Outcomes and Recommendations of the

FIRST AFRICAN FISCAL POLICY FORUM

16 DECEMBER 2021

Coalition for Dialogue on Africa

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Introduction

The Coalition for Dialogue on Africa (CoDA) and the South Centre co-organized the First African Fiscal Policy Forum on 16 December 2021 with the theme "Inequalities in Taxing Rights". It was the first of a series of dialogues aimed to bring together key stakeholders from Africa and the Global South on tax matters, to examine the legitimacy of the international tax reform processes and illicit financial flows and the place and role of Africa in the processes. The dialogue discussed contents of the Two-Pillar Solution of the Organization for Economic Cooperation and Development (OECD)/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) and its implications for African countries. It analyzed other alternatives to the Inclusive Framework, including recommendations of institutions such as the United Nations High-level Panel on Financial Accountability, Transparency and Integrity (UN-FACTI) and Article 12B on Taxation of Automated Digital Services of the UN model Tax Convention. The forum sought to discuss the reasons some countries such as Nigeria, Kenya, Pakistan, and Sri Lanka did not endorse the Inclusive Framework proposals and made recommendations for African countries.

The forum served to raise awareness and encourage African and other developing countries to take strong actions on tax issues. It was held in the aftermath of the OECD/G20 Two-Pillar solution for taxing the digitalized economy. Members of the Inclusive Framework who negotiated the Two-Pillar solution are expected to begin signing and ratifying the agreement in early 2022. It was supported by collaborating organizations working on tax justice in Africa and at the global level, including the Independent Commission for the Reform on International Corporate Taxation (ICRICT), Tax Justice Network, Pan-African Lawyers Union (PALU), Global Alliance for Tax Justice, Collective for the Renewal of Africa, and the African Centre for Tax and Governance.

Opening Session

Ms Souad Aden-Osman, CoDA Executive Director, opened the forum and introduced the panelists and discussants. Prof. Sylvain Boko, Senior Advisor at CoDA, moderated the opening session and presented the objectives and expected outputs of the forum. H.E. Dr Maxwell Mkwezalamba, former Minister of Finance of Malawi and Senior Advisor to the High-Level Panel on Illicit Financial Flows (IFFs) from Africa, and Member of CoDA Technical Committee on Domestic Revenue Mobilization, closed the forum.

H.E. Mr Shaukat Tareen, Minister of Finance of the Islamic Republic of Pakistan and H.E. Dr Zainab Shamsuna Ahmed, Minister of Finance, Budget and National Planning of the Federal Republic of Nigeria (represented) made statements at the opening session.

Both ministers outlined the shortcomings of the two-pillar solution, including failure to consider the interests of the developing countries and their limited participation and representation in the negotiations. They said gains from the two-pillar solution would be insignificant for African and other developing countries because of the limited number of in-scope companies caused by the high turnover threshold, the minimum tax rate detached from developing countries realities, extremely high nexus threshold for re-allocation of Amount A, unsuitable dispute resolution mechanism for developing countries, and the compulsion to remove all unilateral measures, including on out-of-scope companies, which presently account for an important part of revenues. Thus, they highlighted the necessity for these countries to find unilateral ways of collecting tax revenues from multinational enterprises (MNEs) activities arising within their jurisdictions and globally.

Regarding Africa's participation and representation, for instance, only four countries, namely, Cote d'Ivoire, Nigeria, Senegal, and South Africa were represented in the steering committee, Zambia was only invited later. Of the four countries, only Nigeria and South Africa actively participated in the negotiations. Africa's participation was mainly at the technical level and not at the political level, resulting in a compromised level of engagement. The ministers maintained that the two-pillar solution represented a failure of multilateralism in providing a fair and equitable solution to the challenges faced by African and other developing countries in mobilizing adequate tax revenues to finance the implementation of their socio-economic development agenda. They said their countries would have to take measures at the national level in the absence of satisfactory multilateral solutions.

