

# PANAMA PAPERS AND THE LOOTING OF AFRICA

ALVIN MOSIOMA



tax justice network  
Norge



**Written by** Alvin Mosioma,  
**Executive Director** Tax Justice Network - Africa

**Commissioned by** Norwegian Church Aid, Tax Justice Network - Norway and Save the Children Norway.

**Front cover image:** Building in Luxemburg  
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## PREFACE

In the two minutes you will spend reading this preface, one and a half million NOK will be drained out of Africa. An amount that could have provided one year of education for approximately 1400 African children.

While we all pay our taxes, some of the richest and most powerful companies get away with paying a bare minimum. The Panama paper documents, leaked to the press in the spring of 2016, provided us a rare insight into how complex corporate structures are used deliberately to hide away massive amounts of capital in tax havens. The tax authority's abilities to correctly tax companies and individuals, becomes nearly impossible. This means lost revenue for all countries, but the developing countries are suffering the most. Despite this fact, it is still the situation in the rich countries that have attracted the most attention.

With this report, we aim at presenting a more balanced picture in the public debate by including an African perspective, and illustrate the effects of the illicit flows and tax dodging has on Africa. The author provides a key insight to the challenges the African continent is facing, highlighting the necessity for governments to mobilise reliable income in order to ensure sustainable development. The report presents examples of the importance the Panama papers have had for several African countries. This includes disclosure of information about concealed company structures, and veiled ownership of multinational companies that are extracting oil and diamonds at the continent.

According to conservative estimates Africa loses 400 billion NOK<sup>1</sup> every year due to illicit capital flows. At the same time millions of African children die every year due to preventable diseases, and tens of millions of children are out of school. In 24 hours more than 1 billion NOK leaves the continent illegally. This amount would be enough to cover employment of 14 000<sup>2</sup> new health workers for a full year. In just one hour Africa loses 47 million NOK which could have paid for one year of education for 41 000<sup>3</sup> children.

We clearly have no more time to loose. In order to combat illicit capital flows, we need to enhance global transparency. Information in the Panama Papers demonstrated the need for decisive action. We expect the Norwegian government to immediately take more responsibility in order to fight illicit capital flows and tax dodging.

Specifically, we ask Norway to:

- Immediately require full transparency from companies' tax payments, and establish a publicly available register of beneficial ownership. Tax dodging and secrecy have no borders. Only publicly available transparent solutions will make it possible for African citizens to follow and track financial flows.

1 [http://www.uneca.org/sites/default/files/PublicationFiles/iff\\_main\\_report\\_26feb\\_en.pdf](http://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf)

2 Estimates are based on numbers from the report «Making a killing» [http://www.savethechildren.org.uk/sites/default/files/images/Making\\_a\\_Killing\\_NCBTD.pdf](http://www.savethechildren.org.uk/sites/default/files/images/Making_a_Killing_NCBTD.pdf) estimate based on average annual salary in eight african countries for doctors, nurses and midwives to be roughly \$8000 2012.

3 Estimates are based on numbers from UNESCO's Global Monitoring Report from 2015 <http://unesdoc.unesco.org/images/0023/002322/232205e.pdf> with an average annual cost per pupil in Sub-Saharan Africa to be \$136.3 in 2012.

- Support a stronger and more resourceful UN to deal with the problem of illicit capital flows and tax dodging. Today developed countries set the rules through the OECD where African countries have little or no ability to influence. Developing countries must be able to participate on an equal footing with their own voices so they can protect their interest.
- Ensure that the Norwegian Sovereign Wealth Fund (Oljefondet) gives clear expectations of companies' ethical behavior on tax matters and divest from companies that grossly violate such expectations. Today the fund invests in some of the world's largest tax dodgers and has never withdrawn from tax delinquent companies. The fund, one of the biggest institutional investors in the world, today lacks ethical guidelines or rules specifying tax ethics.
- Scale up the aid program "Tax for Development" and strengthen Norad's capacity on tax issues. Well-functioning national tax systems are crucial if countries are to levy fair taxes and finance their own development. Norway should therefore increase technical assistance and cooperation on tax matters with development countries.



## INTRODUCTION

On the 3rd of April 2016 the German Newspaper Sud Deutsche Zeitung in collaboration with the International Consortium of Investigative Journalists (ICIJ) made an unprecedented release of documents from a database of the Panama based offshore law firm Mossack Fonseca which is the world's fourth largest offshore services law firm. The release captured global attention and would turn out to be the largest data leak in history. It exposed the offshore secrecy structures of wealthy businessmen, politicians, suspected drug lords and arms dealers use to hide their wealth.

The extent and magnitude to which the African continent is exposed to the shadowy world of offshore dealings is illustrated through the Panama Papers which found that implicated companies were operating in 44 out of 54 African countries. A recent study by the United Nations committee on Trade and Development (UNCTAD) showed that commodity dependent countries are losing up to 67% of their export earnings worth billions of dollars due to trade misinvoicing.<sup>4</sup>

While it remains to be seen how much the Panama papers will lead to a rethink of the international financial system the leak has significantly contributed to exposing its fault lines. The prevailing discourse on illicit financial flows (IFFs) and the global financial transparency has until now focused on the demand side elements originating primarily from poorly governed developing countries. In contrast, the revelations in the Panama Papers suggest a systemic failure in the global financial architecture and illustrate the depth of advanced accounting, finance, and legal systems providing the supply-side infrastructure for IFFs to offshore territories and high secrecy jurisdictions.

