

**Academics
Stand
Against
Poverty

Journal**

Impressum

Academics Stand Against Poverty (Journal ASAP)

ISSN 2690-3458 (electronic edition)

ISSN 2690-3431 (print edition)

Managing Editor:

Najid Ahmad, Xiangtan, China

Essay Editor:

Kieran Donaghue, Canberra, Australia

Administrative Officer:

Paul Keller, Barcelona, Spain

Editorial Board:

Najid Ahmad, Xiangtan, China

David Alvarez Garcia, Vigo, Spain

Michal Apollo, Cracow, Poland

Arsène Brice Bado, Abidjan, Côte d'Ivoire

Paula Casal, Barcelona, Spain

Neera Chandhoke, New Delhi, India

Horman Chitonge, Cape Town, South Africa

Alberto Daniel Cimadamore, Buenos Aires, Argentina

Johnny Antonio Dávila, Medellín, Colombia

Paulette Dieterlen Struck, Mexico City, Mexico

Evaristus Okechukwu Ekwueme, Harare, Zimbabwe

Judith Lichtenberg, Washington, United States

Pahlaj Moolio, Phnom Penh, Cambodia

Alexander Chido Msimuko, Kitwe, Zambia

Gorik Ooms, Ghent, Belgium

Thomas Pogge, New Haven, United States

Sven Prien Ribcke, Lüneburg, Germany

Sanjay Reddy, New York City, United States

Santosh Kumar Sahu, Chennai, India

Jakob Schwab, Bonn, Germany

Khadija Sharife, Gauteng, South Africa

Magdalene Silberberger, Witten, Germany

Véronique Zanetti, Bielefeld, Germany

Mailing address:

c/o Department of Philosophy, P.O. Box 208306, New Haven, Connecticut, 06520-8306

Physical address:

203 Connecticut Hall, Old Campus, Yale University New Haven, CT 06511

Contact

editor@journalasap.org

Academics Against Poverty Journal is a Journal under Academics Stand Against Poverty Inc., registered as a 501(c)3 non-profit organization in the United States (EIN # 32-0324998).

TABLE OF CONTENTS

1. Welcome to Journal Academics Stand Against Poverty <i>Thomas Pogge</i>	1-23
2. Introduction of the Managing Editor <i>Najid Ahmad</i>	24-31
3. Ethics Dumping: how not to do research in resource-poor settings <i>Doris Schroeder, Kate Chatfield, Vasantha Muthuswamy, Nandini K. Kumar</i>	32-55
4. A Stroke of the Keyboard and Click of the Mouse: an anatomy of cyber frauds as a growing component of illicit financial flows <i>Erhieyov O’Kenny</i>	56-73
5. When the Hunters Learn to Shoot Without Missing, the Birds Learn to Fly Without Perching: protecting source taxation in Uganda’s upstream oil sector from artificial profit shifting <i>Brian Collins Ocen</i>	74-85
6. Illicit financial flows and the extractives sector on the African continent: impacts, enabling factors and proposed reform measures <i>Philip Mutio</i>	86-105
7. Pulling the Plug on Money Laundering in British Columbia, Canada: lessons learned, and actions required <i>Roy Cullen</i>	106-127
8. Western Modernization of Agriculture in Africa Produces Malnutrition <i>Michiel Korthals</i>	128-132
9. Understanding Farmer Protests in India <i>Sudha Narayanan</i>	133-140

Welcome to Journal *Academics Stand Against Poverty*

Thomas Pogge¹

Abstract:

Though it has academics in the title, our new journal isn't especially academic. Its main purpose is practical: to help reduce poverty around the world. Doing so is often seen as technical work for experts in disciplines like engineering, agriculture, pharmacology and economics. But this task also has a large moral and political component. Poor people typically have little political influence and social visibility. And if the rest of us care little about poverty eradication, then not much effort by those experts will be devoted to it.

After presenting the new journal's mission, the bulk of this paper introduces poverty as a subject of constructive academic attention. It does so under five main headings: definition, description, explanation, moral assessment and eradication. At the end, the other essays in this inaugural issue are briefly presented.

Keywords: Academia, Assessment, Definition, Description, Eradication, Explanation, Global South, Hunger, Poverty, Sustainable Development Goals, Undernourishment.

This journal is dedicated to poverty—and to those who must live with it. It is meant to help and to inspire academics to bring their special skills and resources to bear on this problem and thereby to make poverty more vivid, more understandable and more tractable. ASAP-J gives voice to academics and experts, especially ones from the global South, who stand with the poor: who, through well-grounded analysis, critique and reforms of the *status quo* seek to contribute to the eradication—as soon as possible—of poverty and its associated evils. To do this successfully, ASAP-J needs participation also by non-academics who substantially deal with poverty in their personal or professional lives. They are welcome as authors, reviewers, readers and editorial staff volunteers.

ASAP-J extends and complements the work of the registered non-profit organization *Academics Stand Against Poverty* (US EIN 32-0324998) which, taking advantage of a well-entrenched global infrastructure of institutions of research and learning, has been facilitating poverty-focused academic cooperation for over a decade.² ASAP-J supports such collaborative work with mutual learning and seeks to include scholars and experts from poorer countries, from non-elite educational institutions and also from non-educational organizations, agencies and

¹ Having received his PhD in philosophy from Harvard, Thomas Pogge is Leitner Professor of Philosophy and International Affairs and founding Director of the Global Justice Program at Yale (globaljustice.yale.edu). He co-founded Academics Stand Against Poverty, an international network aiming to enhance the impact of scholars, teachers and students on global poverty (www.academicsstand.org), and Incentives for Global Health, a team effort toward creating new incentives that would improve access to advanced pharmaceuticals worldwide (www.healthimpactfund.org). More information at <https://campuspress.yale.edu/thomaspogge/>.

² See www.academicsstand.org; Pogge and Cabrera (2012).

communities dedicated to poverty eradication. Aiming for the widest possible reach, it will always be freely accessible in electronic form, without any requirement to provide personal information. There will never be a cost to our readers or authors. To sustain itself and to safeguard its focus and quality, ASAP-J will depend on volunteer work and occasional donations from friends around the world. These committed supporters are more than friends of the journal, they *are* the journal: working together toward making it succeed in its mission.

International and multidisciplinary, ASAP-J publishes two regular issues per year plus occasional special issues that may be proposed by or to potential guest editors. Regular issues will feature original work on poverty-relevant subjects in the form of research essays, review papers, research notes, reports, book reviews, opinions and letters.³ All submissions receive rigorous and timely peer review and constructive critique to ensure high quality and to assist authors in making their work clear, broadly accessible and practically useful. Journal ASAP is registered under ISSN 2690-3458 (electronic edition) and ISSN 2690-3431 (print edition).

The remainder of this welcome essay gives an overview and a taste of the kinds of constructive work on poverty that ASAP-J seeks to promote, and then presents the authors and essays of our inaugural issue.

Approaching the Subject of Poverty

Constructive reflections on poverty work on the *definition* of poverty, its *description* in both quantitative (incidence, geographical distribution and evolution over time) and qualitative terms, the *causal explanation* of such data and trends, the *moral assessment* of poverty with ascription of normative responsibility and the *eradication* of poverty. ASAP-J will cover all five of these components in the interest of promoting a clear, reason-based understanding of poverty that can be a solid basis for institutional reforms, policies and citizen initiatives.

In doing such work together, we must bear in mind that poverty is an eminently practical subject matter. By affecting how people think about poverty, one can influence their conduct and hence legislation, policies and social practices. Accordingly, much about poverty is contested, as people—consciously or otherwise—adapt their understandings of poverty in the service of gaining political support for, or discrediting, some group or ideology. Such biases and controversies are wide-ranging, involving all five of the mentioned components.

One response to this insight might be a quest for an unbiased, neutral and objective analysis of poverty. But such an analysis is a mirage. While there may be scientifically justifiable definitions of gold and of energy, for example, the same cannot be said for poverty. How we define it depends on the specific purpose for which we intend to use this definition and on the context in which it is to be deployed; and even when purpose and context are given, there are still various plausible options. The alternative to ideology and manipulation here is not some immaculate objectivity, but rather transparency with open discussion.

The five components are interdependent in various ways. Definition is linked to assessment: if poverty is morally regrettable, then its definition should not include people who could easily raise their low level of expenditure but prefer a frugal lifestyle. Description is linked

³ See <http://journalasap.org/index.php/asap/about/submissions> for details on these options.

to definition insofar as at least a rough working definition is needed to identify the phenomena to be described. Their detailed description—including, in particular, interviews and consultations with poor people—can then lead to a sharper, richer definition. Explanation is linked to description insofar as it presupposes good descriptions of the phenomena to be explained (*explananda*) as well as of the phenomena invoked to explain them (*explanantes*). Assessment is linked to explanation insofar as causal involvement is presupposed in attributions of moral responsibility. Eradication strategies are linked to explanations insofar as they must be causally effective in changing factors that produce or perpetuate poverty. Insofar as they rely on moral arguments, such strategies may also be linked to moral assessment, making special demands perhaps on those who have contributed to, or benefited from, poverty-producing wrongs or injustices.

Defining Poverty

A very basic definition might be: *poverty is a trait of persons and groups; they are poor insofar as they lack secure access to essentials for a worthwhile life.*

To be useable as a criterion that can determine who is poor and how poor they are, this definition must be specified in various respects. The best way of doing so depends on *context* and *purpose*. A historical study of the evolution of poverty in Indonesian provinces under Suharto should employ a different specification than the administration of a child credit for poor families in Bulgaria in the 2020s. In both cases, the specification may reasonably take into account what data are available and the cost of obtaining additional data. In the latter case, incentive effects also need to be considered—things that Bulgarian families might do to become, or to appear to be, eligible for the credit. Clearly, there is not one correct specification of poverty to be employed regardless of population, purpose, historical period and geographical location.

It is nonetheless useful to discuss the space in which such specification takes place. The proposed basic definition suggests that poverty is *multidimensional*, as several goods are essential for a worthwhile human life. A fuller definition would need to specify these goods—perhaps including nutrition, shelter, air, water, education, health care, leisure time and freedom from violence among others.

The proposed definition further suggests that freedom from poverty is *scalar*, a matter of degree, and also *satiabile*, such that it is in principle attainable by people having secure access to all essentials for a worthwhile life. This accords with ordinary language and common sense: some people are poorer than others, and some people are not poor at all.

To be sure, it is possible to define poverty so that even the richest human beings would still be poor on account of things that even they cannot have, do or be. So-conceived, poverty would be a trait akin to shortness or tallness: even the shortest person is tall by having a certain height (and being taller than a hedgehog), and even the tallest people are short by being shorter than they might be (and shorter than a giraffe). One might be tempted toward such a definition of poverty as unlimited by the thought that any limit must be, to some extent, artificial and arbitrary. Whatever line we may want to draw between the poor and the non-poor, a tiny change that gets a person or household across this line cannot credibly be said to be of inherently much greater significance than other small changes that occur entirely within or outside that limit. But this implication is easily avoided once we define poverty as scalar, a matter of degree. To illustrate.

Suppose we define calorie-poverty in such a way that some particular person must ingest N kcal per day in order to avoid it, and suppose we then assess the severity of her calorie-poverty as proportional to the square of her proportional calorie shortfall: $(N-D)^2/N$, where D is her daily calorie intake. Such a definition of calorie poverty avoids any suggestion that the cut-off N has much significance—in fact, this definition attaches *greater* significance to any caloric gain below N (e.g., from $N-25$ to $N-15$) than to an equally large caloric gain spanning the threshold (e.g., from $N-5$ to $N+5$).

Any full expansion of the basic definition would have to specify scalarity and satiability in at least five respects. First, there is the *quality and acceptability* of goods in each dimension. For instance, food varies in the nutrients it provides; and some foodstuffs taste awful or cause physical discomfort, while others are locally disliked or rejected for religious, moral or more broadly cultural reasons. A full specification would need to address these facts in order to enable judgments about whether a particular person's food supply covers the essentials and, if not, how severely it falls short. Second, there is the *quantity* of goods in various dimensions, which may be fully sufficient or insufficient to a greater or lesser extent. Third, there is *access*: a household clearly has access to clean water when it is available through a working tap within its dwelling, but water may be less accessible, as when it must be fetched from a river via a steep and unsafe two-kilometer footpath. Fourth, there is *security* of access: a household's access to nutrition or health care may be solid and reliable—or it may be more or less insecure on account of a member's precarious employment and/or the vagaries of severe weather events.

The first four respects of specification apply separately in each dimension of poverty, determining whether people suffer a relevant shortfall in this dimension and, if so, how severe this shortfall is. The fifth respect looks holistically across the dimensions. Doing so is important to reveal cases where a household has full access to each of the essentials but not to all of them together, as when low income compels a choice between buying needed food or needed fuel. It is important also for gauging the depth of poverty by identifying those who are deprived in multiple dimensions. Arguably, a population has a more grievous poverty problem if the groups suffering given shortfalls in food, shelter, health care etc. heavily overlap than if they are largely disjoint. One might even deny that persons suffering minor shortfalls in only one or two dimensions should count as poor at all.

It is possible to compress all this complexity into a single scale indicating the overall degree of poverty of a person or household or group. Such exercises in aggregation are at least somewhat arbitrary in the formulas and weights they employ to construct this unified scale. This obvious arbitrariness draws skeptical attention to any such aggregation exercise, to investigate whether it is robust, that is, leads to similar results as would have been reached by using a different plausible aggregation instead. Such arbitrariness has led some scholars to prefer a so-called dashboard approach that rejects any effort to aggregate information from different dimensions into one unified measure of overall poverty. The reasons to shun aggregation are not, however, reasons to discard information about correlations across dimensions: any serious study of poverty must pay attention to the extent to which various relevant shortfalls—food poverty, water poverty, shelter poverty, health care poverty—are concentrated in the same households or groups, as, of course, they typically are.

Further specification of the proposed basic definition of poverty must incorporate how the essentials for a worthwhile life vary across persons, depending on their particular needs and circumstances. Four factors affecting their individual requirements are their *natural constitution and endowments*, including size, gender and metabolism,⁴ their *necessary work*, which co-determines what food and clothing they need to make their living,⁵ their *natural surroundings*, which may expose them to special clothing and shelter needs, and their *social environment*, which may impose certain prerequisites for social acceptance.⁶

This last idea of *social poverty*: lacking access to prerequisites for social acceptance, is distinct from the more common notion of *relative poverty*: being poorer than most others in one's society or community. Social poverty involves the further element of social stigmatization. Relative poverty is often defined simply in terms of some fraction of the relevant population, such as the poorest decile. So-defined, relative poverty falls outside the scope of the proposed basic definition because belonging to the poorest decile is perfectly consistent with having secure access to all the essentials for a worthwhile life, social needs included. The same is true of other relative-poverty concepts, such as living on less than half the median income. Such notions of relative poverty are not relevant to the focus on poverty but fall under the concept of *inequality* which, unlike that of poverty, does not involve the meaning element of being morally regrettable. There is nothing morally regrettable about the—inevitable—fact that 10% of any population are within its poorest decile.

Even if relative poverty is not genuine poverty, it may affect our moral assessment of genuine poverty. Suppose that, in some society, a third of the population lives in absolute poverty. And suppose the rest of society is getting ever more affluent while the situation of the poorest third remains unchanged. In this scenario, the poor are not getting poorer, but their poverty does become morally ever more objectionable because ever more easily avoidable.

This point is relevant to the definition of poverty, which should capture the core meaning elements of the word as commonly used. One central meaning element characterizes poverty as morally regrettable, which means that it would be morally better if (holding other things equal) there were less poverty. This in turn strongly suggests that agents have *pro tanto* moral reason to work toward reducing and eradicating poverty insofar as they can. This reason may not be decisive all things considered: agents' moral duties to make poverty reduction efforts depend on how much such efforts could achieve, and at what cost to themselves and to their other commitments. Thus, poverty, even severe poverty, may exist without moral fault in past or present conduct, practices or institutional arrangements. A context of high socio-economic inequality indicates, however, that existing poverty is not fault-free in this way. In such a context, it is highly

⁴ Thus, bigger people need more calories, and women need a roughly 70% higher intake of iron than men do (roughly 14.8 *versus* 8.7 mg/day) in order to avoid iron deficiency (anemia).

⁵ Hard physical labor can raise calorie consumption up to threefold.

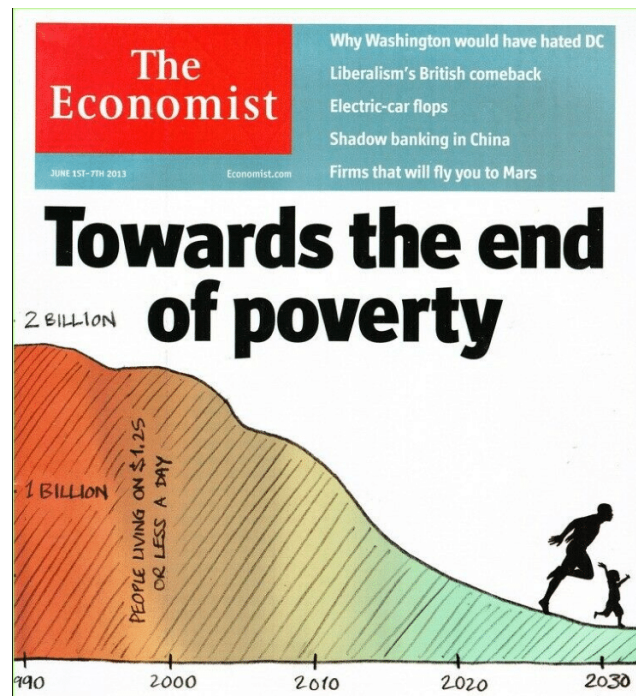
⁶ The idea of such social needs and social poverty is clearly articulated by Adam Smith and developed further by Amartya Sen. Smith writes: "in the present times, through the greater part of Europe, a creditable day-laborer would be ashamed to appear in public without a linen shirt, the want of which would be supposed to denote that disgraceful degree of poverty which, it is presumed, nobody can well fall into without extreme bad conduct" (1976, p. 399).

likely that some people are not making the efforts they could and ought to make, at low cost to themselves, toward reducing poverty.

Describing Poverty

The most authentic descriptions of poverty are communicated by poor people, verbally or in other ways. Through such communications, we learn about common features of poverty and its myriad diverse manifestations. Through such communications and encounters—and also, more indirectly, through stories and novels—poverty becomes salient and commands reflective attention. ASAP-J welcomes such concrete and vivid descriptions, first-hand accounts of the lives of scavengers in India, child laborers in the Congo, domestic servants in Brazil, enslaved fishermen in Thailand or slum dwellers in Nigeria.

Quantitative descriptions of poverty tend to be heavily influenced by the political and ideological biases of their authors and funders. The dominant narrative is one that presents poverty as benign. Defenders of the *status quo* wanting to convey this message tend to define poverty in narrow, minimalist terms and tend to foreground diachronic comparisons between present and past poverty to highlight progress, thereby often focusing on the fraction of people in poverty, rather than their number so as to take advantage of population growth. The most prominent example of such a narrative is the World Bank approach which defines poverty in terms of a household's *per capita* expenditure level converted into US dollars at purchasing power parities. The intended message is well conveyed on the 1 June 2013 cover of *The Economist* magazine showing two ecstatic people escaping poverty by attaining a daily level of consumption that would have cost USD 1.25 in the United States in 2005.



This description of poverty works with an extremely narrow definition of poverty, which includes only a single dimension and suggest that freedom from poverty is achieved at an exceedingly low expenditure level. A person living in the U.S. in 2005—regardless of her metabolism, medical needs, climatic challenges, insecurity of her income and of how long and how hard she must work every day—counts as non-poor provided only that her monthly spending reached USD 38!⁷ Use of such an extremely minimalist poverty definition reduces the number of people identified as poor to a bare minimum.

Another problem with the World Bank's approach is that it implicitly assumes that all household members benefit equally from this household's expenditures. This is often not true, as when women and girls are disadvantaged in regard to food and education, for example. A descriptive exercise should be open to the possibility that, even within the same household, some people are poorer than others.

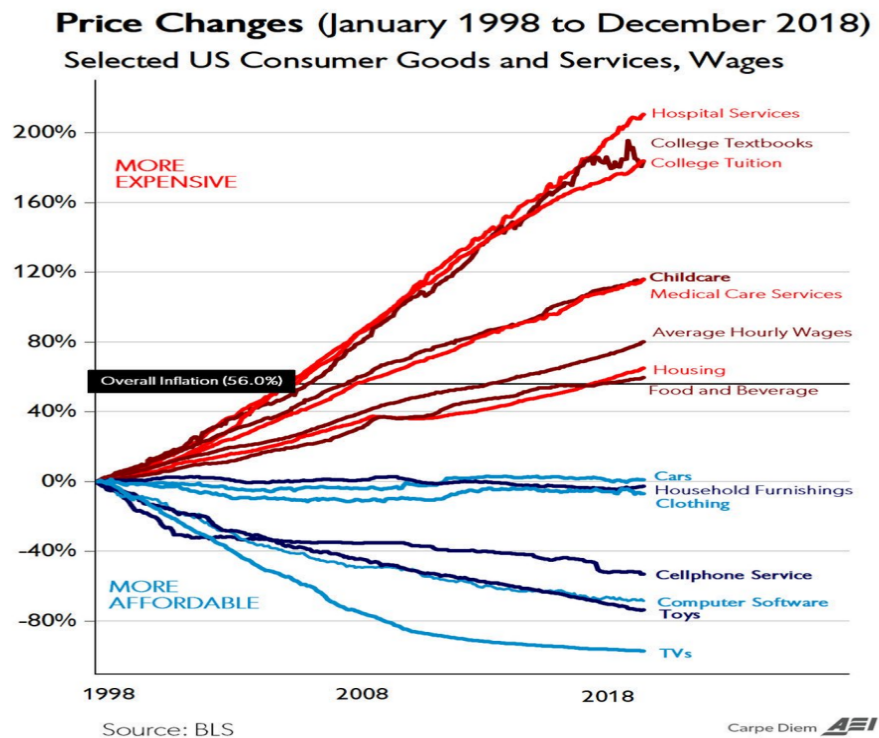
Moreover, the World Bank's description is also biased toward exaggerating the observed decline of poverty. This is so because it works with a definition that excludes social needs, which tend to increase as a society becomes more affluent in aggregate. Further bias results from the empirical fact that the recorded decline in poverty incidence is steeper the lower the poverty line is fixed. In Sub-Saharan Africa between 1990 and 2018, the poverty rate declined by 27% (from 55.15 to 40.39%) or by 8% (from 80.87 to 74.27%), depending on whether one uses the World Bank's poverty line or a more plausible line set at twice its level.⁸

Finally, the World Bank's approach also relies on dubious currency conversions. To determine the poverty status of some given household in some particular year, this household's consumption expenditure in that year must first be converted into local currency units of the base year (2011) and then be further converted into USD of that same base year. These conversions rely on national consumer price indexes and international purchasing power parities (PPPs), respectively, in which the prices of all goods and services are weighted in proportion to their share in, respectively, national and international consumption expenditure. Using such conversions to assess the expenditures of poor people is problematic because their consumption differs sharply from that of people in general. A poor household's access to food may be steadily falling on account of rising food prices, even while its assessed purchasing power shows no decline thanks to the fact that rising food prices are being offset by falling prices for electronic consumer goods. The nearby graphic shows how a consumer price index can hide very large discrepancies in the evolution of different commodity prices. And an analogous point holds for PPPs, where a conversion rate of USD 1 to INR 25 may hide the fact that, at this conversion rate, food is twice

⁷ Though meant to cover *all* living expenses, USD 38 was not sufficient even just for food. For the relevant year 2005, the U.S. Department of Agriculture calculated the cost of a "thrifty" nutritionally adequate diet for short-term or emergency use at well over USD 100 per person per month, with the exact amount depending on each household's size and composition. See <https://fns-prod.azureedge.net/sites/default/files/CostofFoodNov05.pdf>.

⁸ Since 2013, the World Bank had revised its poverty line from USD 1.25 in 2005 dollars to USD 1.90 in 2011 dollars: a household is counted as poor if its consumption expenditure per person per day has less purchasing power than USD 1.90 had in the United States in 2011. Thus, the example in the text shows how the magnitude of poverty reduction is affected by whether poverty is defined in terms of USD 1.90 or 3.80 (2011) per person per day. All data are from <http://iresearch.worldbank.org/PovcalNet/povOnDemand.aspx#>.

as expensive in India as in the U.S. while services, say, are twice as expensive in the U.S. as in India. When this is so, people living in India on INR 950 per person per month are much poorer than ones living in the U.S. on USD 38 per person per month, even though these two incomes are computed to have the same purchasing power.



Complementing the World Bank's poverty measurement exercise, the United Nations Food and Agriculture Organization, in its annual state of food security reports, offers another prominent minimalist description, focused specifically on food poverty. The FAO works with this definition: “*undernourishment*’ has been defined as an extreme form of food insecurity, arising when food energy availability is inadequate to cover even minimum needs for a sedentary lifestyle ... lasting over a year” (FAO et al., 2012, p. 50). By focusing solely on “dietary energy intake,” this definition ignores problems of food absorption as often associated with parasitic infections. It also defines out of existence all undernourishment due to lacking proteins, vitamins, minerals and other essential micronutrients, even while poverty-related deficiencies in Vitamin A, iron and zinc cause hundreds of thousands of deaths each year. The FAO’s definition further ignores that many poor people do hard physical labor to ensure the survival of themselves and their families. Even if such people ingest sufficient energy to meet the “minimum needs for a sedentary lifestyle,” and are thus not counted as undernourished by the FAO, they may still die of starvation. Finally, to reduce the incidence of undernourishment even further, the FAO counts only those whose energy deficit lasts for at least a year: “the reference period should be long enough for the consequences of low food intake to be detrimental to health. Although there is no doubt that temporary food shortage may be stressful, the FAO indicator is based on a full year”

(FAO et al., 2012, p. 50; see also Pogge, 2016). The assurance that low food intake lasting less than a year has no detrimental health consequences is, of course, preposterous, especially when provided by the UN body officially charged with minding the global food system. Most of those who die of starvation do so in under one year and thus without ever suffering any undernourishment as the FAO defines it.