Technical Discussion

Dr Carlos Maria Correa, Executive Director, South Centre chaired the technical panel discussion by:

- H.E. Dr Hakim Ben Hammouda, former Minister of Finance of Tunisia and Chair of CoDA Technical Committee on Domestic Revenue Mobilization
- H.E. Mr Jose Antonio Ocampo, former Minister of Finance of Colombia, Member of the UN FACTI Panel and Chair of the Independent Commission for the Reform the International Corporate Taxation (ICRICT)
- Hon. Irene Ovonji-Odida, Member of the High-Level Panel on IFFs from Africa and Member of the High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (UN FACTI)
- Dr Hanan Morsy, Director of Macroeconomic Policy, Forecasting and Research at the African Development Bank
- Prof. Jomo Kwame Sundaram, former UN Assistant Secretary General and Member of CoDA Technical Committee on Domestic Resource Mobilization
- Prof. Sol Picciotto, Coordinator for Base Erosion and Profit Shifting (BEPS) Monitoring Group (BMG).

There were additional contributions by:

- Ms Liz Nelson, Director, Tax Justice & Human Rights, Tax Justice Network
- Mr Donald Deya, Chief Executive, Pan-African Lawyers Union
- Ms Caroline Othim, Coordinator, Global Policy & Advocacy, Global Alliance for Tax Justice
- Mr Ndongo Samba Sylla, Co-Founder, Collective for the Renewal of Africa
- Mr Mustapha Ndajiwo, Executive Director, African Centre for Tax and Governance

Key Outcomes and Recommendations

The following are key outcomes and recommendations from the forum:

1. The international tax system has been characterized by inequalities in taxing rights and revenue losses and this allows tax evasion, tax avoidance and increase in IFFs. This occurs in a context where international aid has stagnated and foreign direct investment has declined, increasing the need for African countries to increase domestic resource mobilization, especially in the context of the COVID-19 pandemic.

2. Participants emphasized the importance of stemming IFFs from Africa which is estimated at about US$50 billion at the time of publishing the report of the African Union High Level Panel (AU-HLP) chaired by H.E. Thabo Mbeki, former President of South Africa. In 2020, it was estimated at around US$88.6 billion, representing a 77% increase in five years.
3. The report of the AU-HLP (Mbeki Report), the adoption of the African Union Special Declaration on IFFs and the establishment of the Consortium to Stem IFFs highlight the importance of addressing IFFs from Africa and of mobilizing domestic revenues to finance the socio-economic development agenda of African countries.
4. IFF is not only a problem in Africa, it is also a problem in other developing countries.
5. Within the context of curbing IFFs and the need to enhance domestic revenue mobilization, the forum discussed the ongoing global processes, including the OECD/G20 Inclusive Framework on BEPS, with its focus on two pillars: Pillar 1, which provides taxing rights to market jurisdictions on the part of residual profits earned by MNEs with a global turnover of more than €20 billion and more than 10 percent profitability; and Pillar 2, which has set a global minimum corporate tax rate of 15 percent, as endorsed by the G20.
6. Digitalization of the economy has exacerbated difficulties in taxing MNEs because of the lack of physical presence and the continuous challenge posed by tax havens and offshore activities. This has made developing countries lose an important source of revenue. The solutions agreed so far in the OECD/G20 Inclusive Framework have not been beneficial to African and other developing countries, although most of them endorsed the agreement. The solution proposed under the framework will result in limited revenue gains and giving up of unilateral tax measures, which is unfair for those countries.
7. There is limited involvement of African countries in international processes to address taxation issues and IFFs, hence the need to increase their representation and participation.
8. The two-pillar solution offers minimal benefits to developing countries while developed countries receive the bulk of the gains. Pillar 1 only targets a small number of companies and excludes most MNEs operating in Africa. Pillar 2 and its minimum rate of 15% is too low for developing countries regarding their current corporate tax rates of between 25% and 35%. The current structure of Pillar 2 will give priority to developed countries in collecting undertaxed income. Hence, there is little gain for developing countries in the two-pillar solution and there is widespread resentment against the decisions taken at the OECD, which has publicly acknowledged that it is dedicated to promoting the interests of its members and has acted again as a club of rich countries. Developing countries, particularly African countries, must find alternative ways to increase tax revenue from activities taking place in their jurisdictions.
9. The mandatory and binding nature of dispute resolution in Pillar 1 is problematic, and African countries must adopt a solution that respects their sovereignty.

10. Africa's participation in international tax reform processes has been led by national tax administrations that are not well coordinated. Participation of the developed countries, on the other hand, has been led by the OECD, G7 and G20 and this has enabled them to garner the political might, set the agenda and dictate the direction of the processes.

