

CURB ILLICIT FINANCIAL FLOWS TO FUND QUALITY PUBLIC SOCIAL SERVICES IN UGANDA



ISER
Facilitating Social Justice

INITIATIVE FOR SOCIAL AND ECONOMIC RIGHTS

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This report discusses illicit financial flows (IFFs) in the Ugandan context, its manifestations and how to curb it. It seeks to contextualize the notion of IFFs and how they affect the realization of economic and social rights and particularly public services. It posits that a more sustainable recovery from the economic effects of the COVID 19 pandemic requires curbing IFFs to mobilise domestic resources to finance strong quality public services.

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EXECUTIVE SUMMARY

Covid 19 has reinforced the fundamental role of the State and not markets in protecting citizens and safeguarding rights. Systematic underfinancing of the public health sector over years left Uganda unprepared to address the COVID 19 pandemic, with a paucity of public health services, critically needing ICU beds, ambulances, health workers. This resulted in an oxygen crisis, unnecessary deaths and has had a disproportionate impact on marginalized groups widening inequity.¹ The countries spending on public health systems has come under scrutiny with increasing public outcry as politicians are flown abroad while the rest are left to deal with the dire state of public health facilities.

More than ever, the Government has been called upon to mitigate the economic decimation from COVID 19. It needs public funds to address Covid 19 and the increased demands for health, covid 19 vaccination, education, social protection among other needs.

But where will the money come from? Covid 19 economic decimation has resulted in the worst recession since World War II. IMF and World Bank projections find significant disparities in fiscal outlook with an increasingly unequal economic recovery with some low-income countries struggling to rekindle economic growth. Uganda's growth outlook remains uncertain particularly in light of the emergence of Covid 19 variants.² The World Bank's report, "From Double Shock to Double Recovery finds that "the expected government health spending growth in low-income countries (LICs) and lower middle-income countries (LMICs) will fall far short of the spending needs to end the pandemic and prevent future ones."³ Yet it requires low income countries to double their pre-pandemic health spending to return to pre Covid 19 growth trends.⁴

¹ ISER (2021) How Did We Get Here? Uganda's Medical Oxygen Crisis;; https://www.iser-uganda.org/images/downloads/How_did_we_get_here.pdf ; ISER (2021) Profiteering Off A Pandemic: Private Sector and Health Services in Uganda During Covid 19, https://www.iser-uganda.org/images/downloads/Profiteering_off_a_pandemic.pdf

² Bank of Uganda, State of the Economy 2021, <https://www.bou.or.ug/bou/bouwebsite/bouwebsite-content/publications/StateofEconomy/publications/StateOfEconomyReports/2021/Dec/SOE-report-December-2021.pdf>

³ World Bank (2021) From Double Shock to Double Recovery – Implications and Options for Health Financing in the Time of COVID-19 Technical Update: Widening Rifts, https://openknowledge.worldbank.org/bitstream/handle/10986/35298/From_Double_Shock_to_Double_Recovery%20Revision%2020210916.pdf?sequence=5&isAllowed=y

⁴ Ibid.

The economic decimation rendered by Covid 19 has brought the issue of domestic resource mobilization to the fore. Even before Covid 19, according to the World Bank, Uganda's efficiency of revenue mobilization has remained at the rate of 3.5 out of 6 since 2018⁵ lagging behind other East African countries like Kenya which scored 4 out of 6 consistently from 2015 onwards.⁶

Failure to strengthen domestic resource mobilization will force cash strapped countries to make difficult choices, which will likely entail imposing austerity measures, cutting spending for public services like health and education, yet they are urgently needed for a more just recovery.

It will undermine debt sustainability, which is increasingly precarious in Uganda as the country approaches the red line. Uganda's debt doubled in one year due to Covid 19. As the government is increasingly forced into external borrowing in the face of missing tax revenues, its debt burden accumulates, tilting towards a debt crisis. Increased debt and the resultant debt servicing expenses constrains the public resources available for quality public services and the realization of economic social rights and development.⁷

In 2020/21 Uganda spent

▼
12.76 trillion USH

On Interest payments

which is more than the equivalent combined budget that government allocated for public services: **education, health, water, social protection** in the same year.⁸

Accordingly combating IFFs should be top of the agenda for Uganda right now. In setting out to undertake this research on IFFs, we sought to answer three questions often asked by policy makers when this subject is broached:

- Why should we care?
- How much are we losing?
- Where else could that money go?

⁵ World Bank Group, CPIA database, <https://www.worldbank.org/en/data/datatopics/cpia>

⁶ Ibid.

⁷ United Nations Human Rights Council, "Final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights", A/HRC/31/61, Geneva, 15 January 2016, available at: <https://digitallibrary.un.org/record/831668/?ln=en>

⁸ Ministry of Finance, Approved Budget 2020/2021, <https://budget.finance.go.ug/>

9.2%

of countries' Health budgets is lost to tax havens

Ranging from illegal to legal but nonetheless illicit, IFFs drain necessary resources needed for financing public services and a more recovery. On average, countries lose 9.2% their health budgets to tax havens.⁹



2020/21 Health budget

Lost an equivalent of

50%

to

IFFs in 2021

Tax Justice Network puts this figure higher at **110%** of its health budget

2021 figures reveal Uganda loses **\$382.8 millions** in tax abuse

which is **1.2%** of its **GDP¹⁰**

Of this amount

\$17.4 million

through offshore wealth¹¹

\$365.4 million

is lost through corporate tax abuse

This amount could ensure full Covid 19 vaccination for **22.3 million people/ 55.8%** of the population.¹² It could finance social protection, which is only allocated **0.7%** of **GDP**

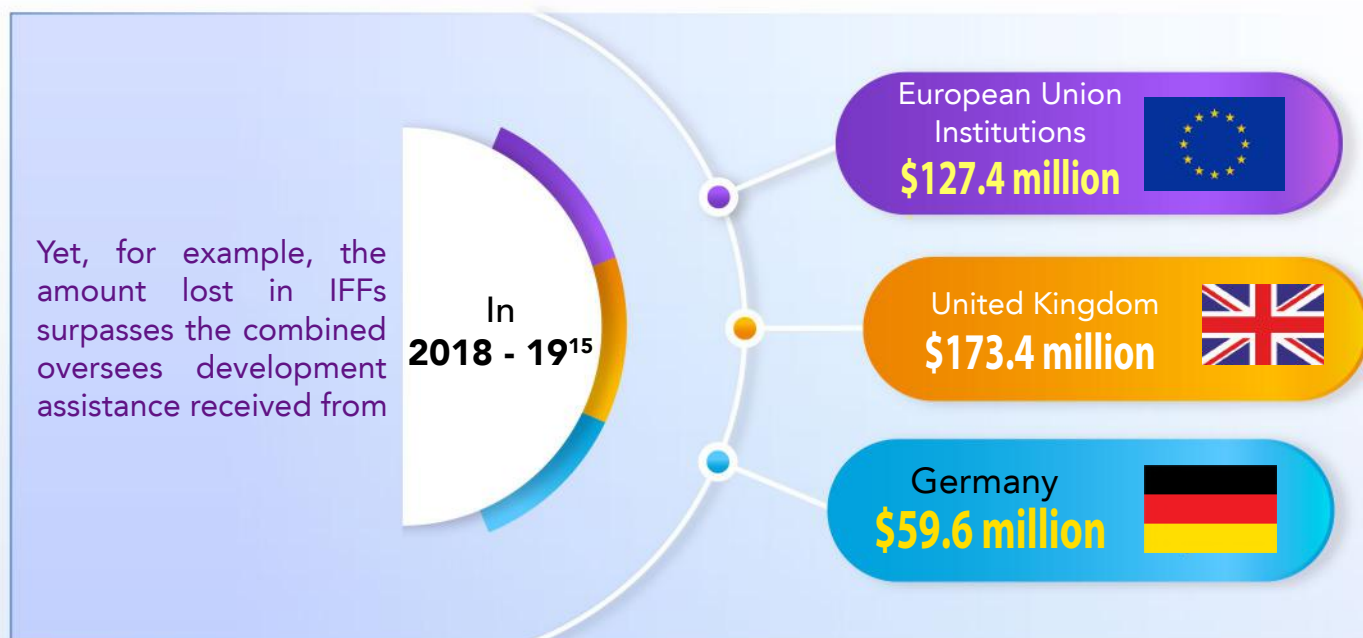
⁹ Tax Justice Network (2020), The State of Tax Justice 2020 at p.5, 83,658, <https://taxjustice.net/reports/the-state-of-tax-justice-2020/#:~:text=Countries%20are%20losing%20a%20total,nurse's%20annual%20salary%20every%20second.>

¹⁰ Tax Justice Network (2021) State of Tax Justice, https://taxjustice.net/wp-content/uploads/2021/11/State_of_Tax_Justice_Report_2021_ENGLISH.pdf

¹¹ Ibid.

¹² Ibid.

Only 67.3% of Uganda's 2020/21 budget is financed from domestic resources and only about half (53.2%) of it is financed from URA tax revenue.¹³ Revenue/Expenditure projections from 2021/22 indicate this will likely not improve much with only 57.5% of this year's budget financed from URA tax revenue.¹⁴



The
\$365.4 million

Uganda loses through corporate tax abuse could replace overseas development assistance from the International Development Association for 2018-2019, which was at **\$311.8 million**

While often regarded as a tax issue, combating IFFs is ultimately about equity: **Who should contribute more tax at a time when the State urgently needs resources to build back better?** Rather than impose further taxes on an already overtaxed lower middle class, the country must, more than ever, focus on combating IFFs. Failing to curb IFFs gives multi nationals leeway to avoid paying tax while taxes are then passed on to lower quintiles of society. While some including Uganda's own senior government officials have offshore accounts,¹⁶ the State has mistakenly focused on increasing

¹³ Hon. Amos Lugolobi, Minister of Finance (2021) Budget Speech Financial Year 2021/22, 10 June 2021 annex 1,

¹⁴ Ibid.

¹⁵ OECD DAC Aid at a Glance by Recipient, https://public.tableau.com/views/OECDDACAidataglace-byrecipient_new/Recipients?:embed=y&:display_count=yes&:showTabs=y&:toolbar=no?&:showVizHome=no

¹⁶ Pandora Papers, <https://www.icij.org/investigations/pandora-papers/pandora-papers-reporting-from-across-africa/>

regressive taxes like Value Added Tax that disproportionately hurt the poor, whose livelihoods have already been greatly impacted by Covid 19 and the resultant lockdowns. Two thirds of Uganda's tax revenue is derived from indirect taxes.

Failure to address IFFs will weaken public services, ultimately hurting the poor and vulnerable. Women bear the disproportionate burden when the State fails to curb IFFs as they struggle to access health, education if public services are cut. This leaves the country perpetually underprepared for pandemics like Covid 19.

However, it is not enough to simply focus on curbing IFFs without addressing how the revenue should be used. The IFFs recovered must be used to finance public services. Especially because it is a two-way relationship: the failure to ensure quality public services enables IFFs.

This report makes the following recommendations:

GOVERNMENT

- i) Uganda ought to develop a comprehensive and structural response towards IFFs, engaging all the key stake holders as highlighted in Appendix 1 and work towards determining the scale, impact and nature of IFFs. Currently piecemeal approaches are used.
- ii) Strengthen National Coordination mechanisms against IFFs, its implications require cross-sectoral and cross-national responses. Strengthen coordination between the different agencies and departments that play significant roles in the; assessment of IFF threats, collection, analyses, use and collection of financial intelligence, investigations, and prosecution of cases that involve IFFs. Additionally, strengthen national coordination around the implementation of preventative measures against IFFs by all institutions of Government.
- iii) Build stronger capacity to negotiate tax agreements and use the whole of government approach promoted by the Oslo Dialogue of the OECD.
- iv) When companies undertake due diligence processes and human rights

- impact assessments, their financial schemes should be included in their assessments and not only the actual operations of their industry.
- v) Adopt best practice from the World Bank, IMF, OECD on transparency and automatic exchange of tax information and address capacity gaps that impede it from submitting more requests. As a result of 69 exchange of information requests submitted by Uganda between 2014-2018, the country identified nearly USD 26 million in revenues that would have otherwise been foregone.¹⁷
 - vi) Integrate the UN Guiding Principles on Business and Human Rights¹⁸ which could play a significant role in curbing IFFs. Of particular note, Principle 2 states that “There are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses. The Guiding Principles are also being integrated into other key international standards that are relevant to business enterprises, including the UN Global Compact, the OECD Guidelines for Multinational Enterprises, the International Finance Corporation Performance Standards 247 and ISO 26000, Guidance for Social Responsibility.¹⁹ Such integration into these other standards relating to corporate social responsibility will facilitate the linkages between human rights, corporate taxation and other financial contributions to sustainable development.
 - vii) Statistical data should be uniformly collected and records properly maintained by all authorized agencies of government, accountable persons, and resources should be specifically appropriated by the government to ensure the achievement of this.
 - viii) Information on the true owners of companies and or corporations and other legal entities registered in Uganda, including Foreign Companies, operating within and outside the country should be disclosed upon the formation, updated regularly and made easily accessible and available to the public in Uganda Registration Services Bureau. This information

¹⁷ OECD (2021) Strengthening Tax Transparency To Combat Tax Evasion, Illicit Financial Flows And Profit Shifting In Uganda, <https://www.oecd.org/tax/tax-global/strengthening-tax-transparency-to-combat-tax-evasion-illicit-financial-flows-and-profit-shifting-in-uganda.pdf>

¹⁸ UN Guiding Principles on Business and Human Rights, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

¹⁹ Ibid.

should also be made readily available to the Finance Intelligence Authority and that can make the requisite information accessible to all other organs of government; DPP, URA etc. or other third parties that can demonstrate a legitimate interest in the information. This should be compounded by the requirement for financial institutions to scrutinize and verify supporting documents used to identify customers.