Sticking to its 2012 definition, the FAO estimates 768 million undernourished people for 2020 (FAO et al., 2021, p. 10). But in recent years the FAO has begun also to report two other estimates (FAO et al., 2021, pp. 18 & 27): the “number of moderately or severely food insecure people”: 2,368.2 million in 2020, and the “number of people unable to afford a healthy diet”: 3,000.5 million in 2019, before COVID-19. The average cost per person of such a healthy diet around the world is given as ca. USD 4 per day or USD 122 per month in 2019 (excluding any cooking expenses). Low as it is, this threshold provides a substantially more realistic criterion for food poverty than the one informing the FAO’s estimate of undernourishment. And it also shows that the World Bank’s latest international poverty line—amounting to USD 66 per person per month in the U.S. in 2019—is absurdly low, covering only half the cost of a healthy diet while leaving zero for clothing, shelter, utilities, medical care and all the rest.

Our brief discussion of the two most prominent official poverty tracking exercises shows that when the world’s governments, their international agencies and other defenders of the *status quo* present poverty as a small and disappearing problem, they commit a grave misrepresentation. Easily 3 billion people, 40% of the world’s population, live in severe poverty.⁹ And the trend is up: according to the FAO, the number of moderately or severely food insecure people has increased each year, from 1,645.5 million in 2014 to 2,368.2 million in 2020; an increase of 44% in merely six years, despite all the grandiloquence about the Sustainable Development Goals. Academics are well placed to correct such misrepresentation and we have a firm moral duty to engage in the needed research, fundraising and coordination efforts to do so—as a sign of respect for the world’s poor and a tool for ending their distress. ASAP-J stands ready to support us in this task.

Explaining Poverty

To explain something is to help us understand it (better). This broad meaning covers various kinds of explanation, including the above discussion on the definition and description of poverty. The present section addresses the narrower topic of *causal* explanations, which seek to identify and to analyze the factors that bring about some event, process or state of affairs.

⁹ The World Health Organization reports that “globally, at least 2 billion people use a drinking water source contaminated with faeces” (<https://www.who.int/news-room/fact-sheets/detail/drinking-water>), that “2.0 billion people still do not have basic sanitation facilities such as toilets or latrines” (<https://www.who.int/news-room/fact-sheets/detail/drinking-water>) and that “an estimated two billion people have no access to essential medicines, effectively shutting them off from the benefits of advances in modern science and medicine” (<https://www.who.int/publications/10-year-review/chapter-medicines.pdf>). UN Habitat reports that “more than 1.8 billion people worldwide lack adequate housing” (<https://unhabitat.org/programme/housing-rights>).

Causal explanations should begin with a precise description of the event, process or state of affairs to be explained. This *explanandum* can take many forms, can be a particular event, for example, or a statistical phenomenon (undernourishment increasing in Haiti; Blacks being heavily overrepresented among the U.S. poor). To provide a causal explanation, one must identify the relevant causal factors (*explanantes*) that jointly bring about the *explanandum*, show that these factors are actually present and also show their causal effect on the *explanandum*.

Causal explanations can explain actual or hypothetical events, processes or states of affairs. Hypothetical explanations are crucial in planning, as when we ask how it is possible to eradicate poverty in Aceh. Here we start from a hypothetical state of affairs—a poverty-free Aceh in 2030, say—and then detail the (likewise hypothetical) causal factors that might jointly bring it about. Assuming the hypothetical causal explanation is correct, we can then implement the plan: put in place the missing *explanantes* and thereby bring about the *explanandum*.

Relevant factors can causally cooperate in diverse ways. Causes can be ancestral to one another as when falling dominos topple each other in sequence. Causes can collaborate additively as when the emissions of many emitters jointly cause the observed pollution. Causes can collaborate “multiplicatively” as when gun powder, oxygen and a spark must all three be present together to effect an explosion.

Most causal explanations are incomplete by focusing on merely a small subset of relevant causal factors while ignoring the rest. An explanation of the recent evolution of poverty in Bulgaria is unlikely to mention Genghis Khan, even though his surviving the 1187 battle of Dalan Balzhut and subsequent conquests surely make a difference. We cannot take every causal explanation back to the beginning of time. Causal explanations also often omit important factors that exert a simultaneous causal influence on the *explanandum*, such as the Earth’s gravitational field or the presence of oxygen in the atmosphere over Bulgaria. Things would be very different with poverty in Bulgaria without either gravity or oxygen—and yet we reasonably ignore these factors in our causal explanations by implicitly taking them for granted and holding them fixed. Such simplifications are necessary for producing useful explanations in real time. But they are sometimes far from harmless. Simplified causal explanations highlight the causal role of certain factors; and they obscure the role of others. Such omissions can be harmless, as when the explanation offered for the recent evolution of Bulgarian poverty fails to mention Genghis Khan, oxygen and gravity. Often, however, decisions to focus on certain causally relevant factors rather than others are driven by specific scholarly or political priorities that deserve scrutiny. In the study of poverty, it may sometimes make sense to focus on causal factors that are easier to change, but such a selective focus may also distort our attributions of responsibility: the fact that certain rules or practices are hard to change should not allow them to escape the judgment that they are gravely unjust in virtue of their very harmful influence on poverty.

Early in its history, the United States was dubbed the land of opportunity, the land where anyone could succeed and become rich. This narrative suggests an explanation of poverty focused on individual conduct. “If you are poor in the U.S., then you only have yourself to blame. Work hard, and you too can be a millionaire.” This narrative was expressed and reinforced by the then popular Horatio Alger stories about young men who worked their way up from farm hand or dish washer. Properly executed, such accounts can explain why some persons born into poverty

became affluent and why others did not. But they cannot explain the extent of such upward social mobility: why a certain percentage succeeded and the rest did not. To see why, we must recognize that it does not follow from the fact that some—or even each—person born into poverty can become affluent that *all* persons can do so. The pathways to riches may be sparse, and access to them competitive. It may be quite impossible for society to achieve the kind of economic growth rates that would be necessary for everyone to achieve affluence. An explanation of the success rate must include these constraints. And it must also explain why those who could have but did not work their way up to the top failed to do so. What social factors made them lack the knowledge or the ambition to climb the social ladder?

Such relevant social factors can be identified and evaluated with the help of regression analysis. We can collect various data about the people born in some chosen period and then examine whether and to what extent any of these characteristics make later economic success more likely. Among these factors might be height, childhood nutrition and health problems, number of siblings and place in the birth sequence, parental income, early death of a parent, number of books in the household, distance from home to the nearest high school, population size and average income of the home town, presence of a public library and so on. A statistical analysis can help show the greater or lesser causal relevance of these and other factors. And can also reveal *how* they are relevant: for example, it may turn out that parental income exerts its influence mainly through its impact on childhood nutrition which in turn influences the child's prospects of economic success by affecting her or his height and measured IQ.

Such work always raises new research questions: why does low parental income raise the probability of iodine deficiency during fetal development and infancy? How does height influence economic success? Less obviously, it also allows us to search for possible background factors without which some discovered causal influence would be different or non-existent. For instance, whether low parental income leads to iodine deficiency during fetal development and infancy is likely to depend on whether the country in question encourages or mandates iodine fortification of household salt and/or other basic foodstuffs.¹⁰ If it does, then the iodine-mediated link from low parental income to low observed IQ may be entirely absent.

Let us illustrate this important point with three further reflections.

1. Relying on household surveys from many countries around the world, distinguished inequality researcher Branko Milanovic has concluded “that 80% of your income can be explained by the two factors of your country of birth (60%) and your parents’ income position (20%). The remaining 20% can be attributed to effort, luck or whatever else is the residual (gender, race).”¹¹ Since people have no choice over their country of birth, their parents’ income class, their gender, their race and the good or bad luck they encounter in the course of their life, we can conclude from the data that only a small fraction, perhaps around 10% or so, of the global variability of income is explained by something that individuals can actually control: their own effort. This conclusion may seem to be the end of the matter: by analyzing the relative importance of six

¹⁰ Iodine fortification was first introduced in the U.S. and Switzerland in the 1920s. See Leung et al., 2012.

¹¹ “Interview with Branko Milanovic on Patterns, Causes and Remedies for Global Inequalities.” Graduate Institute Geneva, 24 May 2019. <https://www.graduateinstitute.ch/communications/news/interview-branko-milanovic-patterns-causes-and-remedies-global-inequalities>

relevant causal factors—country, parental class, gender, race, course-of-life luck and effort—we have explained 100% of observed income variability. But, really, this ought to be the starting point of the main phase of our explanatory investigation: how is it that our world is one in which those five unchosen personal characteristics are so heavily dominant? How did they acquire this heavy causal influence? And how exactly do they exert this influence? These questions might lead us to study the colonial period during which huge inequalities in national average incomes emerged, to question (as Milanovic does in the cited interview) how constraints on international migration perpetuate high international wage differentials, to examine the extent to which the existing international trading and financial systems aggravate international inequality, to research how the intergenerational transmission of advantage escapes taxes on wealth, capital gains, gifts and inheritances, and to explore how racist and sexist social practices and institutional arrangements aggravate race- and gender-based economic and social inequalities.

2. In recent years, randomized controlled trials (RCTs) have emerged as the “gold standard” in poverty research. The basic idea is to randomly divide a population into two or more groups, to treat these groups differently, and then to observe how the groups evolve differently in terms of poverty-relevant characteristics. If one group does better than another, then its treatment is inferred to be superior to the treatment or non-treatment received by the other group. In this case, again, it may be important to look for background factors that explain the observed difference in causal effect. It is possible, for instance, that the treated group benefits in a competitive environment *at the expense* of the other group so that, treatment efforts notwithstanding, the entire population realizes no benefit at all.¹² In this sort of case, the treatment may even support and entrench an injustice, exemplifying what is colloquially known as a “race to the bottom.”¹³ Or it may turn out that the treatment reduces the harm members of the treated group suffer from a work hazard that could (should!) simply be removed.

3. Examining international economic inequality and its possible reduction, we are likely to be struck by observed large differences in the growth rates of different countries and in the related evolution of poverty within them. Some developing countries have had fast economic growth and have thereby diminished the distance in average income to the developed West. Others have had slow or even negative economic growth and have therefore fallen even farther behind. These conspicuous differentials in national economic performance have attracted much explanatory attention from economists seeking to identify the relevant causal factors that can account for the performance differentials.

One much-discussed factor is the relative size of the natural-resource sector: it turns out that developing countries tend to perform considerably worse in terms of economic growth and poverty reduction the larger natural resource extraction is as a share of their gross domestic product (the so-called resource curse). This finding should once more inspire deeper investigation

¹² Example: the treated group receives job interview training that helps it get a larger share of the available job offers.

¹³ Example: in a certain randomly selected subset of garment factories various worker protections are suspended with the result that these factories can fulfill rush orders more quickly. Foreign clothing chains therefore channel more business to these factories, reducing temporary lay-offs of workers. Lay-offs increase in competing garment factories, which are thereby compelled eventually also to dilute worker protections.

of the taken-for-granted background factors that lead to the surprising result that large natural-resource endowments are a headwind. Here a first step is to note the link to bad governance: resource-rich developing countries tend to be poorly and corruptly governed. But why is this so? Arguably, part of the explanation is that the existing international order recognizes rulers—merely because they exercise effective power within a country and regardless of how they acquired or exercise such power—as entitled to confer legally valid property rights in this country's natural resources upon foreigners and to pledge such resources as loan collateral. Highly convenient also for foreign resource buyers, this international resource privilege enables repressive regimes to maintain themselves in power, partly with the help of imported weapons, even against the will of a large majority of the national population. It thereby also provides perverse incentives to try to acquire power by force, increasing the probability of coups and civil strife. The lesson here is that we should not simply rest content with having established a causal link from a large natural-resource endowment to bad governance but should also try to seek out the underlying cause or causes of this causal link. Doing so is good explanatory science and often also of great practical importance.

Assessing Poverty

The assessment of poverty is an evaluative and often normative exercise that typically depends on explanatory insights. To be sure, one can make do without explanatory efforts by just adding a layer of moral regret to descriptive accounts of poverty, saying, perhaps in strong emotional language, that it is bad that so many children grow up undernourished. Such hand-wringing is common in political and religious circles, among those who want to be seen as caring, want all to know that their thoughts and prayers are with the poor. But in order to make progress against poverty, one must seek moral assessment that is combined with explanation to establish *responsibility*. One must identify the factors that play a causal role in the occurrence of poverty, particularly those that are subject to beneficial human modification and most especially those whose reform we ourselves could advance. The move toward such constructive moral assessment turns some *explanantes* into *judicanda*, that is, entities subject to a special kind of moral assessment that involves assignments of responsibility.

Not all contributors to poverty are fit to be treated as *judicanda*. It makes little sense to hold a volcano responsible for erupting or locust for gobbling up a precious crop. But even in such cases it may be appropriate to assign moral responsibility to other contributing factors: to assess the design and performance of the government's early-warning and disaster-response systems, for example, which are bound to influence the impact of the eruption or plague on the affected population. Assigning responsibility to these factors makes sense insofar as this responsibility can then be traced back to specific agents who designed, installed, maintained or operated these systems. The damage from the eruption or the locust depends in part on how well these people did their work. In the final analysis, constructive moral assessment focuses on individual and collective human agents.

A straightforward first stage of such an exercise is consequential assessment, that is, assessment of a *judicandum's* effects in the world. Given that poverty is a morally significant (regrettable) phenomenon, a *judicandum* has a responsibility in regard to poverty insofar as it has a causal influence on poverty. Other things being equal, any *judicandum* is morally better the

more poverty-avoiding its effects are. Of course, other things are rarely equal, and consequential assessment must then take account of other effects of this *judicandum* as well. In the case of an individual's conduct, these centrally include effects on the fulfillment of the agent's own interests. Consequential assessment of poverty-relevant conduct would then essentially perform a comparative cost-benefit analysis of an agent's decision in terms of its comparative effects on poverty and on the fulfillment of the agent's own interests. The word "comparative" indicates that conduct options are assessed relative to one another: choosing option *A* rather than *B*, the agent sets back her own interests by *m* and diminishes the ravages of poverty by *n*.

Few would deny that effects matter, morally. Consequentialists hold that they are all that matters. Consequentialists envision a uniform scale on which *m*, *n*, and other morally relevant effects can be assessed, and they then rank as morally best the conduct option that has the best effects overall.¹⁴ This line of thought particularly highlights the vast social and economic inequality that has accumulated in our world. The severe poverty of those 3 billion people unable to afford a healthy diet at an assessed cost of around USD 4 PPP per day occurs in a world with average income of about USD 50 PPP per person per day — in a world with 56 million millionaires who would barely notice if a small fraction of their wealth were diverted to ending poverty.¹⁵ For consequentialists, the striking, and morally grotesque, reality of our world is that it contains unimaginable human suffering among the poor (*n*) that could be alleviated at a cost to the rich (*m*) that is wholly insignificant.

Such a consequentialist approach evidently needs significant emendations in order to address decision making under conditions of risk or uncertainty. To apply it in real life, considerable simplification is also required because we cannot take into account all of a conduct decision's effects into the far future. As Zhou Enlai is reputed to have quipped, it is hard to assess the impact the French Revolution even with 200 years of hindsight. How much harder, then, to assess the long-term effects of our potential decisions in advance! — And yet, all this complexity cannot really upset the consequentialist presumption that money going from the rich to the poor generally improves the world as we know it.

Non-consequentialist accounts of moral responsibility might depart from consequentialist ones in various respects. One such departure would permit the agent to privilege her own interests in certain ways. Here one might limit the "sacrifice" that an agent is morally required to make with a rigid cap (a maximum on *m*) and/or with a flexible cap defined in relative terms (a maximum on *m/n*). Caps of both kinds are suggested in Peter Singer's work and also by the effective altruism movement that is being built in its wake (Singer, 1972; 2009; 2015). Singer himself seems to regard such caps as merely strategic, believing that the correct morality is consequentialist but that ordinary people typically act better in consequentialist terms if the sacrifice asked of them is capped, for instance at 10% of their disposable income. To fulfill this role, such a cap would have to be applied not to conduct decisions individually but rather to one agent's conduct over time, perhaps over a whole lifetime.

¹⁴ A paradigm example of such a consequentialist approach is utilitarianism, which uses some conception of human happiness or flourishing as a uniform scale.

¹⁵ According to Shorrocks et al. (2021), these millionaires own 45.8% of the world's private wealth, or USD 191.6 trillion (p. 17).

In a multi-option context, caps are naturally understood to use as baseline the option that best serves the agent's own interests. But this can seem inappropriate when this baseline option is morally problematic. When the conduct option that best serves the agent's own interests is a safe theft, then it may seem inappropriate to count the agent's loss from passing up this theft as a "sacrifice".

Related paradoxes arise for uncapped consequentialism also. Thus, a consequentialist morality would approve of stealing from poor people in ways that reduce poverty overall—by channeling the loot to someone (perhaps the thief) who needs it even more. To avoid such conclusions, consequentialism can be revised. One straightforward modification would make morally significant the distinction between what an agent actively brings about and what she merely allows to happen. If substantially more moral weight is attached to the former, then one can avoid some paradoxical conclusions: by committing the theft, the agent would actively aggravate the poverty of the victim whereas, by passing up the opportunity, the agent would merely leave unalleviated the poverty of the even poorer person whom the theft would have benefitted.

Another, more fundamental modification is to apply consequentialist morality not to the conduct of individuals but to the way human society is structured. Under the heading of "social justice," such an approach has been developed by the political philosopher John Rawls, who applies consequentialist reasoning first and foremost to the basic structure of a national society, by which he means its most important and pervasive institutional arrangements (Rawls, 1971). Poverty and other deprivations are to be avoided through a just organization of society; and the central responsibility of individuals in regard to poverty is then to promote and support such just design.

Such a Rawlsian approach is especially suited to the modern world where poverty results indirectly from the conduct of large numbers of differently situated agents who cannot possibly foresee how their conduct will impact poverty and other morally significant phenomena. It is far more promising for individuals collaboratively to structure their society so that it limits poverty as much as reasonably possible.

Rawls's approach might be broadened by recognizing that the incidence, distribution, depth and trend of poverty in a country is heavily influenced not merely by its institutional arrangements, especially including the structure of its economy, but by three other sets of features as well: by its social and cultural practices, customs and habits; by its infrastructure, including transportation, energy, water and communications; and by its physical environment as continually modified by the way the population interacts with it (settlements, agriculture, mining, pollution, rivers and canals, parks, forests, coastlines etc.). While Rawls focuses mainly on the first, all four of these sets of factors are in some degree subject to political design. In regard to all such factors one might ask how poverty would be different if this factor were modified in certain specific and feasible ways. Such consequential assessments are easiest and most reliable when they are focused on a single clearly specified parameter, such as the national minimum wage level or the reach of the national electricity grid. Often, however, it makes sense to take on the more challenging task of analyzing several modifications together because their effects would interact. The poverty effects of two modifications may be quite different from the sum of the effects of either one.

Such broader, holistic reflection is further encouraged by the fact that poverty is not the only justice-relevant consideration, but rather may conflict with other moral values in certain ways or may compete with them for limited resources or may come at excessive social cost. Ultimately the entire ensemble of society's institutional arrangements, social practices, infrastructure, and physical environment should be shaped so as to realize as well as possible the aims of social justice, including poverty avoidance. The country's government and citizens have a shared moral responsibility to make it so.

Rawls's assessment of a society's institutional order ("basic structure") is broadly consequentialist.¹⁶ Yet, Rawls departs from a thoroughgoing consequentialism in the way he relates his theory to the moral responsibilities of human agents. There are two noteworthy departures. First, citizens are to comply with just institutional arrangements already established and are to promote their improvement—rather than directly to promote the aims that guide the structuring of their society. For example, citizens are to promote a just, poverty-avoiding design of their society's economy and to abide by its rules—rather than to steal from the rich in order to reduce poverty even farther.

Second, citizens are assigned a special responsibility for the justice of their own society rather than held responsible for protecting and advancing social justice wherever they can most cost-effectively do so. While we have moral reason to protect and promote just arrangements anywhere, we have especially weighty moral reason to do so in our own society whose structural features we are involved in designing, upholding and imposing. This special weight can be seen as arising from the moral significance of the distinction between what an agent actively brings about and what she merely allows to happen: as citizens, we are not mere bystanders and potential benefactors but co-designers and co-imposers of our society's main features. Structural injustices of our society are identified as ones to which we actively contribute (and from which we may also benefit), not merely ones we can do something about.

In the period since the end of the Second World War, the most important social justice considerations have been articulated in the language of human rights, presented "as a common standard of achievement for all peoples and all nations."¹⁷ Most poverty-relevant among them are widely recognized social and economic human rights: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care..."¹⁸ —including "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."¹⁹

The language of human rights could be pressed into the service of consequential assessment with the idea that some or all *judicanda* ought (to be designed) to minimize human

¹⁶ This is brought out by Rawls's thought experiment of the original position, which is a hypothetical social contract made by representatives each of whom is tasked with advancing the interests of one prospective citizen. Thus, possible agreements are assessed by how well they would serve the interests of individuals.

¹⁷ *Universal Declaration of Human Rights*. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

¹⁸ *Ibid.*, Article 25.

¹⁹ *International Covenant on Economic, Social and Cultural Rights*, Article 12. <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

rights deficits. But the rights idiom more naturally lends itself to incorporating the moral significance of causal pathways (e.g., *doing* versus *allowing*) and hence the special responsibility of citizens for the justice of their own society. This differentiation is incorporated through the common division of human-rights-based duties into duties to respect, to protect and to fulfill human rights.²⁰ Active violations of human rights on the part of a government and society constitute weighty failures to respect human rights, failures in which citizens of the relevant society are typically implicated.²¹ Failures to protect or promote human rights in other parts of the world are less weighty (holding fixed here the harm involved in the relevant human rights deficits and the costs of reducing or eliminating them). It is worse actively to deprive people of secure access to objects of their human rights than passively to fail to remedy a like deficit. And structuring a society so that human rights of some of its members foreseeably and avoidably remain unrealized counts as an active violation of their human rights, a case of disrespect. This point is apparent also in human rights litigation against governments, which is becoming more frequent. Governments are sued for failures to realize human rights in their jurisdiction, not for failures to promote human rights anywhere—though governments can and should, of course, also be held accountable for human rights violations they actively commit abroad, for instance in the course of military aggression.

There is yet a third way in which governments can actively violate human rights: through their participation in shaping the supranational features of our planet. Among these are its supranational institutional arrangements which, over the last three decades of intensive globalization, have become very much denser and more influential. This international institutional order is specifically mentioned in Article 28 of the *Universal Declaration of Human Rights*: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.” This unique entitlement suggests that governments have a collective responsibility to ensure that they shape and structure supranational institutional arrangements in a human-rights-compliant way.

²⁰ This respect-protect-fulfill triad has become prominent in human-rights thinking in and around the United Nations. It goes back to Henry Shue’s seminal book (Shue, 1996, first edition 1980) which inspired Philip Alston and Asbjorn Eide, who popularized the respect-protect-fulfill triad in the 1980s (see Alston and Tomaševski, 1984 and Alston, 1984). This triad was then carefully elaborated in the famous General Comment 12, adopted in 1999 by the UN Committee on Economic, Social and Cultural Rights. Article 15 of this General Comment says: “The right to adequate food, like any other human right, imposes three types or levels of obligations on States parties: the obligations to *respect*, to *protect* and to *fulfill*. In turn, the obligation to *fulfill* incorporates both an obligation to *facilitate* and an obligation to *provide*. The obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to *fulfill* (*facilitate*) means the State must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfill* (*provide*) that right directly. This obligation also applies for persons who are victims of natural or other disasters.”

<https://www.refworld.org/pdfid/4538838c11.pdf>

²¹ Some fairly obvious exceptions apply here for children and for citizens who are relevantly disabled or too poor or oppressed to play a meaningful role in the governance of their society.

Drawing on our earlier discussion of Rawls's assessment of the justice of national societies, we might broaden this responsibility to include three other sets of features as well: international customs and practices, international infrastructure, and humanity's common historical heritage and natural habitat, including Earth's atmosphere, oceans, polar regions, and surrounding solar system. This collective responsibility of governments is analogous to the collective responsibility of citizens for the just structuring of their own society. And it is also included in this latter responsibility: insofar as citizens bear responsibility for what their government does in their name, they bear ultimate responsibility also for the role their government plays in shaping supranational features of our world: its trading, financial and communications systems, prevailing practices of international diplomacy, preservation of historical and natural treasures, protection of air, water, fish stocks and outer space.

Eradicating Poverty

Poverty eradication is closely tied to explanation because it must suitably modify, and therefore comprehend, the causal factors that produce and perpetuate poverty. For eradication strategies to be effective, they must go farther, to a deeper causal analysis of whether and how these causal factors themselves can be modified. Such work poses challenges of three kinds. There are challenges of science and engineering, which may result in new gadgets or pharmaceuticals, new houses or bridges, changes in crops or farming techniques, connection to electricity or the internet. There are challenges of social reorganization, which may involve modification of property or taxation rules, reforms in social practices or taboos, safeguards against violence and corruption. And then, most fundamentally, there are broadly political challenges of persuasion: of getting other actors (sometimes merely one rich or powerful person) to agree on a strategy and then to implement it. This last set of challenges connects eradication to assessment insofar as one can build the needed political support through moral argument with appeal to the responsibilities of those one is seeking to convince.