## AFRICA'S CENTURY? FINANCING AFRICA'S ECONOMIC DEVELOPMENT

The 21st Century has been heralded as Africa's moment. Based on GDP growth and increased inflow of foreign investments and remittances experienced by a number of leading African economies the "Africa Rising" narrative has gone to proclaim that the African continent is expected to become the next nexus of the global economy. A number of African countries have indeed made significant strides in different spheres of human development. For instance, countries in Sub Saharan Africa have reduced child mortality rates by 48% over the last three decades.<sup>5</sup>

While the continent has achieved significant progress in different spheres of human development, we cannot turn a blind eye to the overwhelming challenges that continue to daunt the different countries in their efforts to reduce poverty. Agenda 2063<sup>6</sup>, the continent's agreed development vision, strives to create a continent that is more cohesive, integrated and more self-reliant. A key plank of the African Development agenda will be its ability to generate domestic resource to finance its own economic growth.

The debate on the critical role of taxation in supporting economic development, particularly in developing countries, has taken a center stage in the global policy discourse in the recent years. In Africa, taxation is today widely recognized as the most sustainable mechanism for financing development geared towards achieving structural economic transformation as envisioned in Agenda 2063.

4 [http://unctad.org/en/PublicationsLibrary/suc2016d2.pdf?utm\\_source=UNCTAD+Civil+Society+Newsletter&utm\\_campaign=79aafd03ec-News+Commodities+Misinvoicing&utm\\_medium=email&utm\\_term=0\\_2e2035bdbc-79aafd03ec-65701109](http://unctad.org/en/PublicationsLibrary/suc2016d2.pdf?utm_source=UNCTAD+Civil+Society+Newsletter&utm_campaign=79aafd03ec-News+Commodities+Misinvoicing&utm_medium=email&utm_term=0_2e2035bdbc-79aafd03ec-65701109)

5 [http://www.unicef.org/media/files/Levels\\_and\\_Trends\\_in\\_Child\\_Mortality\\_2014.pdf](http://www.unicef.org/media/files/Levels_and_Trends_in_Child_Mortality_2014.pdf)

6 [http://agenda2063.au.int/en/sites/default/files/03\\_Agenda2063\\_popular\\_version\\_ENG%2021SEPI5-3.pdf](http://agenda2063.au.int/en/sites/default/files/03_Agenda2063_popular_version_ENG%2021SEPI5-3.pdf)

Without adequate resources, governments would not be able to provide access to the necessary quality services required by its citizens, and access to basic amenities and social services such as health care and education will remain mere aspirations.

The paradigm shift towards domestic resource mobilization can be evidenced in the emphasis this has been given in the most recent global development frameworks including the third Finance for Development summit (FfD3) and the Sustainable Development Goals (SDG). There is a clear recognition that the success of achieving the ambitions in the global agenda agreed in Addis FfD3 and the SDGs within the 2030 timelines will heavily depend on the ability of states to generate their own domestic resources.

Beyond its revenue raising potential taxation enhances the social contract by making government more accountable to their citizens and can contribute to reduce donor dependency.

## **AGENDA 2063: THE AFRICA WE WANT**

Agenda 2063 is a strategic framework that seeks to harness opportunities and resources available for the socio-economic transformation of the continent over the next 50 years. Emerging on the eve of the African Union's 50th Anniversary, the continental vision serves as a blueprint for Africa's development towards 2063, and is a commitment by African governments that seeks to accelerate the implementation of past and existing continental initiatives for growth and sustainable development.

Agenda 2063 calls for strengthening domestic resource mobilization, building continental capital markets and financial institutions and reversing illicit flows of capital from the Continent, with a view to achieving the following by 2025:

- Reducing aid dependency by 50 per cent
- Eliminating all forms of illicit flows
- Doubling the contribution of African capital markets in development finance
- Rendering fully operational the African Remittances Institute
- Reducing unsustainable levels of debt, heavy indebtedness and odious debt
- Building effective, transparent and harmonized tax and revenue collection systems and public expenditure

## **3<sup>RD</sup> FINANCE FOR DEVELOPMENT SUMMIT:**

The United Nations held its 3rd International conference on Financing for Development in Addis Abeba- Ethiopia from the 13th-16th of July 2015. The conference sought to build on the success achieved at two previous meetings held in Monterrey – Mexico and Doha- Qatar in 2002 and 2008 respectively. Considering that the previous conference was held 7 years ago, the Addis Abeba conference provided opportunity for world leaders drawn from a wide spectrum of governments, civil society, academia and private sector to take stock of past success and failures and deliberate on emerging issues affecting international development cooperation and development finance and their impact on sustainable development. The consensus outcome document, also referred to Addis Abeba Action Agenda (AAAA), laid out a new global framework for financing sustainable development that recognized the patterns and policies on financial flows. The AAAA spelt out concrete policy actions and recommendation packaged in 100 measures that governments ought to undertake to support the mobilization of resources towards sustainable development and ultimately the achievement of sustainable development goals. Key among these measures is a commitment by member states to curb corruption and tackle illicit financial flows. (Ref Article 18 of the AAAA)

## **2030 AGENDA ON SUSTAINABLE DEVELOPMENT**

World Leaders meeting under the auspices of the United Nations Development summit in September 2015 adopted Agenda 2030 on Sustainable Development. This new global development framework agreed on 17 sustainable Development Goals (SDGs) that seek to eradicate poverty, tackle inequality and injustice and combat climate change by 2030. Built on the success and drawing lessons from the challenges and failures of the Millennium Development Goals (MDGs) which came to an end in 2015, the SDGs spells out a broader development framework encompassing the three dimensions of sustainable development (economic, social and environmental). With its 17 goals and 169 concrete targets the world sets out a more ambitious development agenda to not only as in the previous MDGs reduce poverty but ultimately end it within the next 15 years.