- ix) Domesticate the United Nations Convention Against Corruption (UNCAC) framework.
- x) Focusing on value recovery rather than merely asset recovery. This would entail targeting everyone involved in concealing the transaction/ enabling the IFFs i.e. the gatekeepers, relatives and business associates. Doing so would undermine the patronage structures that enable IFFs.
- xi) Confiscate unclaimed wealth of government officials.
- xii) Participate in the global tax review regimes such as the Global Forum on Transparency and Exchange of Information for Tax Purposes, the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) the United Nations Committee of Experts on International Cooperation in Tax Matters or the United Nations, the World Bank, International Monetary Fund and OECD [Organisation for Economic Co-operation and Development]-managed Platform for Collaboration on Tax.
- xiii) Once money is recovered, ensure it is used to realise social economic rights like health and education.

CIVIL SOCIETY

- i) Civil society actors should assist in identifying best practices in national tax administration capacity to prevent and curb IFFs.
- ii) Curbing IFFs will also require greater coordination and cooperation around key issues and players, including the private sector, governments, international organizations and civil society.

DONORS

- Require measures to curb IFFs as a condition for financing. This has been increasingly seen with donors like IMF, World Bank, Africa Development Bank insisting on the government publishing beneficial ownership of companies awarded contracts from the funds disbursed as a condition for receiving COVID 19 funds.

INTERNATIONAL COMMUNITY/ STATES

- Replace OECD with UN Body.
- Put in place fair reporting standards including revenues, profits, losses, sales, taxes paid, subsidiaries, and staff levels on a country-by-country basis. For example, EU Fair reporting standards. OECD agreement allows country by country reporting.
- Conduct multilateral automatic exchange of tax information by taxation authorities.

1 WHAT ARE IFFs?

The term IFFs emerged in the 1990s and was initially associated with capital flight.²⁰ It now generally refers to cross-border movement of capital associated with illegal activity or more explicitly, money that is illegally earned, illegally transferred or illegally used that crosses borders.²¹ In other words, if it breaks the law in its “origin, movement or use.”²² The Organization for Economic Co-operation and development, OECD²³ and the United Nations under its Coherent Policies for Combating Illicit Financial Flows (UN 2016 World Bank) and the International Monetary Fund define IFFs broadly as all cross-border financial transfers, which contravene national or international laws. The World Bank recommends “focusing on flows and activities that have a clear connection with illegality.”²⁴

The seminal 2015 report of the High-Level Panel on Illicit Financial Flows from Africa also herein after referred to as the Mbeki²⁵ report formally defines IFFs as “money illegally earned, transferred or used.”²⁶ In some cases, this money is earned illegally, for example through organized crime, money laundering, drug trafficking, human trafficking, embezzlement, terrorist finance, or bribery. In other cases, the money could have been earned legally but is transferred out of the country illegally by circumventing currency controls or customs. An example of customs trade is trade misinvoicing, which involves buyers and sellers presenting fraudulent documentation to customs officials. The value of the trade is falsified by under or over invoicing trade documents to be less or more than the actual market value in order to circumvent the payment of customs duties, to hide transfers or wealth between importing and exporting countries or to evade

²⁰ Extracted from; <https://www.worldbank.org/en/topic/financialsector/brief/illicit-financial-flows-iffs>

²¹ Ibid

²² Baker, Raymond (2005) *Capitalism’s Achilles Heel: Dirty Money and How to Renew the Free-Market System*. Hoboken, New Jersey: John Wiley & Sons, Inc.

²³ Organisation of Economic Co-operation and development, Policy Coherence in Combating Illicit Financial Flows available at https://www.oecd.org/gov/pcsd/IFFs%20thematic%20module%20v12cl_for%20web.pdf

²⁴ World Bank (2017) Illicit Financial Flows, <https://www.worldbank.org/en/topic/financialsector/brief/illicit-financial-flows-iffs>

²⁵ The report was commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development and published by the United Nations Economic Commission for Africa in February 2015. It can be found at http://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf.

²⁶ Ibid.

controls on foreign exchange. (UNECA.2018). In other cases, money earned legally, the tax due is evaded through illegal failure to comply with a country's tax laws through falsification of tax returns.

If the Mbeki report definition is adopted however, activities such as tax avoidance that are not illegal per se but that involve the arrangement of one's affairs in order to pay less tax by the utilization of loopholes in tax laws within legal parameters, is excluded as an IFFs. It is therefore important that a broader non-legalist interpretation of IFFs be adopted to encompass such activity. The United Nations Economic Commission for Africa (UNECA) has argued that the term 'illicit' should be interpreted as; 'not authorized or allowed, improper, irregular, not sanctioned by law...., unlawful or forbidden'. In the second instance, 'illicit' has been defined to refer to funds which are illegally earned, transferred or utilized and include all unrecorded private financial outflows that drive the accumulation of foreign assets by residents in breach of relevant national or international legal frameworks.²⁷ It has also been defined to refer to funds from "legitimate economic activity that become illicit due to the subsequent contravention or circumvention of laws in how those funds are handled or dealt with."²⁸ This broader interpretation would therefore encompass aggressive tax avoidance practices occasioned by multi-national corporations.

The adoption of Sustainable Development Goals (SDGs) was underpinned by the need to address the challenge of financing and creating an enabling environment at all levels for sustainable development²⁹ through promoting inclusive economic growth, protecting the environment and promoting social inclusion. The decision to 'leave no one behind' was not without challenges.

²⁷ Ibid, para 14.

²⁸ Human Rights Council (2017), Draft Progress Report On The Research-Based Study On The Impact Of Flow Of Funds Of Illicit Origin And The Non-Repatriation Thereof To The Countries Of Origin On The Enjoyment Of Human Rights, A/HRC/AC/18/CRP.3

²⁹ Resolution 69/313 adopted by the United Nations General Assembly on 27 July 2015, <https://undocs.org/A/RES/69/313> as at 18th December, 2019.



UNCTAD found that a total investment of about

\$3.9 trillion

per year was needed by developing countries to meet their SDGs goals.

As of 2014, developing Countries required **\$250 billion** and **\$210 billion** per year of their **\$80 billion** and **\$70 billion** current investment, to be able to provide education and health respectively under SDG framework.³⁰

Domestic resource mobilization was identified therefore as a core pillar in ensuring the reality of the 2030 Agenda.³¹

The Addis Ababa Agenda calls upon all member states to substantially reduce IFFs by 2030, with a view to eventually eliminating them. Measures such as combating tax evasion and corruption through strengthened national regulation and increased international cooperation, were identified as a means of achieving sustainable development.³²

Additionally, enhanced disclosure practices and transparency, including transparency in all financial transactions between Governments and companies to relevant tax authorities and the payment of taxes in accordance with national and international laws and policies were identified as steps that were to be undertaken in order to respond to IFFs and ensure effective resource allocation.

As a result, countries including Uganda adopted the 2030 agenda to significantly reduce IFFs³³, substantially all forms of corruption and bribery and develop effective, accountable and transparent institutions at all levels³⁴.

2

DIMENSIONS OF IFFs

A core characteristic of transactions linked to IFFs is the use of various mechanisms to maintain opacity in financial information of the entities involved and the nature of their transactions. Illicit financial flows can be either way, inflows or outflows of illicit funds. However, the most manifest means of IFFs is transfer of

³⁰ Investing in SDGs: An Action Plan for Promoting Private Sector Contributions

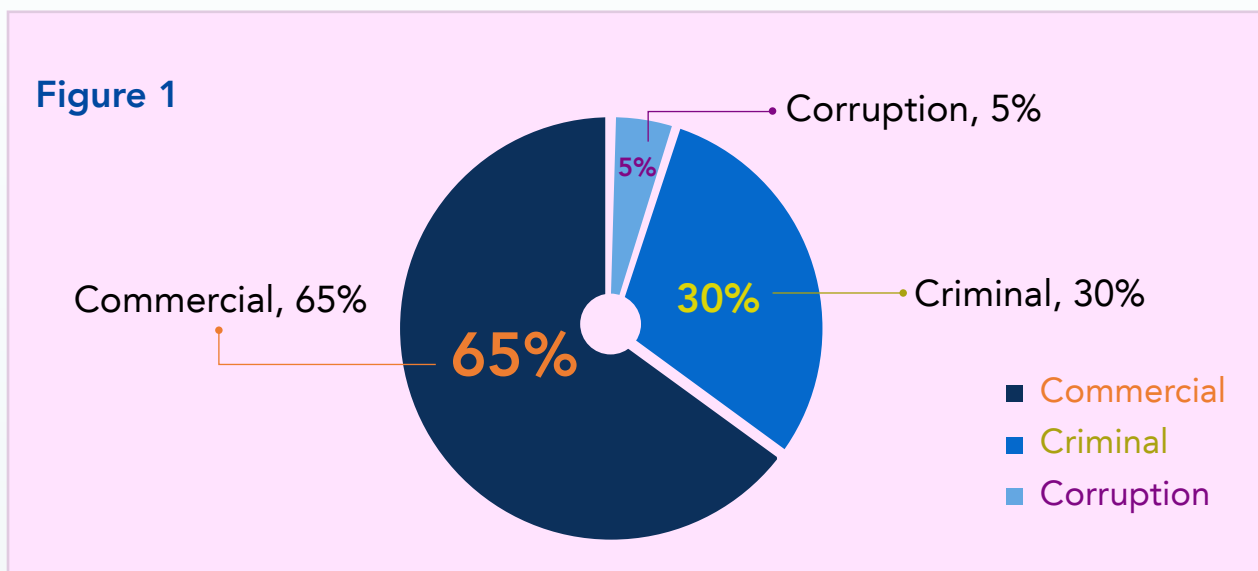
³¹ SDG 17.1 (Strengthen domestic resource mobilization including improving domestic capacity to tax and other revenue collection).

³² United Nations (2015) Addis Ababa Action Agenda, para 23, https://sustainabledevelopment.un.org/-content/documents/2051AAAA_Outcome.pdf

³³ Sustainable Development Goals, Target 16.4.

³⁴ Sustainable Development Goals, Target 16.6.

developing to developed countries. For example, the United Nations Conference on Trade and Development (UNCTAD) calculates that some commodity dependent developing countries are losing as much as 67 percent of their export revenue, worth billions of dollars, to trade misinvoicing. Broadly speaking, there are three categories of illicit financial flows; commercial, criminal, and government corruption. [See Figure 1]



2.1 Commercial IFFs

Commercial IFFs are as a result of business-related activities whose purpose may be; hiding wealth, evading or aggressively avoiding tax, and dodging customs duties and domestic levies.³⁵ These commercial flows take various forms for instance transfer pricing, as well as trade misinvoicing which was identified as one of the largest drivers of IFFs from developing countries, including Uganda. Other forms include: abusive transfer pricing, aggressive tax avoidance, unequal contracts that are grounded in corruption and illegal export of foreign exchange.

Other forms of commercial IFFs may be legal but yet enable IFFs. Double tax agreements depending on how they are crafted by the government and used by companies, enable IFFs by resulting in what has been dubbed double non-taxation, where the potential tax payer avoids tax in both the country of residence and the source country. Matters are further complicated when countries with low or no-tax rates enter into double tax agreements with countries where the commercial activities are taking place. These and other commercial mechanisms have been used to fuel IFFs. Commercial flows

constitute three quarters of the illicit flows from Africa according to the Mbeki report.³⁶

2.2 Criminal IFFs

Criminal IFFs range from trafficking of people, drugs and arms to smuggling, as well as fraud in the financial sector, such as unauthorized or unsecured loans, money laundering, stock market manipulation and outright forgery. Due to the opacity of the nature of transactions shrouded in crime, there is an avenue to transfer of money illicitly while also keeping the transactions from the purview of law enforcement agencies or revenue authorities. Examples of this include money laundering, large scale cash smuggling across borders, trafficking of drugs, arms and people, terrorist financing. These, due to the opaque nature of transactions, provide an avenue for transfer of money illicitly. These constitute 30% of the illicit flows from Africa.³⁷ However, this is an underestimate due to the fact that not all criminal activities come to light.

2.3 Government Corruption

The countries who are the biggest contributors to IFFs include the (1)Cayman Islands, (2)United Kingdom,(3) the Netherlands, (4)Luxembourg and (5) the United States. The UK and territories contribute 37.4%. The UK, its overseas territories, crown dependencies, Luxembourg, Netherlands and Switzerland, popularly dubbed “the axis of tax avoidance” contribute 55.4%.³⁸ African countries are also contributing to IFFs like Mauritius and Kenya.

