partners and academics to undertake the trainings. Such partnerships increase the credibility of the training programmes and ensure a diverse range of expertise and perspectives.

359 Burgh, R. van der & Pol, L. van der. (2020, March 21). "Unfair Trade: How Dutch Rose Growers Avoid Paying Taxes in Kenya." *The Elephant*. <https://www.theelephant.info/analysis/2020/03/21/unfair-trade-how-dutch-rose-growers-avoid-paying-taxes-in-kenya/>.

360 Michira, M. "Taxpayers Could Lose Sh600m in KRA Tax Fraud if Karuturi Deal is True." *The Standard*. <https://www.standardmedia.co.ke/article/2000108060/taxpayers-could-lose-sh600m-in-kra-tax-fraud-if-karuturi-deal-is-true>.

361 *Ibid.*

CASE STUDY: CAPACITY BUILDING IN GHANA, TANZANIA, AND KENYA

Ghana

*The Ghana Tax Justice Coalition has been instrumental in educating the media on the Beneficial Ownership Register and the Right to Information law in the country to help in the broader campaign against IFFs.*³⁶²

Tanzania

To prioritise the Sustainable Development Goals (SDGs) in parliamentary discussions, CSOs conducted SDGs training sessions for the Parliamentary Group on Sustainable Development and the Parliamentary Committee Clerks in 2019. The primary objective of these training sessions was to strengthen the capacity of the group members and clerks in understanding sustainable development concepts, emphasizing the synergies between national development plans for SDGs and Agenda 2063 – Africa’s blueprint for inclusive and sustainable socioeconomic development – and providing them with the necessary tools to monitor the progress of sustainable development implementation during parliamentary discussions. Following the training, both MPs and clerks committed to championing the SDGs agenda within parliamentary discussions.

*Subsequently, in August 2019, the Social Services and Community Development Committee, for the first time in Parliament, reviewed the implementation progress of SDGs 3 (Good Health and Wellbeing) and 4 (Quality Education). The chairperson of the Parliamentary Group on Sustainable Development expressed confidence in leading efforts to improve the implementation, monitoring, and review of SDGs in the country through parliamentary debates.*³⁶³

Kenya

*In partnership with academics from the University of Nairobi and Strathmore University, the International Lawyers Project in Kenya organised training for Tribunal members between 29th January 2024 and 1st February 2024. The purpose of the training was to advance the technical understanding of members of the Tribunal in the areas of corporate tax, customs, and excise as well as emerging jurisprudence in these areas.*³⁶⁴

362 Tax Justice Coalition - Ghana. (2022). *2020 Annual Report*. <https://tjcghana.org/wp-content/uploads/2022/10/TJC-Ghana-2020-Annual-Report.pdf>.

363 Policy Forum. (2021). *Policy Forum Annual Report 2019*. (pp. 16-17). <https://www.policyforum-tz.org/sites/default/files/2021-03/Annual%20report%20for%20January%20to%20December%202019.pdf>.

364 Committee on Fiscal Studies. (2024, February 6). "Capacity Building of Members of the Kenyan Tax Appeals Tribunal." <http://cfs.uonbi.ac.ke/node/149#:~:text=The%20Committee%20on%20Fiscal%20Studies>.

d. Increasing public awareness

Working with the media, CSOs can undertake campaigns to create awareness among the public on the adverse impact of IFFs on governance, the economy, and society through news reports, documentaries, and opinion pieces. By mobilising public support and generating pressure for action, CSOs can push for reforms and accountability measures. Advancements in technology, such as data analysis tools and digital platforms, can empower CSOs to conduct more sophisticated research and analysis on IFFs. CSOs can leverage these tools to uncover patterns of illicit financial flows, track money trails, and hold accountable those responsible for financial crimes.