## **CLOSING THE FLOODGATES: CHALLENGES TO DOMESTIC RESOURCE MOBILIZATION IN AFRICA**

Many African countries have made tremendous progress over the last decade to increase the share of tax revenue to the overall government expenditures. A study conducted by the OECD jointly with the Africa Tax administration Forum (ATAF) shows tax revenues as a proportion of the national incomes measured in GDP has been increasing<sup>8</sup>. On average the tax to GDP levels of African countries have increased from 13% in the early 1990s to the current average of 18%.<sup>9</sup> The averages are still comparatively low when compared to the OECD countries whose average tax to GDP ratio is 34%. The success of growing share of revenue to GDP in Africa is a result of a series of reforms undertaken by countries aimed at improving their revenue base. Many governments in Africa have undertaken various measures to increase their domestic revenues, including increasing the number of registered taxpayers and investing in the human and technical capacity of state institutions. Additionally, governments have introduced new or increased tax rates, particularly consumption taxes such as value added tax (VAT). Further reforms include improved legislative and regulatory framework, and investment in technology and human resources that have significantly contributed to seal loopholes and encouraged sustained revenue growth.

While reform efforts at the domestic level are yielding results, the challenges presented by the outflow of illicit funds is severely undermining the ability of many countries to capture their revenue bases. Factors that frustrate efforts to capture domestic revenue have come under sharp scrutiny by policymakers in Africa. Particularly challenges related to global tax evasion and avoidance that are severely eroding tax bases in developing countries, as clearly exemplified in the Panama Papers, have occupied a centre stage of tax policy discourse. There is a growing body of evidence on the magnitude and impact of illicit flows from developing countries in general and Africa in particular. African countries, under the auspices of the African Union Commission (AUC) in a joint effort with the United Nations Economic Commission for Africa (UNECA), in 2012 established a high level panel on illicit financial flows from Africa.<sup>10</sup> The panel was tasked to study the nature and character of IFFs and ascertain its magnitude. In its final analysis the report confirms that IFFs are having a devastating impact on the economies and on the lives of the poor while contributing to increasing extreme inequality and wealth concentration. Annually the African continent loses up to \$50 billion as a result of illicit financial flows.

Cumulatively this amounts to almost a trillion dollars over the last five decades.<sup>11</sup>

Three key features of illicit financial flows challenge and contradicts conventional wisdom and existing narratives and perception of economic development in poor countries:

- According to IMF estimates in 2015, OECD countries lose up to 400 billion dollars as a result of corporate tax avoidance, compared to 200 billion USD lost by developing countries<sup>12</sup>. However considering that developing countries have a much lower tax to GDP ratio compared to OECD countries, the comparative loss to poorer countries is estimated to account for 6-13% of total tax revenue while in OECD this accounts for 2-3%<sup>13</sup> on average. In other words, poorer countries are bearing the brunt of global tax evasion and avoidance.

8 <http://dx.doi.org/10.1787/9789264253308-en-fr>

9 <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9030.pdf>

10 [http://www.uneca.org/sites/default/files/PublicationFiles/iff\\_main\\_report\\_26feb\\_en.pdf](http://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf)

11 [http://www.uneca.org/sites/default/files/PublicationFiles/iff\\_main\\_report\\_26feb\\_en.pdf](http://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf)

12 <https://www.imf.org/external/pubs/ft/wp/2015/wp15118.pdf>

13 <http://oxfamlibrary.openrepository.com/oxfam/bitstream/10546/601121/4/bp-ending-era-tax-havens-uk-140316-en.pdf>; 16.6.2016.



- Secondly, the net outflow outweighs the inflows. In a study, Leonce Ndikumana has estimated that between 1970 and 2008 38 African countries accumulated a stock of capital offshore of 1.3 trillion USD or 82% of the GDP of these countries in 2010.<sup>14</sup> In contrast, the stock of external debt stood at 283 billion USD. In other words Africa's wealth hidden offshore exceeded the debt by a ratio of four to one, contrary to public perception of Africa as a perennial recipient of external assistance, the evidence from studies on illicit flows makes Africa net creditor to the world.<sup>15</sup>
- The third dimension is the sources of the illicit outflows. Contrary to the commonly held perception that corruption by state officials is the main avenue of resource outflow, tax dodging resulting from manipulation of commercial transactions of multinational corporations accounts for the largest share of illicit flows with 65% of the annual outflows. Criminal activities such as money laundering accounts for 30% while corruption accounts for only 5% of the total outflows.<sup>16</sup>

At the heart of the illicit financial flows is an unholy alliance of different actors, structures and institutions that work together to undermine the integrity of the global financial system. The Panama Papers pulled aside the veil of secrecy to reveal the dealings of international offshore industry. It paints a mosaic of a flawed system exposing unscrupulous MNCs, corrupt business elites and politicians. More importantly it sheds a light on the structures in tax havens that provide a conduit for the illicit outflows; the middle-men and intermediary institutions such as banks, accounting firms and lawyers who design and facilitate the process; and the flawed and rigged global rules without which illicit financial flows would not be possible.