³⁶ Ibid.

³⁷ Ibid.

³⁸ State of Tax (2020) at p.,12

3

LEGISLATIVE AND POLICY FRAMEWORK IN REPECT TO IFFs

A number of international, regional and national legislations tackle the concept of IFFs mainly through criminalizing the forms of IFFs like corruption, while others attempt to close gaps that would create fertile ground for IFFs.

3.1 International instruments

International instruments that address IFFs include but are not limited to;

- **United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention):**³⁹
This includes provisions on money laundering and international cooperation.⁴⁰ The convention recognises that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels.
- **United Nations Convention against Transnational Organized Crime 2000 (Palermo Convention):**⁴¹
The convention was adopted to promote cooperation to prevent and combat transnational organised crime.⁴² It requires states to criminalize money laundering⁴³ and includes provision on extradition⁴⁴, mutual legal assistance⁴⁵ and law enforcement cooperation⁴⁶, criminalise corruption.⁴⁷ These provisions have potential to address IFFs especially as regards to transnational organized crime and money laundering.

³⁹ UN Economic and Social Council (ECOSOC), United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 19 December 1988, available at: https://www.unodc.org/pdf/convention_1988_en.pdf.

⁴⁰ Ibid, Article 10

⁴¹ UN General Assembly, United Nations Convention against Transnational Organized Crime: resolution / adopted by the General Assembly, A/RES/55/25, 8 January 2001, available at: <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

⁴² Article 1

⁴³ Ibid, Article 7 & 6

⁴⁴ Ibid, Article 16 see FN 23

⁴⁵ Ibid, Article 18

⁴⁶ Ibid, Article 27

⁴⁷ Article 8 & 9

- **International Convention for the Suppression of the Financing of Terrorism 1999.**⁴⁸
This convention takes into consideration the fact that acts of international terrorism depend on the financing that terrorists may obtain⁴⁹, and thus goes ahead to enjoin states to criminalize the financing of terrorism⁵⁰, and adopt powers to freeze and seize funds intended to be used for terrorist activities. This convention impliedly addresses the notion of IFFs especially those that stem from criminal activities as well as those channelled towards promotion of criminal activities most particularly terrorist financing.
- **United Nations Convention against Corruption 2003 (Merida Convention):**⁵¹
This convention seeks to strengthen international cooperation in preventing and combating the transfer of funds of illicit origin, derived from acts of corruption, including the laundering of funds, and in returning such funds.⁵² It requires states to put up measures, including legislative and administrative measures to prevent and criminalize corruption⁵³; including prosecution, adjudication and sanctions⁵⁴ and providing international cooperation.⁵⁵ It enshrines asset recovery on corruption cases in international law and serves as quintessential mechanism to harmonise asset recovery.⁵⁶

A number of human rights instruments do not explicitly address IFFs but contain provisions that could be used to require States to curb IFFs.

The 1986 United Nations (UN) Declaration on the Right to Development (DRTD).⁵⁷

The Declaration aims to put people at the centre of development; ensure their free, active and meaningful participation in society; secure non-discrimination; fairly distribute the benefits of development;

respect self-determination, and sovereignty over natural resources in a process

⁴⁸ UN General Assembly, International Convention for the Suppression of the Financing of Terrorism, No. 38349, 9 December 1999, available at: <http://www.un.org/law/cod/finterr.htm>.

⁴⁹ Ibid

⁵⁰ Ibid, Article 4

⁵¹ United Nations Convention Against Corruption, available at: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

⁵² Ibid, see preamble

⁵³ Ibid, Article 4

⁵⁴ Article 30

⁵⁵ Ibid, Article 43

⁵⁶ Ibid, Under Chapter V

⁵⁷ UN General Assembly, Declaration on the Right to Development, A/RES/41/128, 4 December 1986, available at: <http://www.un.org/documents/ga/res/41/a41r128.htm>.

that advances other civil, political, economic, social and cultural rights.⁵⁸ It places a primary duty on states to create national and international conditions favourable to the realization of the right to development.⁵⁹ This can be a strong premise for a state like Uganda to curb IFFs in order to realize development. The Declaration also provides a viable basis for legal cases on any matter incidental to IFFs in the African human rights system where it is justiciable by virtue of its embodiment in Article 22 of the African Charter on Human and Peoples' Rights⁶⁰ and related jurisprudence.⁶¹

Guiding principles on Business and human Rights

The Guiding Principles on Business and Human Rights contain several references to human rights impacts and "adverse human rights impacts". "Human Rights

Due Diligence" is a core concept of the principles, contained inter alia in Principles 17 - 24, in particular, 17, 18, 19, 20, 21, relating specifically to the obligations of business. Notably, Principle 17 provides that in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.⁶² Under Principle 18, "In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business

⁵⁸ UN Declaration on the Right to Development, <http://www.facing-finance.org/en/database/norms-and-standards/un-erklarung-ueber-das-recht-auf-entwicklungun-declaration-on-the-right-to-development/>

⁵⁹ Ibid, Article 3 See FN 36

⁶⁰ African Charter on Human and Peoples' Rights, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), 27 June 1981, available at: <https://au.int/sites/default/files/treaties/7770-treaty-0011 - african charter on human and peoples rights e.pdf>

⁶¹ The justiciability of the RTD has been upheld by the African Commission on Human and Peoples' Rights in Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) (ACHPR, Decision 276/03 of 25 November 2009, available at: http://www.achpr.org/files/sessions/46th/comunications/276.03/achpr46_276_03_eng.pdf) and by the African Court on Human and Peoples' Rights in African Commission on Human and Peoples' Rights v. Republic of Kenya (AfCHPR, Application No. 006/2012, Judgment of 26 May 2017, available at: <http://www.african-court.org/en/images/Cases/Judgment/Application%20006-2012%20-%20African%20Commission%20on%20Human%20and%20Peoples%E2%80%99%20Rights%20v.%20the%20Republic%20of%20Kenya..pdf>). For a discussion on the justiciability of the RTD, see OHCHR, "Frequently Asked Questions on the Right to Development", New York and Geneva, 2016, available at: http://www.ohchr.org/Documents/Publications/FSheet37_RtD_EN.pdf, pp. 8-9.

⁶² UN Principles on Guiding Principles, p.17, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

relationships. This creates an obligation on the part of businesses not to engage in IFFs due to their adverse effects to human rights.

A number of UN Security Council Resolutions: S/RES/1373 (2001)

S/RES/2253 (2015); S/RES/2368 (2017) ⁶³ have also introduced measures to counter illicit IFFs. A number of other policies have been adopted and they are geared towards curbing and addressing IFFs

A number of other policies have been adopted and they are geared towards curbing and addressing IFFs. These include; Transforming our world: the 2030 Agenda and Sustainable Development, Sustainable Development Goals (SDGs);⁶⁴ as well as the Addis Ababa Action Agenda (AAAA),⁶⁵ among others.

The obligations that arise from the international legal framework apply to both countries of origin and recipient countries⁶⁶ of funds of illicit origin due to the principle of international cooperation and assistance towards the realization of human rights, particularly economic, social, and cultural rights."⁶⁷ According to this principle, states' obligations to respect, protect, and fulfill human rights are not only applicable in relation to their own domestic populations but do have an extraterritorial scope, applying to both countries in a position to assist and countries in need of assistance.⁶⁸

⁶³ For example, UN Security Council, Security Council resolution 1373 (2001), S/RES/1373 (2001), 28 September 2001, available at: [http://undocs.org/S/RES/1373\(2001\)](http://undocs.org/S/RES/1373(2001)); UN Security Council, Security Council resolution 2253 (2015), S/RES/2253 (2015), 17 December 2015, available at: [http://undocs.org/S/RES/2253\(2015\)](http://undocs.org/S/RES/2253(2015)); UN Security Council, Security Council resolution 2368 (2017), S/RES/2368 (2017), 8 December 2017, available at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2368\(2017\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2368(2017)).

⁶⁴ UN General Assembly, 'Transforming our world: the 2030 Agenda for Sustainable Development', A/RES/70/1, 25 September 2015, available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.

⁶⁵ UN General Assembly, Addis Ababa Action Agenda of the Third International Conference on Financing for Development, A/RES/69/313, 16 July 2015, available at: http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf.

⁶⁶ Under Article 26, Vienna Convention on The Law Of Treaties.

⁶⁷ Charter of the United Nations, Arts. 55 and 56; International Covenant on Economic, Social, and Cultural Rights, art. 2, para. 1; Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, principles 28 and 29; Convention on the Rights of the Child, art. 4; Declaration on the Right to Development, arts. 3.1, 3.2, 3.3 and 4.2; Vienna Declaration and Programme of Action, arts. 1, 4, 10, and 11.

⁶⁸ Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 13; general comment No. 14, para. 45; general comment No. 15, paras. 37-38; general comment No. 17, paras. 36-38; general comment No. 18, paras. 29-30; Limburg Principles, principle 26.

3.2 Regional legal framework

i. African Commission

On the issue of IFFs, human rights and development, the African Commission on Human and Peoples' Rights in Resolution 236 has recognized that "illicit capital flight undermines the capacity of State Parties to implement the ACHPR and to attain the Millennium Development Goals", and called upon States parties to the African Charter "to examine their national tax laws and policies towards preventing illicit capital flight in Africa."⁶⁹

ii. United Nations Economic Commission for Africa (UNECA)

One of the most significant efforts in regional cooperation in this area is that of the 2015 report of the High Level Panel on IFFs from Africa, which was established by the UN Economic Commission for Africa in 2011 following Resolution 896(XLIV) of the fifth Joint Annual Meetings of the Economic Commission for Africa Conference of African Ministers of Finance, Planning and Economic Development and the Conference of African Ministers of Finance, Planning and Economic Development.⁷⁰ This panel did an extensive study on IFFs in Africa and provided the threshold for assessing the impact of IFFs on Africa in general. It found out that Africa is estimated to have lost in excess of \$1 trillion in IFFs and that currently Africa is estimated to be losing more than \$50 billion annually in IFFs.

⁶⁹ Resolution 236 adopted by the Commission at its 53rd ordinary session, 23 April 2013. <http://www.achpr.org/sessions/53rd/resolutions/236/>.

⁷⁰ African Union and Economic Commission for Africa, Report of the High Level Panel on Illicit Financial Flows from Africa, Addis Ababa, 2 June 2017, available at: https://www.uneca.org/sites/default/files/-PublicationFiles/iff_main_report_26feb_en.pdf

iii. African Union Convention on Preventing and Combating Corruption⁷¹

This convention takes cognizance of the negative effects of corruption on the economic and social development of African peoples and the need to foster the promotion of economic and social rights in conformity to the African Charter. It enjoins state parties to adopt legislative and other measures to create, maintain and strengthen internal accounting auditing and follow up systems.⁷² It contains provisions on laundering of proceeds⁷³, illicit enrichment,⁷⁴ international cooperation⁷⁵ and urges states to create an enabling environment for Civil Society Organizations which will enable them to hold government to the highest levels of transparency and accountability, among other provisions.

iv. Nairobi Declaration on Taxation and Development

It tasks G20, UN and African Governments to address IFFs enabled through financial secrecy by offshore financial centres and to increase transparency of transactions by multinational corporations.

⁷¹ African Union, African Union Convention on Preventing and Combating Corruption, 11 July 2003, available at: <https://au.int/sites/default/files/treaties/7786-treaty-0028 - african union convention on preventing and combating corruption e.pdf>.

⁷² Article 5

⁷³ Ibid, Article 6

⁷⁴ Ibid, Article 8

⁷⁵ Ibid, Article 19

3.3 National legal framework on IFFs in Uganda

There is no particular national legislation that explicitly deals with IFFs in Uganda, however a number of legislations tackle the various manifestations of IFFs and attempt to close the gaps for IFFs, for instance; Anti-Corruption Act, Anti-Terrorism Act, Companies Act among others.

Anti-Money Laundering Act, 2013 (ALMA)

Uganda enacted the ALMA in November, 2013 that established the Financial Intelligence Authority (FIA) in 2014. The AMLA creates the offense of money laundering with penalties of up to 15 years of imprisonment and institutes mechanisms to improve banking supervision, to raise awareness about illicit activities among banks and non-financial institutions, for Internal Control and Risk Management, anti-money laundering systems and controls, for client due diligence, risk assessment, and training and capacity building, among others.

There is a National Strategy for Money Laundering Strategy and the Financing of Terrorism and Proliferation Financing FY 2020/21-2024/2025 following a baseline survey.