CASE STUDY: CSO RAISES ALARM ON FOREIGN OIL FIRM FLOUTING TRANSFER PRICING RULES

*The Civil Society Platform on Oil and Gas in Ghana raised awareness about a contract signed in 2010 between Ghana Gas and Sinopec International Petroleum Service Corporation (SIPSC), a Chinese company. The contract was for the construction of the Western Corridor Gas Infrastructure Development Project. This project included an offshore pipeline, onshore pipelines, a gas processing plant, a Natural Gas Liquids (NGL) export system, and an office complex.*³⁶⁵

*The Civil Society Platform accused SIPSC of inflating the cost of the gas processing plant by USD 140 million. According to the CSO, SIPSC manipulated Ghana's transfer pricing rules through a transaction with its special purpose subsidiary, SAF Petroleum Investments, registered in Dubai. In the transaction, SAF would purchase the items that SIPSC needed for the contract and then resell them to SIPSC and, in doing so, increase the cost of the project.*³⁶⁶

Sections 66(2) and 80(b) of Ghana's Transfer Pricing Regulations provide that the sale of petroleum and mineral products should be guided by the arm's length principle, meaning they should be at market value. However, it is unclear if these provisions cover other transactions along the value chain, such as the installation of the liquefied petroleum gas plant.

*SIPSC denied any wrongdoing and threatened to withdraw from the USD 700 million gas project if the government did not meet its financial commitments.*³⁶⁷ *The outcome of this deal remains unclear.*

365 Isodec. (2017). *Impact Research: Transfer Pricing in Ghana's Oil & Gas Sectors, Commodity Exports and Imports*. (pp. 2-8). <https://isodec.org/transfer-pricing-in-ghanas-oil-gas-sectors-commodity-exports-and-imports-2/>.

366 Readhead, *Transfer Pricing in the Extractive Sector in Ghana*, (p. 7), https://resourcegovernance.org/sites/default/files/documents/nrgi_ghana_transfer-pricing-study.pdf.

367 Moran, J. (2013, April 29). "China's Sinopec Threatens to Quit Ghana Gas Project Over Funding: Reports." S&P Global. <https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/natural-gas/042913-chinas-sinopec-threatens-to-quit-ghana-gas-project-over-funding-reports>.

CASE STUDY: CENTRE FOR COLLABORATIVE INVESTIGATIVE JOURNALISM RAISES ALARM ON GHANA LOSING GH¢ 400 MILLION FROM MTN TOWER SALE

The CSO Centre for Collaborative Investigative Journalism (CCIJ) reported on the sale by MTN, Ghana's biggest telecoms provider, of its investment in a mobile phone tower business.³⁶⁸ MTN Ghana rents mobile phone towers from the Dutch company Ghana Tower Interco BV. The Dutch company was 49% owned by MTN. The shares were transferred in the Netherlands to the US-based American Tower Corporation. This sale or transfer of shares took place offshore for a profit of 4.8 billion South African rand (USD 262 million). With the possibility of accruing capital gains tax of up to 25% on such a transaction, Ghana could lose Gh¢ 400 million (USD 26 million) in tax. Though the Ghana Revenue Authority insists the transaction is taxable in Ghana, MTN in the publication of its financial results stated that its profit from the sale was "non-taxable". The tax dispute is yet to be resolved at the time of writing.

e. Promotion of transparency and accountability

CSOs can promote transparency and accountability within tax administration agencies, AML agencies, and anti-corruption government institutions by advocating for open data policies, access to information laws, and mechanisms for public scrutiny and oversight. Specifically, they can advocate for increased transparency in government budgets, tax expenditures, and revenue collection processes.

CSOs in the various countries can leverage the existing domestic laws that allow for access to information. In Ghana, CSOs can use the Right to Information Act 2019³⁶⁹ to obtain information on mining contracts that are often negotiated under the shroud of secrecy. CSOs in Tanzania can use the equivalent law — the Access to Information Act 2016³⁷⁰ — to request information on mining agreements which are often not public and contain provisions that allow for IFFs. CSOs in Kenya can use the Access to Information Act³⁷¹ to request information such as waivers granted under special agreements made between the government and multinational entities.