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14 L. Ndikumana, J. Boyce and A. Ndiaye (2015). Capital Flight from Africa: Measurements and Drivers, in S.I. Ajayi and L. Ndikumana (eds.) (2015). Op. cit.

15 <https://www.imf.org/external/pubs/ft/wp/2015/wp15118.pdf>

16 [http://www.uneca.org/sites/default/files/PublicationFiles/iff\\_main\\_report\\_26feb\\_en.pdf](http://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf)

## THE PRICE WE PAY: CONSEQUENCES AND IMPACT

Illicit financial flows are contributing to extreme wealth concentration and income inequality. Offshore tax jurisdictions provide a haven for the rich to hide their ill-gotten wealth. Most recent estimates indicate that over 8% of the global financial assets of households or USD7.6 trillion is hidden offshore.<sup>17</sup> The African continent has the fastest growing number of high net worth individuals (HNWI) globally with a 145% growth over the last fourteen years compared to a world average of 73% growth in the same period.<sup>18</sup> Different studies and recent leaks show that many of these millionaires use offshore tax havens to conduct their business and to limit their tax obligations. A study by Tax Justice Network-Africa found that there were only 100 HNWI officially registered with the Kenya Revenue Authority in a country of estimated over 40,000 HNWI.<sup>19</sup> The large amount of wealth hidden offshore leads to increased inequality across all dimensions (horizontal, vertical, gender, spatial and intergenerational) and a concentration of wealth in the hands of ruling elites and powerful MNCs. This allows these to dictate or influence policy in their favour. The World Wealth Report by Cap Gemini – a financial consulting firm specialized in tracking HNWI - illustrate the extreme levels of both financial and political control and inequality in the case of Kenya. The report indicates that about two-thirds of Kenya's Sh4.3 trillion (\$50 billion) economy is in the hands of a small elite of 8,300 super-wealthy individuals.

The inability of governments in Africa to capture revenues from wealthy elites and multinational companies due to aggressive tax avoidance and evasion have contributed to undermining progressive taxation and further aggravated inequality. Under pressure from dwindling external support and failing revenue streams from international trade due to market liberalization, many countries have introduced and increased consumption taxes such as VAT which are regressive and hurts lower income earners the most. Due to high levels of inequality and income disparities that characterize many African countries, only progressive tax systems can ensure that the tax burden is not unfairly borne by those already economically disadvantaged. Unfortunately due to pressure to provide basic services to its citizens combined with leakages resulting from corruption and other vices, such as those revealed in the Panama Papers, many governments are rather increasing taxes on consumption. Studies have shown that such taxes have a tendency to harm the poor most because of their regressive nature.

The existence of untaxed and uncontrolled capital hidden offshore poses a serious risk of destabilizing weak economies. In a 2007 report, the Financial Action Task Force (FATF), an inter-governmental body established to combat money laundering, terrorist financing and other related threats to the integrity of the international financial system<sup>21</sup>, characterized the real-estate and property sector as highly prone to money laundering. These sectors often attract criminals who launder their illegally earned proceeds through investments in property.<sup>22</sup> This can lead to a crowding out of legitimate investments and can in worst case create economic bubbles that poses risks to the entire finance and banking sector. The report, written in 2007, already highlights the misuse of corporate vehicles such as those specialized by Mossack Fonseca in the Panama papers to conceal asset ownership, finance criminal activities and money laundering.<sup>23</sup>

17 G. Zucman: Hidden Wealth of Nations

18 <http://www.cnbc.com/news/special-report/2015/06/17/hnw-fastest-growing-hnw-market-luke-martins/>

19 Africa Rising: Inequalities and essential role of fair Taxation. Tax Justice Network-Africa

20 *ibid*

21 <http://www.fatf-gafi.org/about/>

22 <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20through%20the%20Real%20Estate%20Sector.pdf>

23 *ibid*

The outflow of illicit capital from Africa through the exploitation of loopholes within the global financial system hinders the ability of governments to fund development programmes. This translates directly to schools and hospitals that will not be constructed, or roads and railways lines that will not be built. Illicit flows further increases government dependency of external support and increases levels of debts that governments accrue to fulfil their obligations. This is confirmed by a recent report by UNCTAD released this year, which warns of the risk of the rapidly rising external debt in many African countries.<sup>24</sup> Africa's external debt grew rapidly at a rate of 10.2% between 2011 and 2013 compared to 7.9% between 2006- 2009.



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24 [http://unctad.org/en/PublicationsLibrary/aldcafrica2016\\_en.pdf](http://unctad.org/en/PublicationsLibrary/aldcafrica2016_en.pdf)

## **PANAMA PAPERS REVISITED: CORRUPTION, TAX HAVENS AND OTHER STORIES**

The Panama Papers presented a historically unprecedented opportunity to expose the fault lines of a global financial system and the extent to which the system is flawed and rigged. The leaks provided a clear illustration of how the current financial system is providing legal and quasi-legal opportunity for all kinds of shady characters including criminals and corrupt politicians, to open anonymous companies through which they can conduct illicit business and hide ill-gotten wealth.

## **A GLOBAL PROBLEM WITH AN AFRICAN FACE: A CASE OF UGANDA'S HERITAGE OIL**

The High Level Panel on Illicit flows established by the African Union and UNECA characterized the challenge of tackling illicit financial flows as “a global challenge with an African face. Notwithstanding its global dimensions, the impact of illicit flows are being felt at a very local level. Beneficiaries of IFF are exploiting the loopholes both in domestic legislation and on the international arena.