Efforts toward poverty eradication vary widely in how profoundly they seek to change the world. At one end of the spectrum are individual gifts of money or property to poor people. The most common example of this are remittances, where persons, typically guest workers in a more affluent country, send some of their income to relatives and friends in their home country. Remittances are hugely important to poor people, amounting to USD 548 billion in 2019 and a surprisingly strong USD 540 billion in the COVID year 2020.²² Given by people who are often undocumented and among the poorest in their host country, this amount greatly exceeds the official development assistance (ODA) by all the affluent countries combined which, in 2020, amounted to USD 161 billion—some of it given as loans and much of it paid to consultants and businesses of the donor state.²³

²² <https://www.worldbank.org/en/news/press-release/2021/05/12/defying-predictions-remittance-flows-remain-strong-during-covid-19-crisis>. Unfortunately, some firms charge substantial fees on remittances, thereby reducing their value. <https://www.westernunion.com/us/en/send-money/app/price-estimator>.

²³ This is 0.32% of the combined gross national incomes (GNIs) of the affluent countries (<https://www.devex.com/news/what-to-make-of-the-2020-dac-stats-99641>) which, since 1970, had been promising to reach 0.7% (<https://www.oecd.org/development/stats/the07odagnitarget-ahistory.htm>).

Cash transfers have recently been studied more systematically in the context of a non-governmental organization, GiveDirectly, that makes predictable cash payments via mobile phone to households in East Africa (mainly Kenya, Uganda and Rwanda). These transfers are unconditional: recipients can spend the money as they please, means-tested: only extremely poor households are included, and small: in the region of USD 1 per person per day, representing purchasing power of ca. USD 2. GiveDirectly has experimented with various giving formats (monthly for two years, monthly for 12 years, lump sum; including all or only some of a village's poorest people) and the outcomes have been closely studied, focusing particularly on emerging spending patterns, enduring gains in health and education, as well as negative and positive externalities such as envy and economic multiplier effects.²⁴ Given modern transfer and payment technologies, such direct and predictable income supports might prove to be highly cost-effective tools of poverty eradication, tools that could be instituted nationally or even globally in the form of an unconditional but perhaps means-tested basic income that could be presented as ensuring that all human beings get at least some of the value of our planet's used natural resources, including air, water and soil, all of which are now appropriated and used very disproportionately by a small affluent minority of humankind.²⁵

Continuous with cash transfers and income supplements are national and supranational changes in tax and social support systems, which influence rather directly the distribution of the social product. In recent decades, such changes have overwhelmingly gone in the wrong direction, with massive reductions in top marginal tax rates and corporate taxes (which mostly fall upon affluent shareholders) and widespread privatization and austerity reforms shrinking state sponsorship and support of basic goods and services (foodstuffs, water, health care, education, electricity, local transport, trains, telecommunications, postal services etc.). These changes have greatly increased the gap between rich and poor and have thereby also gravely weakened the influence the poor can exert upon political decisions, either directly or through their unions and other organizations. Money can buy influence in politics, and in today's world any one of a few thousand billionaires and major corporations can outspend millions of poor people. Moreover, superrich individuals and major corporations have the incentives and opportunities to acquire the expertise and connections needed to deploy their political funds to optimal effect while poor people must invest great efforts to even get started through coordination on a joint plan of political action. Given the much-enlarged political power disparity between rich and poor around the world, it will be very difficult to modify tax and social support systems so as to make them more egalitarian.

While tax and social support systems are explicitly focused on adjusting poverty and inequality, many other structural features of national societies and supranational structures have

²⁴ See reports by Give Well (<https://www.givewell.org/charities/give-directly>) and by Dylan Matthews in VOX (<https://www.vox.com/future-perfect/2019/11/25/20973151/givedirectly-basic-income-kenya-study-stimulus>).

²⁵ For a proposal in this direction, see Pogge (2008, chapter 8). Paying income support of USD 1 per day to 3 billion people would cost USD 3 billion, substantially less than the USD 7 billion value of daily global consumption of just a single natural resource (crude oil sells at ca. USD 70 per barrel and global consumption is about 100 million barrels per day). Paying poor people a dividend from the value of natural resources extracted or degraded would raise their price, with wholesome ecological side effects.

profound effects on poverty and inequality that, far from their rationale and purpose, are easily overlooked. The point can best be introduced with an example. Innovation is crucial to human progress, and societies therefore provide incentives to invest in innovation. Globalized in 1995 through the TRIPs Agreement, humanity's predominant mechanism for encouraging innovations involves 20-year product patents that WTO member states are required to institute and to enforce. Such temporary monopolies reward innovators by enabling them to reap large markups or licensing fees from early users. The predictable result are high prices, especially for innovative products that meet urgent needs and especially in high-inequality environments.

The pharmaceutical sector provides dramatic illustrations. An important hepatitis-C drug, *sofosbuvir*, was introduced in 2013 at a price of USD 84,000 per course of treatment, which is roughly 3000 times the cost of production (Barber et al., 2020). In poorer countries, where the upper classes are less affluent and less well-insured, the profit-maximizing price typically is substantially lower—but still unaffordable with the also much lower ordinary incomes there. The reason is that, even *intra*-nationally, economic inequalities tend to be large and demand curves therefore highly convex. Sad but true: most people around the world cannot afford advanced medicines, at least until their patents expire which, with *sofosbuvir*, will start happening in 2024 (Reuters, 2015, p. 25). Five years after its market introduction, only about 7% of the 71 million persons living with hepatitis C had been treated, while the remaining 66 million remained ill and potentially infectious to others (Clinton Health Access Initiative, 2020). Each year, millions of people suffer and die from lack of access to medicines that generic manufacturers would be happy to mass-produce and sell quite cheaply.

It may be said in defense of patents that these millions of deaths are simply unavoidable: if patents were abolished, most potential innovations would not be forthcoming, especially in the pharma sector where development of a new product can cost USD 1 billion or more. But this defense overlooks that innovations can be encouraged and rewarded in other ways. We might, for instance, reward innovators from public funds according to the social impact they achieve with their innovations, sold at competitive prices. As with the patent system, the fixed cost of innovation would then largely be borne by those who can afford it. Yet there would be no need to exclude the rest. With socially valued innovations rewarded from public funds, all can have access to them without monopoly markups. Such a system of impact rewards can work in any domain where a uniform metric of social value can be formulated, such as health gains (pharmaceuticals), pollution reduction (green technologies), knowledge, skills and employment (education), nutrient yield and reduced use of fertilizers and pesticides (agriculture). Such a system would work even better if many countries jointly supported it, thereby greatly increasing its social value while diluting its cost.

Complementing patents, impact funds would revolutionize innovator incentives. Monopoly rewards turn innovators into jealous spies in search of possible infringers. Impact rewards would encourage innovators actively to promote their registered innovations' fast, wide and impactful diffusion. Registrants would even subsidize it to poor buyers insofar as the increase in rewardable health impact justifies the cost of the subsidy.

Patent rewards fail to encourage innovations that meet needs mainly of the poor. Impact rewards would make it profitable to produce such innovations because impact is assessed

regardless of the economic position of the beneficiaries. Pharmaceutical innovators could then profitably develop and deploy good new treatments for the notoriously neglected tropical diseases, which afflict over a billion people, and for other major diseases concentrated among the poor, like tuberculosis, malaria, hepatitis and pneumonia, which together kill some 7 million people annually.

Patent rewards penalize innovators for suppressing their target disease, as doing so would shrink their own future market. A Health Impact Fund would fully reward third-party benefits: innovators who successfully contain a disease are rewarded for protecting people from infection even if these people never need treatment.²⁶

Many structural features of national societies and of our wider society of nations might be similarly reformable in a way that preserves their essential function while reducing their inequalitarian, poverty-aggravating distributive effects. Exploring and instituting such reforms would greatly reduce the “work” that tax and social support systems must do to keep extreme poverty and inequality at bay. And it might better address the structural causes of poverty with an eye to the special challenges poor people face in regard to nutrition, water, shelter, health and health care, sanitation, clothing and personal care, energy, education, social and political participation and respect, physical safety, family planning, environmental degradations and hazards, working conditions in employment and at home, navigating governmental agencies and the legal system, banking and credit, travel and transportation, data and communications.

Introducing Journal ASAP’s Inaugural Issue

Following my more academic Welcome, you will meet the journal’s Managing Editor Najid Ahmad, who went from growing up in a poor, non-electrified village in rural Pakistan to being a popular economics professor in China, and whose vivacious self-introduction brings poverty and academia together. After that, Issue 1/1 properly opens with an essay by Doris Schroeder, Kate Chatfield, Vasantha Muthuswamy and Nandini Kumar on “Ethics Dumping: how not to do research in resource-poor settings,” which raises important issues—relevant for many of the authors who will be writing for Journal ASAP—about how we should conduct research that touches communities and individuals in economic distress.

Next come the four winners of the 2020 seventh Amartya Sen Essay Prize Competition. Co-sponsored by Yale’s Global Justice Program and the Washington think tank Global Financial Integrity, the annual Sen Prizes reward original work on financial corruption as systematically facilitated by a vast network of tax havens, secrecy jurisdictions, shell companies, fake trusts and anonymous accounts, along with an army of shady lawyers, accountants, lobbyists and financial advisors. As revealed by various spectacular whistle blows (LuxLeaks, Panama Papers, Bahamas-List, Paradise Papers, etc.), this sophisticated infrastructure helps vast amounts of capital income and corporate profits evade taxation; and it also enables crimes of many other kinds, such as illegal trafficking in persons, drugs and weapons, international terrorism, corruption of and by public and corporate officials, embezzlement and the money laundering associated with all such activities. In these ways, the global haven industry massively aggravates national and global inequalities and greatly impedes the development of poor countries by enabling

²⁶ See www.healthimpactfund.org.

multinational corporations, autocrats, corrupt officials, millionaires and criminals to drain them of capital and tax revenues. The 2020 competition called specifically for essays on illicit financial flows, defined as cross-border movements of funds that are illegally earned, transferred, or used.²⁷ The Sen Prize jury selected four entries from the 20 received. Erhieyov O’Kenny won first prize with his essay on the culture of cyber fraud in Nigeria; and three second prizes went to Brian Ocen for his analysis of profit shifting in Uganda’s oil sector, to Philip Mutio for his study on illicit financial flows related to the extractives sector on the African continent, and to Roy Cullen for his discussion of money laundering in British Columbia (Canada). These four essays form the centerpiece of our first issue; and ASAP-J is looking forward to publishing also the winning entries of future annual Amartya Sen Essay Prize Competitions.

Our inaugural issue concludes with two shorter opinion pieces. One discusses the Alliance for a Green Revolution in Africa (AGRA) which, jointly established in 2006 by the Rockefeller and Gates Foundations, was meant to bring scientific agriculture to Africa. Michiel Korthals contends that, despite large investments by 13 African states, the promised doubling of incomes has not materialized and that nutrition, biodiversity and water availability have all deteriorated. He argues that successful agriculture in Africa must be sensitive to local conditions and build on local knowledge and experience.

No national professional group in the world contains more people, or more poor people, than India’s agricultural sector, which is shaken by massive farmers’ protests against three pieces of legislation recently passed by the Indian government. In her invited opinion piece, Sudha Narayanan helps us understand what these protests are about and shows the way toward a more democratic reform path that would be sensitive to the concerns, needs and vulnerabilities of India’s smallholders and landless agricultural workers.

The last four pages contain an invitation to contribute to future issues of this *Journal* along with detailed guidelines for such submissions, followed by an invitation to submit by 31 August 2022 an essay for the Ninth Amartya Sen Essay Prize Competition, which is jointly sponsored by Global Financial Integrity, ASAP and the Yale Global Justice Program. Winning essays will receive USD 5,000 (first prize) or USD 3,000 (second prize) and will be published in *Journal ASAP*.

Completion of this first issue could not have succeeded without our main Essay Editor Kieran Donaghue in Australia. We are deeply indebted to him, and grateful also to our Administrative Officer Paul Keller and many others who are helping *Journal ASAP* with reviews and in diverse other ways.

References

- Alston, P. (1984). International Law and the Right to Food. In A. Eide, W. B. Eide, S. Goonatillake, J. Gussow, & Omawale (Eds.), *Food as a Human Right* (pp. 162-174). The United Nations University Tokyo.

²⁷ Illicit financial flows are explicitly recognized as an obstacle to achieving the Sustainable Development Goals and singled out as a separate target #4 of SDG 16. <https://www.un.org/ruleoflaw/sdg-16/>.

- Alston, P., & Tomaševski, K. (1984). *The Right to Food*. Netherlands Human Rights Centre (SIM).
- Barber, M. J., Gotham, D., Khwairakpam, G., & Hill, A. (2020). Price of a hepatitis C cure: Cost of production and current prices for direct-acting antivirals in 50 countries. *Journal of Virus Eradication*, 6(3). <https://doi.org/10.1016/j.jve.2020.06.001>
- Clinton Health Access Initiative. (2020). Hepatitis C Market Report. Issue 1. https://www.globalhep.org/sites/default/files/content/resource/files/2020-05/Hepatitis-C-Market-Report_Issue-1_Web.pdf
- FAO, WFP & IFAD. (2012). The State of Food Insecurity in the World 2012. FAO. <http://www.fao.org/3/i3027e/i3027e.pdf>
- FAO, IFAD, UNICEF, WFP and WHO. (2021). The State of Food Security and Nutrition in the World 2021. Transforming food systems for food security, improved nutrition and affordable healthy diets for all. FAO. <https://doi.org/10.4060/cb4474en>.
- Leung, A., Braverman, L., & Pearce, E. (2012). History of U.S. Iodine Fortification and Supplementation. *Nutrients* 4(11), 1740–46. <https://www.mdpi.com/2072-6643/4/11/1740>
- Pogge, T. (2008). *World Poverty and Human Rights*. Polity Press.
- Pogge, T. (2016). The Hunger Games. *Food Ethics* 1(1), 9–27. <http://link.springer.com/article/10.1007/s41055-016-0006-9>
- Pogge, T. & Cabrera, L. (2012). Outreach, Impact, Collaboration: Why Academics Should Join to Stand Against Poverty. *Ethics & International Affairs*, 26(2), 163–182. <https://doi.org/10.1017/S0892679412000275>
- Rawls, J. (1971). *A Theory of Justice*. Harvard University Press.
- Reuters, T. (2015). Patent Situation for Key Products for Treatment of Hepatitis C: Sofosbuvir. Working paper prepared for the World Health Organization. https://www.who.int/phi/implementation/ip_trade/sofosbuvir_report_updated.pdf
- Shorrocks, A., Davies, J., & Lluberas, R. (2021). Global Wealth Report 2021. Credit Suisse Research Institute. <https://www.credit-suisse.com/about-us/en/reports-research/global-wealth-report.html>
- Shue, H. (1996). *Basic Rights. Subsistence, Affluence, and US Foreign Policy*. Princeton University Press.
- Singer, P. (1972). Famine, Affluence, and Morality. *Philosophy & Public Affairs*, 1(3), 229–43. <http://www.jstor.org/stable/2265052>
- Singer, P. (2009). *The Life You Can Save – How to Do Your Part to End World Poverty*. Random House.
- Singer, P. (2015). *The Most Good You Can Do – How Effective Altruism Is Changing Ideas About Living Ethically*. Yale University Press.
- Smith, A. (1976). *The Wealth of Nations*. University of Chicago Press.

Introduction of the Managing Editor

Najid Ahmad¹

Abstract:

This real story-based essay explains the role of education in poverty alleviation and reminds the moral responsibility to resource people and countries to offer helping hands to the people in need.

Keywords: Poverty, Health Issues, Moral Responsibility, Village Life, Education

Greetings wonderful people. I am Najid Ahmad, managing editor of the journal *Academics Stand Against Poverty*. Allow me to take this opportunity to briefly introduce myself, my relation to poverty along with my idea and vision about Journal ASAP.

I am from a very small village in the District Dera Ghazi Khan, Punjab Province, Pakistan, with a PhD degree in economics from Dongbei University of Finance and Economics in Dalian, China. Currently I am an Associate Professor at Hunan University of Science and Technology in Hunan, China, and a Global Justice Fellow at Yale University, New Haven, USA. In the past few years, I have won several awards and honors that include twice winning the prestigious Chinese Government Outstanding Researcher Award, an invitation from the French Government for global pollution reduction planning and an excellent-video award from Hunan Province for a video depicting poverty.

I'm a frequent traveler abroad for poverty seminars, research collaborations and meetings. Please allow me to mention that two of my siblings also have doctoral degrees and we are fortunate to be the first family among the three million residents of District D.G. Khan with three family members being PhDs!

I have initiated several small-scale projects for poverty alleviation in my village, including poultry projects where our poultry farms and incubation machines have a capacity for more than 10,000 chickens. Biogas plants and solar energy are other important projects to mention that meet the need for gas and electricity in the village which is short of gas and a proper electricity supply. A biogas plant can be built at a cost of \$150-200 and will then, with just cow dung and water, provide a family with a stable supply of gas (and, with addition of a generator, electricity) for 20 years. Similarly, the installation of solar panels to power pumps to irrigate our land does not only help us overcome the deficiency of the electricity supply but also offers a clean source of energy. For these reasons, I have formed a very positive attitude towards small-scale projects that, at little cost, help families escape poverty.

The above brief description looks cool, doesn't it? But life is never a bed of roses, especially for poor families. All sincere struggles for improvement require heavy efforts on the part of the candidate and his/her family along with the support of external partners who might be either sincere friends or external supporters offering helping hands in a situation where the

¹ School of Business, Hunan University of Science and Technology, China. I acknowledge the help and support of Prof. Thomas Pogge and Kieran Donaghue in the finalizing this piece of writing. I acknowledge that I did not receive any financial support, nor I was consciously bias to anyone in this essay.

candidate/family is stuck and needs a big push. This account fits my situation well in that, without such heavy efforts and support, my rural poor background in Southern Punjab would barely have allowed me to meet my basic needs and would have placed higher education beyond reach. Well, it is true that I started my early life in extreme poverty that one can hardly imagine, and the given pages are too limited to explain the situation. But it is also true that this gives me the opportunity to observe and understand poverty with first-hand experience and to help people in more affluent countries understand their moral responsibilities to respect and care with helping hands the people in need.

Allow me to provide a glimpse of my life of 35 years, beginning with living conditions. We didn't have proper, well planned, and constructed houses/apartments with water supply, toilets, laundry system, heating system and luxury AC in rooms to live in. Rather, we used to live in mud houses that are normally self-planned and constructed with mud rather than having big construction plans and bricks. Further, five to six family members living in one small mud room was quite common. I remember that if rain continued for two to three days, which was very common, the mud houses risked bowing down to hug the land and put us under the sky. Literally under the sky! It also happened that several days heavy rain brought a flood from the mountains of the Koh-e-Sulaiman Range to make a circle around our weak mud houses where we all had to keep watch for nights on end to try to protect our houses from the flood, a flood that was coming from the mountains rather than the Indus River that is also near us (about 13 km away). Destruction of agricultural production was common and worse still there are no agricultural insurance plans in the area (not even insurance for humans) so six months of work can be completely wiped out by such rain. When after several days all the rainwater finally reaches the Indus River, this can cause another problem – the Indus overflowing its banks and causing more damage to families, agriculture, and houses, with accidents, loss of animals, shortage of food and widespread disease across the region. The 2010 Indus River flood was quite serious, and we received much support from around the world for our area. Thanks to everyone! Whenever we have mountain flood, it often makes it harder to meet our basic needs from local markets. If someone fell ill or was in urgent need of something, it was a long battle with heavy deep water for several kilometers to fetch medicine and bring food for the family. Prayers were the only hope to stop the rain and flood to bring us back to normality. If, after days and sometimes weeks, life returned to normal, this also enabled me to go back to school.

My weak memory allows me to remember my work of unloading bricks and stones from trucks and helping sellers to sell clothes and vegetables in the local market (mandi) in return for small amounts of money when I was 8-9 years old! Usually, the money from that child labor was too little to even buy local sweets that we would eat sitting under the trees at noon. Till 2007, in each summer, I was severely ill (in 2008, I moved to another city named Lahore for my master's degree) with little hope of survival. The reasons for my illness remain unknown, but now I think that limited resources, including but not limited to lack of a proper diet, lack of better-quality water, lack of electricity to counter hot weather were to blame.

Lack of water supply was a real issue to be solved. I used to fetch water in a clay pitcher carried on my bicycle from a far-away canal, and sometimes the pitcher fell from my bicycle to break into pieces and water shattered on the road due to the heavy load than my small boney

body could not support. This clay pitcher was also very important in the summer to keep water cold; in other words, it was our fridge. I often went with my relatives to bring water, but when my mother had time from her domestic work, she would also go with me to bring a second pitcher to have water for several days. This soft water was considered especially suitable for cooking food, such as beans and potatoes. However, now I realize that it was not as good as was thought as it contained lots of sand particles that my mother tried to remove by passing the water through a clean cloth to capture the sand particles. Our village still does not have a proper water supply and relies on its own resources, so clean water remains a luxury. To counter the scarcity of water, initially the families of the village relied either on rain to store water in one reservoir to use for several months or on bringing water from a canal in pitchers. But during my early childhood, we also had a manual water pump (Nalka in the local language) in the home that brings water from deep underground with manual power to fulfill household needs – though this was hard water, salty and unsafe to drink, particularly for those with a weak digestive system on whom it may work like poison. Anyhow, water scarcity developed my habit of drinking very little water daily until my doctor warned me in December 2020 that my blood is getting thicker and thicker and that, if I do not take proper care this, it can lead to serious consequences in the very near future. The first advice was to drink more water. Water scarcity was an issue we learned to cope with in village life, and so was a lack of food in that we often had to rely on potatoes and beans for weeks, along with plain wheat bread (roti).

Our favorite morning breakfast was always wheat bread prepared in oil (called poratha) with milk tea and sometimes without milk, only red tea with sugar (Kahewa) if we had little milk. I never forget my luxury school lunch prepared by my mother containing wheat bread with sugar and oil poured on it. It was nicely covered in a plastic bag to put in my school bag. Many of my classmates did not even have that! Honestly, it was a little hard in the hot summers to walk 2.5-3 km to primary school since our village had no primary school (it still doesn't). Usually, I packed a book, a writing wooden palette called Takthi that is around A4 size, an inkpot, a wooden pencil etc. along with lunch. The school bag was hand-made by my mother with her sewing machine. It was a kind of folded stitched cloth till 3rd grade and finally, one day, I insisted that my father take me to the nearest city to buy a school bag, and a very stylish one it was. Guess! I was very excited to show it to my classmates the very next day.

Indeed, I have unforgettable memories of my primary school. Well, it is true that it was very hard to attend class in the hot summer without electricity in the class. We students all used to bring our own mattress to sit on the classroom floor or outside under the tree, depending on the season, since there was no proper seating, no benches, or chairs. So, we students in different classes all sat on the floor on our own mattresses, and sometimes we shared with each other if someone forgot to bring his mattress. The mattresses were made from empty fertilizer bags that we got from our parents when they discarded those bags after using fertilizer on the land. We just washed the empty fertilizer bag and used it as our mattress.

There used to be a wooden chair for the teacher in each class. We call our teacher Ustad Ji or Ustad Sahib. Normally, all subjects were taught by a single Ustad Ji from morning to the end of the class. So, one teacher for one large class with boys from different villages; the girls' school was separated from us. I must recall that none of us had a watch to check the time for break or

end of the class, however, Ustad Ji had a watch and we often tried to check from him. Knowing the time was heartening because during break time we would have lunch and relax from the boring class. Our monitor was the kind of guy who often asked Ustad Ji how much time was left until Lunch Break or until the end of the school day. We would sometimes check the time by going near to Ustad Ji to ask permission to go to the toilet, and when he responded, we secretly checked his watch. We would be happy if we had just half an hour of school time left. It gave us real pleasure to hear the bell for afternoon break. Since there was no toilet in the school, we used to go far away in the trees and for this, and we needed to get permission from Ustad Ji. If his mood was good and we got permission successfully, we would relax outside in the trees and skip the boring lessons. Initially till around 3rd grade I was not among the better students, and I was often punished with a bamboo stick on my back and on my hands, making the hands red and painful, and teacher's kicks often sent me falling to the floor, although without so much pain.

Honestly, I never told my parents about Ustad Ji's punishments as he was a very respected person for us. However, when once he had beaten me bitterly on my legs and I was unable to walk properly, my father realized that there was something wrong. He asked me with anger, and I told him the whole story. I don't know until today whether my father met Ustad Ji and asked him not to beat me so hard or not; however, the teacher's behavior improved and, I became less interested in class and school and finally, Ustad Ji made an announcement that I had failed the 3rd grade exams (three years of schooling), which meant that I didn't qualify for admission to 4th grade. The exams were taken and marked by the class teacher till 4th grade. I was given two options: either leave the school with a pass certification and join a new school at 4th grade or repeat the 3rd grade in same school. Because the other school was far away – a distance that I would have needed to cover by walking or cycling and that would have included a train crossing that I was afraid of – I decided to repeat the class to work as hard as possible.

Finally, I passed the exams with better scores to reach 5th grade. The 5th grade was a very pleasant experience as our classroom had two electric fans and we did not need to bring our mattress, as mattresses were provided for the most senior students at primary school. It was the real reason for many to struggle hard through to 5th grade, so that they could then sit under luxury fans and on good mattresses. In winter, we all sat under the sky in the school grounds. I got a distinction in 5th year to qualify for secondary school and it was the first exam that was administered by the government, with the exam papers neither prepared nor checked by our school teachers but by the government board in charge of such exams. Such exams are often called the Board Examination. This board examination gave me confidence to study further.