368 Dogbevi, E. K. (2020, September 18). "Ghana Could Lose GH¢ 400m in Capital Gains Tax on MTN Tower Deal." Center for Collaborative Investigative Journalism. <https://ccij.io/ghana-could-lose-gh>.

369 Act No 989.

370 Act No 6 (2016).

371 Cap 7M of the Laws of Kenya.

CASE STUDY: GHANA NATIONAL PETROLEUM CORPORATION TRANSACTION WITH AKER ENERGY GHANA AND AGM

The Alliance of CSOs Working on Extractives, Anti-Corruption, and Good Governance, through press statements and a letter to Parliament, questioned a transaction between the Ghana National Petroleum Corporation (GNPC) and Aker Energy. The transaction entailed GNPC purchasing stakes in two deepwater blocks from two Norwegian-led firms, Aker Energy and AGM Petroleum.³⁷² The Alliance of CSOs questioned the amounts sought by Aker and AGM, which the two firms claimed related to development expenses. These amounts, the Alliance of CSOs argued, were inflated when compared to the works undertaken by the two firms and would have resulted in flows of money from Ghana. The Alliance of CSOs demanded that Parliament investigate the transaction on the grounds that it was likely to lead to loss of public funds. These calls for investigation have yet to be heeded.

f. Partnerships and collaboration

CSOs can collaborate with government agencies, international organisations, academic institutions, and other stakeholders to share information, expertise, and resources in combating tax evasion and IFFs. They can participate in multi-stakeholder initiatives, task forces, and coalitions to foster cooperation and collective action.

In all the focus countries, CSOs can leverage the partnerships and training initiatives to sensitise their citizenry on their role in curbing IFFs through measures such as reporting of corruption and money laundering activities.

372 Akinosho, T. (2021, August 10). "Ghana's \$1Billion GNPC/Aker Transaction Throws Up Intriguing Questions." *Africa Oil and Gas Report*. <https://africaoilgasreport.com/2021/08/farm-in-farm-out/is-1billion-too-high-for-ghana-to-pay-for-purchase-of-aker-agms-interests/>.

CASE STUDY: COLLABORATION TO ADVANCE THE REALISATION OF THE AFRICA MINING VISION ASPIRATIONS IN TANZANIA

In 2017, the Tax Justice Network Africa (TJNA) collaborated with Policy Forum network on a study in Dodoma titled “Where is the Money? Taxation and the State of Africa Mining Vision Implementation: A Case of Tanzania and East Africa.” The study engaged decision-makers such as MPs, TRA officials, and Ministry of Minerals officials, making recommendations to advance the realisation of the Africa Mining Vision (AMV) aspirations in Tanzania. The recommendations included maintaining efforts to develop a country mining vision aligned with the AMV, enhancing mineral audit capacity, utilising the African Minerals Development Centre (AMDC) for negotiating mineral concessions and addressing taxation issues, establishing a sovereign wealth fund, and strategising to invest part of mining revenue in local communities. An analysis was conducted to assess the current status of AMV implementation in Tanzania; the country adopted the Vision in 2009 with an action plan in 2011. Tanzania has made progress towards realising the AMV since 2017, including a significant reorganisation of the fiscal regime in the mining sector over three years. This reorganisation involved reviewing the mineral fiscal regime, addressing tax revenue leakage, establishing laws for contract negotiation and renegotiation, promoting local participation, auditing mineral production and exports, and enhancing sector linkages to the local economy.³⁷³

CASE STUDY: TJNA USES COLLABORATION AS A TOOL TO FIGHT IFFS

In November 2023, TJNA jointly organised the Pan African Conference on Illicit Financial Flows and Taxation with the African Tax Administration Forum. The conference sought to explore ways African countries can take the lead on international conversations that have a direct bearing on domestic resource mobilisation and IFFs.³⁷⁴ The annual conference facilitates alignment and collaboration among African CSOs, pan-African institutions, and government agencies. It brings together researchers and academics to take stock of the successes and challenges in the continent’s domestic resource mobilisation efforts and to provide evidence that CSOs and other stakeholders can use to support their ongoing tax policy and advocacy work.