The discovery of commercially viable oil in Uganda estimated at 6.6 billion barrels, heralded a new wave of optimism and promise that the discovery would accelerate a rapid economic growth that would lift millions out of poverty.<sup>25</sup> Over time however, many Ugandans have realized, like in many resource rich countries in Africa, that the discovery could turn out to be a poisoned chalice. The country has been embroiled in long, complicated and expensive legal disputes with oil companies over tax payments for years. One of the first companies to enter Uganda was Heritage Oil based in Jersey.<sup>26</sup> Heritage Oil featured prominently in the Panama papers revealing its aggressive schemes to avoid paying taxes to the Ugandan government. The expose on Heritage Oil best illustrates how unscrupulous some MNCs use weaknesses in domestic legislation to undermine efforts of poor countries to collect taxes. Upon sales of 50% of its stakes in Uganda Oil field to Tullow Oil in 2010 Heritage Oil made \$ 1.5 billion in windfall.<sup>27</sup> The Ugandan government in turn demanded \$404 million in capital gain taxes resulting from the sale. In an attempt to avoid paying the tax, by taking advantage of the Uganda-Mauritius Double Tax Agreement<sup>28</sup>, the company decided to re-domicile to Mauritius with the help from Mossack Fonseca. Leaked emails illustrate how far the company was willing to go to avoid taxes. Quoting one of the directors in the leaked email with the instruction “Due to tax reasons emanating from Uganda, the directors have been advised by tax accountants to re-domicile Heritage Oil and Gas Limited (HOGL) to Mauritius from the Bahamas before completion [of the sale].” He added: “The group’s tax accountants are working hard to eliminate the potential tax charge imposed by the Ugandan authorities without HOGL having to be re-domiciled, but as a second line of defense, the directors have been advised to put in place all that is necessary to effect re-domiciliation to Mauritius so that the process can be completed if it becomes necessary.<sup>29</sup> A protracted legal battle between Heritage Oil and the Ugandan government was decided in favor of the government whereby the Ugandan government managed to recover over 400million USD it was owed by Heritage Oil.

25 <http://www.reuters.com/article/us-uganda-oil-idUSKBN0NV0BB20150511>

26 <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2015/10/WPM-601.pdf>

27 A windfall profits are gains that companies earn under unusual or exceptional circumstances. Windfall profits are usually temporary and in many cases attract a special windfall tax.

28 Double Tax Agreements (DTA) or Treaties (DTT) as negotiated bilateral agreements aimed at ensuring that individual or company that operate in more than one jurisdiction is not taxed twice for the same profits. Double Tax agreements differentiate between source and residence taxation. In a DTA/DTT two tax jurisdiction agree on where the particular tax liabilities should be paid or taxing rights should be exercised. The choice is either at source where the company / Individual is operating or at residence where the individual/Company is registered as resident

29 <https://Panamapapers.investigativecenters.org/uganda/>

This case illustrates the spaghetti strategy that many companies use under 'treaty shopping' to minimize their tax payments. They take advantage of weakness in domestic law and loopholes presented in International treaty agreements (Double Tax Agreements-DTAs). Instead of helping companies avoid double taxation (at source and destination) many of these agreements help companies achieve double non-taxation. A study conducted by the Tax Justice Network-Africa (TJN-A) on DTAs in Africa found out that many of the treaties were outdated and had not been revised for decades. The capacity constraints facing many revenue authorities made the administration of these treaties difficult and open to abuse. Some of the new treaties that are being negotiated between African countries and tax havens opens up for abusive practices such as treaty shopping, and round tripping both which lead to shifting profits to low tax jurisdictions.<sup>30</sup>

### **KENYA-MAURITIUS DTA LITIGATION CASE:**

The Tax Justice Network-Africa has sued the Kenyan Government for signing a double Tax agreement with Mauritius. The case which was filed in 2014 is due for hearing on the 16th of August 2016. In the case TJN-A makes both a constitutional and technical argument against the signing of the Double Tax Agreement between the Kenyan Government and Mauritius. On the constitution TJN-A argues that the government did not fulfil the constitutional requirements before signing the treaty. The new Kenyan constitution requires that before signing an international treaty the state must:

- undertake measures to ensure that the public participation
- conduct due diligence to ensure that such agreements are not to the disadvantage of the country
- ensure that Parliament is involved in the ratification of such a treaty.

TJN-A argues that none above requirements were fulfilled and hence the state was in violation of the constitution. On the technical level TJN-A portends that this agreement will lead to a double non taxation of companies registering in Mauritius simply because Mauritius is a tax haven. The treaty gives Taxing rights specific taxes such as tax on royalties and capital gains to Mauritius. Considering that these taxes are either lower or non-existent in Mauritius this would encourage treaty shopping and round tripping. This is a case where companies originating from elsewhere will route their investment through Mauritius just to take advantage of the friendly provisions in the treaty.