My father was my childhood friend and I remembered that I was called the "Stapni" of my father as I often went with him when he went on his bicycle to meet his friends. "Stapni" is the local name of the extra tyre that is attached to a car or truck for immediate replacement when a functioning tyre gets punctured. Being the Stapni of my father was a unique experience of my life as I made very senior friends who often shared their life experiences and stories to motivate me for a better future. It was the reason, during my initial days of school, that all kids of my age looked to me like very young children and immature, and I felt myself to be a very mature person. However, I had to adjust myself to other kids when my father told me that now I had to have my own friends and must play with them. My old friends often helped me by asking me to sit beside

them on their bicycles if they saw me walking to school, sometimes even when they were going in the opposite direction: when they saw me, they turned back to drop me to school first and then went back on their way. After all, I was their friend, and we had our memories of having tea together.

If I recall correctly, our village had no electricity till my 8th year of schooling, so I used to study with a small lamp fueled with Kerosene oil in a small mud room where disturbance by mosquitoes and insects was natural in the long dark nights. The lamp was not bought from any market but rather something we invented by using a discarded small medicine bottle, making a hole in upper side of the bottle's top to insert a piece of string, then pouring in kerosene oil to fill the bottle and finally lighting the beautiful lamp with a match. Thanks to my late grandmother for her invention that helped me in my studies!

It was a little harder to complete the reading and writing assignments in the dark room when the cruel summer was extremely hot without any fan (well, sometimes, my mother used to have a hand-made fan moving with her hands for long hours, which was an extra luxury) and in the winter when the weather turned cold, we had no heating and other ways of keeping warm were not enough. If I stayed outside the room to study at night in the summer, insects and mosquitos encircled the light and the lamp could not maintain the light due to external air pressure. So, the small mud room with the small dark light remained my world for several years.

In the summer, we used to spend days under the trees praying to God for a breeze. It was a memorable experience to recite school lessons under the tree during the hot summer when average temperatures in our area were between 35° and 45°C. Winter was boring as we had to keep a fire in the room to have better temperature, and if there was a sunny day then we could sit near the wall of our houses covering ourselves with warm shawls. Our village was filled with lots of wild trees; however, we had to cut down those trees and dry the wood so we could use it for cooking fuel and firewood in the nights to warm ourselves. I used to have a small axe that I would bring when my parents and I collected wood together. Sometimes I also went by myself to cut wood, carrying the wood home with my meagre strength or dragging the wood as I rode my bicycle. Now our village and area are without trees as we hardly planted new trees and kept cutting them down until they were all gone. The same thing happened in the nearby villages and therefore there are now more heat waves, and it is even hotter in the summers.

As a farmer village we used to grow mainly wheat and cotton, occasionally along with rice and sugar cane. My father, our relatives and we children used to work in summer and winter cutting and harvesting wheat and picking cotton, with women contributing significantly. To make harvesting the wheat and picking the cotton efficient and smooth, we used to have a "Wengar", the local term for a joint volunteer group of people working together. So today if we are picking cotton on our land, all our relatives will join us to help complete the task efficiently. This is a "Wengar". We don't need to pay them for their work. Instead, we reward them in future by helping them in return. In this way, we all efficiently handle our village tasks. However, if there was no Wengar, then people are hired to work and cash payment is based on output, on how many kilograms of cotton is picked by individuals till evening. I remember once asking my mother whether I could buy badminton rackets and a ball. I was told not to inform my father as this would burden him. The cotton season was almost over and after the collection from all the plants (often

after three or four rounds when there next to no cotton left on the plants), these plants are made available to everyone to use them for home cooking needs. Even at this stage one can sometimes pick very small amounts of remaining cotton (known as "OJARA" in the local language) for free. So, we went to our land and for several days collected as much of the remaining cotton as we could. I took this cotton on my head for sale in the nearby city to buy my favorite rackets. Imagine my joy when I returned home with my two rackets! Hurrah for my rackets!

A real wave of joy came when we saw electric bulbs in our mud houses and electricity was provided to our village. Hurrah, hurrah, electric bulbs in a variety of colors. Ah! what about the television!! OMG, it was something very beautiful when we bought a black & white television with a TV aerial (antenna) several years later that opened a new world to us. There used to be only one accessible TV channel named PTV where our favorite cartoons and programs were on weekly basis. We often face signal issues, and someone need to rotate the antenna to clear signals where our communication was with loud voice to inform each other if now TV screen is better or getting worse.

EIDS, our two annual Muslims religious festivals, were the main source of happiness, as on EIDS new dresses and shoes and pocket money (Eidi) were granted from elders, and we spent the pocket money on hand-made ice cream. EIDS were also the best source of meat for all in the village, especially on Eid al Adha, when many slaughter animals such as cows and goats to sacrifice according to the will of God and distribute among relatives and to people who cannot slaughter animals. All of us young kids went to places where people were slaughtering animals and gathered our shares in the form of lots of meat. This meat was not eaten in a few days but rather often stretched over more than a month. However, storing the meat was by a novel method that I will never forget. Even after we got electricity many of us were unable to buy a fridge, which was obviously a luxury item that my family also bought very late. So, my mother put meat in one big container and put it on the fire to let its water evaporate. I remember she mixed in salt. Later all the meat was put on the roof in the sunshine to dry it further. Well, crows often took their share from the roof, but the rest was ours, enough for many days. So, in this way, EID is a blessing for many poor people, enabling them to have meat for several days. Otherwise, honestly, it's not affordable for the poor.

Let me briefly mention some of our relatively richer relatives who kept their distance from us, considering us very poor. Perhaps they were afraid that we might ask them for money. Even though my parents faced a great struggle to raise us with dignity, we rarely asked for a helping hand during those difficult times. However, some relatives rarely visited us and some even fled when they saw me or my younger brother walking near the road. Some went so far as to break relations with us permanently. They stopped speaking with us because, given how poor we were, any association with us might make them look poor also. Once I asked my parents whether we had some terrible disease, and whether this was the reason our relatives did not visit us. What is the problem with us? My father silenced me angrily, saying I was a young child who knew nothing. But now I realize that we did have a disease, which is called poverty.

Based on the above limited glimpse of my life and situation, it is natural to wonder, given such extreme poverty, what enabled us three siblings to earn PhD degrees while also helping others improve their lives. Allow me a few more lines to explain my understanding about poverty

and opportunities for improvement. The first thing is hard work, the second is external support, with both interconnected. Normally, poor people have the first quality as they are hard working with the wish to improve their lives. But limited understanding and knowledge often hinder them. Here external support is needed where they lack the understanding and have little resources, so they need a positive push from more affluent people and countries to fill the gap. I am not here assuming that the poor can improve their lives with mere financial support such as aid and donations. Rather, moral support and encouragement along with guidance do play important roles. To my understanding, the poor often need a positive forward push to improve their lives through better education and knowledge. If I am asked how to eradicate poverty, I will confidently respond – yes, *education* is the key. By education, I do not mean a PhD degree for all. What I mean is a better understanding of how to improve one's situation, and education can bring such a better understanding.

Naturally, some will go for higher education according to their thirst for knowledge, and some will end at an intermediate stage. But all will have improved lives in ways that would not have been possible without education. It was also true in my case that after my master's degree (2010), I kept trying for four years for the opportunity to continue my PhD when it was hard to finance my further education without external support. Luckily, I was awarded a full scholarship from the Chinese Government Scholarship Council (CSC) to fulfill my dreams. Otherwise, it would have been hard to gather resources for a PhD. A plane ticket was bought by borrowing 600 USD to fly to China. Honestly, it was a very lovely experience in August 2014 to see a plane for the first time so close, where previously my experience of planes had been the sight of a small dot moving in the sky. I was neither sure that I would be granted a visa during the visa process nor was I sure whether plane officials would allow me to enter the plane. Perhaps I was too nervous and excited, what I can say! After reaching the Chinese University, there was only one choice: to work hard to prove my abilities. This is important for everyone, but particularly for those who have seen hardships of life. So, I tried my best to prove myself, with the hope of having a better future for myself and my family.

In 2016, my younger sister also won the same scholarship to join me and completed her PhD in 2020 at the young age of 26, placing her among the youngest Pakistani PhD degree holders. How much she struggled as a village girl or how much social pressure we faced to educate her is another long story to share. However, we remained committed to encouraging her to continue her study, even with limited resources and in a restricted environment.

Recently, my younger brother also got the opportunity to complete his PhD on a scholarship. It is true that my parents diverted all their small resources to education till our master's degrees, and I feel proud that we have better results after years of struggle even though some of our houses are still made out of mud and girls' education in my area is still a challenge. It is also true that without the scholarship support it would have been very hard for us to continue further study. I am hopeful and committed with my small resources to encourage youth to put them on an educational track, encourage them with small projects that I am sure will help them in one way or another to come out of poverty. Certainly, it is hard without the support of sincere academic friends like all of you, who always try to encourage and help me by not only creating opportunities for me and for my family but also for my village and area. This brief review of my life

may help clarify the role of education in poverty alleviation and may also reveal that educated children can find their way towards better lives irrespective of their background. But it also reveals that it was hard without external support to continue the battle for improvement. This is the reason why, whenever I am given the opportunity to speak at a national and international forum, I request and appeal to the more affluent people and countries to help poor people and countries to educate their children to have great future generations without poverty. It is only possible if the world makes joint global efforts in poverty eradication. I hope that future generations will find poverty only in museums, and I am very hopeful that this will happen. We academics and more affluent people and countries must play our role in poverty alleviation.

Three years ago, I met Professor Thomas in the city of The Hague, Netherlands, and we had a discussion on poverty and future projects. He told me about the Academics Stand Against Poverty (ASAP) global network in 22 countries and I proposed the idea that we should have an international journal to help academics be the voice of the poor, where researchers' evidence and experiences will explain poverty to people in the more affluent parts of the world. He agreed and proposed to name it "Journal Academics Stand Against Poverty". So, you may call Thomas and me the founding editors of Journal ASAP. However, it does not belong to us. Rather, it belongs to all academics and friends who are committed to contributing to poverty alleviation. I think that we academics, wherever we are around the globe, have a moral responsibility to play our role in poverty alleviation in one way or other. One way can be to bring scientific evidence, real-world examples, and policy suggestions to the attention of international agencies and NGOs, so they can feel how the poor are living, what their core problems are and how we can help them to work themselves out of poverty. It is hoped that all this practice will lead to more resources being devoted to poverty alleviation. We must not forget the COVID-19 pandemic that continues to severely hurt economies around the globe, with people losing jobs at very high rates. It is highly likely that pandemic poor will emerge, that is people who have fallen into poverty due to the pandemic. We must join hands to stand against poverty and act as fast as possible. I invite and appeal to academia to join the movement in standing against poverty to free our and future generations from this scourge.

Ethics Dumping – How not to do research in resource-poor settings

Doris Schroeder, Kate Chatfield, Vasantha Muthuswamy, Nandini K. Kumar¹

Abstract:

Ethics dumping is a global phenomenon involving the ‘off-shoring’ of research. Research that would be prohibited, severely restricted or regarded as highly patronizing in high-income regions is instead conducted in resource-poor settings. Twenty-eight case studies of ethics dumping were examined through inductive thematic analysis to reveal predisposing factors from the perspective of researchers from high-income regions. Six categories were agreed and further illuminated: Patronizing conduct, unfair distribution of benefits and/or burdens, culturally inappropriate conduct, double standards, lack of due diligence and lack of transparency. The ultimate aim of the paper is to deepen understanding of these highly unethical practices amongst *academics who stand against poverty*, leading to their further reduction.

Keywords: Equitable Research, Ethics Dumping, Double Standards, Research Ethics, Exploitation.

Introduction

In the wake of the SARS-CoV-2 pandemic, numerous voices are calling for increased international collaboration in research (Bompart, 2020). Global collaborations are said to bring together the best minds for the benefit of all (Kituyi, 2020). Groups like the Organisation for Economic Co-operation and Development (OECD) have long promoted global co-operations as a means of addressing challenges such as climate change, energy security, natural disaster prevention and mitigation, biodiversity protection, and food security (OECD, 2014).

In recognition of the potential benefits of global research (Godoy-Ruiz et al., 2016), many funding streams now actively promote or require collaborative efforts. For example, the Global Challenges Research Fund (GCRF) in the UK is investing heavily in research partnerships to “help create a fairer, healthier, safer and more prosperous world for everyone” (UKRI, 2020 p.2). This trend is particularly evident in health research, where collaborations are meant to address global health disparities and build research capacity in low- and middle-income countries (LMICs) (Kerasidou, 2019).

However, there is a downside to the internationalization of research: the potential for ethics dumping, a phrase coined by the European Commission (EC) in 2014.

Due to the progressive globalisation of research activities, the risk is higher that research with sensitive ethical issues is conducted by European organisations outside the EU in a

¹ Prof Schroeder and Dr Chatfield, Centre for Professional Ethics, UCLan School of Sport and Health Sciences, Preston, England. Drs Muthuswamy and Kumar, President and Vice President respectively of the Forum for Ethics Review Committees in India (FERCI). Thanks for highly valuable comments from two anonymous reviewers and two editors. No conflict of interest declared. Doris Schroeder Orcid: <https://orcid.org/0000-0002-3633-2758>. Kate Chatfield Orcid: <https://orcid.org/0000-0001-8109-0535>. Vasantha Muthuswamy Orcid: <http://orcid.org/0000-0002-4531-8691>. Nandini Kumar Orcid: <http://orcid.org/0000-0002-6507-4524>.

way that would not be accepted in Europe from an ethical point of view. This exportation of these non-compliant research practices is called ethics dumping (EC, n.d.).²

Today, six years later, an extended Google search restricted to the exact term 'ethics dumping' generates more than 22,000 entries. Ethics dumping is now recognised as a global phenomenon involving the 'off-shoring' of research that would be prohibited, severely restricted or regarded as highly patronizing in high-income settings to resource-poor settings (Schroeder et al., 2019).

In August 2018, "Europe's biggest research fund [Horizon 2020] crack[ed] down on 'ethics dumping'" (Nordling, 2018) by requiring adherence to the new *Global Code of Conduct for Research in Resource-Poor Settings* (GCC) (Trust, 2018).

The development of the GCC was grounded in real-world experiences of ethics dumping. Via in-depth consultations,³ extensive international networking and an open case study competition, an array of real-world cases of ethics dumping were collected (Schroeder et al., 2016). These examples were many and varied, spanning a broad range of research disciplines, but they all fulfilled the following criteria:

- An international collaborative project situated in an LMIC with at least one high income country (HIC) partner involved in the case.
- An activity that would be considered unethical, prohibited or severely restricted in the country of the HIC researcher's home institution had taken place.
- The research resulted in harm or exploitation of research participants, local researchers, local communities, LMIC institutions, animals and/or the environment.

Diagram 1 – Countries in which the GCC is applied (Sep 2020)



Source: Funding data obtained from the European Commission and the European and Developing Countries Clinical Trials Partnership, a funder that tackles poverty-related diseases. Both adopted the GCC in August 2018.

² Subsequent to the authors accessing this reference in June 2020 it has been removed from the site.

³ Consultations ran over three years from 2015 to 2018 with representation from academia, policy makers, policy advisors, industry, over-researched and vulnerable populations in LMICs and research ethics committees in LMICs. The four authors of this paper are co-authors of the code.

Two years on from its launch, the GCC has had stunning success and is currently (Sept. 2020) applied in over 40 countries. It consists of 23 short articles grouped according to the values of fairness, respect, care and honesty, and can be found in Appendix 2. While the GCC is already applied by many researchers around the world, there remain far more who are yet to understand what ethics dumping looks like and how it can be prevented. To help increase awareness of the phenomenon, varied cases of ethics dumping were collected by Schroeder et al. (2018). Though informative, the heterogeneity of these cases means that researchers may find it difficult to recognize the predisposing factors that might result in ethics dumping.

For this reason, the aim of this article is to provide a thematic categorisation of researcher attitudes and researcher conduct associated with ethics dumping. The ultimate aim is to deepen understanding of this highly unethical practice, leading to its further reduction.

Method

The case studies collected during the development of the GCC provide a considerable amount of rich data about how and why ethics dumping occurs in different environments. This data could be analysed from a multitude of perspectives. For instance, it could be analysed from a legal and regulatory perspective (Andanda et al., 2017) or a gender perspective (Cook, 2020). To ensure practical value for *academics who stand against poverty*, data was analysed from the perspective of HIC researchers with a specific focus on their attitudes and conduct in international collaborative research.

Twenty-eight publicly available ethics dumping cases were analysed independently by two authors of this paper.⁴ Inductive thematic analysis of the qualitative data was employed to reveal themes that describe the HIC researchers' attitudes and conduct. Following individual, independent analysis, a further two rounds of collaborative analysis were undertaken until the themes were eventually collapsed into six agreed categories. The categorisation of the 28 publicly available cases is shown in Appendix 1.

It should be noted that qualitative findings are invariably impacted by the perspectives of those who undertake the analysis (Yilmaz, 2013). Hence, the categorisations described by the authors of this paper are not envisioned as definitive. They are *proposed* categorisations for researcher attitudes and conduct that underpin ethics dumping. Nevertheless, the thematic analysis was undertaken by researchers who have been immersed in the topic of ethics dumping for many years and the categorisations are firmly grounded in empirical data. Furthermore, the six categories are not intended to capture every last component of researcher attitudes and conduct. They are intended to reveal the foremost ethics pitfalls for HIC researchers who want to avoid ethics dumping in collaborative research with resource-poor communities.

⁴ Of the 28 cases, 14 are published in the collection by Schroeder et al. (2018). Other cases were drawn from over 30 that were collected by Dr Vasantha Muthuswamy, Dr Nandini Kumar (Indian co-authors of this paper), Dr Urmila Thatte, Dr Sandhya Kamat and their teams in 2016. Of these, 14 were discussed in detail at a workshop in Mumbai in 2016, with summaries in the public domain (Chatfield et al., 2016).

Findings

Table 1 shows the six agreed categories of researcher attitudes and conduct which underpin ethics dumping and summarises their meanings.

Table 1. Researcher attitudes and conduct that underpin ethics dumping

Category	Meaning
1. Patronizing conduct	HIC researchers adopt a 'we know best' or 'we can do best' attitude towards their LMIC counterparts.
2. Unfair distribution of benefits and/or burdens	Benefits are skewed in favour of the HIC researchers and/or burdens are skewed toward LMIC stakeholders.
3. Culturally inappropriate conduct	Conduct and attitudes are not aligned with LMIC culture and customs.
4. Double standards	Activities are undertaken in the LMIC that would be considered unethical, prohibited or restricted in the HIC.
5. Lack of due diligence	A failure to ensure that conduct is fully tailored to local needs.
6. Lack of transparency	A failure to ensure full understanding of the research by those involved, what it entails and its implications.

Each of the categories is discussed further below, illustrated with short summaries from relevant case studies.

Patronizing conduct

Prominent ethics guidelines stress that research involving vulnerable populations, for instance in LMICs, is only justifiable if it is locally relevant (see for instance, *Declaration of Helsinki* (WMA, 2013, Art. 20)). Yet, local relevance and acceptance of research cannot be straightforwardly deduced from another setting. Instead it requires meaningful input from local communities and researchers. As Emanuel et al. (2004 – emphasis added) explained one and a half decades ago:

A collaborative partnership between researchers and sponsors in developed countries and researchers, policy makers, and communities in developing countries helps to minimize the possibility of exploitation by ensuring *that a developing country determines for itself whether the research is acceptable and responsive to the community's health problems*.

When local relevance is assumed without local input, a paternalist or patronizing attitude is likely to be at play, formerly the preserve of medical doctors, as captured in the expression "Doctor knows best" (Landsdown, 1994). This can be inferred from the case in Box 1, which illustrates the problems that can arise when well-meaning researchers adopt a patronizing attitude in

collaborative research. The researchers' assumption that Vitamin-A deficiency in Uganda should be addressed via the introduction of transgenic bananas failed to take local conditions and preferences into account and therefore wasted a lot of resources.

Why might researchers in a high-income country assume that they know what is best for people in a very different environment? Māori scholar Linda Tuhiwai Smith argues that patronizing researchers can “assume in advance that people [potential research participants or potential collaborators] will not be interested in, or will not understand, the deeper issues”

Box 1 – A transgenic banana for Uganda

In 2014, a US university aimed to produce a transgenic banana containing beta-carotene to address Vitamin-A deficiency in Uganda. Later the research was abandoned for ethical reasons during human food trials conducted amongst US-based students (e.g. safety issues and undue inducement). However, the study also raised concerns in Uganda about the potential release of the transgenic fruit; the risks of undermining local food and cultural systems; and the risks of reducing banana agrobiodiversity. Uganda is home to non-modified banana varieties that are already higher in beta-carotene than the proposed transgenic variety. Uninvited intrusions into local food systems, which were not matched to local needs, were unwelcome and considered inappropriate (van Niekerk and Wynberg, 2018).

Why might researchers in a high-income country assume that they know what is best for people in a very different environment? Māori scholar Linda Tuhiwai Smith argues that patronizing researchers can “assume in advance that people [potential research participants or potential collaborators] will not be interested in, or will not understand, the deeper issues” involved in research, an approach she calls “arrogant” (Tuhiwai Smith, 1999, p. 16). Patronizing communication often builds on stereotypes (Ohs, 2017, p. 157) within unequal power relationships (Gervais and Vescio, 2007, p.160). Psychologists term the tendency for stereotype-confirming thought patterns ‘implicit bias’, and it can lead to discrimination even when people feel they are being fair (Payne et al., 2018). Furthermore, “the historical legacy of discrimination has created structural inequalities that may continue to cue stereotypical associations long after official legal barriers have been removed” (Payne et al., 2019, p. 11694).

HIC researchers can also adopt patronizing attitudes towards research ethics committees and processes in LMICs. Chairs of Kenyan research ethics committees have reported a range of disrespectful and patronizing behaviour by international researchers. In its most patronizing form, HIC researchers declare that local ethics approval is not necessary because the research has already received approval from an HIC ethics committee (Chatfield et al., 2020). However, research ethics committees in resource-poor settings are often the only ones who (can) check whether a study proposed by international researchers is locally and culturally acceptable.

Other instances of disrespectful and patronizing conduct have included investigators' refusal to provide a full break-down of costs; ignoring the Kenyan context and local reporting requirements; demanding swift ethics approval and complaining if such approvals were not forthcoming (Chatfield et al., 2020). This sort of disrespectful and patronizing conduct is not exclusive to international research or collaborations between high-income and lower-income regions; it might also be experienced by members of research ethics committees in HICs.

However, there are important ethical differences. Research ethics committees in resource-poor settings are often understaffed and underfunded (Ndebele et al., 2014, Silaigwana and Wassenaar, 2015). For international researchers to *add* burdens and stresses rather than to try and help where they can (e.g. by submitting paperwork in the form required locally), is unethical.

Respect is a term that has two very distinct meanings (Darwall, 1995, p. 183). It can mean a high degree of acceptance or admiration, freely given, as in “I respect the achievements of Nelson Mandela”, or it can mean the recognition that others have interests that differ from one’s own, and to which appropriate consideration should be given. “This sort of respect ... is ... owed to all persons” (Darwall, 1995, p. 183), but it is not as freely given as admiration respect. Respect which recognizes that others are different and have different interests needs work, and it becomes more and more important the more heterogeneous a collaboration is, such as in international collaborative research. To be respectful in such collaborations entails due regard for local cultures and systems, including organisational structures, history, customs and norms, relationships with the environment, and other sensitivities (including experience of previous unethical research) (SASI, 2017).

Benefits and/or burdens are unevenly distributed

The fair and non-exploitative distribution of benefits and burdens in any shared social undertaking, such as research, is one of the main prerequisites of ethical conduct (Pogge, 2006). When undertaking research internationally, it is likely that HIC researchers will benefit, given the emphasis in today’s research careers on the importance of mobility (Sugimoto et al., 2017). A *Nature* article describes international research trips as “short-term upheaval [that] can yield widespread collaborations and long-term resources” (Gould, 2015, p.245). When HIC researchers exploit their mobility benefits, a fairness issue arises, as can be inferred from the case in Box 2.

Box 2 – Exporting valuable samples without benefit sharing

In 1995, a research team from a US university obtained blood samples from tens of thousands of impoverished Chinese villagers. The samples were exported to the US for research into asthma, diabetes, hypertension and other diseases. The project was partly funded by a US pharmaceutical company, which became “the ultimate beneficiary... As part of the agreement signed with the US university, they obtained the genetic information of Anhui farmers and claimed that it owned the relevant patents” (Zhao and Zhang, 2018, p. 76). This resulted in multimillion-dollar investments in the company, while the sample donors received only a free meal and a small amount of money to cover expenses and job leave allowance (up to 3 dollars each) (Zhao and Zhang).

This case is a typical example of ‘helicopter research’, with unevenly distributed benefits and burdens. Minasy and Fiantis (2018) make points similar to Tuhiwai Smith (1999) when they recall many international projects in Indonesia, where “years of research produce(d) little benefit to Indonesian scientists and communities”. Like Tuhiwai Smith, Minasy and Fiantis (2018) also associate inequitable international research with the colonial model.

This neo-colonialist research was conducted by researchers from wealthier countries who have access to funding and new technologies. Most of the researchers work on the assumption that they have the right to study other nation's resources in the name of science.

It is not only local/host researchers at the institutional level who feel exploited or unfairly treated by international researchers. As Petrus Vaalbooi (Trust, 2018a), an indigenous San elder from South Africa, noted in an interview: "Our knowledge has been taken by clever people who come and tempt us with ten Rand or five Rand."⁵

As an extreme example of the unfair distribution of benefits and burdens, Linda Tuhiwai Smith (1999, p. 3) explains that researchers "told us things already known, suggested things that would not work, and made careers for people who already had jobs". She compared some research encountered by indigenous communities to random, damaging "visits by inquisitive and acquisitive strangers" (1999, p. 3) undertaken without the sensitivity to see how the "pursuit of knowledge is [still] deeply embedded in the multiple layers of ... colonial practices" (1999, p. 2).