373 Policy Forum, *Policy Forum Annual Report 2019*, (pp. 23-24), <https://www.policyforum-tz.org/sites/default/files/2021-03/Annual%20report%20for%20January%20to%20December%202019.pdf>.

374 Tax Justice Network Africa. (2023, October 17). “Announcing the 11th Pan-African Conference on Illicit Financial Flows and Taxation (PAC 2023).” <https://www.taxjusticeafrica.net/resources/blog/announcing-11th-pan-african-conference-illicit-financial-flows-and-taxation-pac-2023#:~:text=The%20Tax%20Justice%20Network%20Africa>.

g. Legal and policy analysis

CSOs could undertake legal and policy analysis and research on IFFs in their countries. Such analysis could identify the existing loopholes in the laws which create avenues for IFFs, the impact of IFFs on the national economy, and the challenges facing the institutions tasked with preventing IFFs.

Further, they can collaborate with academic institutions, legal experts, think tanks, and other stakeholders to conduct legal and policy analyses to identify variance between national laws and international standards promoted by organisations such as the FATF and the UN. Findings from the research can provide evidence-based recommendations to promote legal and institutional reforms to close the existing gaps that facilitate IFFs. By pooling resources, expertise, and networks, CSOs can enhance the quality and credibility of their analyses and amplify their advocacy efforts.

CASE STUDY: USE OF RESEARCH

In 2017, the Interfaith Standing Committee on Economic Justice and Integrity of Creation (ISCEJIC) issued a report titled The One Billion Dollar Question — Revisited 5 Years Later: How Much is Tanzania Now Losing in Potential Tax Revenue?', an update of a 2012 report on the same issue.³⁷⁵ The report estimates significant losses of USD 1.83 billion from tax incentives and USD 1.3 billion from corruption in Tanzania.³⁷⁶ It also contains policy recommendations for governments on mitigating loss in tax revenues by reviewing tax incentives and promoting transparency. By availing data for engaging with stakeholders, raising public awareness about the impact of lost revenues on critical public services, and aligning with international initiatives like the Partnership for Transparency, the report amplifies advocacy efforts and positions Tanzania within the global anti-corruption agenda, showcasing a holistic approach towards addressing IFFs in the country.

h. Public interest litigation

CSOs can engage in public interest litigation on IFFs. This may entail holding the government to account on measures that it has taken or failed to take in combating IFFs. Successful litigation can set legal precedents that deter future instances of IFFs. Litigation also has the added advantage of bringing public attention to the cases, which can be an effective tool for creating awareness on the issue of IFFs.

Though an effective tool, litigation can be expensive, and CSOs may face financial constraints in pursuing legal action. The costs may include legal fees as well as fees for hiring subject matter experts on IFFs. Legal proceedings can also be lengthy and complex, delaying outcomes and impacting effectiveness.

³⁷⁵ Curtis & Ngowi, *The One Billion Dollar Question*, <https://www.kirkensnodhjelp.no/globalassets/lanserte-rapporter/2017/one-billion-dollar-question-f.pdf>.

³⁷⁶ *Ibid.*

CASE STUDY: THE USE OF LITIGATION TO CHALLENGE IFFS

Tax Justice Network Africa v Cabinet Secretary for National Treasury & 2 Others [2019] eKLR³⁷⁷

The Tax Justice Network Africa (TJNA) filed a case at the High Court contesting the legality of the Kenya-Mauritius Double Taxation Agreement due to its lack of formal approval by Parliament. TJNA argued that certain provisions of the agreement, such as reduced tax rates for specific types of income, adversely impacted Kenya's tax revenue. Conversely, the government asserted that parliamentary ratification was unnecessary as the agreement had already received approval from the Cabinet. They defended the lower tax rates as a strategy to attract foreign investors and foster economic growth in Kenya. The court ultimately deemed the agreement unconstitutional, however it did not go as far as to establish clear guidelines on treaty-making and public involvement in tax legislation.