30 <http://www.taxjusticeafrica.net/wp-content/uploads/2016/02/NEW-report-Tax-Treaties-in-Sub-Saharan-Africa-report-TJN-A.pdf>

## **MATRYOSHKA OR THE CASE THE RUSSIAN DOLLS: HOW DIAMONDS FROM SIERRA LEONE WERE LEGALLY UNDERPRICED**

One of the most surprising aspects of the Panama leaks is the argument by those mentioned that they were operating within the confines of the law and have not been doing anything illegal. In response to the queries that was sent to Mossack Fonseca regarding the Panama leaks the company denied any wrongdoing. “It is legal and common for companies to establish commercial entities in different jurisdictions for a variety of legitimate reasons, including conducting cross-border mergers and acquisitions, bankruptcies, estate planning, personal safety, restructuring and pooling of investment capital from different jurisdictions in neutral legal and tax regimes that does not benefit or disadvantage any one investor”.<sup>31</sup>

While owning shell companies by itself is not illegal, the anonymity provided can be used to cover all aspects of business dealings making it impossible to determine the actual legality. In other words anonymous shell companies are used to hide actual ownership structures and distort lines of responsibility and accountability. The Panama Papers provides in this respect an illustration on how the financial system has been allowed to develop tools and vehicles that can be used to blur lines between illegal and morally questionable activities. Shell companies have been historically the vehicle of choice for corrupt elites to hide their stolen wealth. Shell companies are the main export service that tax havens provide. This becomes evident when looking at the case of Sierra Leone.

Sierra Leone is ranked as one of the poorest countries in the world ranked 181 out of 187 countries in the 2014 Human Development Index.<sup>32</sup> The ebola epidemic in 2014/15 left a devastating social economic impact and brought the country to its knees throwing millions of people further down the poverty ladder. A study conducted by the United Nations Development Programme (UNDP) projected an economic loss in average of between USD 200.7 million and 264.3 million between 2014 and 2017 representing an average of 7.1% of the country’s GDP.<sup>33</sup> For a country struggling to emerge out of such a catastrophic socio economic crisis, recovery efforts depends on its ability to harness and utilize available resources including mineral resources. It is with this background and context that the activities of one of the leading mining companies exposed in the Panama papers should be seen.

The Benny Steinmetz Group Resources (BSGR) has according to the leaked papers been involved in dubious practices that have systematically undervalued the diamonds exported out of Sierra Leone.<sup>34</sup> Benny Steinmetz was revealed to use offshore centers and with the support of Mossack Fonseca to create secretive layers of companies through trusts and foundations to conceal ownership and to manipulate the prices for the sole purpose of evading taxes. Two companies, Koidu Holdings and Ocea, were revealed in the Panama leaks to belong to the same mother companies belonging to Benny Steinmetz.<sup>35</sup> Between the two they accounted for over 60% of the total diamond exports. Ocea has a multilayered ownership structure with several subsidiaries including Ocea Mining, Ocea Technical Services, Ocea Diamond Ocea Limited all registered in the British Virgin Island with no public information about their operations and financial statements.<sup>36</sup>

31 <https://panamapapers.icij.org/blog/20160403-mossack-fonseca-response-icij.html>

32 <http://hdr.undp.org/sites/default/files/ranking.pdf>

33 <http://www.africa.undp.org/content/dam/rba/docs/Reports/ebola-west-africa.pdf>

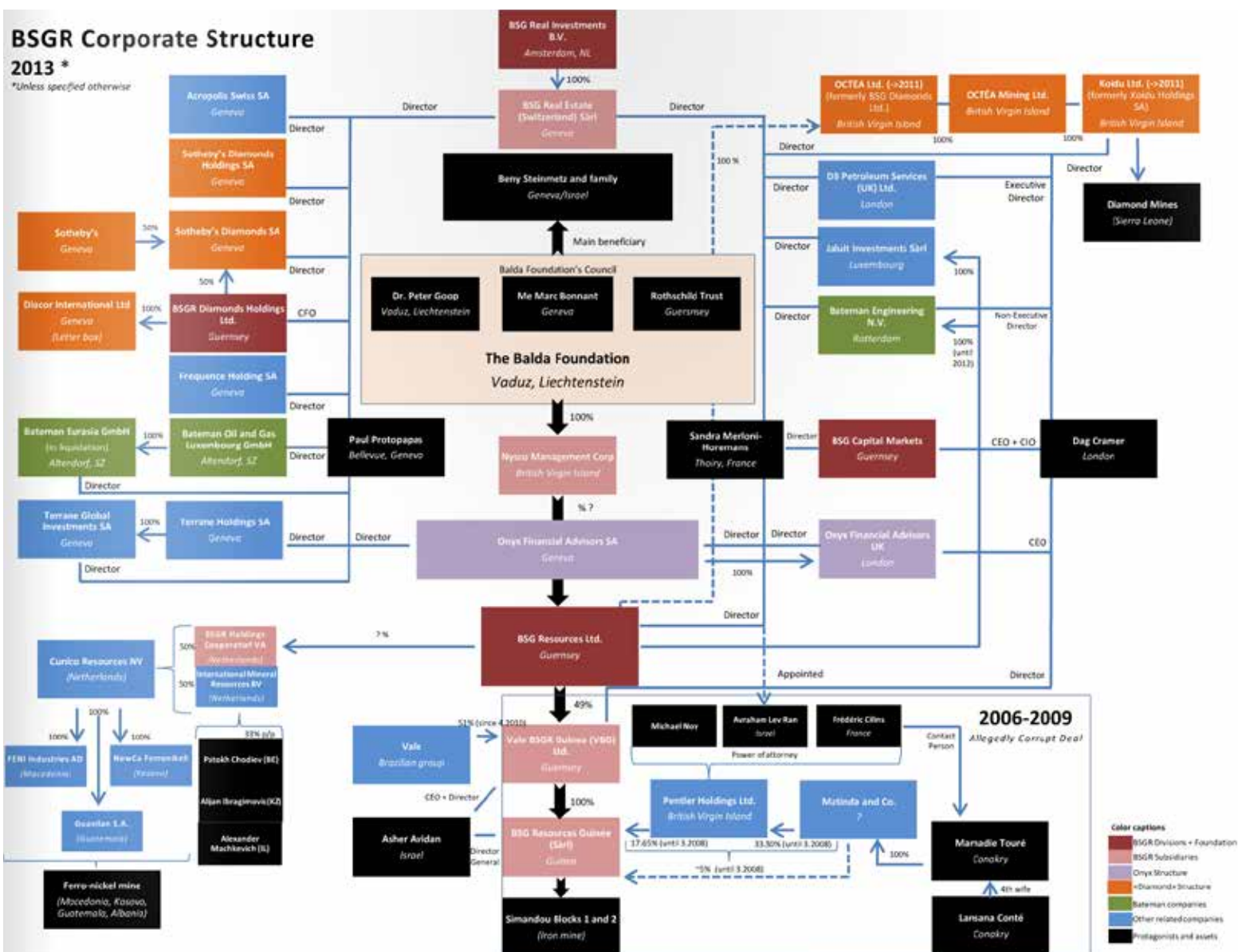
34 <https://panamapapers.investigativecenters.org/sierra-leone-2/>