The enduring rage against such neo-colonial, one-sided approaches to research was brought into sharp focus at the start of the SARS-CoV-2 outbreak in Europe via the Twitter hashtag #AfricansAreNotLabRats.

Culturally inappropriate conduct

When HIC researchers are focussed mostly upon their own objectives, they might ignore or overlook important cultural sensitivities in the setting they want to work in. For instance, a senior Kenyan ethics committee chair reported an instance where a community in Kenya refused to take part in a research study when they saw the caduceus symbols on the clothes and equipment of the research staff. In their culture, the snake symbolises the Devil, and members of the potential research community believed that blood was going to be collected by devil worshippers (Chatfield et al., 2020). A case of research where a local community felt mistreated due to a lack of cultural sensitivity and engagement is presented in Box 3.

Box 3 – Lack of community involvement

In 2010 a genomic research project entitled "Complete Khoisan and Bantu genomes from southern Africa" was published in *Nature* amidst wide publicity. The study involved use of samples taken from impoverished indigenous peoples, the San in Namibia, which were obtained without community approval. The publication featured conclusions and details about the indigenous group as a whole, which the community leadership "regarded as private, pejorative, discriminatory and inappropriate" (Chennells and Steenkamp, 2018, p. 15).

⁵ Ten Rand is equivalent to 0.52 € or 0.62 US\$ (26/10/2020). That this sum is tempting can only be understood in the context of the impoverished community. "Only 1.1 percent of the [South African] San community received tertiary education or other post-school training" (Kollapen, 2004, p. 30) and "poverty is a serious issue" (Kollapen, 2004, p. 30).

It has long been accepted that some research, in particular genetic research, can have consequences for an entire group/community and should therefore be handled particularly sensitively (Weijer, 1999). The use of genetic samples obtained from a small number of illiterate, highly impoverished indigenous people, without any community engagement, as in the case given, is not ethically justifiable, because it can lead to harm for the entire *group*.

This case shows a failure of respect for participants and the local community on two primary levels. First, conclusions were published that were unrelated to genomic research and for which consent had not been provided, whilst derogatory terms like ‘hunter-gatherer’ were used. Second, local existing community approval systems were ignored. The San have their own customs and systems for approving research (SASI, 2017) which were not followed. Both individual consent *and* community engagement, which would include engaging with local approval structures, are required for good ethical practice (Molyneux and Bull, 2013).

Double Standards

Double standards in research have long been challenged as ethically unacceptable (Macklin, 2014). This type of ethics dumping is particularly worrying because it often represents a *deliberate* attempt to circumnavigate higher ethics governance standards in one location by moving research somewhere else. In deliberate ethics dumping, researchers from HICs are aware of “opportunities” for research in LMICs which would be prohibited or severely restricted at home. These “opportunities” may present themselves because of lack of regulation (Chatfield and Morton, 2018), understaffed and underfunded research ethics committees (Ndebele et al., 2014, Silaigwana and Wassenaar, 2015) or because local communities or individuals are unable to defend their rights and are open to coercive inducements (Novoa-Heckel and Bernabe, 2019, Chennells 2016). A clear case of double standards in research is shown in Box 4.

Box 4 – “Off-shoring” animal research

In 2013 a report in the British press alleged that an academic from a UK university bypassed British law in his research with non-human primates by “off-shoring” his studies to Nairobi, Kenya. The neuroscientist investigated methods for treating conditions such as stroke, spinal cord injury and motor neurone disease. He accepted that the research would not have been allowed in the UK. The non-human primates in the Nairobi facility were also caught in the wild, a method to obtain animals for research which is prohibited in the UK. Hence, this constituted an additional violation of animal welfare standards (Chatfield and Morton, 2018).

Most LMICs have mechanisms to regulate research, at least in the health field, either at the national or institutional level. Most LMICs also have legal requirements for mandatory review and approval by research ethics committees (Silaigwana and Wassenaar, 2015). In Kenya, all research that involves humans or animals has to be approved *locally*, whether or not studies have received approvals from non-Kenyan RECs of collaborating institutions (Chatfield et al., 2020). However, governance standards can vary between countries and in situations where ethical, legal or regulatory standards lack equivalence, researchers might seek “opportunities” to conduct research abroad that would not be permitted at home.

In the case described in Box 4, the researcher side-stepped the higher ethics requirements of the UK by moving his research to Kenya, thereby displaying double ethics standards. Non-human primates' similarity to humans raises specific ethical concerns about their use in scientific experiments, which is why non-human primates are subject to additional protection. Licence holders using non-human primates must demonstrate that no other species are suitable for the purposes of the licence and must adhere to specific licence conditions (GOV.UK, 2020). Birth records are now required for non-primates used in research to show that they have not been taken from the wild.

Deliberate circumvention of ethical and regulatory requirements might also occur *within* high-income settings. However, the penalties (both legal and professional) for any researcher acting in this way are serious. Such conduct is far more likely to pass unnoticed or unchallenged if it takes place in resource-poor settings, where protection mechanisms are fragile, or individuals may not be aware of their rights and may also assume that in all cases members of international organisations have come to help them (Luc and Altare, 2018). The circumvention of established, but under-resourced, protection mechanisms for research involving vulnerable individuals is a particularly worrying form of ethics dumping. For instance, “during the height of the Ebola virus disease surge in Liberia in 2014, there was a fragile national regulatory framework to oversee research. Some researchers took undue advantage of this gap to conduct unethical research” (Tegli, 2018, p. 115).

Lack of due diligence

When researchers fail in their duty of care in collaborative research, the resultant neglect can take a variety of forms. For instance, informed consent procedures might not be adequately tailored to local requirements, or the local impacts of hosting the research might deplete the community of valuable resources (like health care staff). Additionally, travelling researchers may overlook the need for special measures to protect the interests of people who are particularly vulnerable to certain risks, as illustrated in Box 5.

Box 5 – Stigmatization of sex workers

Sex workers are highly sought after as participants in health research, primarily for investigations into sexually transmitted diseases, including HIV. In Nairobi there are tens of thousands of sex workers, many of whom are the primary wage earners for their families. Many are illiterate, and many also have mental health and/or addiction problems. Access to conventional medical treatment can be challenging for sex workers in Kenya, where sex work is illegal. Hence, access to health care via research and financial rewards can be an attractive proposition. However, there is a lot of stigma attached to being a sex worker and/or for being HIV positive. Sex is not spoken of openly, and HIV positive people do not normally reveal their status. Given this stigma and the illegal status of sex work, there is always a fear about maintaining the confidentiality of participation in research (Chatfield et al., 2016).

Sex work is illegal in many countries, including in Kenya. In addition, even where it is not illegal, sex work is highly stigmatized and “seen as an ‘immoral activity’ rather than a form of labour.

Many believe that sex workers deserve to be punished” (Tukai, 2018, p. 27). Researchers who come from more liberal countries might not be fully aware of the high risks people can face when being identified as sex workers (Dewey and Zheng, 2013, p. 28). These risks can be increased for same-sex or trans-sex workers. Researchers might release research participant names to the police voluntarily (for example, in an effort to report physical abuse they have observed), or involuntarily (through breaches of confidentiality after obtaining personal data). However, simply being visible in a locality as an international researcher and interacting with potential participants can also put community members at risk.

Crossing borders and cultures means that the knowledge one has about research participant welfare may not suffice to ascertain risks, including privacy risks. However, ignorance of local laws, customs and culture is no excuse for ethics dumping. Deleterious impacts upon the recipient are no less harmful if inflicted unintentionally. Researchers have a responsibility to use due diligence when they work in unfamiliar environments. Potential research participants, communities and local collaborators are best placed to ensure that benefits of research are increased, burdens and risks decreased, and that the research is tailored to local needs and contexts.

Lack of transparency

In research ethics, honesty concerns are often about lack of transparency about the funding situation, the purpose of the research, how it will be conducted, the potential harms and benefits, what will happen to the data/samples that are taken, and any changes that might occur during the process. The case in Box 6 exemplifies the problems that can occur when researchers fail to ensure transparency.

Box 6 – Misleading consent process

Following the catastrophic epidemic of Ebola in 2013 in Western Africa, efforts to develop an effective vaccine included a plan for an HIC pharmaceutical company to conduct a phase I/II study in an African country which had not had any registered cases of the disease. The study aimed to recruit 200 adults and 200 children but was suspended when members of the public expressed concerns. Aside from having no direct relevance in this country (given that no Ebola cases had been experienced) and, therefore, no possible benefit, there were numerous problems with the informed consent procedure. In particular, the information given to potential research participants was highly misleading, as they were led to believe that an Ebola *vaccine* was going to be tested rather than an Ebola *candidate vaccine*. Potential participants were at risk of believing they were receiving a direct benefit should they be exposed to Ebola. Additionally, the five-page information leaflet was full of technical terminology and not tailored for local understanding (Tangwa et al., 2018).

Therapeutic misconception refers to the belief that study participation will provide benefit(s) to the participant. Studies have shown that motivations to join a study are often based upon expectations about the possibility of obtaining medical care or drugs, or better medical care (Kass et al., 2005). As such, an informed consent process that lacks transparency is highly ethically problematic.

Informed consent is universally recognized as a central component of ethical conduct in research with humans (Marshall, 2006), and a prerequisite of informed consent is that participants understand what they are consenting to. The differences in understanding between well-educated and less well-educated potential research participants can be problematic in terms of informed consent success. A person spending more time talking one-on-one to potential participants appears to be the most effective available way of improving research participants' understanding, and thus the quality of their consent (Flory and Emanuel, 2004).

At the same time, transparency is not only about communication between researchers and research participants. It is equally important that research teams from HICs and LMICs work out a distribution of labour in a transparent manner.

What can academics resolved to stand against poverty do against ethics dumping?

What can *academics resolved to stand against poverty* do against ethics dumping? An easy answer to this question can be given for *deliberate* ethics dumping. For instance, where double standards are purposefully exploited to “off-shore” research that would not be permitted at home, refraining from this activity is the obvious solution. Research has shown that unethical conduct is sometimes legitimized as good for science (Johnson and Ecklund, 2016). However, good for science, or even good for poverty reduction, are not valid reasons (excuses) for ethics dumping. The avoidance of deliberate ethics dumping requires that ethical conduct is prioritized at all times over achieving short-cuts to further academic careers or scientific progress or even poverty reduction.

There are also pragmatic reasons for avoiding ethics dumping, as it is becoming more and more known and guarded against by institutions and funders. For instance, a US scientist who was allegedly involved in the infamous Chinese CRISPR babies' case⁶ by giving advice and credence to his former PhD student's experiments, faced very serious consequences. “The nature of the incident would be quite different with or without his involvement,” a genome-editing pioneer said in an interview with Qui (2019). The experiment could not have been undertaken in the US, and the US scientist lost his job as a result of allegations of ethics dumping (Qui, 2019).

Some straightforward answers can also be given for *helicopter research*, which distributes the benefits and burdens of research unfairly. This type of research is easily recognizable, and many efforts are underway to stop it. For instance, in 2018 a group of Africa-based researchers published guidelines for the ethical handling of genetic samples (Nordling 2018, Yakubu et al., 2018). But the prevention of helicopter research becomes more complex where neo-colonialist attitudes and patronizing conduct are at play (Minasy and Fiantis, 2018).

Ethics dumping, which is based on ethics blind-spots or culturally inappropriate or patronizing conduct, is difficult to tackle. Locally inappropriate or irrelevant research, as well as culturally inappropriate research, might fall into this category. Ethics blind spots, as the term

⁶ CRISPR stands for “Clustered Regularly Interspaced Short Palindromic Repeats”. CRISPR gene editing is a technology which allows the modification of genomes of living organisms. In 2018, Chinese scientist He Jiankui used the technology, against an international consensus to embargo the technique for humans, on two embryos to achieve an innate resistance to HIV. The experiment was condemned internationally and He Jiankui was sentenced to three years imprisonment and required to pay a significant fine.

suggests, are problematic because they are hidden from the view of those who hold them and unethical behaviour often stems from actions that are not recognized as unethical (Sezer et al., 2015). Some blind spots are caused by lack of knowledge or experience. These should be the easiest to address through due diligence, mentoring by more experienced colleagues and careful planning. However, other blind spots are deep-rooted and harder to address. Where the legacy of colonialism and other forms of oppression persist, these deeply held stereotypical notions can impact upon the research designs/ approaches of even the most well-intentioned researchers.

Fresh impetus against patronising, “neo-colonialist attitudes” (Reddy, 2019) in research has come in the wake of the tragic death of George Floyd in 2020. To reduce racism in science and academia (Nature, 2020), world-wide efforts have been catalysed to transform science and academia into a safer, more inclusive environment (Gwynne, 2020) and to “amplify marginalized voices” (Nature 2020). At the same time, one can also see the emergence of ‘black bioethics’ as a consequence of social issues and discrimination becoming more prominent in the wake of the SARS-CoV-2 pandemic, which are not discussed in conventional bioethics. Bioethics’ unwillingness to bend to cultural and professional shifts has created the need for black bioethics (Keisha Ray, 2020).

Overall, the best antidote against ethics dumping is *strong links and collaborations* between travelling and local researchers, as well as the communities in which the research is situated. This implies that potential research participants, researchers and community representatives in resource-poor settings are involved meaningfully in *all* phases of the research from planning to evaluation. Academics who stand against poverty should therefore take note of Nelson Mandela’s famous quote: “Everything that is done for me without me is done against me.”

References

- Andanda, P., Wathuta, J., & Fenet, S. (2017). Compliance Failures. A report for TRUST. <http://trust-project.eu/wp-content/uploads/2016/03/Deliverable-4.2-Compliance-Failures.pdf>.
- Bompart, F. (2020). Ethical rationale for better coordination of clinical research on COVID-19. *Research Ethics*, DOI. 1747016120931998.
- Chatfield, K., Schroeder, D., & Kimani, J. (2016). Nairobi Plenary Meeting Report, TRUST Project. <http://trust-project.eu/wp-content/uploads/2016/11/Meeting-Report-TRUST-Nairobi-Final.pdf>.
- Chatfield, K., Schroeder, D., & Muthuswamy, V. (2016). Mumbai Meeting Report, TRUST Project. <http://trust-project.eu/trust-workshop-in-mumbai-the-report/>.
- Chatfield, K., & Morton, D. (2018). The Use of Non-human Primates in Research. In D. Schroeder, J. Cook, H. Hirsch, S. Fenet, & V. Muthuswamy (Eds.), *Ethics Dumping - Case Studies from North-South Research Collaborations* (pp.81-90). Springer.

- Chatfield, K., Schroeder, D., Guantai, A., Bhatt, K., Bukusi, E., Adhiambo Odhiambo, J., Cook, J., & Kimani, J. (2020). Preventing ethics dumping: the challenges for Kenyan research ethics committees. *Research Ethics*, First Online 24 May 2020. <https://journals.sagepub.com/doi/full/10.1177/1747016120925064>.
- Chennells, R. (2016). *Equitable Access to Human Biological Resources in Developing Countries - Benefit Sharing Without Undue Inducement*. Springer.
- Chennells, R., & Steenkamp, A. (2018). International Genomics Research Involving the San People. In D. Schroeder, J. Cook, H. Hirsch, S. Fenet, & V. Muthuswamy (Eds.), *Ethics Dumping - Case Studies from North-South Research Collaborations* (pp. 15-22). Springer.
- Coles, D., Wathuta, J. & Andanda, P. (2018). ICT and Mobile Data for Health Research. In D. Schroeder, J. Cook, H. Hirsch, S. Fenet, & V. Muthuswamy (Eds.), *Ethics Dumping - Case Studies from North-South Research Collaborations* (pp. 99-106). Springer.
- Cong, Y. (2018). Legal and Ethical Issues of Justice: Global and Local Perspectives on Compensation for Serious Adverse Events in Clinical Trials. In D. Schroeder, J. Cook, H. Hirsch, S. Fenet, & V. Muthuswamy (Eds.), *Ethics Dumping - Case Studies from North-South Research Collaborations* (pp. 121-128). Springer.
- Cook, J. (2020). Avoiding Gender Exploitation and Ethics Dumping in Research with Women. *Cambridge Quarterly of Healthcare Ethics*, 29(3), 470-479.
- Darwall, S. (1995) Two Kinds of Respect. In R. Dillon (Ed.), *Dignity, Character and Self-Respect* (pp. 181-197). Routledge.
- Dewey, S., & Zheng, T. (2013). *Ethical Research with Sex Workers: Anthropological Approaches*. Springer.
- EC. (n.d.). Ethics Horizon 2020. <https://ec.europa.eu/programmes/horizon2020/en/h2020-section/ethics> Accessed 29 June 2020.
- Economist, The. (2019). No dumping, please. Print edition 2 Feb 2019, 73-76.
- Emanuel, E., Wendler, D., Killen, J. & Grady, C. (2004). What Makes Clinical Research in Developing Countries Ethical? The Benchmarks of Ethical Research. *Journal of Infectious Diseases*, 189: 930-937.
- Flory, J., & Emanuel, E. (2004). Interventions to improve research participants' understanding in informed consent for research: a systematic review. *Jama*, 292(13), 1593-1601.
- Gervais, S. & Vescio, T. (2007) The origins and consequences of subtle sexism. In A Columbus (Ed.), *Advances in psychology research* (pp.137-166). Nova Science Publishers, Vol.49.
- Godoy-Ruiz, P., Cole, D., Lenters, L., & McKenzie, K. (2016). Developing collaborative approaches to international research: Perspectives of new global health researchers. *Global Public Health*, 11(3), 253–275.
- Gould, J. (2015). Mobility: A strategic move. *Nature*, 522, 245–247.

- GOV.UK. (2020). Animal Testing and Research. <https://www.gov.uk/guidance/research-and-testing-using-animals>. Accessed 9 September 2020.
- Gwynne, P. (2020). US scientific societies condemn racism in the wake of George Floyd death. PhysicsWorld. <https://physicsworld.com/a/us-scientific-societies-condemn-racism-in-the-wake-of-george-floyd-death/>. Accessed 17 August 2020.
- Johnson, D., & Ecklund, E. (2016). Ethical Ambiguity in Science, Science and Engineering. *Ethics*, 22(4), 989–1005.
- Kass, N.E., Maman, S., & Atkinson, J. (2005). Motivations, understanding, and voluntariness in international randomized trials. *IRB*, 27(6), 1.
- Kerasidou, A. (2019). The role of trust in global health research collaborations. *Bioethics*, 33(4), 495-501.
- Kituyi, M. (2020). COVID-19: Collaboration is the engine of global science - especially for developing countries. The World Economic Forum COVID Action Platform, May 15 2020. <https://www.weforum.org/agenda/2020/05/global-science-collaboration-open-source-covid-19/> Accessed 6 September 2020.
- Kollapen, J. (2004). Report on the Inquiry into Human Rights Violations in the Khomani San Community. South African Human Rights Commission, November 2004.
- Kubar, O. (2018). Hepatitis B Study with Gender Inequities. In D. Schroeder, J. Cook, H. Hirsch, S. Fenet, & V. Muthuswamy (Eds.), *Ethics Dumping - Case Studies from North-South Research Collaborations* (pp. 61-66). Springer.
- Landsdown, R. (1994). Does doctor know best? Patient input into medical decision making, *J R Soc Med*, 87(11), 716–717.
- Leisinger, K., Schmitt, K., & Bompert, F. (2018). Healthy Volunteers in Clinical Studies. In D. Schroeder, J. Cook, H. Hirsch, S. Fenet, & V. Muthuswamy (Eds.), *Ethics Dumping - Case Studies from North-South Research Collaborations* (pp. 67-70). Springer.
- Luc, G., & Altare, C. (2018). Social Science Research in a Humanitarian Emergency Context. In D. Schroeder, J. Cook, H. Hirsch, S. Fenet, & V. Muthuswamy (Eds.), *Ethics Dumping - Case Studies from North-South Research Collaborations* (pp. 9-14). Springer.
- Macklin, R. (2004). *Double standards in medical research in developing countries*. Cambridge University Press.
- Marshall, P. (2006). Informed consent in international health research. *Journal of Empirical Research on Human Research Ethics*, 1(1), 25-41.
- Minasy, B., & Fiantis, D. (2018). 'Helicopter research': who benefits from international studies in Indonesia? *The Conversation*, 29 Aug 2018. <https://theconversation.com/helicopter-research-who-benefits-from-international-studies-in-indonesia-102165>.

- Molyneux, S., & Bull, S. (2013). Consent and Community Engagement in Diverse Research Contexts: Reviewing and Developing Research and Practice. *J Empir Res Hum Res Ethics*, 8(4)1-18.
- Nature. (2020). Editorial - Systemic racism: science must listen, learn and change, Nature 9 June 2020. <https://www.nature.com/articles/d41586-020-01678-x>
- Ndebele, P., Wassenaar, D., Benatar, S., Fleischer, T., Kruger, M., Adebamowo, C., Kass, N., Hyder, A. A., & Meslin, E.M. (2014). Research ethics capacity building in Sub-Saharan Africa: a review of NIH Fogarty-funded programs 2000–2012. *J Empir Res Hum Res Ethics*, 9(2), 24-40.
- Niekerk, van J., & Wynberg, R. (2018). Human Food Trial of a Transgenic Fruit. In D. Schroeder, J. Cook, H. Hirsch, S. Fenet, & V. Muthuswamy (Eds.), *Ethics Dumping - Case Studies from North-South Research Collaborations* (pp. 91-98). Springer.
- Nordling, L. (2018). Europe's biggest research fund cracks down on 'ethics dumping'. 3 July. <https://doi.org/10.1038/d41586-018-05616-w>
- Novoa-Heckel, G. & Bernabe, R. (2019). A survey in Mexico about ethics dumping in clinical research. *BMC Medical Ethics*, 20(38).
- OECD. (2014). Research Co-operation between Developed and Developing Countries in the Area of Climate Change Adaptation and Biodiversity. http://www.oecd.org/environment/Research_Cooperation.pdf Accessed: 8 September 2020.
- Ohs, J. (2017). Communication and Ageing Research. In M. Allen (Ed.), *The SAGE Encyclopedia of Communication Research Methods*. Sage, 154-158.
- Payne, K., Niemi, L., Doris, J. M. (2018). How to Think about "Implicit Bias". *Scientific American*, March 27, 2018. <https://www.scientificamerican.com/article/how-to-think-about-implicit-bias/>
- Payne, B.K., Vuletich, H.A., & Brown-Iannuzzi, J.L. (2019). Historical roots of implicit bias in slavery. *Proceedings of the National Academy of Sciences*, 116(24), 11693-11698.
- Pogge, T. (2006) Justice. In Donald M. Borchert (Ed.), *Encyclopedia of Philosophy* (2nd ed., pp. 862-870). Macmillan Reference.
- Qiu, J. (2019). American scientist played more active role in 'CRISPR babies' project than previously known. *STAT*, 31 Jan 2019. <https://www.statnews.com/2019/01/31/crispr-babies-michael-deem-rice-he-jiankui/>
- Rath, J. (2018). Safety and Security Risks of CRISPR/Cas9, In D. Schroeder, J. Cook, H. Hirsch, S. Fenet, & V. Muthuswamy (Eds.), *Ethics Dumping - Case Studies from North-South Research Collaborations* (pp.107-113). Springer.

- Ray, Keisha. (2020). Black Bioethics and How the Failures of the Profession Paved the Way for its Existence. The Hastings Center. <https://www.thehastingscenter.org/black-bioethics-and-how-the-failures-of-the-profession-paved-the-way-for-its-existence/>
- SASI (South African San Institute). (2017). The San Code of Research Ethics. <https://www.globalcodeofconduct.org/affiliated-codes/>.
- Schroeder, D., Cook Lucas, J., Fenet, S., & Hirsch, F. (Eds.). (2016). *"Ethics Dumping" – Paradigmatic Case Studies*. A report for TRUST. <http://trust-project.eu/ethics-dumping-trusts-report-on-paradigmatic-case-studies/>.
- Schroeder, D., Cook, J., Hirsch, H., Fenet, S., & Muthuswamy, V. (Eds.). (2018). *Ethics Dumping - Case Studies from North South Research Collaborations*. Springer.
- Schroeder, D., Chatfield, K., Chennells, R., Singh, M., & Herissone-Kelly, P. (2019). *Equitable Research Partnerships - A Global Code of Conduct to Counter Ethics Dumping*. Springer.
- Sezer, O., Gino, F., & Bazerman, M.H. (2015). Ethical blind spots: Explaining unintentional unethical behavior. *Current Opinion in Psychology*, 6, 77-81.
- Silaigwana, B., & Wassenaar, D. (2015). Biomedical research ethics committees in sub-Saharan Africa: A collective review of their structure, functioning, and outcomes. *Journal of Empirical Research on Human Research Ethics*, 10(2), 169-184.
- Srinivasan, S., Johari, V., & Jesani, A. (2018). Cervical Cancer Screening in India. In D. Schroeder, J. Cook, H. Hirsch, S. Fenet, & V. Muthuswamy (Eds.), *Ethics Dumping - Case Studies from North-South Research Collaborations* (pp.33-48). Springer.
- Sugimoto, C., Robinson-Garcia, N., Murray, D., Yegros-Yegros, A., Costas, R. & Larivière, V. (2017). Scientists have most impact when they're free to move. *Nature*, 550 (7674), 29–31.
- Tangwa, G., Browne, K., & Schroeder, D. (2018). Ebola vaccine trials. In D. Schroeder, J. Cook, H. Hirsch, S. Fenet, & V. Muthuswamy (Eds.), *Ethics Dumping - Case Studies from North-South Research Collaborations* (pp.49-60). Springer.
- Tegli, J. K. (2018). Seeking retrospective approval for a study in resource-constrained Liberia. In D. Schroeder, J. Cook, H. Hirsch, S. Fenet, & V. Muthuswamy (Eds.), *Ethics Dumping - Case Studies from North-South Research Collaborations* (pp.115-119). Springer.
- Trust. (2018). Global Code of Conduct for Research in Resource-Poor Settings. <https://www.globalcodeofconduct.org/>.
- Trust. (2018a). Andries Steenkamp and Petrus Vaalbooi Interviews. Youtube video. https://www.youtube.com/watch?v=A4_Mvdwl_Gc.
- Tuhiwai Smith, L. (1999). *Decolonizing Methodologies: Research and Indigenous Peoples*. Zed Books.