6.2. CHALLENGES AND RECOMMENDATIONS

a. Legal barriers

Rights enshrined in the Constitutions of all three countries, such as freedom of the press³⁷⁸, freedom of expression³⁷⁹, access to information,³⁸⁰ and public participation,³⁸¹ are often qualified. For example, governments may claim national security prerogatives to withhold information that may otherwise be made accessible to the public — Article 24 of the Constitution of Kenya provides one example.³⁸² CSOs can consider challenging this through the courts.

377 High Court of Kenya. Tax Justice Network Africa v Cabinet Secretary for National Treasury & 2 others. Kenya Law. <https://kenyalaw.org/caselaw/cases/view/169664>.

378 The Constitution of Kenya, Article 34 and The Constitution of Ghana, Article 21.

379 The Constitution of the United Republic of Tanzania, Article 18.

380 The Constitution of Kenya, Article 35; The Constitution of Ghana, Article 21.

381 The Constitution of Kenya, Article 10; The Constitution of the United Republic of Tanzania, Article 30 and Constitution of Ghana. Article 164.

382 The Constitution of Kenya, Article 24.

CASE STUDY: USE OF LITIGATION TO OVERCOME LEGAL BARRIERS

Khalifa & another v Principal Secretary, Ministry of Transport & 4 others; Katiba Institute & another (Interested Parties)³⁸³

*This case was filed by an individual citizen, and it revolved around the disclosure of information regarding contracts between the government and other entities involved in constructing the Standard Gauge Railway in Kenya. Khalifa contended that despite the significant expenses incurred in the project, it lacked transparency. He requested this information from government agencies, but they refused to disclose it. He then sought relief from the court, aiming to obtain the information and assert his right to access it.*³⁸⁴

The High Court ruled in Khalifa's favour, declaring that any government restriction on information, purportedly justified by national security concerns, must genuinely serve that purpose. The court determined that Khalifa's right to information had been infringed.

b. Limited resources

CSOs mostly rely on donor funding and often encounter financial constraints due to inadequate funding. Inadequate funding may be due to a limited number of donors, limited donation amounts, and/or restrictions on use of funds, which require alignment with donor priorities. Inadequate financial support impedes the capacity of CSOs to conduct comprehensive research, advocacy campaigns, litigation, and awareness-raising activities on the complexities of IFFs, limiting their impact in combating illicit financial practices.³⁸⁵

To address these financial and human resources challenges there is a need for CSOs to leverage their existing resources by collaborating to avoid the fragmented roles that lead to the duplication of scarce resources. CSOs may also consider diversifying sources of income to avoid over-dependence. This will allow CSOs to focus on genuine anti-IFF efforts rather than donor-driven agendas.

c. Lack of technical capacity

Transactions-related IFFs tend to be complex and require specialised knowledge and expertise in areas such as finance, taxation, anti-money laundering regulations, and international law. Also, IFFs are complex, multifaceted, and involve multiple actors, jurisdictions, and illicit activities. Analysing the legal and policy dimensions of IFFs requires a nuanced understanding of these complexities, which can be challenging for CSOs without specialised expertise or resources and capacity.

383 Constitutional Petition E032 of 2019 [2022] KEHC 368 (KLR) (13 May 2022) (Judgment).

384 Mudeyi, M. O. (2022, July 20). "Khalifa v Secretary for National Treasury and Planning: A New Dawn for the Right to Access of Information in Kenya." Oxford Human Rights Hub. <https://ohrh.law.ox.ac.uk/khalifa-v-secretary-for-national-treasury-and-planning-a-new-dawn-for-the-right-to-access-of-information-in-kenya/#:~:text=The%20petition%20was%20filed%20by>.