35 Ibid

36 Ibid

The Panama Papers further reveal a complex web of ownership structures between the different subsidiaries of Ocea spread across a number of tax havens including Jersey, BVI Switzerland, Liechtenstein and Panama. The maze of ownership resembling a Russian doll is so complex and almost impossible to discern. To avoid being detected BSGR owner transferred ownership of the Swiss based company Diacore to his brother Daniel Steinmetz. Diacore which is registered in the Mossack Fonseca database, owned over 30 companies and is 50% indirectly owned by Oceanview Trust. The registered beneficial owner of the Oceanview Trust is Nir Livnat, located in the British Virgin Islands. Additionally 12.5% of Oceanview is indirectly owned by a Liechtenstein registered foundation called Zamaria, ultimately owned by the same Daniel Steinmetz; A further 37.5% is indirectly owned by Surfwave Foundation, also registered in Liechtenstein and owned by Daniel Steinmetz.<sup>37</sup>

### BSGR CORPORATE STRUCTURE<sup>38</sup>



37 ibid

38 <https://issuu.com/declarationdeberne/docs/bsgrcorporatestructure>



The above complex structures are deliberately set up for tax planning purposes and to obscure actual ownership. For a country like Sierra Leone struggling to recover from a devastating epidemic that has destroyed its institutional capacity, it would be impossible to capture the true value of its resources for tax purposes and such schemes explain how BSGR has escaped paying any taxes for a long period of time.

### **WITHOUT A TRACE: MOZAMBIQUE'S 4.2 BILLION DOLLAR QUESTION**

The Lurio River Valley Agricultural development Project (DVRL) has been touted as the largest of its kind in Africa and is estimated to cover over 600,000 hectares and valued at \$4.2 billion. According to the project initiators own estimations the project will generate an annual income of \$150 million benefiting over 280,000 people from around the region.<sup>39</sup> The project aims to contribute to energy generation, infrastructure development, water supply and enhancing food security. On face value it can be argued that for a country emerging from decades of conflict these are exactly the kind of investments it should be attracting. Hidden away from the company prospectus however are a number of serious concerns that calls into question the credibility of the project and the validity of their promises. A study conducted on the potential social and environmental impact show that more than 500,000 people risk losing their homes if the project is approved.

The Panama Papers have raised red flags on the complexity of ownership structure of the company. The company is owned through a web of offshore shell companies and trusts spread throughout various tax havens including Malta, Mauritius, Bahamas, British Virgin Island and Guernsey among other Tax havens.<sup>42</sup> This complex pattern of ownership structures points at a common characteristic of tax avoidance schemes that are responsible for illicit financial flows. A study by Save the Children estimates that Mozambique lost over \$5.27 billion between 2002 and 2010 as a result of trade misinvoicing. This amounts to an average annual loss of \$585 million representing 9% of the country's GDP. In addition up to \$187 million is lost annually as a result of tax avoidance schemes through VAT, import tax and corporate income tax. This amounts to about 10.4% of the Mozambique's government revenue.<sup>43</sup> Putting the figure in the context of forgone development this translates to almost the entire annual health budget of Mozambique.

39 <http://www.agricane.com/blog/item/developing-the-lurio-valley>

40 Ibid

41 <https://www.grain.org/article/entries/5212-mozambique-s-council-of-ministers-must-say-no-to-resettlement-of-100-000-in-the-nacala-corridor>

42 <https://panamapapers.investigativecenters.org/mozambique/>

43 [http://www.savethechildren.org.uk/sites/default/files/docs/Making\\_a\\_Killing\\_NCBTD.pdf](http://www.savethechildren.org.uk/sites/default/files/docs/Making_a_Killing_NCBTD.pdf)



## **MIRROR MIRROR ON THE WALL: UNDERSTANDING THE GEOGRAPHY AND PUBLIC PERCEPTION OF CORRUPTION**

Corruption has traditionally been defined from a rather narrow sense of abuse of entrusted power for private gain and only differentiated between grand, petty and political. In his seminal paper on the geography of corruption John Christensen – co-founder and now director of Tax Justice Network - examines the ideological factors that have shaped the global discourse on corruption.<sup>44</sup> He argues that focus on the demand side of the corruption equation has targeted developing countries, particularly in Africa, as the primary locus of corruption. Meanwhile, concerns about how the prevailing financial infrastructure profits from handling the proceeds of criminal activity, including tax evasion, have been consistently ignored.<sup>45</sup> Particularly in Africa the fight against corruption is still perceived by a narrow definition that largely ignores the supply side factors and the infrastructure that facilitates and profits from corruption.