Companies Act, 2012

The Companies Act is administered by the Uganda Registration Services Bureau. It provides for the creation of public limited companies, private limited companies defined as companies limited by shares, foreign companies, and unlimited companies as legal persons through registration. It requires the filling of compliance returns and has penalties for tax evasion and allows for lifting corporate veil should company or directors of company engage in tax fraud.⁷⁶

⁷⁶ Companies Act 2012

<p>Anti-Corruption Act, 2009</p>	<p>Defines acts constituting corruption by public officers as embezzlement, bribery, causing financial loss, conflicts of interest and other more traditional crimes, but also aspects related to nepotism, sectarianism, influence peddling and other less visible forms of undue privilege. The Act also deals with any obstruction of efforts to investigate or prosecute cases of corruption. Provisions for the nominal protection of informers by withholding their identity are reinforced by the substantive Whistleblowers Protection Act (2010).⁷⁷ Special investigative powers including orders of search and seizure are given to the Inspector General of Government (IGG) (i.e. the ombudsman) and the Director of Public Prosecutions (DPP), both of which are legally independent, constitutional offices. While broadly dealing with corruption, its clauses and the investigative powers can be used upon to tackle the government corruption prong of IFFs.</p>
<p>Tax Procedures Code Act, 2014</p>	<p>Requires that every person eligible to pay tax register. Non-compliance in registering and paying taxes due is also deterred by the imposition of penalties and prescription of offences, again contributing to financial transparency.⁷⁸</p>
<p>Income Tax Act Cap 340</p>	<p>The Income Tax Act Cap 340 of the laws of Uganda is the primary legislation. It enables the Commissioner General of URA to determine the source of income and nature of a payment or revenue to determine the</p>

⁷⁷ Whistleblowers Protection Act (2010)

⁷⁸ Part XIV of the Tax Procedures Code Act

chargeable income that has been realized by a tax payer in an arm's length transaction. The Income Tax Act has regulations on transfer pricing, Income Tax (Transfer Pricing) Regulations 2011 which govern controlled transactions where one entity is based in/ subject to the laws in Uganda and the other is not.⁷⁹ Section 25 of the 2019 amendment to the Income Tax Act put in place an interest stripping rule more effective at restricting profit shifting where a deduction for interest on all debts owed by a tax payer is allowed but only up to 30% of the tax earnings before interest, depreciation and amortization.⁸⁰ This sought to prevent tax leakages from re characterized business transactions since the way a company is capitalized significantly impacts the profit reported for tax purposes and therefore the amount of tax the company pays. Multinationals often structure a mixture of debt and equity to maximise their benefit and to impact how much profit they report for tax purposes. Thin capitalization rules place a limit on the amount of interest companies deduct when calculating the companies' profit for tax purposes thereby preventing cross-border shifting of profit through excessive debt.⁸¹

To combat offshore tax evasion, in 2012, Uganda joined the Global Forum on Transparency and Exchange of Information for Tax Purposes and assented to Convention on Mutual Administrative Assistance in Tax Matters in 2016. It has also endorsed the Yaoundé Declaration⁸² and Africa Initiative.

⁷⁹ There are several methodologies provided for under the Income Tax (Transfer Pricing) Regulations 2011 to assess transfer pricing provided for: Comparable uncontrolled price method; Resale price method; Cost plus method; Profit split method; Transactional net margin method. See <https://www.drtp.ca/wp-content/uploads/2015/02/Uganda-Transfer-Pricing-Regulations-2011.pdf>

⁸⁰ Income Tax Act 2019 Amendment <https://old.ulii.org/system/files/legislation/act/2019/340/The%20Income%20Tax%20%28Am%29%20Act%2C%202019%20Assent.pdf>

⁸¹ OECD https://www.oecd.org/ctp/tax-global/5.%20thin_capitalization_background.pdf

⁸² <https://www.oecd.org/tax/transparency/what-we-do/technical-assistance/the-yaounde-declaration.htm>

4

HOW MUCH IS UGANDA LOSING AND WHY SHOULD WE CARE?

The true estimates of IFFs are difficult to ascertain owing to the fact that IFFs are a cross-sectoral, multi-dimensional problem perpetuated by the lack of transparency and the desire to curtail the laws and customs. This has resulted in the absence of clear data as most of the IFFs are mostly hidden. In Uganda's context, the haphazard efforts to combat IFFs means that it is recently that the government has set out to intentionally track IFFs.

However, data is emerging. In 2020, the OECD released aggregate country by country reporting data enabling calculation of country corporate tax losses and increased the countries in 2021.

Uganda loses
\$382.8 million

in tax abuse,
which is 1.2%
of its GDP.⁸³



Of this amount, **\$365.4 million**
\$17.4 million through offshore wealth.⁸⁴

This amount could ensure full Covid 19
vaccination for 22.3 million people/
/55.8% of the population.⁸⁵



Using the OECD 2021 data,

**Uganda lost half of
its 2020/21 health
budget in IFFs.**



In the 2020/2021 budget

**Uganda spent Shs 2,788,911,431,032
on health⁸⁶ and Shs 3.7 trillion on
education.**⁸⁷

Tax Justice Africa found it to be higher at
110% of its health budget in IFFs.⁸⁸

⁸³ Tax Justice Network (2021) State of Tax Justice, https://taxjustice.net/wp-content/uploads/2021/11/State_of_Tax_Justice_Report_2021_ENGLISH.pdf

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ministry of Finance, Approved Budget 2020/21

⁸⁷ Ministry of Finance, Approved Budget Estimates FY 2020/21.

⁸⁸ <https://taxjustice.net/country-profiles/uganda/>

Using the OECD
2020 data, the tax loss is
equivalent to

31.43%

of Uganda's public health
expenditure and could finance
83,658 nurse's salaries.⁸⁹

The Report of the High-Level Panel on Illicit Financial Flows in Africa noted that 3% of Uganda's GDP is lost in IFFs.⁹⁵ Conversely, Uganda is responsible for \$14,398,422, less than 0.01% tax loss through IFFs worldwide.⁹⁶ The Global Financial Integrity report had in 2014 estimated this to be on average 713 million USD in IFFs from the country.⁹⁷

In 2020, Tax Justice Africa estimated it to be **\$115,358,153** and **\$96,594,157 (83.7%)** is lost due to corporate tax abuse.⁹⁰ This figure could be up to three times higher⁹¹ if indirect losses as a result of reduced statutory and effective corporate tax rates to attract multinational corporations, essentially a self-defeating race to the bottom on corporate taxation, are calculated.⁹² **\$18,763,996 is lost due to offshore tax evasion.**⁹³ Offshore wealth as a percentage of Uganda's GDP is **(3.4%)**.⁹⁴

To understand the impact
of this, we must look at the
country's domestic revenue
mobilization.

⁸⁹ Tax Justice Network (2020), The State of Tax Justice 2020 at p.72, 83,658 n

⁹⁰ Tax Justice Network, The State of Tax Justice at p.72, https://taxjustice.net/wp_content/uploads/2020/11/The_State_of_Tax_Justice_2020_ENGLISH.pdf

⁹¹ See Crivelli, E., de Mooij, R. & Keen, M. (2016). Base Erosion, Profit Shifting and Developing Countries. *FinanzArchiv: Public Finance Analysis* 72(3): 268–3019 (suggesting indirect losses may be three times higher than direct losses)

⁹² Tax Justice Network (2020), The State of Tax Justice at p.72, https://taxjustice.net/wp_content/uploads/2020/11/The_State_of_Tax_Justice_2020_ENGLISH.pdf

⁹³ Tax Justice Network, The State of Tax Justice at p.72, https://taxjustice.net/wp_content/uploads/2020/11/The_State_of_Tax_Justice_2020_ENGLISH.pdf

⁹⁴ Tax Justice Network, The State of Tax Justice at p.46.

⁹⁵ Report of the High Level Panel on Illicit Financial Flows in Africa.P.55

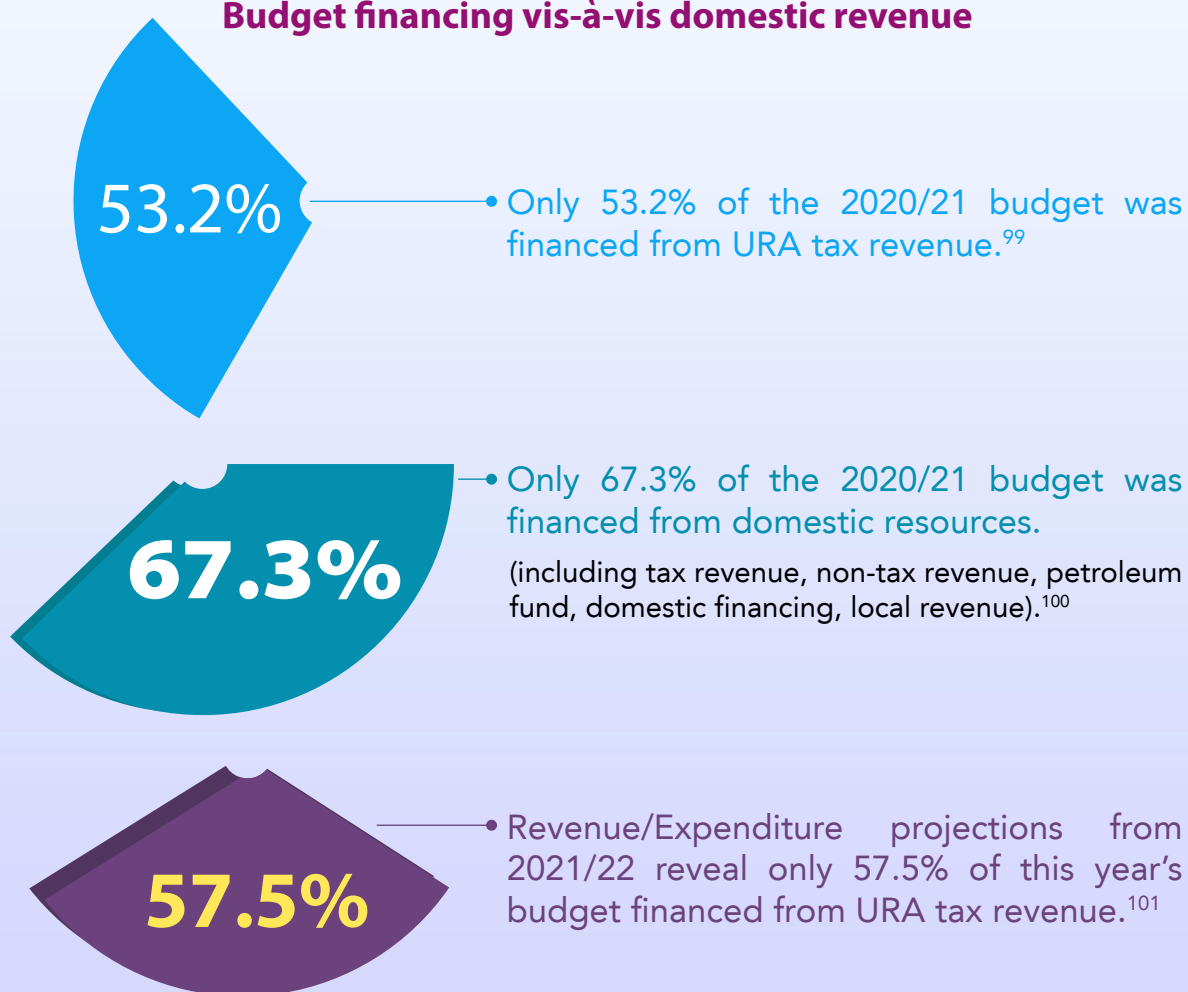
⁹⁶ Tax Justice Network, The State of Tax Justice at p.46, https://taxjustice.net/wp_content/uploads/2020/11/The_State_of_Tax_Justice_2020_ENGLISH.pdf

⁹⁷ Global Financial Intergrity (GFI) (2014), Illicit Financial Flows in Developing Countries 2003-2012 at p.33

Uganda's revenue collection remains below par despite successive reforms by Uganda. Uganda's tax to GDP ratio was 12.99% in 2020/21. According to the World Bank, the minimum desirable tax to GDP ratio is 15 %. However, the World Bank notes that at that level, revenues are inadequate to finance basic state functions. This low tax revenue collection reflects "weaknesses in revenue management, corruption and shortfalls in the capacity of tax and customs administrators."⁹⁸



Budget financing vis-à-vis domestic revenue



⁹⁸ World Bank, Results Briefs-September, 2019, 'Mobilising Tax Resources to Boost Growth and Prosperity in Sub Saharan Africa accessible at <https://www.worldbank.org/en/results/2019/09/09/mobilizing-tax-resources-to-boost-growth-and-prosperity-in-sub-saharan-africa> as at 25th Nov, 2019.

⁹⁹ Hon. Amos Lugolobi, Minister of Finance (2021) Budget Speech Financial Year 2021/22, 10 June 2021 annex 1,

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

According to the World Bank, Uganda's efficiency of revenue mobilization has remained at the rate of 3.5 out of 6 since 2018¹⁰² lagging behind her other EAC countries like Kenya which has had 4 out of 6 consistently from 2015 onwards.¹⁰³

While all countries are affected by IFFs, in an age of economic and financial globalization, outflows from Uganda as a developing country, are of particular consequence and entail disproportionate impacts given that its resource-constrained and yet to effectively ensure the Economic Social Rights.

Reduced tax earnings resulting from hiding taxable funds have a direct effect on the provision of public services such as schools, clinics, sanitation, security, water and social protection. This is due to the fact that financial resource outflows through illicit flows ultimately narrow the national tax base, which in turn impairs the ability of the State to fund social protection or adequate and accessible public services. **This disproportionately affects the poor and women.**¹⁰⁴

In the face of the inability of the public sector to finance essential social services due to low domestic resource mobilisation, social services are increasingly privatized, posing problems of affordability and accessibility and heightening inequity.