- Tukai, A. (2018). Sex Workers Involved in HIV/AIDS Research. In D. Schroeder, J. Cook, H. Hirsch, S. Fenet, & V. Muthuswamy (Eds.), *Ethics Dumping - Case Studies from North-South Research Collaborations* (pp.23-31). Springer.
- UKRI. (2020). UKRI's GCRF Collective Programme. <https://www.ukri.org/wp-content/uploads/2020/11/UKRI-201120-GCRF-Collective-Programme-Brochure.pdf>. Accessed 21/03/2021.
- Weijer, C. (1999). Protecting communities in research. *Cambridge Quarterly of Healthcare Ethics*, 8, 501-513.
- WMA (World Medical Association). (2013). Declaration of Helsinki. <https://www.wma.net/policies-post/wma-declaration-of-helsinki-ethical-principles-for-medical-research-involving-human-subjects/>.
- Yakubu, A., Tindana, P., Matimba, A., Littler, K., Nchangwi, SM., Madden, E., Staunton, C., Vries, J.de (2018) Model framework for governance of genomic research and biobanking in Africa – a content description [version 2] AAS Open Research, 1:13. <https://aasopenresearch.org/articles/1-13>.
- Yilmaz, K. (2013). Comparison of quantitative and qualitative research traditions: Epistemological, theoretical, and methodological differences. *European journal of education*, 48(2), 311-325.
- Zhao, Y., & Zhang, W. (2018). An International Collaborative Genetic Research Project Conducted in China. In D. Schroeder, J. Cook, H. Hirsch, S. Fenet, & V. Muthuswamy (Eds.), *Ethics Dumping - Case Studies from North-South Research Collaborations* (pp.71-78). Springer.

Appendix 1 – Analysed Ethics Dumping Cases

Good practice cases are marked with a ✓. For good practice cases the relevant category was negated to arrive at a suitable categorisation. Hence, a good practice case study on culturally appropriate conduct was changed to ‘Culturally inappropriate conduct’, or a good practice case study on due diligence was changed to ‘No due diligence’.

Table 2 Categorisation of Ethics Dumping Cases from Springer Publication

Case study title	Short description of main ethical issue	GCC article and value	Short categorisation
1. Social Science Research in a Humanitarian Emergency Context (Luc and Altare, 2018)	Research <i>and</i> emergency support were provided to an LMIC community by a European NGO. The “dual role ... endangered the neutrality of the data collection and ... the acceptability of the NGO as assistance provider”.	Honesty Art 21 GCC	No due diligence
2. International Genomics Research Involving the San People (Chennells and Steenkamp, 2018)	A genomics research project involving the indigenous San population led to the publication of “private, pejorative, discriminatory and inappropriate” information, being regarded as an “insult” by the community itself.	Respect Art 8 GCC	Culturally inappropriate conduct
3. Sex Workers Involved in HIV/AIDS Research (Tukai, 2018)	✓ The good practice case study described ethically highly complex research involving sex workers in Nairobi whose work is “classified ... as illegal” and regarded as an “immoral activity” rather than a form of labour”.	Care Art 15 GCC	No due diligence

4. Cervical Cancer Screening in India (Srinivasan et al., 2018)	Three clinical trials on cervical cancer screening methods were conducted in India from 1998 to 2015. “Two hundred and fifty-four women in the no-screening arm died due to cervical cancer.” “A no-screening control arm would not have been allowed in the USA but was accepted by the US funders for clinical trials in India.”	Care Art 14 GCC	Double standards
5. Ebola Vaccine Trials (Tangwa et al., 2018)	Ebola vaccine trials in a West African country were abandoned before completion due to major ethical issues. The country “had not registered any cases of the Ebola virus disease”.	Fairness Art 1 GCC	Unfair distribution of benefits and/or burdens
6. Hepatitis B Study with Gender Inequities (Kubar, 2018)	A clinical trial to investigate the safety of a Hepatitis B vaccine was proposed in Russia. The study imposed risks on female partners of male research participants “without their informed consent”.	Fairness Art 2 GCC	Unfair distribution of benefits and/or burdens
7. Healthy Volunteers in Clinical Studies (Leisinger et al., 2018)	Dangerous double enrolment in clinical studies takes place in LMICs in order to obtain “a critical source of income”.	Care Art 15	No due diligence
8. International Collaborative Genetic Research Project in China (Zhao and Zhang, 2018)	Export of highly valuable blood samples from rural China with US partner “benefitting substantially” from the sample sale whilst exploiting “local individual citizens... the local scientific community ... and the country’s national interest”.	Fairness Art 6	Unfair distribution of benefits and/or burdens
9. The Use of Non-human Primates in Research (Chatfield and Morton, 2018)	Off-shoring neurological research on non-human primates from the UK to Kenya in violation of UK animal welfare legislation.	Care Art 17	Double standards

10. Human Food Trial of a Transgenic Fruit (van Niekerk and Wynberg, 2018)	US project to develop a genetically modified banana to resolve malnutrition issues in Uganda not adapted to local health needs and “undermining local food and cultural systems ... [by] imposing inappropriate solutions”.	Fairness Art 1 GCC	Patronizing conduct
11. ICT and Mobile Data for Health Research (Coles, Wathuta and Andanda, 2018)	The case examined the ethics risks of using mobile phone technology in health research in LMICs. A special emphasis was given to possible “privacy violations”.	Care ⁷ Art 23 GCC	No due diligence
12. Safety and Security Risks of CRISPR/Cas9 (Rath, 2018)	The case examined the ethics risks of CRISPR/Cas9 technology used in LMICs. A concrete case on the same topic was published in the Economist (2019).	Care Art 18 GCC	Double standards
13. Seeking Retrospective Approval for a Study in Resource-Constrained Liberia (Tegli, 2018)	A social science study on the Ebola virus disease was undertaken in Liberia in 2014 without local ethics approval. “Researchers took undue advantage” of “a fragile national regulatory framework”.	Respect Art 10 GCC	Double standards
14. Legal and Ethical Issues of Justice: Global and Local Perspectives on Compensation for Serious Adverse Events in Clinical Trials (Cong, 2018)	A 78-year-old Chinese woman was refused compensation for a serious adverse event in a clinical trial where a pharmaceutical company exploited an “immature legal system and ... research participants’ ... limited resources”. The Chinese woman won her legal case after five years.	Care Art 14 GCC	Double standards

⁷ Art 23 of the GCC is linked to Honesty, but here we grouped it with Care. When the GCC is updated, this change is likely to be included.

Table 3 – Categorisation of Ethics Dumping Cases from Mumbai Workshop (all in Chatfield et al., 2016)

Case study area	Short description	GCC article and value	Short categorisation
15. Demonstration project of the human papillomavirus (HPV) vaccine	The study population for this demonstration project of the HPV vaccine were teenage girls. “Informed consent was provided by school heads and hostel wardens in place of assent from the girls and consent from their parents or legally authorized representatives.”	Care Art 12	No due diligence
16. Phase III drug trial	It was shown that a drug under consideration in a phase III trial in India “induced bladder tumours in mice and rats”. “Indian law requires that carcinogenicity studies need to be completed before phase III studies, whereas European laws state that carcinogenicity studies can run parallel to clinical trials”. As a result of this discrepancy, “no compensation or support would be available” to participants of the Indian study who developed cancer as a result of the phase III trial.	Care Art 14 GCC	Double standards
17. Post-trial access to treatments	A patient was given a trial drug for a chronic condition and taken off his current treatment. The experimental drug led to an improvement of his health, “but as soon as the study ended the participant was taken off the study drug.”	Care No article ⁸	Unfair distribution of benefits and/or burdens
18. Experiments on Bhopal Gas tragedy survivors	Survivors of the Bhopal Gas tragedy were involved in medical research. “Many of these patients were not aware that they were	Care Art 12	Unfair distribution of benefits and/or burdens

⁸ When the GCC was drafted, it was decided not to include post-trial obligations, as they are only relevant to medical research, whilst the GCC is cross-disciplinary.

	participating in a clinical/ drug trial and at least ten serious adverse events were noted. No informed consent was sought.”		
19. HIV vaccine trial	✓ A good practice case about an HIV vaccine trial where “the local communities were involved at every stage of planning and implementation, and social and cultural values were respected and given due consideration.”	Respect Art 8 GCC	Culturally inappropriate conduct
20. Initiative to reduce neonatal mortality through home-based neonatal care	A study aimed to reduce neonatal mortality through home-based neonatal care from ‘trained health workers’ was conducted with a control group. “The ‘control’ village were knowingly denied access to care.”	Care Art 14 GCC	Double standards
21. Recording, monitoring & reporting of adverse events	✓ The good practice case study requested “a local site Data and Safety Monitoring Board ... in multicentre, multinational trials involving human participants” so that “the pooling of data from different regions [w]ould [not] result in masking the severity of some” adverse events and serious adverse events.	No ethics dumping potential apparent	
22. Consent for secondary use of samples	✓ The good practice case study requested that samples for which no consent for secondary use had been obtained should “under no condition ... be sent abroad.”	Fairness Art 6 GCC	Unfair distribution of benefits and/or burdens

23. Genomic study in a tribal population	No local ethics approval was sought for a genomic study involving an Indian tribal population.	Respect Art 10 GCC	Patronizing conduct
24. Paediatric study	A study involving children and pre-teens provided an “information sheet [which was] ... deemed inappropriate for the participants”. “Problems with [the] automatic import of documents from the Western context were highlighted.”	Care Art 12 GCC	Culturally inappropriate conduct
25. Authorship credit	✓ A good practice case study “noted that formal Memorandums of Understanding were developed in consultation with local collaborating institutes before the start of the project. Engagement between overseas partners and local collaborators was undertaken iteratively and regularly during the various stages of the project’s life span. And an approach about how decisions on authorship were to be made was agreed early on in the project.”	Honesty Art 20 GCC	Lack of transparency
26. Large vaccine study	✓ A good practice case about a vaccine study, where “dialogue and continued communication with the local community – by research staff, investigators, and fieldworkers” was organised.	Fairness Art 2	Lack of transparency
27. Phase I/II trial	A phase I/II trial conducted “in spite of a pending request from his own local ethics committee for more preclinical data before approval could be granted”.	Care	Patronizing conduct

28. Herbal product	An “unqualified practitioner” had interested foreign parties in a herbal product. “The international collaborators were interested in funding research without knowledge about the ethical and other regulatory requirements for undertaking such research in India.”	Fairness Art 4	No due diligence
--------------------	---	-------------------	------------------

A Stroke of the Keyboard and Click of the Mouse: an anatomy of cyber frauds as a growing component of illicit financial flows

Erhieyov O’Kenny¹

Abstract:

Advances in digital technology have seen Nigerian conmen migrate their schemes to the cyber domain. With the advent of the COVID-19 pandemic these fraudsters have intensified their cyber attacks on vulnerable victims across the world. Through scams such as phony contracts, internet romance deception, and Business Email Compromise, Nigeria’s cyber criminals make billions of dollars every year at the cost of individuals and corporations.

With the enactment of anti-cybercrime laws, the Nigerian government hopes to stem the tide of these practices. The Central Bank of Nigeria, for its part, has issued risk-based cyber security guidelines to financial institutions to enable them better to protect their computer systems and networks from external infiltration. At the international level, law enforcement agencies in the U.A.E have taken steps to track Nigerian cybercriminals operating from their territory, while the FBI has ramped up investigation of cases affecting the U.S..

The author recommends that individuals and corporations put locks on their SIM cards and mobile devices, activate two-tier authentication for email and social media accounts, and routinely update their computer devices and software, to enhance their cyber security.

Keywords: Nigerian Cyber Fraudsters, Advance Fee Fraud, 419, Business Email Compromise, Cybercrime Techniques.

Introduction

The COVID-19 pandemic has altered the way that we live and work. It has foisted a new normal on the entire world. To foster social/physical distancing, in an effort to curtail the spread of the virulent virus, more individuals and businesses are leveraging the virtual space for their day-to-day activities – in terms of communication, shopping, banking, commerce, learning and conferencing, as health workers strive to save lives. Amid the growing difficulties and uncertainties, cyber fraudsters have intensified their online schemes aimed at defrauding vulnerable victims of their hard-earned monies.

In the United Kingdom, the National Fraud and Cyber Security Center reported a 400% spike in cybercrimes in March 2020. Graeme Biggar, Director General of the National Economic Crime Center, warned that “fraudsters [are] using the COVID-19 pandemic to scam people...[by]

¹ Erhieyovw O’Kenny is an independent researcher working on human rights and social development issues in sub-Saharan Africa. He affirms that there is no conflict of interest in respect of the research, authorship, or publication of this paper to declare. O’Kenny received USD 5,000 for this essay, attached to its winning First Prize in the Seventh Annual Amartya Sen Essay Prize Competition.

sending emails offering fake medical support and targeting people who may be vulnerable or increasingly isolated at home.”² In the United States Tonya Ugoretz, Deputy Assistant Director of the Federal Bureau of Investigation (FBI), noted the rise in cybersecurity complaints to the Bureau's Internet Crime Complaint Center (IC3) from an average of 1,000 to 3,000-4,000 daily.³

It is against this backdrop that this essay examines the cyber fraud phenomenon. The focus is on Nigerian cyber fraudsters and their mode of operation, in view of the heavy losses that individuals and businesses across the world sustain as a result of their schemes. The Nigerian cyber scammers have become a huge headache to law enforcement authorities in the U.S. and Europe. Following the arrest and subsequent extradition of the celebrated internet fraudster Ramon Olorunwa Abbas (aka Hushpuppi) from the U.A.E to the U.S. on charges of conspiracy to commit wire fraud and launder hundreds of millions of dollars obtained through cybercrime, the FBI has vowed to go after cybercriminals no matter what part of the world that they operate from.⁴

A description of the problematic activity

In the 1990s local fraudsters in Nigeria recalibrated their schemes and extended their dragnet to foreign waters. Their catches were huge: many gullible white men and women who fell like packs of card to their dubious antics. Their victims lost substantial sums of monies as a result. The phenomenon became known as 419, named after section 419 of the Nigerian criminal code. The biggest fraud, at the time, was perpetrated by a syndicate that comprised Ikehukwu Anajemba, his wife Amaka, Emmanuel Nwude-Odinigwe, Dr. Hammed Ukeh, several Asian money mules who provided bank accounts to receive the illicit funds for a cut of the proceeds, among others. Their victim was Nelson Sakaguchi, a Director at Banco Noroeste, a Brazilian bank with headquarters in Sao Paulo.

The syndicate had invited Mr. Sakaguchi to Nigeria to explore potentially high yielding business opportunities. The Brazilian was taken to a private house in Enugu state that was carefully decorated as the Central Bank of Nigeria, with the appropriate logo and other paraphernalia. With some of the fraudsters playing the role of the Governor of the Central Bank, Director of International Remittance, Director of Budget and Planning in the Ministry of Aviation, among other top portfolios, the Brazilian was assured of a major contract from the Federal Government. He left for his home country in high hopes. Not long afterwards the fraudsters sent him a fax with the news that the Nigerian government had awarded him a contract to build an airport in the Federal Capital Territory valued at \$200 million. He was told he could take \$13 million for himself from the deal.

² “Coronavirus-related scams increase by 400% in March, says ActionFraud.”. Radio broadcast. MKFM, March 30, 2020. <https://www.mkfm.com/news/local-news/coronavirus-related-scams-increase-by-400-in-march-says-actionfraud/>

³ Maggie Miller. “FBI sees spike in cyber crime reports during coronavirus pandemic.” THE HILL, April 16, 2020. <https://thehill.com/policy/cybersecurity/493198-fbi-sees-spike-in-cyber-crime-reports-during-coronavirus-pandemic>

⁴ Andrew John Innocenti “Criminal Complaint by Telephone or Other Reliable Electronic Means.” Affidavit. U.S. District Court for the Central District of California, June 25, 2020. <https://www.justice.gov/usao-cdca/press-release/file/1292066/download>

Having hoodwinked him, the fraudsters began to demand advance fees to put the contract into effect, and Mr. Sakaguchi complied. A list of payment (contained in the particulars of claim filed by the claimants' lawyer Peters & Peters of 2 Harewood Palace, Hanover Square, London which *The NEWS* magazine obtained) showed that between May 2, 1995 and January 20, 1998 the Brazilian remitted over \$190 million via SWIFT electronic system to various accounts in several countries that the fraudsters provided.⁵ Since he did not have such huge monies, Mr. Sakaguchi had to dip his hands into Banco Noroeste's coffers, for which he was later prosecuted by the authorities in Brazil. While he waited for the contract to yield the much-touted high returns, the fraudsters squandered the earnings on their extravagant lifestyle.

Negative influence of extravagant lifestyles

With the proceeds of the advance fee fraud, the Anajembas, for instance, acquired 30 houses in Nigeria, the U.S. and Britain, a fleet of exotic cars, large shareholdings in First Homes (a subsidiary of First Bank of Nigeria) and more, as investigations by *TELL* magazine uncovered.⁶ Emmanuel Nwude-Odinigwe, the deceptively gentle-looking member of the syndicate who reportedly played the role of Governor of the Central Bank of Nigeria, purchased 20 houses in Nigeria and abroad. He had large shareholdings in the Union Bank of Nigeria (which helped him to secure the position of Executive Director), and in G. Cappa PLC (where he was also a Director), among other prime investments, until law enforcement agents got on his trail.⁷

The fraudsters wore costly designer outfits, frolicked at exclusive parties and nightclubs, gave house-warming parties at which popular musicians were paid to entertain the *crème-de-la-crème* guests, had chieftaincy titles conferred on them, moved about in exotic bullet-proof cars, and undertook frequent pleasure trips abroad accompanied by concubines. They lived like high-flying princes with vast fortunes at their disposal. The allure of such an extravagant lifestyle prompted many youths to follow suit. Many of them quickly jettisoned legitimate work to embrace advance fee fraud as a way of life because of the stupendous wealth that it could generate in the shortest possible time.

Escalation of the problematic activity

In 2001 the Nigerian government deregulated the communications industry, which was monopolized by the state-owned enterprise Nigeria Telecommunications Ltd. (NITEL) for decades. Several Global System for Mobile Communications (GSM) operators were licensed to provide voice, internet and data services to the teeming populace. Huge investments in state-of-the-art digital switches, base stations, cell sites, fiber optics and broadband were made over the years. Stiff competition among the licensed GSM operators swiftly brought charges down. The Nigerian telecoms market would become one of the fastest growing in the world. Mobile subscribers hit the 172 million mark in 2017, and over 112 million Nigerians had access to the internet in 2018.

⁵ Tayo Odunlami. "The Biggest 419 Affair Ever." *The NEWS*, September 1, 2003, pp. 20-21.

⁶ Dayo Aiyetan. "The \$254 Million Scam." *TELL*, August 19, 2002, p.26.

⁷ Ibid.

Local fraudsters quickly latched onto the digital revolution to perpetrate their schemes. They migrated from the traditional mode of operation, where communication with potential victims was mostly done by way of physical contact, analog phone calls, fax and postal mail, to the virtual space. Hiding under the anonymity that the virtual space confers, they were able to orchestrate various kinds of online frauds by simply stroking the keyboard and clicking the mouse of their computer devices. It was then that they became known as the *Yahoo Boys* or *Yahoo Yahoo Boys*, apparently due to attacks on Yahoo Mail accounts that they orchestrated. (At the time the vulnerability of Yahoo Mail to external intrusions was thought to be high). In the current dispensation where computers, laptops, tablets, and smart phones with enhanced Internet capacities are readily available at affordable costs, the population of cyber criminals in Nigeria has grown exponentially, with attacks on unsuspecting victims constantly on the rise.

Tactics and techniques

In August 2001, the U.S. Consulate in Nigeria raised the alarm that millions of Americans were receiving via conventional mail and emails bogus offers with possible criminal intent.⁸ Through what the cyber fraudsters term *bombing*, dubious business proposals are sent to masses of email addresses, sometimes harvested with an email extractor (a potent software tool that can extract email IDs from web pages automatically) on a day-to-day basis. The cyber fraudsters often pick their victims from the wide array of profiles in social media platforms, dating sites, web forums for professionals and similar locations. They make extravagant business offers while posing as high-profile personalities in Nigeria and abroad. In fact, there are no limits to the array of claims that they make.

Monies quoted in the business offers run into millions of dollars. Potential victims are promised a certain percentage as reward for their assistance. Assistance here implies that the potential victims accept their nomination as emergency beneficiaries of what are, unbeknown to them, bogus funds domiciled in fictitious accounts that the fraudsters seek to transfer. This is the bait. Once the targets respond affirmatively, they are asked to send their personal information including their bio data, contact addresses, bank account details, telephone numbers, and so on.

The fraudsters typically send potential victims various official-looking but forged documents in an effort to validate their false claims. They then demand advance fees to facilitate the transfer of the bogus funds to the bank accounts of the victims. Should a victim send money (often through Western Union or Money Gram for funds not exceeding \$10,000 in a single transaction or via wire transfer for larger sums) the fraudsters escalate their demand for funds under various guises. This continues until the victims have exhausted every possible avenue of getting money. Some victims borrow money from family, colleagues, friends, and even from banks, to satiate the seemingly endless demands of the fraudsters in the hope of getting the bigger reward afterwards. When they finally come to realize with whom they are dealing, the fraudsters disappear, and the money is irretrievably gone.

⁸ Public Affairs Section of the U.S. Consulate General, Lagos, Nigeria. "U.S. Embassy and Nigerian Police Join Forces to Fight '419' Fraud." *Crossroads*, vol. 8, no. 8, August–October, 2001, p.3.

With advancement in Information and Communication Technology, cyber fraudsters are able to constantly change their tactics and formats. Business Email Compromise (BEC) has become the fastest growing component of their operations, generating the highest illicit earnings thus far. BEC, as defined in an affidavit filed at the United States District Court for the Central District of California by the FBI, typically involves “a computer hacker gaining unauthorized access to a business-email account, blocking or redirecting communications to and/or from that email account, and then using the compromised email account or a separate fraudulent email account...to communicate with personnel from a victim company and to attempt to trick them into making an unauthorized wire transfer.”⁹ They are mostly implemented via phishing emails.

In some cases the fraudsters create email accounts and/or websites that resemble those of real government offices, business entities, financial institutions or multilateral agencies, from which they write to officials of businesses on a subject of interest to them. The targets are often tricked into clicking the accompanying links and/or downloading the attached files that have been infected with malware, ransomware, spyware or other malicious software.

Once the unwary victims fall for the trick their email accounts and/or computer systems are automatically compromised. The cyber fraudsters then methodologically sift through the email exchanges in an effort to construct their manipulative strategies. The American cybersecurity company Secureworks, which has studied email scams emanating from the West African sub-region, notes: “The attackers get inside the email systems of companies...looking for business-to-business transactions...If two companies are about to make a deal, the scammers use their inside access to email systems to modify invoice details and direct payments into accounts they control.”¹⁰

Other fraudulent online schemes that Nigerian scammers perpetrate include romance scams (typically these schemes target vulnerable elderly women seeking love and affection), lottery scams, inheritance scams, shopping frauds, and denial-of-service attacks. There seems to be no limit to the array of online scams, as the fraudsters are ingenious and tech savvy. They also keep track of unfolding developments in the world that they manipulate to achieve their ends. In the case of the COVID-19 pandemic, Nigerian fraudsters have created fake shops, tracking apps, websites, social media accounts, and email addresses, with which they make claims to manufacture and/or supply Personal Protective Equipment.¹¹ INTERPOL said the German health authorities, in their desperate bid to procure much needed face masks in the wake of the pandemic, were swindled out of €800,000. In an attempt to trace and block the movement of the funds, the international organization found out that the money was moved from the Netherlands through the U.K., with Nigeria being the final destination.¹²

⁹ United States Attorney’s Office, Central District of California. “Nigerian National Brought to U.S. to Face Charges of Conspiring to Launder Hundreds of Millions of Dollars From Cybercrime Schemes.” Press Release. July 3, 2020. <https://www.justice.gov/usao-cdca/pr/nigerian-national-brought-us-face-charges-conspiring-launder-hundreds-millions-dollars>

¹⁰ Jeremy Kirk. “Churchgoing Nigerians Drive Business Email Attacks.” Bank Info Security, August 5, 2016. <https://www.bankinfosecurity.com/church-going-nigerians-drive-business-email-attacks-a-9323>

¹¹ “INTERPOL warns of financial fraud linked to COVID-19.” INTERPOL, March 13, 2020. <https://www.interpol.int/News-and-Events/News/2020/INTERPOL-warns-of-financial-fraud-linked-to-COVID-19>

¹² Abdur Rahman Alfa Shaban. “Account in Nigeria linked to European COVID-19 mask fraud – INTERPOL.” africanews, April 15, 2020. <https://www.africanews.com/2020/04/15/account-in-nigeria-linked-to-european-covid-19-mask-fraud-interpol/>

Technical competencies

In terms of technical acumen James Bettke, a counter threat researcher at Secureworks, has contended that Nigerian cyber fraudsters “can’t code, don’t do a lot of automation, [that] their strengths are in social engineering and the ability to create agile scams.”¹³ Nigerian cyber fraudsters are thought to mainly leverage the abundance of personal information in social networks such as Facebook, Twitter, and LinkedIn, as well as media sharing sites such as Instagram, YouTube, and Snapchat, to engineer attacks on their victims. However, this assessment is not tenable in the light of new evidence.