385 Peace Direct & LINC LLC. (2020). *Facilitating Financial Sustainability (FFS) Activity: Systematic Review of Literature and Practice*. USAID. https://linclocal.org/wp-content/uploads/2020/05/FFS-Systemic-Review-of-Literature-and-Practice_FINAL.pdf.

Certain technical areas, such as base erosion and profit shifting (BEPS), are constantly evolving and demand specialised skills. This can pose challenges for CSOs, ultimately impacting their advocacy efforts. The challenges can be overcome by collaborating with academic institutions, legal experts, think tanks, and other stakeholders to conduct legal and policy analyses of IFFs. By pooling resources, expertise, and networks, CSOs can enhance the quality and credibility of their analyses and amplify their advocacy efforts.

d. Lack of data and information

CSOs often face challenges in accessing accurate and up-to-date data on IFFs, financial transactions, beneficial ownership structures, and offshore accounts. Limited transparency in financial systems and the lack of reliable information on IFFs hinder CSOs' ability to analyse and expose illicit financial activities, making it difficult to advocate for regulatory measures and policy changes. In Tanzania, for example, the rules on disclosure of the beneficial ownership prohibit CSOs from accessing the information as to who is the real beneficial owner of a company. This information can only be accessed by government agencies. In this regard, this rule creates a challenge for CSOs to obtain accurate and reliable data.

CASE STUDY: LACK OF INFORMATION ON PETROLEUM AGREEMENTS

In Ghana, negotiation of petroleum agreements (PAs) under the Petroleum (Exploration and Production) Act 2016 (Act 919) lack transparency. This opacity limits the participation of key stakeholders, which is problematic as there is a positive correlation between transparency, balanced bargaining, and equitable distribution of resources from the extractive industry.

For example, the active involvement of CSOs in negotiating the Petroleum Revenue Management Act³⁸⁶ in 2011 led to positive gains, including the reservation of 30% of oil revenue in the Heritage and Stabilisation Funds. On the other hand, the opaqueness of PAs can lead to inequitable stabilisation clauses that are detrimental to revenue mobilisation. Examples include the Ghana-Kosmos Energy agreement. Article 26.3 of this agreement indemnifies Kosmos Energy from any changes in Ghana's tax laws that may not be favourable to Kosmos.³⁸⁷

386 2011, Act 815.

387 Petroleum Agreement Among the Republic of Ghana, Ghana National Petroleum Corporation, Kosmos Energy Ghana HC, and The E.O. Group in Respect of West Cape Three Points Block. (2004). <https://www.tulloil.com/application/files/1115/8517/6510/west-cape-three-points-contract-area-pa.pdf>.

e. Government interference

CSOs advocating against IFFs may sometimes encounter political pressure from government authorities or powerful entities with vested interests in maintaining the status quo. This may restrict the ability of CSOs to investigate IFFs, raise awareness about the detrimental effects of illicit financial practices, and advocate for reforms.³⁸⁸ Interference may take the form of shrinking financial support, legal harassment, or having their organisation or work discredited in the public sphere.

To effectively navigate these challenges, CSOs must remain aware of these risks and proactively assess the potential threats they face in advocating against IFFs. This includes conducting thorough risk assessments of their organisations to ensure compliance with the law, implementing security protocols, and developing contingency plans to mitigate any personal safety concerns that may arise.

f. Lack of cooperation and coordination

The presence of fragmented and diverse roles, accompanied by unnecessary competition among CSOs addressing IFFs and operating in isolation rather than pursuing a shared agenda, hinders collaborative efforts. This lack of trust among CSOs impedes their ability to work together effectively.

Pooling financial and human resources could empower CSOs to achieve a more significant impact collectively than they could individually. By capitalising on each other's strengths, complementing efforts, and fostering coalitions and alliances, CSOs can more effectively address IFFs.