IFFs contribute to austerity since balance of payments influence fiscal and monetary policy yet IFFs disguise the real export performance of the country. For example leakages in the balance of payments, also known as illicit hot money outflows were 1204,000,000 USD between 2003-2012.¹⁰⁵ This distortion results in slowed growth, reduced investment in social services. Often the results are multiple and intersecting and create barriers to basic human rights like the rights to food and health, including healthcare and medicines.

Curbing IFFs could reduce aid dependency. The OECD has found that, 'IFFs exceed aid and investment in volume, internationally'.¹⁰⁶

¹⁰² World Bank Group, CPIA database, <https://www.worldbank.org/en/data/datatopics/cpia>

¹⁰³ Ibid

¹⁰⁴ Akiina Mama (2020), The Gendered Impacts of Illicit Financial Flows, <https://www.akinamamawaafrika.org/the-gendered-impacts-of-illicit-financial-flows-iffs/>; Attiya Warris (2017) Illicit Financial Flows: Why We Should Claim These Resources for Gender, Economic and Social Justice, oronto: Association for Women's Rights in Development (AWID), <https://www.awid.org/publications/illicit-financial-flows-why-we-should-claim-these-resources-gender-economic-and-social>

¹⁰⁵ Global Financial Integrity, GFI(2014) Illicit Financial Flows in Developing Countries 2003-2012 at p.33

¹⁰⁶ OECD, 2014, What do illicit financial flows mean for developing Countries? In illicit financial flows from developing countries: Measuring OECD Responses, OECD Publishing Paris.

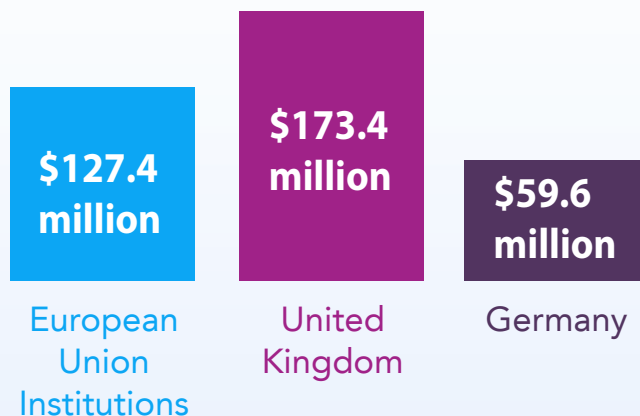
The \$365.4 million

Uganda loses through corporate tax abuse could replace overseas development assistance from the International Development Association for 2018-2019, which was at

\$311.8 million¹⁰⁷

The potential revenue lost in IFFs

surpasses the combined overseas development assistance received from the



(in 2018-19¹⁰⁸)

If the large flows can be curbed, the development finance gap can be met. The High-Level Panel on Illicit Financial Flows found that if IFFs were to be translated into sources of finance for African Governments and the economy at large, the dependence on development assistance and other sources of support would be lowered or disappear entirely.¹⁰⁹

On the converse, when there are substantial amounts of IFFs, stakeholders such as donors and investors reduce aid given or availed. This lowers the inflow of Direct Foreign Investments and foreign aid that could have been channeled towards development as monies that could have been directed for development finance are instead diverted to develop control mechanisms to curb the practice.

IFFs undermine debt sustainability, outlined in SDG target 17.4.

As some developing country governments may need to resort to external borrowing in the face of missing tax revenues, debt burdens accumulate and debt crisis becomes more imminent.

¹⁰⁷ OECD DAC Aid at a Glance by Recipient, https://public.tableau.com/views/OECDACaidata_glancebyrecipient_new/Recipients?:embed=y&:display_count=yes&:showTabs=y&:toolbar=no?&:showVizHome=no

¹⁰⁸ Ibid.

¹⁰⁹ Mbeki, 2015.

Uganda's debt burden is nearing the redline as stock rose from
\$12.55 billion In June 2019 to **\$15.21 billion** by December 2020

representing **49.8%** percent of the country's GDP in nominal terms.¹¹⁰
 This, in turn, can detrimentally impact the realization of economic social rights
 since debt servicing expenses constrains the public resources available to fund
 public services.¹¹¹

In 2020/21, Uganda spent

12.76 trillion USH

in interest payments

which is more than the equivalent combined
 budget that government allocated for the
 following public services in the same year:¹¹²



¹¹⁰ Minister of Finance, (2021) Budget Speech, FY 2021/22, <https://www.finance.go.ug/sites/default/files/The%20Budget%20Speech%20for%20FY%202021-2022.pdf>

¹¹¹ United Nations Human Rights Council (2016), "Final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights", A/HRC/31/61, Geneva, 15 January 2016, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/006/43/PDF/G1600643.pdf?OpenElement>.

¹¹² Ministry of Finance (2020), Approved Budget 2020/2021, <https://budget.finance.go.ug/>



In **2021/22** Uganda allocated **\$1.3 billion** in interest repayments in FY 2021/22 which is 20.6 percent of her estimated domestic revenues for this year.¹¹³

IFFs contribute to a regressive tax system and impose an unfair tax burden on poorer sections of society. Large Companies especially multi-national corporations that engage in profit shifting activities erode the tax and revenue base of a country. This leaves the bulk of the tax burden on small and medium sized enterprises and individuals. Uganda's tax system is generally classified by tax experts, scholars and civil society actors as regressive with a disproportionately higher tax burden on poor people that leaves out many richer entities. This is the direct opposite of progressive taxation and curtails the purpose of taxation to support good governance and development, encouraging instead the reliance on development assistance since the government finds it is increasingly resource constrained.

In 2019, ~**65%** of Uganda's total tax revenue were taxes of goods and services at

shs 10,457,660,966,000

out of the total tax revenue of

shs 16,1399,636,973,000.¹¹⁴

The fact **two thirds** of Uganda's tax revenue is borne by households regardless of their ability to pay disproportionately affects the poor and women who are hit harder by indirect taxes. Yet the revenues lost through IFFs are more than combined indirect taxes

(\$2,920,928,238.65)

¹¹³ Budget Speech FY 2020/21, <https://www.finance.go.ug/sites/default/files/The%20Budget%20Speech%20for%20FY%202021-2022.pdf>

¹¹⁴ Data extracted on 31 March 2022 at https://stats.oecd.org/Index.aspx?DataSetCode=CTS_CIT_The_total_and_non_tax_revenue_at_shs_17,826,255.85_million

IFFs deepen inequality levels and worsen poverty. IFFs further deepen the existing inequality in distribution of political and economic power, in that those who benefit from IFF, especially the local elite, become wealthier and gain further control of the polity. IFFs are often tools of already wealthy people, requiring a plethora of accountants, lawyers and other professionals to facilitate them. IFFs are not tools of those living in poverty.¹¹⁵ The dire consequence of this situation is felt most severely when policies aimed at addressing poverty are compromised in the interests of maintaining the economic power of that elite. Only tax abusers and the wealthy benefit at the expense of everyone else.

IFFs further constitute a transfer of development finance resources from developing countries to developed countries. This consequently exacerbate inequalities between countries, negatively impacting the prospects of SDG 10 to reduce inequalities within and among countries.

Failure to curb IFFs puts local business at a disadvantage.

Failure to ensure multinational corporations pay their fair share of tax disadvantages local businesses who are taxed thereby detrimentally impacting on innovation and local development. Yet rather than reinvestment in the country in the form of local jobs, funding to create more wealth, tax abusers move the wealth offshore.

Undermines representation and governance

Higher tax revenue should result in better governance and enables political representation by ensuring governments are held responsible for how resources are used. When leakages are not curbed and domestic revenue mobilization remains low, a larger proportion of the national budget is financed by external actors which corrodes the political representation, accountability of the states to its citizens and overall governance.

IFFs as a disabler of sustainable development

IFFs can be considered as a significant disabler of sustainable development as they ultimately deter growth, development, governance and rule of law in a country. IFFs are not compatible with other determinants of governments' efforts to effectively use and mobilize revenues and resources for sustainable development. For example, corruption undermines the ability of governments to ensure sustainable development, terrorism displaces people and destroys livelihoods, tax evasion reduces the resources base and affects governments capacity to fund inclusive growth policies and strong quality public services.

¹¹⁵ UNECA, 2017

It is estimated that developing countries lose approximately US \$1.26 trillion per year as a result of Corruption, bribery, theft and tax evasion that could be used to lift those who are living on less than \$1.25 a day above \$1.25 for at least six years.

It is important to understand from the onset that IFFs are not merely direct losses to the public purse. One shilling lost to IFF does not equate to one shilling of harm. The harm caused can be even greater than its headline value, for instance corruption which is one of the manifestations of IFFs, undermines the quality of public works. It can thus be seen that IFFs have wide-reaching impacts on economies, institutions, people which in turn affect human rights.¹¹⁶

This hurts the poor disproportionately as in most cases public funds that were intended for development are diverted for private gain, thereby destabilizing Government's ability to provide public services like health and education, feeding inequality and injustice.¹¹⁷

"The repatriation of funds of illicit origin would provide States that are undergoing a democratization process with a further opportunity to improve the realization of economic, social and cultural rights and to fulfil their obligation to meet the legitimate aspirations of their peoples." Human Rights Council, (A/HRC/31/22).

Covid 19 increased financing provided to governments in lower income countries from international financial institutions and assistance. However, without appropriate safeguards, it can be lost in IFFs. On the other hand, Covid 19 has placed more financial demands on governments necessitating they prioritise curbing IFFs to have the resources required for social protection, vaccines and strengthening health systems.

¹¹⁶ Hunter, M., 2018. Measures That Miss The Mark. Capturing The Proceeds Of Crime In Illicit Financial Flow Models. Global Initiative Against Transnational Organized Crime. Available at: www.globalinitiative.net/capturingproceeds-of-crime-in-illicit-financial-flows-models/

¹¹⁷ United Nations, 2003. "United Nations Convention Against Corruption." Treaty Series 2349 (October): 41

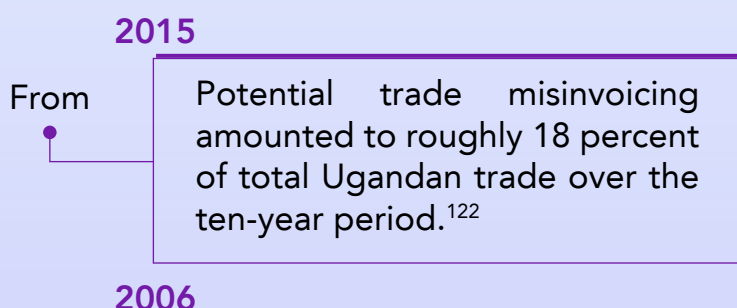
5 WHERE ARE THE VULNERABILITIES TO IFFs IN THE UGANDAN CONTEXT?

5.1 TRADE

According to the Vulnerability tracker, Outward trade (exports) is the most vulnerable avenue for IFFs with a vulnerability score of 66%, above weighted average level of vulnerability in the region which is 58.¹¹⁸ The top three trading partners for Uganda most responsible for vulnerability via outward trade include Kenya, United Arab Emirates, Rwanda.¹¹⁹

 Kenya, is a particularly secretive partner, and has increasingly sought to establish Nairobi International Financial Centre with the attendant heightened secrecy provisions. Tax regimes in the  United Arab Emirates, for example Dubai International Financial Centre and Ras Al Khaimah enable one to pay low or nil tax regime within a free-trade zone environment “combined with multiple secrecy facilities and an ‘ask-no-questions, see-no-evil’ approach to enforcement.”¹²⁰ Similarly with imports, Kenya and United Arab Emirates are the most secretive partner, although  China is the main import partner. Trade through imports and exports with the European Union consists of one-third of Africa’s vulnerability to IFFs.¹²¹

Trade misinvoicing of imports is by far the primary method through which capital is illicitly transferred out of the country.



¹¹⁸ Tax Justice Network (2020), State of Tax Justice (2020) at p.59.

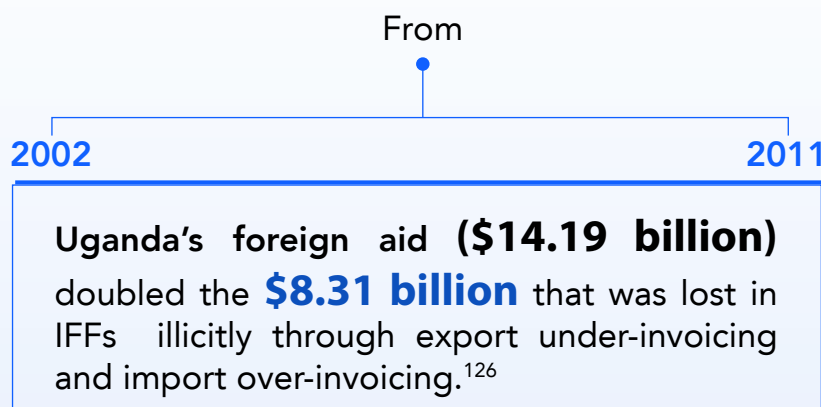
¹¹⁹ Ibid.