A recent investigation by Unit 42 of Palo Alto Networks has shown that Nigerian cyber actors currently produce an average of 840 unique samples of information stealing malware per month, as well as utilizing damaging Remote Access Trojans such as NetWire and NanoCore to cast a wider net over the virtual space (Palo Alto Networks, 2018). The revelation by FBI special agent Andrew John Innocenti that Ramon Olorunwa Abbas (‘Hushpuppi’) and another conspirator defrauded a law firm in New York of approximately \$923,000 via a BEC scheme, as well as siphoning off millions of dollars from financial institutions in Europe and America via cyber heists, testify to the growing sophistication of Nigerian cyber criminals. They can no longer be portrayed as minor players in the fast-growing cyber fraud industry.

Assets recovered by the Dubai police, which conducted a raid on the apartment of Abbas in an operation codenamed *Fox Hunt 2*, would make even the notorious Russian hackers Maksim Yakubets and Igor Turashev of Evil Corps, who the U.S. Treasury Department sanctioned for stealing banking credentials in over 40 countries and siphoning off millions of dollars, green with envy. They included 21 computer devices, 47 smart phones, 15 memory sticks and five hard disks that contained 119,580 fraud files as well as the addresses of 1,926,400 victims.¹⁴ Over \$40 million in cash and 12 luxury cars valued at \$6.8 million were recovered as well.

From the foregoing it has become clear that Nigerian online fraudsters, irrespective of what part of the world they operate from, are capable of orchestrating attacks on individuals, businesses, banks, payment solution providers, financial institutions, government departments, fin-techs, and big tech firms across the world with a high degree of precision. In order to perpetrate successful scams, the fraudsters work collaboratively for a share of the illicit proceeds. Olivia Ndubuisi, a Nigerian broadcast journalist who infiltrated one of the headquarters of internet fraudsters in Nigeria, notes that: “The Yahoo Boy rarely lives alone. He needs his comrades around him to pull off a successful scam: the document forger, the international call router, the bank account front person...the tech wizard...[and] the smooth talker.”¹⁵

¹³ Lily Hay Newman. “Nigerian Email Scammers Are More Effective Than Ever.” WIRED, May 3, 2018. <https://www.wired.com/story/nigerian-email-scammers-more-effective-than-ever/>

¹⁴ William Ukpe. “Hushpuppi extradited to the United States.” Nairametrics, July 2, 2020. <https://nairametrics.com/2020/07/02/hushpuppi-extradited-to-the-united-states/>

¹⁵ Olivia Ndubuisi. “Nigeria / Internet scamming. The Yahoo Boys Universe.” Chronicle #37, n.d. <https://www.zammagazine.com/chronicle/chronicle-37/695-nigeria-internet-scamming-the-yahoo-boys-universe>

Some documented cases

In 2013, a syndicate comprising two university undergraduates, Isaiah Friday and Azzaior Samuel, and two Bureau de Change operators, Salihu Mahmoud and Dan Ibrahim, broke into the digital database of the Union Bank of Nigeria to post 2.05 billion Nigerian Naira to accounts in other branches that they control.¹⁶

Obinwanna Okeke, an outwardly successful Nigerian entrepreneur whom Forbes magazine has featured in its prestigious *30 under 30* list of African entrepreneurs, pleaded guilty in 2020 to charges of computer intrusion and wire fraud that caused Unatrac Holding Ltd, a British affiliate of U.S heavy equipment manufacturer Caterpillar, \$11 million in losses.¹⁷ In 2018 Okeke and his conspirators had hacked into the email account of the Chief Financial Officer of Unatrac by means of a phishing email that contained a link to a fake Microsoft Office 365 login page. Having obtained the CFO's credentials, the cyber thief studied the email flow to learn of pending financial transactions. He then created spurious money transfer requests and invoices in the CFO's name, using the company's logo.

Some years ago British retiree John Anthony Lynch suffered a financial loss of over £400,000 when Nigerian internet fraudsters trapped him with a beautiful woman and mouthwatering business deals.¹⁸ After exhausting all of his retirement benefits, including selling his house, Mr. Lynch took out loans in order to meet the insatiable demands of the fraudsters. In 2016, a Japanese women, named as 'FK' in U.S court documents, lost \$200,000 over a ten-month period to a Nigerian fraudster with the pseudo name 'Terry Garcia', a supposed American soldier on tour in Syria, and his accomplices.¹⁹ She was said to have borrowed money from her sister, ex-husband and friends in her desperate bid to clear a bag of diamonds that the unscrupulous conman claimed he had sent to her.

In a similar fashion a Cambodian woman named Sophanmia lost \$75,000 to a 19-year old Nigerian online fraudster named Chigemezu Arikibi, who just joined the game.²⁰ The teenager opened a fake Facebook account with the name 'Frank Williams' and another account on Instagram with the name 'Patrick Williams' with which he communicated with her. He offered to send her expensive gift items and \$500,000 in cash to be used for investment in the real estate sector of the southeastern Asian country. This was the trick used in convincing her to send money to a spurious courier agent in Indonesia in her desperate bid to have the items cleared.

Internet romance scams can endanger the life of victims. In 2019 a 34-year old man named Chukwuebuka Obiaku lured a 46-year old American woman retiree to Nigeria.²¹ He then

¹⁶ Vera Ekwebelem. "Online Burglary Escalates." Broad Street Journal, October 21, 2013.

¹⁷ Ishita Chigilli Palli. "Nigerian Entrepreneur Pleads Guilty in \$11 Million BEC Scam." Bank Info Security, June 22, 2020. <https://www.bankinfosecurity.com/nigerian-entrepreneur-pleads-guilty-in-11-million-bec-scam-a-14479>

¹⁸ Ade Alade. "57-year-old Briton scammed of N1bn by a Nigerian fraud syndicate says... 'I want to die'." Saturday Sun, January 12, 2013, p.14.

¹⁹ Faith Karimi. "Men in California oversaw a romance scam that targeted women worldwide, feds say." CNN, August 24, 2019. <https://edition.cnn.com/2019/08/23/us/nigeria-romance-scam-arrests/index.html>

²⁰ Andrew Utulu. "419: Boy, 19, Nabbed For Allegedly Defrauding Cambodian Lady Of \$75,000." Saturday Independent, February 29, 2020. <https://www.independent.ng/419-boy-19-nabbed-for-allegedly-defrauding-cambodian-lady-of-75000>

²¹ "Romance scam: US woman freed after a year as hostage in Nigeria." BBC News, July 13, 2020. <https://www.bbc.com/news/world-africa-53390397>

held her in a local hotel for 16 months against her will, seized her credit and debit cards and forced her to part with \$48,000 from her retirement benefits.

The documented cases of such practices are many and varied. New cases continue to be reported to law enforcement agencies in different parts of the world.

Magnitude and estimates

Heavy financial losses continue to be recorded in Nigeria and other countries of the world as a result of the activities of Nigerian internet fraudsters. The exposed losses to businesses worldwide are now estimated to be more than \$3 billion. Unit 42 of Palo Alto Networks has estimated that, in 2017, Nigerian BEC-linked incidences shot up by 45%, representing about 17,600 attacks per month (Palo Alto Network, 2018). The U.S. Treasury Department estimates that BEC scams cost American companies more than \$300 million a month, with an average of 1,100 businesses scammed every month.²² The FBI estimates that between October 2013 and December 2016 more than 40,000 business email compromise incidences resulted in \$5.3 billion in losses.²³ According to the FBI's *Internet Crime Report 2019*, its Internet Crime Complaint Center received 467,361 complaints (at an average of 1,300 daily), with recorded losses to individual and businesses put at \$3.5 billion, the highest the Center has recorded so far.²⁴ Cyber security experts have established that 90% of all BEC schemes are perpetrated by Nigerian actors, both in and outside of Nigeria.

With respect to Nigeria an editorial in the Daily Independent notes that "Nigeria lost the staggering sum of \$649 million (N250 billion) to cybercrime in 2017 ... [which is] saddening and very unfortunate given that such monumental hemorrhage could have been avoided."²⁵ It cited the 2018 report of the Nigeria Deposit Insurance Corporation that revealed that there were 37,817 reported cases of fraud in the year under review, of which 59.2% were internet and technology related. In broad terms, cyber fraud costs Nigerian businesses billions of naira annually.

Adverse impact/damages

Cyber fraud adversely alters the lives of individual victims and can even ruin businesses. The defrauding of Mr. Sakaguchi, for instance, resulted in the liquidation of Banco Noroeste (a bank that had been in existence for about 70 years), leading to an abrupt and devastating loss of shareholders' capital. Defrauded individuals, such as those mentioned earlier in this essay, are plunged into a state of indebtedness and despair from which they may never recover. John Anthony Lynch almost committed suicide to escape the trauma caused by his devastating experience.

²² Scott Ferguson. "BEC Scams Cost U.S. Companies \$300 Million Per Month: Study." Bank Info Security, July 19, 2019. <https://www.bankinfosecurity.com/bec-scams-cost-us-companies-300-million-per-month-study-a-12805>

²³ Lily Hay Newman. "Nigerian Email Scammers Are More Effective Than Ever." WIRED, May 3, 2018. <https://www.wired.com/story/nigerian-email-scammers-more-effective-than-ever/>

²⁴ "2019 Internet Crime Report Released." FBI News, February 11, 2020. <https://www.fbi.gov/news/stories/2019-internet-crime-report-released-021120>

²⁵ "The Huge Losses To Cybercrime." Daily Independent, December 17, 2019. <https://www.independent.ng/the-huge-losses-to-cybercrime/>

Nigeria's image in the international community has been seriously dented. Howard F. Jeter, the U.S. Ambassador to Nigeria from 2001 to 2003, noted that: "Legitimate Nigerian businessmen attempting to establish trade links with the U.S. and Europe or to solicit foreign investments are greeted with negative reactions based on suspicions of '419' fraud schemes."²⁶ High commissions and embassies continue to issue advisories to their citizens who wish to visit Nigeria to explore potential business opportunities to be wary of Nigerian businessmen, many of whom are deemed to be 'crooked'. With reduced inflow of Foreign Direct Investment the tax generating potential of the Nigerian state is seriously hampered. Employment opportunities that should accrue from the operations of foreign businesses in Nigeria are lost. Due to the bad reputation arising from the operations of cyber fraudsters, Nigerian citizens on international travel are subjected to intense checks at airports abroad.

Businesses whose customer databases are breached and whose monies are stolen often end up losing the trust and confidence of their customers. Affected customers may sue for the damages that such breaches may cause them. Precious time is wasted as individuals and businesses strive to recover their compromised email accounts and restore the integrity of their computer systems. Larger monetary resources need to be earmarked to tighten data security. Businesses are compelled to hire formidable IT professionals to assist in the fortification of their computer systems and network servers on a regular basis, which adds to their operational costs and reduces their profitability. Some foreign entities have even blocked IP addresses in Nigeria from accessing their websites.

Enabling conditions/why cyber frauds persists

➤ Growing poverty and lack of opportunities

The latest report of the National Bureau of Statistics entitled *Poverty and Inequality in Nigeria 2019* classifies 40.1% of the population of Nigeria, or 82.9 million people, as poor (i.e. they live on N381.75 per day or N11,452.50 per month).²⁷ An earlier report by the Brookings Institution categorized Nigeria as the 'poverty capital of the world', with 110 million people projected to live in extreme poverty by the year 2030.²⁸ Unemployment currently stands at over 23%. Popular Nigerian movie actor cum musician Nkem Owoh captured the distinct correlation between poverty and advance fee fraud in the lyrics of one of his songs in Pidgin English: "*I don suffer no be small, upon say I get sense. Poverty no good at all, Neyin make I join this business. 419 no be thief, it's just a game, everybody dey play, if anyboby fall mugu, ah, my brother, I go chop am!*"²⁹ The English translation reads: "I have suffered so much, even though I am sensible. Poverty is not good at all, that is why I joined this [419] business. 419 is not stealing, it's just a game [that] everybody is playing. If anybody falls for my antics, ah, my brother, I will swindle him!"

²⁶ Public Affairs Section of the U.S. Consulate General Lagos, Nigeria. "U.S. Embassy and Nigerian Police Join Forces to Fight '419' Fraud." *Crossroads*, vol. 8, no. 8, August–October, 2001, p.3

²⁷ "82.9m Nigerians Are Poor –NBS." *The Pointer*, May 5, 2020, p.5.

²⁸ Homi Kharas, Kristofer Hamel and Martin Hofer. "Rethinking global poverty reduction in 2019." Brookings Institution, December 13, 2018. <https://www.brookings.edu/blog/future-development/2018/12/13/rethinking-global-poverty-reduction-in-2019/>

²⁹ Nkem Owoh. "I go chop your dollar." Kas-Video Entertainment, 2005. VCD.

Contributing to the endemic poverty in Nigeria is massive official corruption. The oil wealth of the nation is being siphoned off by politicians in collusion with bureaucrats. Gabriel Ogunjobi, a journalist and intern with the internet platform African Liberty, captured this as follows: "The desperation for survival of many of Nigerian youths is tough. Most are unemployed and can barely afford to feed themselves. The misappropriation of public funds that could have created jobs and other economic opportunities by corrupt politicians is the real problem here."³⁰

➤ **Negative influence of extravagant wealth**

The extravagant lifestyle of cyber fraudsters continues to draw many poor people into the morally corrupt profession. Celebrated internet fraudsters such as Hushpuppi lived in the exclusive Palazzo Versace Apartments in Dubai, had \$40.9 million in cash at home, 12 luxury cars parked in his garage valued at \$6.8 million, among other luxurious things of life. Always clad in customized designer outfits and sporting expensive wrist watches, he exhibited his super expensive lifestyle via regular social media posts. His followers on Instagram numbered well above two million. Many upcoming youths crave to be like him, not minding how he made his wealth. Rev. Christopher Omotunde, Bishop of the Ekiti Diocese of the Anglican Communion, has posited that the mindless pursuit of wealth by most Nigerians is the cause of the increasing rate of criminalization in the nation.³¹

Nigeria generally lacks good societal role models. Political leaders and public sector officials continue to demonstrate unbridled passion for monumental corruption. Here is a country that posthumously honored the late Gen. Sani Abacha, the despotic military head of state who stole billions of dollars from the national treasury.³² Amaka Anajemba, a member of the syndicate that defrauded a Brazilian banker of millions of dollars which resulted in the collapse of Banco Noreste, was appointed Managing Director of the Enugu State Waste Management Board by Governor Ifeanyi Ugwuanyi in 2016.³³

➤ **Easy to learn and low risk**

Many Nigerian cyber fraudsters are inducted into the clandestine profession by their streetwise peers. Cybercrime techniques are easy to learn and execute as they do not require much education or technical acumen. The entry costs are low. The requirements are a simple computer device (up-and-coming fraudsters often start with second-hand laptops), internet access, and hacking toolkits, readily available in the black market of the dark web, for those who want to venture into hacking schemes.

³⁰ Gabriel Ogunjobi. "Internet Fraud is Destroying Nigeria – thanks to the Government." African Liberty, September 23, 2019. <https://www.africanliberty.org/2019/09/23/internet-fraud-is-a-problem-in-nigeria-but-the-government-is-worse/>

³¹ Rotimi Ajomoyela. "Fake lifestyle, bane of crime in Nigeria – Anglican Bishop." Vanguard, November 11, 2019. p. 11.

³² Olu Fasan. "Nigeria shames itself by posthumously honouring Abacha." Vanguard, May 14, 2020. <https://www.vanguardngr.com/2020/05/nigeria-shames-itself-by-posthumously-honouring-abacha/>

³³ "Ugwuanyi's Curious Love for Amaka Anajemba." This Day, August 28, 2016. <https://www.thisdaylive.com/index.php/2016/08/28/ugwuanyis-curious-love-for-amaka-anajemba/>

Chigemezu Arikibi, the 19-year old Nigerian internet fraudster who defrauded a Cambodian woman of \$75,000 while posing as an American pilot working for a British airline, confessed: "It was Ugochukwu my friend who taught me how to do internet fraud. Ugochukwu used to communicate with white (oyibo) people on the internet and when he is chatting, I will be looking. I learned job from him for one week and I started my own."³⁴ Investigations by the Nigerian Economic and Financial Crimes Commission (EFCC) have shown that there are informal training centers where upcoming cyber con artists are coached in the art of online fraud by older fraudsters. Training centers in Lagos³⁵ and Akwa Ibom³⁶ were exposed by operatives of the EFCC, acting on intelligence. Unlike perpetrators of such crimes as armed robbery, kidnapping, militancy and piracy, which are risky to execute, many cyber fraudsters work remotely from their homes and other hidden locations, almost unrestrained. Nowadays they hardly use public cybercafés, to avoid being apprehended by prowling plain clothes law enforcement officials. Even when they are caught Nigerian fraudsters are confident that they can avert prosecution by using their vast illicit wealth to bribe law enforcement and judicial officials.

➤ Cinematic influence

It has been said that the foreign movies of the 1970s, 80s and 90s that depicted carefully orchestrated heists, armed robberies, bank frauds, among other cleverly executed crimes, have corrupted the traditional values of Nigerian society. The early Nigerian fraudsters began to put the tricks that they saw in these movies into practice. They soon turned the art against whites, mostly in Europe and America, using the justification that they were taking back the huge resources that the white imperialists stole from Africa during the period of the transatlantic slave trade and colonialism.

➤ Greed

While some individuals can easily spot emails with bogus offers, which are often full of grammatical errors and implausible scenarios, others continue to fall for the tricks of the cyber fraudsters. Greed, the unbridled desire to reap bountifully where one has not sown or to immensely benefit from illicit activities, is what makes most of the victims succumb to the wiles of cyber fraudsters. For instance, individuals who receive emails that announce that they have won lotteries they did not enter or that nominate them as emergency beneficiaries of inheritances that they are not entitled to should be wary. Nigerian cyber fraudsters are very smart. They know that greed is a part of human nature, that human beings naturally desire fortunes without having to work for them. So they make enticing offers that play on the psyche of their victims.

³⁴ Andrew Utulu. "419: Boy, 19, Nabbed For Allegedly Defrauding Cambodian Lady Of \$75,000." Saturday Independent, February 29, 2020. <https://www.independent.ng/419-boy-19-nabbed-for-allegedly-defrauding-cambodian-lady-of-75000>

³⁵ Xavier Ndah and Raji Adebayo, "EFCC Smokes Out Yahoo Boys' Kingpin in Lagos Hotel, Arrest 26 others." Independent, December 5, 2019, p.7. <https://www.independent.ng/efcc-smokes-out-yahoo-boys-kingpin-in-lagos-hotel-arrests-26-others/>

³⁶ Nsikak Nseyen. "EFCC arrests operators of 'yahoo academy' in Akwa Ibom," December 1, 2019. <https://dailypost.ng/2019/12/01/efcc-arrests-operators-of-yahoo-academy-in-akwa-ibom-photos/>

Greed is also something that rears its ugly head in the camp of the fraudsters themselves, especially when it comes to sharing their ill-gotten gains. In the Sakaguchi swindle saga, the originator of the scam, Dr. Hammed Ukeh, felt his fellow conspirators had sidelined him in the sharing of the booty, so he wrote a petition to the police informing on his fellow criminals. Fraudsters who feel their accomplices have sidelined or cheated them often use secret cult groups or hired assassins to exact revenge.

➤ **Bag eggs in the law enforcement agencies**

Typical Nigerian fraudsters offer bribes to law enforcement officials who are closing in on them. For instance Amaka Anajemba, after she took over the reins of her husband's vast illicit business empire upon his sudden death, attempted to bribe Mallam Nuhu Ribadu, the chairman of EFCC at the time, with N30 million when he brought charges of fraud and money laundering against her.³⁷ But the czar of the anti-graft agency, who was awarded the prestigious Sheikh Tamin Bin Hamad Al Thani International Anti-Corruption Excellence Award in Doha Qatar in 2018, was said to have declined the bribe. Many corrupt law enforcement officers would readily accept such bribes and let the culprits go free. Some would even tamper with evidence. In one incident, Hussani Abubakar, a staff member of the EFCC, stole vital exhibits from the forensic section of the anti-graft agency that could have been used as evidence in the prosecution of a local cyber fraudster.³⁸

Hope Olusegun Aroke, a convicted internet fraudster serving time in the Maximum-Security Prison in Kirikiri, Lagos, has been under investigation in relation to a \$1 million mega scam.³⁹ It appears that compromised elements in the prison system had allowed him access to the internet and a mobile phone, with which he plotted the scheme with the aid of external collaborators.

Some policemen hide under the cloak of fighting cybercrimes to enrich themselves. There have been reported cases of unauthorized stop-and-search operations on the roads, streets, and markets of cities and towns across Nigeria. Private residences, restaurants, bars, hotels, guest houses, and nightclubs, among other public places have also been raided, almost indiscriminately. Phones, laptops and other personal effects have been searched and confiscated on flimsy reasons. Individuals have been arrested on unfounded allegations only to be asked to part with some money before they are let go. A case in point is 21-year-old Isaac Ogbechie who, in one of the police checkpoints along the Benin-Asaba expressway, was accused of being a yahoo boy.⁴⁰ He said the police seized his mobile handset because it contained photos of some white people, as well as impounding his laptop because he did not have the purchase receipt. To gain public support, law enforcement agents must be seen to be sincere in the fight against cybercrimes.

³⁷ Geoffrey Ekenna. "Ready to Spill the Beans." Newswatch, February 23, 2004, p. 20.

³⁸ "Ex- EFCC Staff Jailed for Stealing Exhibits." EFCC, February 20, 2020.

<https://efccnigeria.org/efcc/news/5488-ex-efcc-staff-jailed-for-stealing-exhibits>

³⁹ "Internet fraud: Nigerian scammer 'pulls off \$1m heist' from prison." BBC News, November 19, 2019.

<https://www.bbc.com/news/world-africa-50480495>

⁴⁰ Awele Ogboru and Omo Oyibode. "Police Checkpoints: Security Tools or Extortion Joints?" The Pointer, February 1, 2020, p.8.

➤ **Lapses in documentation**

To register a SIM card in Nigeria, a prospective subscriber is required to provide a government-issued ID card (e.g. an international passport, a driver's license, a voter's card, a national identity card) in addition to providing their bio data and contact details. Due to the proliferation of forgery in the country cyber fraudsters can register their SIM cards with fake documents, which the telecoms operators spend little time checking. In the same manner, in collusion with compromised staff of banks, cyber fraudsters can open bank accounts using fake names and documents. Because Nigerian banks lag behind in conducting KYC (Know Your Customer), these accounts often bypass the laid-down processes of due diligence. With payment options such as Western Union and Money Gram, which are irreversible, cyber fraudsters are able to receive \$10,000 or below from their victims in a single transaction, once they can answer the relevant test questions, provide the Money Transfer Control number, the sender's name, expected amount, as well as the country from where the money is sent, while using fake documents and accounts to identify themselves. It has baffled EFCC investigators how the convicted internet fraudster Hope Olusegun Aroke was able to open two bank accounts, as well as buy a luxury house and car, under the fictitious name 'Akinwunmi Sorinmade' while doing time in prison.⁴¹

➤ **Spiritual powers**

Many cyber fraudsters are deeply involved in fetishes. Armed with the personal information of potential victims (e.g. name, date of birth, home address, place of residence, nationality, photographs) they often consult witch doctors and juju priests.⁴² They offer sacrifices at fetish shrines where the spirits of their potential victims are supposedly hypnotized and their minds captured. This may explain why some of the victims of the online fraudsters would readily empty their bank accounts as well as borrow money from family and friends to meet the demands for money that the fraudsters make. Some of the fraudsters even go to the extent of making human sacrifices. A case in point is 29-year-old internet fraudster Taiwo Akinola, who attempted to murder his mother Alice Iyabo Akinola as part of a ritual that was supposed to make his online scam business prosper.⁴³

➤ **Hard-to-get justice and minimal sentences**

Nigerian courts are currently overwhelmed with cases. The Federal High Court, for instance, which has 36 divisions, has over 200,000 cases to hear while it has only 82 judges.⁴⁴ This has caused long delays in the dispensation of justice.

⁴¹ "Internet fraud: Nigerian scammer 'pulls off \$1m heist' from prison." BBC News, November 19, 2109. <https://www.bbc.com/news/world-africa-50480495>

⁴² Juju priests, the equivalent of voodoo priests in Caribbean countries such as Haiti, ostensibly serve as mediums between the physical and spiritual worlds.

⁴³ "How 'yahoo-boy' try to kill im mam for money rituals." BBC Pidgin News, August 20, 2015. <https://www.bbc.com/pidgin/tori-45248779>

⁴⁴ Ade Adesomoju, Tunde Ajaja and Alexander Okere. "Justice suffers as 82 justices handle over 200,000 cases in federal high courts." Punch, July 21, 2019. <https://punchng.com/justice-suffers-as-82-judges-handle-over-200000-cases-in-federal-high-courts/>

Even when fraudsters are successfully prosecuted in a court of law, the penalties for the crimes are typically low. For instance, the Lagos High Court had, in July 2005, convicted and sentenced Amaka Anajemba to a paltry two and half years jail term in addition to ordering her to return \$25.5 million. An unemployed Nigerian man named Lawal Sholaru, who defrauded U.S. citizen David Geobel through Business Email Compromise, was sentenced to six months imprisonment with the option of paying a fine of N100,000 in lieu of serving the jail term.⁴⁵ The low sentences are never sufficient to deter cyber criminals from continuing with their activities.