The Panama papers exposed the role of destination countries, mainly tax havens, who provide a safe haven for the proceeds of corruption and acts as facilitators and conduits of corruption used by the legal advisors, bankers and accountants who are all part of the corruption value chain.

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44 [http://www.taxjustice.net/cms/upload/pdf/0701\\_Mirror\\_Mirror\\_corruption.pdf](http://www.taxjustice.net/cms/upload/pdf/0701_Mirror_Mirror_corruption.pdf)

45 Ibid

46 <http://www.financialsecrecyindex.com/>

47 <http://www.financialsecrecyindex.com/introduction/fsi-2015-results>

## CONCLUSIONS

An assessment of the Panama papers from an African perspective leads us to draw a number of lessons and conclusions. First, although the leaks emerged from one of the world's largest supplier of shell companies, Panama is but one of the many tax havens spread across the world. Tax havens differ in their levels of secrecy, their specialization and scale of their financial activity. The Tax Justice Network has developed the Financial Secrecy index<sup>46</sup> to rate the level of opacity and size of jurisdictions across the world.<sup>47</sup> The Financial Secrecy Index ranks jurisdictions according to their secrecy and the scale of their offshore financial activities. A politically neutral ranking, it is a tool for understanding global financial secrecy, tax havens or secrecy jurisdictions, and illicit financial flows or capital flight. What can be deduced from this ranking is that then even worse culprits are "onshore" tax havens like Switzerland, US, London and Luxemburg. Second, considering the size of Panama in the ranking one can say with certainty that the Panama Papers present just a tip of the iceberg. The enormity of usage of tax havens is much bigger and hence it can be interpreted that the magnitude of the outflow is even higher than current estimates. Third, although the main highlight and international focus of the Panama Papers were on rich countries, the above example illustrate the scale and impact on developing countries and specifically African countries. These countries are bearing the brunt of a rigged and flawed global financial system that is hemorrhaging significant resources that they direly need to finance their economic programmes. Fourth, as the High Level Panel on illicit financial flows (HLP) puts it the illicit outflow of resources from Africa will not be tackled only at the national level. It's a global problem that requires global solutions. Current challenges will be addressed not by piecemeal reform but through a fundamental paradigm shift that will tackle the systemic failure of the financial architecture through cooperation and collaboration of both rich and poor countries. Transparency of the global financial system can not be guaranteed so long as Tax havens continue to exist. To tackle the scourge of global corruption and the outflow of illicit capital will require a bold move that will lead to the ultimate closure of Tax havens. Otherwise it will be a game of musical chairs and with another Panama awaiting to happen in yet another tax haven. In the words of Richard Brooks - the Author of 'The great Tax Robbery' - "Tax havens don't need to be reformed. They should be but outlawed"<sup>48</sup>

## RECOMMENDATIONS

One key lesson that can be drawn from the Panama Papers is that no government developed or developing is safe from the scourge of illicit financial flows which is facilitated by financial infrastructure provided by the tax haven industry. Actions of a Panama law firm have direct impact on the lives of a Sierra Leonean or Mozambican.

Tackling the menace of illicit financial flows will require concerted efforts and action at global regional and national level. Below are a set of proposed recommendations and measures that the Norwegian government can undertake to contribute to closing the loopholes that facilitate revenue leakage from African countries and undermine the continent's ability to make progress towards sustainable development:

- a. Support technical capacity building: Building on its previous experience Norway should continue to invest in enhancing capacity of stakeholders including tax authorities, research and academic institutions and civil society. Measures such as the Addis Tax Initiative provide space for harmonization of technical support in line with the principles of aid effectiveness.

48 <https://www.theguardian.com/news/commentisfree/2016/apr/04/tax-havens-reformed-outlawed-panama-papers>

- b. Tax Harmonization: There are existing and ongoing efforts by regional economic blocks such as the East Africa Community to coordinate and harmonize their tax policies. This measure should be supported since collaboration at subregional level is key to achieve policy coherence, information sharing and tackling harmful tax competition
- c. Support a consortium on illicit financial flows: The African Union in collaboration with the UNECA have recently joined forces with key policy actors from across the continent such as the African Tax Administrators Forum (ATAF) and Tax Justice Network-Africa to establish a consortium on illicit financial flows. This group is working towards a framework to champion the implementation of the recommendations of the High Level Panel on Illicit Flows. The consortium provides a strategic forum to drive the debate on IFF in Africa forward.
- d. Support Reforming global governance structure. The current international system leading global reforms is undemocratic and not inclusive. Norway should support and work towards establishing an intergovernmental body on tax matters under the auspices of the UN. This will ensure that developing countries have a seat at the table so that we can work for solutions that work for all.
- e. Implement an open beneficial ownership registry. Governments all over the world are in the process of implementing registries over the real owners behind complex company structures. Norway must ensure that its planned registry is fully open and searchable for all.



Photo: Greg Rodland/Kirkens Nødhjelp