11. Representation and participation of African countries was limited, with only Nigeria and South Africa actively participating at the technical level. African countries did not participate at the political level. The demands and proposals of African countries and other developing countries have been largely ignored in the negotiations, resulting in countries such as Kenya, Nigeria, Pakistan, and Sri Lanka not endorsing the agreement. Developing countries that are members of the IF agreed to give up unilateral measures on all companies, not just those within the scope of Pillar 1, although this is a political and not a legal agreement.

12. The forum commended countries that refused to endorse the agreement and encouraged African countries to renegotiate the agreement to ensure that it is beneficial to them. Options for African countries include participation in the package (Pillars 1&2), strengthening tax on non-resident companies, and reviewing existing tax treaties.

13. The two-pillar solution will be a legally binding agreement if signed and ratified. However, it is not a package; each pillar must be signed and ratified separately. Thus far the agreement has been solely political. African and other developing countries must carefully assess and decide whether to sign it or not and should analyze the costs and benefits for each of the pillars. They must compare the benefits from alternatives to Pillar 1 such as Article 12B of the UN Model Tax Convention or unilateral tax measures as well as alternatives to Pillar 2 such as Alternative Minimum Taxes. Article 12B is simple to implement and offers potentially much higher revenue collection for developing countries.

14. If developing countries sign, it must be done on the condition that the two-pillar solution will be further and comprehensively modified. It is unclear if developed countries, particularly the United States, will sign Pillar 1 agreement; if they do not there is no reason for developing countries to do so, because it means they will give up their taxing rights and gain nothing. Therefore, African and other developing countries that choose to join Pillar 1 must do so only after the developed countries, especially the US, have ratified it.

15. African and global south countries must be better coordinated and set up a common position on the re-allocation of taxing rights. African strategies for adopting a common position in other international arenas such as in the World Trade Organization should be considered.

16. African countries and the other developing countries must change the forum for negotiation on tax matters and bring these negotiations to the United Nations where their voices would be stronger. The UN process was perceived to be more inclusive, more relevant to the needs of Africa and the Global South than the OECD/G20 Inclusive Framework on BEPS. Further, political accountability of the Inclusive Framework is only to the OECD, G20 and the G7. In this regard, an intergovernmental body on tax matters at the UN (UN Tax Convention) as demanded by the G-77 and recommended by various bodies, including the UN FACTI Panel, where such negotiations would be taking place on equal footing would be ideal. The South Centre has provided further guidance on the possible structure of such a body. Besides, the existing institutional architecture lacks coordination with institutions such as the International Monetary Fund (IMF) and the World Bank. For African countries especially, such an intergovernmental body on tax matters at the UN would be more beneficial because of the active role African countries play in the UN.

17. The forum highlighted the need for Africa to have a well-coordinated and coherent approach in these global processes to curb IFFs from Africa, and to ensure that the processes are inclusive and address the peculiarities of African countries. Within this context, South-South cooperation would be critical.

18. Regarding IFFs, initiatives such as the Mbeki Panel highlighted that commercial drivers account for 65% while corruption, money laundering and other factors account for 35% of IFFs out of Africa.

19. To provide quantitative information on the potential outcomes of the two-pillar solution and other alternatives, CoDA and South Centre launched a call for papers on studies to assess and quantify the likely impacts of these proposals on the economies of developing countries. This will allow an assessment of the revenue gains from (a) Amount A of Pillar 1 contrasted with revenues from Article 12B (on both gross and net basis approaches) and (b) the expected revenues under Pillar 2. These studies will ideally cover each Member State of the African Union and Member States of the South Centre.

Conclusion

Participants in the forum emphasized the need to continue the dialogue series to enable African countries to make informed decisions on crucial tax questions related to their domestic revenue mobilization efforts. They commended CoDA and the South Centre for co-organizing the First African Fiscal Forum given that inequalities in taxing rights have existed for a long time in international standards, notably of the OECD, and that digitalization of the economy has made it difficult for African countries and other developing countries to tax highly digitalized companies.

On behalf of the co-organizers of the forum, H.E. Dr. Maxwell M. Mkwezalamba thanked the Ministers of Finance of the Federal Republic of Nigeria and Pakistan for their insightful statements, the panelists for their candid interventions, and all the participants for their valuable contributions. He thanked Dr Carlos Maria Correa for effectively and efficiently chairing and moderating the discussion of the technical panel. He commended the CoDA Secretariat, headed by Ms Souad Aden-Osman; the South Centre, under the leadership of Dr Carlos Maria Correa and other organizations that collaborated to organize the forum.