¹²⁰ Tax Justice Network (2019), Vulnerability and Exposure to Illicit Financial Flows in Africa at p.32, <https://taxjustice.net/reports/vulnerability-and-exposure-to-illicit-financial-flows-risk-in-africa/>; Tax Justice Network (2018), Narrative Report of the United Arab Emirates (Dubai) https://www.financialsecrecyindex.com/PDF/UnitedArabEmirates_Dubai.pdf

¹²¹ Ibid.

¹²² GFI (2018) at p.17

As of 2015, Uganda lost USD 92,000,000 due to import under invoicing¹²³ and export over invoicing (inflows) and USD 171,000,000 as a result of export under invoicing and import over invoicing.¹²⁴ Between 2003-2012, it lost 12,597,000,000 USD in Gross trade misinvoicing.¹²⁵



Trade misinvoicing is a challenge for developing countries. Over the period of 2003-2012, it is estimated that potential trade invoicing alone was responsible for 77.8 percent of the global ten-year IFF total in real terms.¹²⁷ In 2015, it was about 25% of the total developing countries trade.¹²⁸

Examples of services being over invoiced are when Intra group loans are so large they substantially reduce tax payments of companies involved, payments for overseas education, medical tours and foreign insurance.

To reflect export invoicing, it is worth reflecting on sugar. In 2017, The New Vision profiled businessman, Jagdish Shah created fake invoices of exporting Sugar to Kenya worth 4 billion USD and claimed a Value Added Tax Refund which he got yet he had not exported sugar to Kenya.¹²⁹

¹²³ GFI has defined Trade misinvoicing as the act or omission of "deliberate misstates, manipulates, falsifies, or omits a price, quantity, volume, grade, or other material aspect of an invoice for the purpose of evading or avoiding VAT taxes, customs duties, income taxes, or any other form of tax or revenue collected by the Government; (ii) obtaining a tax benefit, export subsidy, or other benefit provided by the Government; or (iii) evading or avoiding [capital or foreign exchange controls]"

¹²⁴ GFI (2019), Illicit Financial Flows to and from 148 Developing Countries: 2006-2015 available at <https://secureservercdn.net/50.62.198.97/34n.8bd.myftpupload.com/wp-content/uploads/2019/01/GFI-IFF-Update-Report-2019-Executive-Summary.pdf?time=1652389876>

¹²⁵ GFI (2014), Illicit Financial Flows in Developing Countries 2003-2012, <https://secureservercdn.net/50.62.198.97/34n.8bd.myftpupload.com/wp-content/uploads/2014/12/Illicit-Financial-Flows-from-Developing-Countries-2003-2012.pdf>

¹²⁶ GFI 2014 at p.38.

¹²⁷ <https://secureservercdn.net/50.62.198.97/34n.8bd.myftpupload.com/wp-content/uploads/2014/12/Illicit-Financial-Flows-from-Developing-Countries-2003-2012.pdf>

¹²⁸ GFI 2019

¹²⁹ <https://www.newvision.co.ug/news/1444586/businessman-court-sh4b-tax-fraud>

5.2 ABUSIVE TRANSFER PRICING

Transfer pricing is an “adopted book value for a good or service transacted between related entities.” Multinationals can use this to shift profits from Uganda (which may be a higher tax jurisdiction) to a lower tax jurisdiction so as to reduce their tax liability. Uganda is particularly vulnerable to this.



Except for the mining and extractive industries, nearly 45 percent of corporate tax revenue in Uganda is derived from fewer than thirty major corporations with the majority subsidiaries of multinational enterprises.¹³⁰

This cross-border activity facilitates tax leakages with multinationals able to evade tax through tax planning and abusive transfer pricing. To curb this, Uganda introduced new transfer pricing penalties updated in July 2017 under the Income Tax (Transfer Pricing) consistent with OECD transfer pricing guidelines for multinational enterprises and tax administrations. For example, there is a 50 million USH penalty for not submitting information on request but only 500,000USH for contravening the transfer pricing regulations or a jail term of six months. However, filing transfer pricing documentation with tax return forms to the Uganda Revenue Authority is not mandatory and responsibility is on the tax payer to self-assess and retain documentation.

Double Taxation Treaties and Agreements that enable tax leakages

A double taxation treaty or agreement (DTT/ DTA) is an agreement between two states with the main aim of avoiding double taxation and of preventing fiscal evasion, with respect to taxes on income, capital gains, and non-residents earning passive incomes such as dividends, interests, royalties, and technical fees. DTAs are also entered into to try to attract foreign investments and for strategic political reasons.¹³¹ Tax treaties between Uganda and other foreign countries prevail over the Income Tax Act. Uganda has double taxation treaties (DTTs) with several countries, including: India, South Africa, Zambia, Italy, Belgium, Denmark,

¹³⁰ IMF (2017) Uganda: Selected Issues, <https://www.elibrary.imf.org/view/journals/002/2017/207/article-A005-en.xml#A05fn2>

¹³¹ GFI (2019).

Mauritius(recalled), the Netherlands(recalled), Norway, and the UK. Uganda as a country denounces or reduces tax chargeable through these agreements, thereby renouncing her right to withhold taxes. DTAs tax rates for the non-resident investors deriving passive income from Uganda (such as dividends, interests, royalties, and technical fees) are far too low, most of them having been negotiated over 10 years without being adjusted for economic changes over time. According to the DTA between the Netherlands and Uganda, the tax rate on dividends to companies holding 50 percent shares in Ugandan resident affiliates is zero, the interest is capped at 10 percent and branch profits at five percent of repatriated profits. Similarly, with Denmark, the tax rate on dividends to beneficial owners holding 50 percent or more of shares is capped at only five percent, royalties at 10 percent, and income from permanent establishments is exempt. This has provided an incentive for firms to exploit cross border accounting and intra group transactions to shift their earnings into a form in which taxation rights accrue to the other jurisdiction if the rate of tax is lower.¹³²

DTAs have been used to evade tax and facilitate IFFs. Current DTAs are weak on enforcing transfer pricing rules and can be used to facilitate base erosion and transfer pricing. The DTAs rather than benefit Uganda then benefit the foreign companies that try to evade tax by enabling them to route investments in Uganda through intermediary companies in treaty countries with low or no taxation.¹³³

¹³² GFI (2019); UNECA, 2017.

¹³³ IMF (2017)

When Heritage Oil and Gas Limited Company (*hereinafter* Heritage Oil) learnt of a capital gains tax that Uganda intended to impose, it shifted its headquarters from Bahamas to Mauritius to take advantage of the double taxation agreement Mauritius has with Uganda. Mauritius does not impose a capital gains tax. It then sold to Tullow Uganda Limited 50% stake in Uganda's oil fields at \$1.5 billion. When the URA imposed a \$404 million capital gains tax on the transaction, there was a protracted legal battle. Uganda threatened not to renew Tullow Oil's exploratory licences if the tax was not paid. In April 2011, Tullow Oil paid 30%, \$121 million in a down payment and put the rest, \$283 million in an escrow account with Standard Chartered bank London while the issue was being determined by the Tax Appeals Tribunal which ruled in Uganda's favour. URA assessed another \$30 million on a \$100 million that Heritage Oil had paid Tullow as a cash settlement from breaching companies' Sharing and Production Agreement. Heritage Oil then sued Tullow and the Ugandan government over these tax payments to a court in London and Uganda initially lost on 14 June 2013 when Justice Burton decided in Tullow's favour on 14 June 2013.¹³⁵ Uganda eventually won the case in 2015 after United Nations Commission on International Trade Law ruled in its favour and ordered Heritage Oil to pay \$4 million in costs incurred.

Despite Uganda's victory in this case, it is also problematic that Capital Gains Tax would not apply if in fact the company was already domiciled in Mauritius. Mauritius is one of the countries through which Uganda's Foreign Direct Investment is "substantially funneled."¹³⁶ Given that there is no provision in Uganda's treaties to allow Uganda to assert the right to tax this base, Double Taxation Agreements can weaken legal protections provided by domestic law like the recent amendment to the Income Tax Act introducing Capital Gains Tax on immovable property.

Base erosion and profit shifting essentially through double non-taxation, treaty abuse are a loophole that deprive countries like Uganda of resources urgently needed to provide quality public services.

Most of Uganda's Double Taxation agreements do not include a provision on withholding management fees despite the Income Tax Act permitting

¹³⁴ Panama Papers, <https://panamapapers.investigativecenters.org/uganda/>

¹³⁵ Heritage Oil and Gas Ltd and Heritage Oil Plc (together 'Heritage') in the Court of Appeal in London (Case No: 2013/2175)

¹³⁶ IMF (2017)

withholding on such fees. Centralising payment of management service fees to a parent company is often used to evade taxes by multinational corporations and enables cross border tax avoidance.¹³⁷

Furthermore, the use of double taxation agreements means low income countries like Uganda often lack the capacity or political influence to secure Tax Information Exchange Agreements. Even when available, the process of accessing information through them is time consuming and difficult.

The IMF has found that Uganda revenue loss from Double Tax Agreements is likely to be substantial as compared to similar investment without the agreements in place, raising questions about who these agreements ultimately serve.¹³⁸

The country is working on a national policy on Double Tax Agreement to negotiations approved by cabinet given that the country's interests have not always been safeguarded in the process of negotiation. The Ministry of Foreign Affairs has recalled the Netherlands and Mauritius treaties and is re negotiating them.

5.3 EXTRACTIVES

The UN Economic Commission for Africa found that between 2000-2010, the extractive sector contributed half of the IFFs lost from Africa.¹³⁹

While Uganda's extractive sector is arguably nascent, there are indications that it is significantly contributing to IFFs.

IFFs arise along the mineral chain starting from licencing to decommissioning, and purchases are over or under priced whether through trade misinvoicing,

transfer mispricing or triangulation trade to reduce the tax bill for the multinational company.

Uganda lacks capacity to monitor large multinational firms operating in extractives sector. The paucity of available

¹³⁷ IMF (2017) <https://www.elibrary.imf.org/view/journals/002/2017/207/article-A005-en.xml>

¹³⁸ Ibid.

¹³⁹ United Nations. Economic Commission for Africa. Special Initiatives Division. African Minerals Development Centre; African Union Commission (2017), Impact of Illicit Financial Flows on Domestic Resource Mobilization: Optimizing Revenues from the Mineral Sector in Africa, https://archive.uneca.org/sites/default/files/PublicationFiles/impact_of_illicit_financial_flows_-_april_2017_-_web.pdf

geological data available geological information in Africa and “resulting in information asymmetry between mining companies that have the means to acquire private information about reserves and Governments” makes the extractive sector vulnerable to IFFs.¹⁴⁰ Moreover, the race to the bottom in the extractives sector, by setting lower taxes/granting tax exemptions, results in higher flows out of the country. The IMF found that the foregone revenue cost of these incentives is 8-10% of the country’s revenue yet taxes are not a decisive factor in a decision to invest.¹⁴¹ There are also unquantifiable multiplier effects from the flows from the extractive sector, particularly undermining peace and security in the region.

HIGH RISK AREAS-GOLD

Gold is the country’s top export at 57% of Uganda’s exports.¹⁴² According to the OEC records which are submitted by government, Uganda in 2020 exported \$3.47 billion in gold and imported \$1.97 billion in gold, the 18th largest gold importer in the world. Gold was also the most imported product in Uganda.

Gold has a high-risk area for illicit flows. In 2020, Uganda exported all its gold to United Arab Emirates, approximately \$3.47billion.¹⁴³ Tax regimes in the United Arab Emirates, for example Dubai International Financial Centre and Ras Al Khaimah enable one to pay low or no tax within a free-trade zone environment “combined with multiple secrecy facilities and an ‘ask-no-questions, see-no-evil’ approach to enforcement.”¹⁴⁴ This is salient because there have been concerns about Ugandan gold, including whether it is really from Uganda or the Democratic Republic of Congo with the UNCTAD finding that gold is smuggled from the DRC to Uganda then exported to UAE.¹⁴⁵ Disproportionate increases in the country’s gold exports over the last few years given the limited modest reserves raises

¹⁴⁰ United Nations Conference on Trade and Development (UNCTAD), (2020) Tackling Illicit Financial Flows for Sustainable Development in Africa: Economic Development in Africa Report 2020 at p.71, https://unctad.org/system/files/official-document/aldcafrica2020_en.pdf ; UNECA and African Minerals Development Centre, 2017

¹⁴¹ IMF (2017) Uganda:Selected Issues <https://www.elibrary.imf.org/view/journals/002/2017/207/article-A005-en.xml>

¹⁴² Observatory of Economic Complexity (OEC) website, <https://oec.world/en/profile/country/uga>

¹⁴³ See also (UNCTAD) (2020).

¹⁴⁴ Tax Justice Network, Vulnerability and Exposure to Illicit Financial Flows in Africa at p.32. Tax Justice Network, *Narrative Report of the United Arab Emirates (Dubai)* (2018) https://www.financialsecrecyindex.com/PDF/UnitedArabEmirates_Dubai.pdf [accessed 6 December 2018].