6.3. THE ROLE OF CSOS

CSOs can play a critical role in combating IFFs through advocacy, research, capacity building, and monitoring efforts. They can advocate for enhanced legal frameworks, governmental transparency, and accountability to strengthen institutions. However, they may also encounter challenges such as limited resources, technical capacity gaps, lack of data, government interference, and lack of coordination with each other. To address these challenges, CSOs can leverage existing resources, collaborate with various partners, diversify funding sources, build technical expertise, advocate for open data policies, conduct risk assessments, and foster cooperation and coordination among themselves. Through concerted action, CSOs can contribute to addressing IFFs and promote sustainable development in Ghana, Tanzania, Kenya, and beyond.

388 AU/ECA Conference of Ministers, *Report of the High-Level Panel on Illicit Financial Flows from Africa*, (pp.37- 40), https://au.int/sites/default/files/documents/40545-doc-IFFs_REPORT.pdf.



7. Conclusion

The impact of IFFs in African countries is undoubtedly immense, draining public resources that could be spent on national development and provision of essential public services. IFFs exacerbate poverty, inequality, and injustice and undermine the rule of law. Kenya, Ghana, and Tanzania are victims of this criminal activity, having experienced significant loss of revenues from IFFs through tax-related offences, corruption, and money laundering.

International and regional legal and institutional frameworks have played a role in addressing IFFs. However, their effectiveness is hindered by lack of judicial enforcement mechanisms, failure by countries to ratify or domesticate key international conventions, and, in some cases, difficulty in implementing proposed recommendations due to limited resources.

Combating IFFs relies on the legal and institutional frameworks within the respective countries. While these have been useful, gaps in the legal frameworks fail to adequately address avenues for IFFs. For instance, tax laws lack key provisions necessary to curb tax avoidance and evasion, the penalties are insufficient to deter corruption, and the legal frameworks have not kept abreast with technological advancements to effectively address money laundering activities. Moreover, the institutional framework is hampered by alleged political interference, insufficient resources, lack of expertise, and inadequate international cooperation. These loopholes create room for exploitation by perpetrators, resulting in loss of revenue through IFFs.

CSOs can play a crucial role in the fight against IFFs. They can advocate for legal and institutional reforms by lobbying policymakers and offering policy recommendations. They can also serve as watchdogs by monitoring and overseeing government actions. Further, they can engage in capacity building of key government officials, undertake legal and policy research on various aspects of IFFs, engage in public awareness campaigns against IFFs, and undertake public interest litigation in relation to IFFs.

However, CSOs face various challenges in the fight against IFFs. They encounter government interference in the form of legal harassment and imposition of legal barriers that hinder access to information. They often lack technical expertise on IFFs, which can be complex, and face financial constraints that hinder their ability to address the evolving complexities of IFFs effectively.

Despite these challenges, CSOs can make substantial difference in combating IFFs arising from tax avoidance and evasion, corruption, and money laundering. This could safeguard national revenues, which could in turn spur national development in Kenya, Ghana, Tanzania, and Africa as a whole.

7.1. SUGGESTIONS FOR FUTURE RESEARCH

Future research should explore the impact of the digital economy on IFFs. The rapid advancement of digitisation, including digital currencies like cryptocurrency, online payment systems, and mobile money transfers, introduces new avenues for trade but also presents challenges related to money laundering, taxation, and tracing illicit financial activities such as corruption.

By studying the intersection of IFFs and the digital economy, researchers can provide valuable insights for developing effective regulatory frameworks, enhancing technological solutions for detecting IFFs, and promoting financial integrity in the digital era. This area of research is crucial for addressing emerging challenges and ensuring accountability in the evolving financial landscape. This will, in turn, inform new and developing areas that CSOs can address as they advocate for greater accountability and financial integrity by governments, regulators, businesses, and other entities and, hence, effectively contribute to the minimisation of IFFs in general.



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