¹⁴⁵ UNCTAD (2020), See also Reuters, 2019; United Nations, Security Council, 2002

significant questions.¹⁴⁶ The UAE “ask no questions” approach is a perfect cover. UAE has no gold originally and exports gold from African countries like Uganda. The UAE then sends most of the gold to Switzerland (33%), India(15.3%), Turkey. An analysis of the UAE’s recorded imports by the UAE from Uganda greatly exceed recorded exports from Uganda to the UAE, implying either potential export under invoicing and/or smuggling.¹⁴⁷

This has happened before. In 2002, the United Nations Panel of Experts on Illegal Exploitation of Natural Resources and other forms of Wealth of the Democratic Republic of Congo had found that some of Kampala gold trading companies, Machanga Ltd and Uganda Commercial Index bought gold from Ituri armed groups.¹⁴⁸ Gold was then smuggled from DRC to Uganda then exported to UAE.

Smuggled gold would not be reflected in the country’s trade statistics and not taxed. The potential loss when this occurs is substantial. Uganda’s import tariff for gold was 18.4% in 2018. In 2021, the Minister of Finance indicated Uganda would be imposing an export levy of 5% on processed gold and 10% on unprocessed gold.¹⁴⁹

5.4 FRAUD AND CORRUPTION

Conversely, the limited data on IFFs in Uganda point to corruption, fraud, tax crimes and counterfeiting goods as being the most reported IFFs in Uganda, with fraud being the most reported crime followed by tax crimes and corruption.¹⁵⁰ Tax crimes recoveries from smuggling and tax evasion amounted to UGX 11,857,525,656 and UGX 161,971,518, 633 respectively.¹⁵¹

The Uganda Police Force reported that economic crimes in the year of 2018, totaled to about 15,099 compared to 16,032 cases in 2017. A breakdown of the economic crimes reveals that there were 84 reported cases of abuse of office reported in 2017, 75 of causing financial loss, 304 of embezzlement, 585 of counterfeiting amongst others.¹⁵²

¹⁴⁶ UNCTAD (2020).

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Lugolobi (2021), Budget Speech FY 2021/22, 10 June 2021,

¹⁵⁰ FIA, National Risk Assessment Report, 2017

¹⁵¹ FIA, 2017

¹⁵² Uganda Police Force, Annual Crime report, 2019

According to the mutual assessment undertaken by the Eastern and Southern Africa Anti Money Laundering Group (ESAAMLG), “corruption in Uganda is considered a way of life and often goes unreported.”¹⁵³

According to the Mbeki Report, corruption constitutes around 5% of illicit financial outflows. Under this form officials are bribed to facilitate IFFs usually by turning a blind eye to IFFs. Uganda has been doing poorly in this regard. Embezzlement and diversion of government funds for personal interests through theft and misallocation are the main manifestations of corruption in Uganda. As a result of corruption, public officials and private individuals acquire funds that are transferred out of Uganda, particularly through officials abusing their discretion.

Corruption undermines development, social and economic rights and it lies at the heart of Africa’s poverty and deprivation. It manifests in ways that directly impact upon the lives of people seeking government services and often times impact of corruption is felt by the vulnerable; women, children and the disadvantaged.

5.5 POACHING AND WILD LIFE OFFENSES

Uganda is estimated to lose about UGX 2,000,000,000 (approximately USD 588,235,000) annually due to poaching of wildlife and other related wild life offences. The FIA in 2020 put out a handbook on following the money in illegal wild life trade indicating awareness and more concerted coordination among different agencies could help tackle this.

5.6 TRAFFICKING

The number of human trafficking cases reported to the police had increased from 177 in 2017 to 666 in 2020, majority of which were of a transnational nature involving both adults and children.¹⁵⁴ Although few cases were reported the registered number of victims of trafficking is alarming and increasing day by day. In 2018, 650 victims were registered compared to 355 in 2017 with females being the majority. The data on Human trafficking suggests that Uganda is both a source and destination country for human trafficking especially from countries like; Somalia, Burundi, South Sudan and to UAE, Iraq, China and Saudi Arabia among others.

¹⁵³ Eastern and Southern Africa Anti Money Laundering Group (ESAAMLG Report, 2019).

¹⁵⁴ US Department of State (2021), 2021 Trafficking in Persons Report: Uganda, <https://www.state.gov/reports/2021-trafficking-in-persons-report/uganda/>

6 WHAT IS ENABLING IFFS IN UGANDA?

The continued growth of Uganda's economy coupled with limited capacity and political will to combat IFFs has provided a suitable haven for legal and illegal activities and create perverse opportunities for IFFs in Uganda.¹⁵⁵

6.1 Limited Capacity Gaps to Curb IFFs in Uganda

Uganda employs law enforcement and regulatory agencies to combat, track and reverse IFFs; particularly the police, FIA, Uganda Revenue Authority, IGG, and other specialized agencies. Unfortunately, these agencies face numerous challenges stemming from lack of knowledge, poor data, corrupt practices and capacity constraints.

For years Uganda lacked a central Exchange of Information Unit. In 2014, the Uganda Revenue Authority created it. It initially had part time staff and still has insufficient officers to deal with the growing work load. This is a key unit given that transparency and exchange of information helps governments identify untaxed income of companies and high network individuals scrupulously trying to avoid taxation.

The FIA that plays a central role in curbing IFFs had 25 out of the 64 posts vacant including key positions like Director Legal, Inspection and Compliance, Director Audit.¹⁵⁶ With FIA's staffing shortfalls, it cannot regulate the over 2500 agencies.¹⁵⁷

The Uganda Police Force continues to grapple with the challenge of capacity gaps in terms of professional training, use of robust scientific methods of intelligence gathering and criminal investigations. There were about 5,292 CID personnel instead of the 19, 843 needed.¹⁵⁸ The current work load of a police office in Uganda is 1: 45 Case files per detective far above the United Nations Standards that call for a work load of 1.12 cases per detective.¹⁵⁹

¹⁵⁵ Extracted from; <https://www.busiweek.com/new-report-explains-how-illicit-financial-flows-are-affecting-uganda/>

¹⁵⁶ Office of the Auditor General (2019) Consolidated Annual Report.

¹⁵⁷ Ibid.

¹⁵⁸ Uganda Police Force (2018) Annual Crime Report, 2018, <https://www.upf.go.ug/wp-content/uploads/2019/05/annual-crime-report-2018..pdf>

¹⁵⁹ Ibid.

The staff often lack forensic audit skills required to trace funds held by multiple shell companies and parked in Special Purpose Vehicles in different jurisdictions.

6.2 Presence of a large informal economy

Nearly 50 percent of the economy is informal in Uganda, which means that a significant portion of economic activity takes place outside the watch of government. A number of informal activities provide a good environment for illicit activities, including IFFs. Financial institutions in the informal sector house IFFs, for example transfer of remittances through informal channels.¹⁶⁰ Given the informal nature of the economy, chances are that significant volumes of financial transactions take place in cash, which is harder for regulators to monitor or even see. For example Artisanal miners not registered and informal. The large informal sector reduces the efficacy of financial intelligence units, and increases the risk of money laundering.¹⁶¹ Only those proportions invested in formal businesses end up being declared to the Uganda Revenue Authority (URA), the government body mandated to assess and collect specified revenue, enforce laws relating thereto, and provide for related matters.¹⁶²

6.3 Gaps in parliamentary oversight

Parliament is obliged to promote democratic governance,¹⁶³ conduct scrutiny of government policies, oversee the government budget, and ensure spending decisions are in line with the national priorities. Gaps in upholding the parliamentary duty¹⁶⁴ to protect the constitution and represent national interests, through legislation and oversight of the Executive, including its investment approach and decisions made in relation to extractives among others, reduces transparency and enables IFFs. Parliament is vested with a constitutional role to draft laws among other functions and failure at which or laxity thereof exposes the country to IFFs. Yet little effort has been made to capacitate Parliament in this regard.

¹⁶⁰ UNCTAD (2020) Tackling Illicit Financial Flows for Sustainable Development in Africa.

¹⁶¹ OECD, 2018

¹⁶² GFI (2018).

¹⁶³ Article 79(3) of the Constitution

¹⁶⁴ Ibid, Article 79

6.4 Weak and piecemeal legislative framework

Uganda's laws and regulations on financial transparency and anti-money laundering have the strongest influence on IFFs, and there are notable gaps in the framework the Government of Uganda has in place to address the sources, transfer methods, and motivations of IFFs in the country. In particular, laws governing corporations in Uganda are generally weak in so far as they do not require the official identification of the beneficial owners of companies or the complete identity of all shareholders in a company.

For instance, the Companies Act¹⁶⁵ provides for incorporation by subscription of names of the shareholders to the memorandum of association.¹⁶⁶ But the owners need not appear before the registrar for proper identification so it is easy to put in place owners that are not the real owners. The Act permits beneficial ownership of companies by proxies, trustees and personal representatives which in effect legitimizes concealment of the real business controllers and beneficiaries.¹⁶⁷ Even if registrar suspected a company and would like to investigate it for tax evasion, only the High Court can lift the corporate veil.¹⁶⁸ Despite a blanket prohibition on extending financial assistance,¹⁶⁹ the Act relaxes this rule for private companies permitting a private company to extend financial assistance for the purchase of its shares or those of its holding company.¹⁷⁰ This vulnerability enables aggressively complex corporate insider-lending which companies do to minimize scales of taxable income to be declared. It prescribes a rather light and non-deterrent penalty of only 25 currency points for default on issuing certificates as proof of shareholding.

The FIA, which was only recently established,¹⁷¹ acknowledges this shortcoming and is working to enhance its performance in helping to prevent, track, and prosecute money laundering in the country.

Uganda's extractive sector and the presence of numerous transnational crime markets add to the importance of having a strong financial transparency and anti-money laundering framework. While the Ministry of Energy licences dealers

¹⁶⁵ Companies Act, 2012

¹⁶⁶ Ibid, Sections 4(1) and 8

¹⁶⁷ Ibid, Section 20

¹⁶⁸ Ibid, Section 20.

¹⁶⁹ Ibid,Section 63

¹⁷⁰ Ibid,Section 65.

¹⁷¹ Under Anti-Money Laundering Act, 2013

in precious metals, the sector is not regulated and FIA is yet to issue policy guidelines to unregulated sectors.¹⁷²

Currently the AMLA & the Financial Institutions Act, 2004 are in conflict with respect to suspicious transaction reporting. The former requires that Financial Institutions report suspicious transactions to the FIA while the latter to the Bank of Uganda. Additionally, the AMLA is not clear on the supervision of all reporting entities. As such, there is still a low level of effectiveness of the AML regime in respect to FIA's supervision, investigations and prosecutions. The Anti Money Laundering Act 2013(as amended) and accompanying regulations do not provide FIA with administrative sanctions incase accountable persons breach the law.¹⁷³

Additionally, trusts are not effectively regulated in Uganda as these can be created without the need for registration with an accountable body. This leaves gaps that can be misused as a conduit for IFFs due to the limited or lack of supervision accorded. Despite the requirement by the Trustees Incorporation Act to register at formation, no system has been put in place to ensure up to date and accurate information on the settle, trustees, beneficiary through a system of adequate reporting.

The Income Tax Act allows Uganda to impose a capital gains arising on transfers where the underlying assets are "immovable property" and mineral and petroleum rights are covered but this does not apply to economic rents like licences and rights to telecommunication assets domestically. This would protect against transfer of interest in Uganda's assets without paying tax.

6.5 Failing to have an evolved legal framework for taxation in light of digital realities.

The continued reliance on the arm's length principle as a basis of corporate taxation and assuming legal entity's deal with each other at arm's length by trading at market prices is still reflected in legal policy not just in Uganda but globally despite the ways trading has evolved. Multinationals are thus able to exploit gaps in different countries trading regimes and avoid paying their fair share of tax.

¹⁷² Office of the Auditor General (2019) Consolidated Annual Report

¹⁷³ Office of the Auditor General (2019) Consolidated Annual Report

As credit cards and other cashless innovations have developed, billions are transferred across borders, shifted from the country to low tax jurisdictions. Failure to tax digital companies is an oversight not just in Uganda but one the world has often overlooked. Yet globally the digital economy was \$413 billion in 2017 and by 2025 the digital economy globally is estimated to be \$1.15 trillion. E-commerce was valued at \$29 trillion in 2017.¹⁷⁴ Failure to tax this erodes the tax base. For example, profits generated by Jumia, Netflix, Safe Boda, digital operators like Facebook, telecommunication services from Ugandan consumers can't be taxed because they are not domiciled here. Instead the tax burden is passed on to consumers since all URA can tax is the VAT from consumers here.

The use of electronic payment systems through financial intermediaries that may not be regulated, online services, online banking, cryptocurrencies can facilitate IFFs. In Uganda's case, crypto currencies are not recognised by Bank of Uganda but are not prohibited. This vacuum can be exploited to launder money and illicit proceeds.

Recognising this, the G20/OECD Base Erosion and Profit Shifting initiative (BEPS) is attempting to move past the arm's length principle and replace it with unitary taxation, where a company and its subsidiaries are treated as one, rather than individual entities. This would enable the profits of the company and subsidiaries to be shared amongst countries depending on how much economic activity takes place in each country, ensuring MNCs contribute in areas where they employ workers and actually operate. The BEPs among other focus areas looks at the digital economy. It has agreed to a two-pillar solution: a special nexus rule which allows allocating a certain amount to a market jurisdiction if multinational enterprise derives 1 million euros and for smaller jurisdictions whose GDP is less than 40 billion Euros, it will be if the enterprise deprives 250,000 Euros and above. A quantum rule where 25% of residual profit (profit over 10% revenue) will go to market jurisdiction.¹⁷⁵ Unfortunately, US and France continue to block proposed OECD reforms on this.

Uganda is yet to assent to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting which would modify

¹⁷⁴ AFRODAD (2021) Factsheet on Digital Economies and Illicit Financial Flows, https://media.africa-portal.org/documents/FACT_SHEET_on_Digital_Economy_and_IFFs.pdf

¹⁷⁵ OECD(2021) Statement on a Two Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, <https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.htm>

bilateral treaties to eliminate double taxation and would help fight against base erosion and profit shifting used by multi-national companies to evade paying their fair share of tax.

6.6 Failure to put in place social safety nets and invest in social services

The State's failure to put in place social safety nets incentivises individuals to take part in IFFs. The incentive to do so is to ensure that their families are provided for given the country's weak health and education systems.

7 WHAT MUST BE DONE?

Uganda will struggle to meet its goal of rising to middle income status and reducing its reliance on foreign debt unless it increases efforts to combat the commercial tax evasion, corruption, and money laundering of criminal proceeds and terrorist financing.¹⁷⁶ Given the fundamentally global and interconnected nature of IFFs, it is clear that any effort to prevent and regulate them cannot be done by individual countries alone. International cooperation is key. This report makes the following recommendations:

RECOMMENDATIONS

GOVERNMENT

- i) Develop a comprehensive and structural response towards IFFs, engaging all the key stake holders as highlighted in Appendix 1 and work towards determining the scale, impact and nature of IFFs with a national risk assessment. Currently piecemeal approaches are used.
- ii) Impose effective penalties for failing to provide accurate up to date beneficial ownership
- iii) Ensure when companies undertake due diligence processes and human rights impact assessments, their financial schemes should be included in their assessments and not only the actual operations of their industry.
- iv) The UN Guiding Principles on Business and Human Rights¹⁷⁷ could play a significant role in curbing IFFs. The principles contained therein rest on a framework of three pillars - the State's duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights, requiring business to act with due diligence; and the need for greater access to effective remedies. Of particular note, Principle 2 states that "There are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is

¹⁷⁶ <https://www.tralac.org/news/article/13574-a-scoping-study-of-illicit-financial-flows-impacting-uganda.html>

¹⁷⁷ http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

involved in or supports those businesses. The Guiding Principles are also being integrated into other key international standards that are relevant to business enterprises, including the UN Global Compact, the OECD Guidelines for Multinational Enterprises, the International Finance Corporation Performance Standards 247 and ISO 26000, Guidance for Social Responsibility.¹⁷⁸ Such integration into these other standards relating to corporate social responsibility will facilitate the linkages between human rights, corporate taxation and other financial contributions to sustainable development.

- v) Statistical data should be uniformly collected and records properly maintained by all authorized agencies of government, accountable persons, and resources should be specifically appropriated by the government to ensure the achievement of this.
- vi) Ensure companies should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate in order to curb IFFs.
- vii) Uganda ought to start 'following money' as a means of recovering illicit funds. Despite the frameworks put in place to ensure compliance with tax laws, Persons and businesses that make money from criminal activities or that receive corruption payments, for example, are unlikely to report these illegal schemes on their tax forms. Experts have recommended following the money as the most effective way of ending IFFs.¹⁷⁹
- viii) IFFs are encouraged due to the lack of transparency in the global financial system that encourages the use of tax havens, secrecy jurisdiction's anonymous trusts and shell companies to hide and launder the funds. Uganda should adopt best practice from the World Bank, IMF, OECD on transparency and automatic exchange of tax information and address capacity gaps that impede it from submitting more requests. As a result of 69 exchange of information requests submitted by Uganda between 2014-2018, the country identified nearly USD 26 million in revenues that would have otherwise been foregone.¹⁸⁰
- ix) Disclose, update and make easily accessible information on the true owners of companies and or corporations and other legal entities registered in Uganda, including Foreign Companies, operating within

¹⁷⁸ Ibid.

¹⁷⁹ Second Schedule, Anti Money Laundering Act, 2013

¹⁸⁰ OECD (2021) Strengthening Tax Transparency To Combat Tax Evasion, Illicit Financial Flows And Profit Shifting In Uganda, <https://www.oecd.org/tax/tax-global/strengthening-tax-transparency-to-combat-tax-evasion-illicit-financial-flows-and-profit-shifting-in-uganda.pdf>

and outside the country. It should be available to the public in Uganda Registration Services Bureau. This information should also be made readily available to the Finance Intelligence Authority and that can make the requisite information accessible to all other organs of government; DPP, URA etc. or other third parties that can demonstrate a legitimate interest in the information. This should be compounded by the requirement for financial institutions to scrutinize and verify supporting documents used to identify customers. Recommendation 24 of the Financial Action Task Force (FATF)¹⁸¹ requires countries to ensure that competent authorities; such as law enforcement, financial intelligence units and tax agencies have access to or an ability to obtain adequate, accurate and up to date information on beneficial owners and companies and other legal persons in a timely fashion. Linking information on beneficial owners of companies with real estate and other major assets would reduce opacity.

- x) Introduce a wealth tax and progressive taxation and use the money to fund COVID 19 and social services.
- xi) Intensify efforts to curb IFFs and demonstrate visible political commitment by improving the health of democratic institutions; police, IGG, DPP, etc. Currently, Uganda has not yet developed an effective system that ensures that IFFs cases are properly identified, investigated and prosecuted to enable the tracking and acquisition of IFFs proceeds to be confiscated and thereafter channeled by the government for development.
- xii) Strengthen National Coordination mechanisms against IFFs; the state should strengthen coordination between the different agencies and departments that play significant roles in the; assessment of IFF threats, collection, analyses, use and collection of financial intelligence, investigations, and prosecution of cases that involve IFFs. Additionally, strengthen national coordination around the implementation of preventative measures against IFFs by all institutions of Government; the Central Bank of Uganda, Ministry of Foreign Affairs, Ministry of

¹⁸¹ Although Uganda is not a member of the FATF, she is part of the East and Southern Africa Anti Money Laundering Group, an associate member, whose current objective is to adopt the FATF 20 recommendations, apply anti money laundering measures and implement any measures contained in multilateral agreements and initiatives.

Finance, Financial Intelligence Authority, Auditor General's Office, Uganda Revenue Authority, The Inspectorate of Government, Ministry of Justice, Uganda Police Force, Civil Society and Financial Institutions etc. Combating IFFs involves multiple policy areas. From crime control to regulations in the financial sector, and tax regimes, its implications require cross-sectoral and cross-national responses.

- xiii) Domesticate the United Nations Convention Against Corruption (UNCAC) framework.
- xiv) Focusing on value recovery rather than merely asset recovery. This would entail targeting everyone involved in concealing the transaction/enabling the IFFs i.e. the gatekeepers, relatives and business associates. Doing so would undermine the patronage structures that enable IFFs.
- xv) Confiscate unclaimed wealth of government officials.
- xvi) Participate in the global tax review regimes such as the Global Forum on Transparency and Exchange of Information for Tax Purposes, the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) the United Nations Committee of Experts on International Cooperation in Tax Matters or the United Nations, the World Bank, International Monetary Fund and OECD [Organisation for Economic Co-operation and Development]-managed Platform for Collaboration on Tax.
- xvii) Build stronger capacity to negotiate tax agreements and use the whole of government approach promoted by the Oslo Dialogue of the OECD
- xviii) Once money is recovered, ensure it is used to realise social economic rights like health and education.

CIVIL SOCIETY

- xix) Civil society actors should assist in identifying best practices in national tax administration capacity to prevent and curb IFFs.
- xx) Curbing IFFs will also require greater coordination and cooperation around key issues and players, including the private sector, governments, international organizations and civil society.¹⁸² Civil society organizations have a role to play as advocates to increase transparency around revenues and expenditures, as well as to monitor behavior of public and private officials. Prevention and control of IFFs would facilitate the realization of economic, social and cultural rights.¹⁸³

DONORS

- Require measures to curb IFFs as a condition for financing. This has been increasingly seen with donors like IMF, World Bank, Africa Development Bank insisting on the government publishing beneficial ownership of companies awarded contracts from the funds disbursed as a condition for receiving COVID 19 funds.

INTERNATIONAL COMMUNITY/ STATE

- Replace OECD with UN Body. The 2020 State of tax found most tax havens are found in the OECD countries, which are responsible for 59% of the losses due to private tax evasion.¹⁸⁴
- Put in place fair reporting standards including revenues, profits, losses, sales, taxes paid, subsidiaries, and staff levels on a country-by-country basis. For example, EU Fair reporting standards. OECD agreement allows country by country reporting.
- Conduct multilateral automatic exchange of tax information by taxation authorities.

¹⁸² Extracted from <https://www.worldbank.org/en/topic/financialsector/brief/illicit-financial-flows-iffs>

¹⁸³ A/HRC/25/52, paras. 29-34.

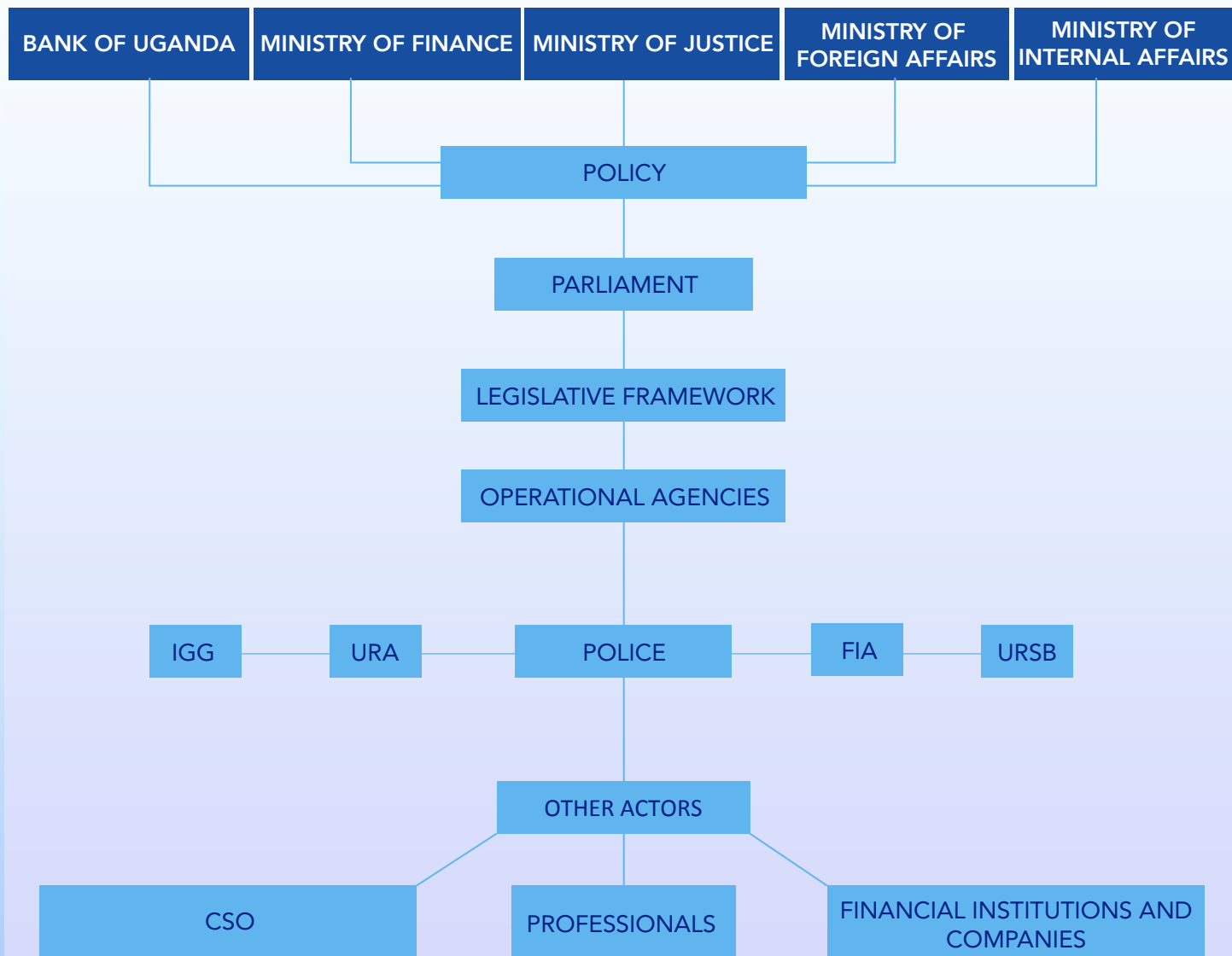
¹⁸⁴ State of Tax 2020 at p.40.

CONCLUSION

This study reveals how IFFs undermine the right to development and other human rights - civil, political, economic, and social rights of individuals and peoples - in particular, those living in developing countries. The symbiotic relationship between IFFs and human rights particularly its effect on revenue for public social services necessitates this is prioritized to ensure the full and equitable realization of social and economic rights.

APPENDIX I

KEY ACTORS IN THE FIGHT AGAINST IFFs IN UGANDA



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