➤ **Silence**

Many cases of cyber fraud go unreported as the victims choose to be silent. They are either afraid that the lost monies are too small to warrant being reported or that the chances of recovering them are slim. Some are afraid that they themselves could become complicit, or could be accused of being complicit, in the illicit schemes of the fraudsters.

➤ **Alternative storage medium**

Cryptocurrencies such as Bitcoin are serving as means to conceal illicit monies. The BBC reported that money mules who assisted the Nigerian internet fraudster Olalekan Jacob Ponle ('mrwoodberry' to his Instagram followers) in laundering the millions of dollars that he siphoned off from firms in Chicago, Iowa, Kansas, Michigan, New York and California, had converted the cash to Bitcoin in order to conceal the trail.⁴⁶

Efforts at stemming the menace

➤ **Cooperation/collaboration**

The U.S. has been in the forefront of efforts to stem cybercrimes and advance fee frauds. As far back as 2001 the U.S. Embassy in Nigeria provided the Interpol Office and Special Fraud Unit of the Nigeria Police Force packages worth \$150,000 which consisted of vehicles, computers, large generators, fireproof safes, VHF radios, and computer training for investigators, to enhance their operations.⁴⁷ The sharing of intelligence among agencies is yielding results. In May 2019 U.S. law enforcement kick-started Operation reWired, in conjunction with the law enforcement agencies of some other countries, including Nigeria. The cooperation was instrumental in the apprehension of over 80 persons, most of them Nigerians, for varying cybercrimes. It also disrupted the flow of \$118 million and led to the recovery of about \$3.7 million.⁴⁸ A previous collaboration codenamed Operation Wire Wire resulted in the arrest of 74 online fraudsters in 2018.

⁴⁵ Eniola Ayoola. "Unemployed man bags six months imprisonment for \$1,200 internet fraud." NNN, May 20, 2020. <https://nnn.ng/unemployed-man-bags-6-months-imprisonment-for-1200-internet-fraud/>

⁴⁶ Larry Madowo. "How the US caught flashy Nigerian Instagrammers 'with \$40m'." BBC News, July 8, 2020. <https://www.bbc.com/news/world-africa-53309873>

⁴⁷ Public Affairs Section of the U.S. Consulate General, Lagos, Nigeria. "U.S. Embassy and Nigerian Police Join Forces to Fight '419' Fraud." Crossroads, vol.8, no.8, August – October 2001, p.2-3.

⁴⁸ Abubakar Idris "FBI announces arrest of 167 alleged fraudsters in Nigeria in anti-fraud operation." techcabal, 11 September 2019. <https://techcabal.com/2019/09/11/fbi-announces-arrest-of-167-alleged-fraudsters-in-nigeria-in-anti-fraud-operation/>

Although the U.S has no formal extradition treaty with the U.A.E, due to the gravity of the cyber frauds allegedly perpetrated by 'Hushpuppi' and 'Woodberry' Abu Dhabi heeded Washington's request to extradite the suspected fraudsters to the U.S for immediate prosecution. The evidence gathered by the FBI is overwhelming. If convicted the Nigerians could spend 20 years in prison in the United States.

➤ **Arrest and prosecution**

Surveillance, intelligence sharing, and inter-agency cooperation has led to an increase in the arrest and prosecution of culprits. In 2019 law enforcement authorities in the U.S. unsealed a 252-count grand jury indictment, citing conspiracy to defraud and launder money, against 80 people (most of them Nigerians) in a \$46 million internet scam.⁴⁹ Damilola Otuyalo, who is wanted by the London Metropolitan Police in connection with a £500,000 scam, was arrested by the EFCC following actionable intelligence.⁵⁰ A suspected billionaire internet kingpin Onwuzurike Kingsley Ikenna, aka Nwanta Anayoeze Yonaracha, believed to be a specialist in BEC schemes, was arrested by the EFCC in Umuahia Abia state on January 26, 2020.⁵¹ Damilola Ahmed Adeyeri, who allegedly hacked the official email address of the American Cranes Manufacturing Company and stole \$82,570, and his mother Kareem Adeyeri, following a petition by the FBI, are now in EFCC custody.⁵²

➤ **Legislative/judicial/financial reforms**

Through acts of the Nigerian parliament the Economic and Financial Crimes Commission was established in 2003 and the Independent Corrupt Practices Commission in 2009 to investigate and prosecute cases of corruption, including cases of advance fee fraud and cybercrimes. The National Information Technology Development Agency (NITDA) came into being via the NITDA Act 2007. As an arm of the Federal Ministry of Communications it is charged with formulating and driving the national policy on information and communications technology.

To facilitate the prosecution of culprits, the Cybercrime (Prohibition, Prevention, etc) Act of 2015 was enacted. In the past computer-generated evidence was not admissible in Nigerian courts, but with the new Evidence Act 2011, in obvious recognition of advancements in digital communication, computer evidence is now admissible, provided it has not been tampered with.⁵³ The Central Bank of Nigeria released a Risk-based Cybersecurity Framework and Guidelines

⁴⁹ "US charges 80 people, mostly Nigerians, in \$46 m internet scam." Aljazeera, August 23, 2019.

<https://www.aljazeera.com/economy/2019/8/23/us-charges-80-people-mostly-nigerians-in-46m-internet-scam>

⁵⁰ Dimeji Kayode-Adediji. "EFCC Foils Man's Attempt To Smuggle In Hard Drug For Detained Son."

Premium Times, February 18, 2020. <https://www.premiumtimesng.com/regional/ssouth-west/377935-efcc-foils-mans-attempt-to-smuggle-in-hard-drugs-for-detained-son.html>

⁵¹ Xavier Ndah. "Suspected Billionaire Internet Fraud Kingpin Arrested in Umuahia." Daily Independent, 5 February 2020. <https://www.independent.ng/suspected-billionaire-internet-fraud-kingpin-arrested-in-umuahia/>

⁵² Oditia Sunday and Matthew Ogune. "Mother, son jailed three years for \$82,570 internet fraud." The Guardian, 29 January 2020. <https://guardian.ng/news/mother-son-jailed-three-years-for-82570-internet-fraud/>

⁵³ Stanley Nnabuo. "Admissibility of Electronic/Computer-Generated Evidence in Nigeria: Concerns and Disputations." Zeeblen Chambers, March 20, 2019. <https://zeeblenchambers.com/admissibility-of-electronic-computer-generated-evidence-in-nigeria-concerns-and-disputations/>

(effective January 1, 2019) to enable deposit money banks and payment service providers to counter the growing threats that cyber fraudsters pose (Central Bank of Nigeria, 2018).

➤ **Demolition of the notorious Oluwole market**

This infamous market place in the Balogun area of Lagos state was, for many years, a location where expert forgers of the criminal underworld operated. Anyone could procure all kinds of documents, including national identity cards, driver licenses, international passports of Nigeria and other countries, bank account statements, letter-heads of government offices, and certificates of different kinds, no matter what they wanted to use them for. The market was demolished by the Lagos State Government some years ago.

➤ **Reformation**

To mould the character of future generation of Nigerians, the EFCC has decided to catch them young. It has inaugurated Integrity Clubs in some schools, one of which is the Excellent Kiddies Montessori Academy in Bwari Abuja.

Further recommendations

The activities of cyber fraudsters are threatening the realization of inclusive sustainable development goals. Justice for victims is often hard to get, as it can take law enforcement officials years to get to the root of the matter. Even in cases where the cyber fraudsters are apprehended it is hard to recover the stolen monies, because they have been used to finance their extravagant lifestyles. We must therefore do everything possible to stem the growing tide of cyber fraud. The following recommendations will further help in addressing the problem.

- Law enforcement officials in Nigeria require relevant ICT training to better perform their tasks. In particular, officials require the latest training in cybercrime investigation and digital forensics. They require well-equipped computer forensic laboratories to be able to correctly analyze cybercrimes involving among other activities electronic intrusions, identity theft and digital impersonation. Training in network investigation, social media investigation, evidence recovery, unbreakable procedures for defending networks, Random Access Memory analysis, is also relevant. Big tech companies such as Microsoft, HP, Cisco, Google, and Facebook can play big roles in this regard.
- To deter cybercrimes the names of convicted perpetrators should be published in major Nigerian newspapers periodically. Before they begin to serve their jail sentences the culprits should be taken to their family houses in their home states to publicly shame them. As Gabriel Ogunjobi has noted: "There should be no sympathy whatsoever for anyone found guilty of perpetuating such selfish crimes."⁵⁴

⁵⁴ Gabriel Ogunjobi. "Internet Fraud is Destroying Nigeria – thanks to the Government." African Liberty, September 23, 2019. <https://www.africanliberty.org/2019/09/23/internet-fraud-is-a-problem-in-nigeria-but-the-government-is-worse/>

- The prevailing situation in Nigeria, where convicted cyber fraudsters get only one, two or three-year jail terms for serious financial crimes, whereas persons convicted of stealing a mobile phone can get jail terms of five or more years, is lamentable. This is a travesty of justice. After serving these minor prison terms the convicts are likely to go back to the illegal activities. Stronger jail sentences will help to deter such crimes.
- Again, while serving their jail sentences, convicted cyber fraudsters should be trained in vocations such as fashion design/tailoring, welding, generator set repair and similar trades, so they can be gainfully employed when they complete their sentences. They should also be given civics lessons so as to disorientate their minds from their past way of life.
- Specialized courts should be established to deal with the rising cases of financial crimes so that justice can be dispensed in a timely manner. Justice delayed, as a popular maxim puts it, is justice denied.
- The moral decadence in Nigeria ought to be addressed. The relevant government agencies (e.g. Ministries of Information and Culture, Youths and Sports, the National Orientation Agency) and the clergies of religious institutions should intensify their effort at inculcating the right values in Nigerians through enlightenment campaigns and sermons. That 'legitimate hard work pays' is the mantra that should be adopted and institutionalized in Nigeria to reawaken the youth and gear their minds towards positive endeavors. The efforts of the many Nigerians who have attained great success at home and abroad through legitimate means could be highlighted to inspire the country's youth.
- Financial institutions and payment service providers should endeavor to carry out credibility checks on their in-house ICT staff, as well as on the staff of contractor firms entrusted with the responsibility of maintaining their critical computer/network infrastructure. In the case of the cyber attack orchestrated on the Union Bank of Nigeria cited earlier in this essay, it was one of the computer technicians doing maintenance work in one of the branches on a part-time basis who enabled the fraudsters to gain access to the database of the bank.

Conclusion

It is the duty of individuals and businesses to take responsibility for their data security. They should put locks on their SIM cards in addition to putting passwords on their mobile handsets and other computer devices. Measures such as the following will help: (i) not using public cybercafés for online financial transactions; (ii) being wary of unsolicited emails and/or opening links and files attached to them; (iii) ensuring that a two-tier authentication step is activated for all of their email and social media accounts; (iv) not logging into public Wi-Fi, which is known to be susceptible to intrusive attacks; (v) not downloading apps or files from untrusted sources; (vi) having very strong antivirus scanners fitted to computer devices to detect and remove malicious malware; and (vii) carrying out regular updates of Android devices to install the latest Google security patches, which will optimize system stability. Furthermore, individuals and businesses should endeavor to use very strong passwords (combinations of letters, figures and symbols) for their email and social media accounts. They should not use the same password for all their accounts.

It has come to light that Yahoo Mail is still susceptible to intrusive attacks. In 2014, for instance, Yahoo suffered monumental data breaches in which the vital information of 500 million users, including names, email addresses, telephone numbers, birth dates, and encrypted passwords, were stolen in what was thought to be the biggest single computer intrusion on a corporate entity of all time.⁵⁵ Therefore Yahoo Mail (now owned by Verizon Communications) and other email service providers should take adequate steps to fortify their servers against external attackers.

Indeed, not only email service providers but all tech companies and IT firms need to improve the security of their systems on a regular basis, in view of the growing sophistication of cyber criminals. One way to do this would be to hold regular carefully controlled hacking competitions, in order to identify system weaknesses that cyber criminals could potentially exploit.

References

Central Bank of Nigeria. (2018). Risk-Based Cybersecurity Framework and Guidelines for Deposit Money Banks and Payment Service Providers.

<https://www.cbn.gov.ng/Out/2018/BSD/RISK%20BASED%20CYBERSECURITY%20FRAMEWORK%20FINAL.pdf>

Palo Alto Networks. (2018). Silverterrier: The Rise of Nigerian Business Email Compromise.

https://www.paloaltonetworks.com/apps/pan/public/downloadResource?pagePath=/content/pan/en_US/resources/whitepapers/unit42-silverterrier-rise-of-nigerian-business-email-compromise

⁵⁵ Nicole Perlroth. "Yahoo Says Hackers Stole Data on 500 Million Users in 2014." The New York Times, September 22, 2016. <https://www.nytimes.com/2016/09/23/technology/yahoo-hackers.html>

When the Hunters Learn to Shoot Without Missing, the Birds Learn to Fly Without Perching: protecting source taxation in Uganda's upstream oil sector from artificial profit shifting

Brian Collins Ocen¹

Abstract:

This paper examines the phenomenon of artificial profit shifting as a component of illicit financial flows. Uganda's upstream oil sector involves a rent sharing regime with the non-resident international oil companies. The involvement of international oil companies creates taxing rights for host governments. Unfortunately, these rights can be susceptible to artificial profit shifting - an aggressive strategy of tax avoidance which contravenes applicable anti-abuse tax laws and therefore falls within the prescriptive envelope of illegality. This paper discusses the unique opportunity for the application of anti-abuse tax laws and the need for judicial cooperation in doing so, as a tool against artificial profit shifting; whose negative impact on the tax-to-GDP ratio continues to undermine Uganda's efforts in domestic resource mobilisation to alleviate poverty.

Keywords: Illicit Financial Flows, Artificial Profit Shifting, Anti-Abuse Rules, Judicial Cooperation, Resource Colonialism.

Introduction

This paper traverses themes of taxes and taxation, and their effect on poverty alleviation in developing countries. Rodrik states that "the captains of the world economy have conceded that progress in international trade and finance has to be measured against the yardsticks of poverty alleviation and sustainable development" (2002, p. 29). Because the majority percentage of domestic resource mobilisation by government is typically supported by taxes (Henderson and Poole, 1991, p. 598), tax is inevitably a fundamental feature in poverty alleviation for developing states.

According to the OECD's revenue statistics on Uganda, since 2000 Uganda's tax-to-GDP ratio has never exceeded 11.8%, which it reached in 2018 (OECD, 2020). Yet in that same year, Uganda's tax-to-GDP ratio was still below that of neighbours Kenya and Rwanda; and similarly below the broader Common Market for Eastern and Southern Africa (COMESA) (World Bank Group, 2018, p.v).

The impact of Illicit Financial Flows (IFFs) on least developed countries such as Uganda is associated with a low tax-to-GDP ratio and continued reliance on official development assistance (aid) and/or debt. In 2015, a high level inter-governmental report noted that Africa was

¹ The author is a final year LLB student at Makerere University, Uganda. An earlier version of this paper was awarded second place in the Amartya Sen Prize 2020, with the presentation of the award taking place during a virtual ceremony at the ASAP Global Conference in November 2020. The views expressed in the paper are solely those of the author.

estimated to have lost more than \$1 trillion in IFFs, an amount that equals the official development assistance received by the continent within the same timeframe (High Level Panel, 2015, p.13). Most recently, the Africa Growth Initiative at Brookings has also noted that between 1980 and 2018 sub-Saharan Africa haemorrhaged US\$1 trillion in IFFs (Signe, Sow, and Madden, 2020, p.2).

There is no clarity on what the tax contribution to the net value of Uganda's oil will be. What is speculated is that the net present value of Uganda's oil will be US\$2 billion annually for at least the next 26 years (Lakuma, 2018, p.2). Whatever the tax contribution will be, it will undoubtedly be significant in raising Uganda's tax-to-GDP ratio. It is also important to note that the US\$2 billion is more than the US\$1.7 billion that Uganda gets as development assistance annually (Kamugisha, 2010, p.3)

Unfortunately, multinational companies have proven themselves capable of employing impermissible aggressive tax avoidance strategies characterized by artificial profit shifting. In recent years, no company has provided a more dramatic example than Heritage Oil and Gas Limited (hereafter 'Heritage') in its operations in Uganda's upstream oil sector. This essay focuses on Heritage's operations in Uganda, in order to highlight artificial profit shifting as a tax-related component of IFFs in the country's nascent upstream oil sector.

Uganda's upstream oil sector

The upstream oil sector involves the search for and recovery of crude oil, as well as its production. This includes the phases of exploration, drilling and production (Devold, 2013, p.4). Owing to the capital intense nature of the upstream oil sector, which requires advanced technology, this sector involves partnership with international oil companies (IOCs) to carry out its operations (Johnston, 2003).

With the involvement of IOCs, a suitable fiscal regime is needed. A fiscal regime is a set of instruments or tools that determine how the revenues from oil and mining projects are shared between the state and the companies (Gudmedstad, Zolotukhin and Jarlsby, 2010). The fiscal regime must aim to take into account the risks borne by the IOC and its need for a rate of return commensurate to that risk, while also providing revenue to the state which owns the resource (Energy Charter Secretariat, 2008, p.8).

In 2006 discoveries of 6.5 billion barrels of oil, of which 1.4 to 1.7 billion are economically recoverable, were made in Uganda. Although Uganda also engages a local content policy in the oil sector designed to try and enhance the benefits for local people beyond revenue to include jobs and the creation of businesses, revenue collection from the sector remains the key issue.

A significant source of revenue for the host country is from the taxation of the profit oil share of the IOC, as well as taxation of other activities of the IOC within the host country. Uganda operates a contractual petroleum fiscal arrangement known as the Production Sharing Agreement (PSA). Under this type of contractual arrangement, the government remains the owner of oil and gas resources and awards the IOC a license to exploit the oil and gas (Tordo, 2007).

Under Uganda's Model Production Sharing Agreement (hereafter MPSA), the contractor is compensated in kind through cost oil, which is the portion of the total value of available crude oil required to recover costs, as well as through profit oil, which is the portion of available crude oil after costs have been recovered (Government of Uganda, 2012, Article 12). This means that,

after deducting cost oil to cater for costs incurred by the IOC, the remaining production is profit oil (Bindemann, 1999, p.14). According to Article 12 of Uganda's MPSA, the apportionment of profit oil is on a sliding-scale set in favor of the government and based on cumulative production.

Article 13 of the MPSA also makes room for corporate income taxation of the profit oil of the IOC in accordance with Uganda's Income Tax Act. Aside from corporate income tax charged on profit oil of the IOC, other forms of taxes the government collects include capital gains tax, in case of transfer of assets by an IOC, and stamp duty on documents processed by an IOC.

Uganda also operates a hybrid PSA, where the IOC pays what is typically considered a tax on production, i.e. royalties covered by Article 9 of the MPSA. Further, the IOC pays non-tax revenues, i.e. a signature bonus paid upon obtaining a license to explore and a production bonus upon obtaining a license for production under Article 8 of the MPSA.

Finally, Uganda's production sharing regime is also combined with a form of equity participation known as carried equity participation as provided for by article 10 of the MPSA.²

Therefore, under this production sharing agreement model, the total share of government revenue take is the sum of: (i) revenue from the government share of profit oil; (ii) corporate income tax on the IOC share of profit oil; (iii) royalty payments by the IOC; (iv) bonus payments; and (v) a percentage of the NOC's share of the profit oil under the state equity participation provisions.

The history of the tax dispute between Heritage and the government of Uganda, which forms the nucleus of this paper, dates back to 1997, when Heritage was contracted by the government of Uganda to explore for oil in Uganda. After discovering commercially viable amounts of oil later in 2006, Heritage sold its interests to Tullow Oil (hereafter 'Tullow'). Typically, under Uganda's income tax laws, the sale by Heritage to Tullow was subject to a capital gains tax, i.e. a tax charged on the transfer of assets. However, in order to avoid this tax, Heritage resorted to the extensive use of artificial profit shifting mechanisms to illegally avoid the capital gains tax due to the government of Uganda.

What is Artificial Profit Shifting?

Profit shifting occurs when multinational corporations use tax planning tools as a vehicle to transfer profits from high tax jurisdictions to low tax jurisdictions. Although profit shifting is not illegal, it is subject to certain legal qualifications or limitations (Klemm and Liu, 2019, p.5). It violates such legal requirements when "it is associated with practices that artificially segregate taxable income from the activities that generate it", at which point it becomes "artificial profit shifting" (OECD, 2013, p.10).

Artificial profit shifting is a tax-related component of IFFs. Global Financial Integrity defines IFFs "as movements of money and value from one country to another that are illicitly earned, illicitly transferred, and/or illicitly utilized" (2018, p.3). The background to artificial profit shifting is a delicate balance between the legitimate individual rights of tax payers and the abuse of those rights by tax payers.

² Carried equity participation means that a National Oil Company (NOC) can enter into a joint venture with an IOC whereby the IOC agrees to advance funds to the NOC for the development to production stages, after which the NOC spends equally with the IOC and compensates the IOC for the funds advanced.

What do we mean by the aforementioned statement?

In principle, tax is strictly levied in accordance with statute. This is a well-established legal principle of tax administration and tax interpretation, captured by common law jurisprudence of *Cape Brady Syndicate V IRC* (1921) in which the court held that, “there is no presumption as to tax. [...] one can only look at the language used [in the statute]” (p.71).

This requirement of legal certainty enables the function of the rule of law, the purpose of which is to guard against arbitrary abuse of power by tax authorities. This also forms the basis for the legitimate individual rights of tax payers. The basis for the legitimate individual right of the tax payer (whether it be a natural person, i.e. an individual, or an artificial person, i.e. a company) is therefore the principle of certainty that entitles a tax payer to pay only what the law prescribes - nothing more and nothing less.

This certainty provides a significant benefit to tax payers, namely the benefit of tax planning. Tax planning involves organising your affairs in such a way that you pay the least amount of tax under the statute. It is achieved by legally minimising one’s taxable income. In *Union of India and Another V Azadi Bachao Andolan and Another* (2003), the supreme court of India held that tax planning cannot be treated as illegal. Vogel, adding the weight of his scholarly reputation to that position, writes that such a rule “applies, if not universally, at least within all Western constitutional democracies” (1986, p.79). But he adds that “nevertheless, tax planning inevitably reaches a point beyond which it cannot be tolerated within a legal system if it is intended that the system be just” (p. 79)

Generally, for tax planning to be valid, it must be exercised in a manner that does not involve dubious devices (*Vodafone International Holdings B.V v Union of India and Another*, 2012, para. 56). Therefore, similar to the “misuse of rights” legal concept postulated by Lord Sumption in *Prest V Petrodel Resources Limited* (2013) (hereafter the *Petrodel case*) as a concept that forms the basis for the lifting of the veil in company law, tax law has also developed the doctrine of the abuse of tax laws to distinguish permissible from impermissible tax avoidance. (Garbarino, 2014, pp. 216-217; Baker, 2013, p.8).³ In the *Petrodel case*, Lord Sumption defines the misuse of the legal concept of rights as one which “extends not just to the illegal and improper invocation of a right but to its use for some purpose collateral to that for which it exists” (*Prest vs. Petrodel*, 2013, para 17).

At an international level, abusive tax planning involves the use of formal arbitrage to defeat the distributed taxing rights of contracting states. The distribution of taxing rights among contracting states is captured under both the 2017 Update to the OECD Model Tax Convention on Income and on Capital (hereafter Update to the OECD Model Tax Convention) and the 2017 UN Model Double Tax Convention between Developed and Developing Countries (hereafter UN Model Tax Convention). One main objective of the model conventions or treaties is to eliminate double taxation on income obtained in international business. One of the ways to eliminate double taxation is to divide the taxing rights between resident country and source country.

³ The lifting of the veil refers to a principle in company law which forms a justification for courts to sidestep the corporate personality of companies when inquiring into purported misdeeds of the company, in order to establish who the company’s directors are, for purposes of attributing fault for the company’s misdeeds.

What is source taxation?

Under the international taxation regime, foreign companies with significant activities in a country are typically only taxed on the income from sources within that country. This is captured under Article 7 of the Update to the OECD Model Tax Convention. This is the concept of source taxation, which must be distinguished from resident taxation, which is captured under Article 4 of the Update. According to the resident taxation principle, if a company or person is classified as a resident, tax authorities of their place of residence have full taxing power over their worldwide income. In other words, a resident country claims the right to tax income that a company earns regardless of where in the world that income is generated.

In recognizing that a company may be taxed multiple times, the resident country that claims to tax on a worldwide basis gives a credit or exemption for taxes paid to other governments, in order to eliminate double taxation. This is generally covered under articles 23A and 24B of the Update to the OECD Model Tax Convention. And additionally, the commentary to article 23A also states that where there is a double tax treaty, such treaty will take precedence over domestic law in the determination of the method of grant of a credit or an exemption. Otherwise, the type of credit or exemption a company gets to prevent double taxation depends on the domestic tax law in its country of residence.

Source-based taxation is consistent with a benefits perspective on justifying tax jurisdiction, since source jurisdictions provide significant benefits to corporations that carry on business activities within them. Such benefits include the provision of infrastructure or education, as well as more specific government policies such as keeping the exchange rate stable or interest rates low. These benefits justify source-based taxation in the sense that the host country's government bears some of the costs of providing the benefits that are necessary for earning the income.

Tax planning to avoid source taxation

Tax rates differ from one country to another, as a matter of principle - because states are sovereign and hence have the right to impose their own tax rates, which they may do, for example, to offer more attractive tax rates for investors than competing states, but also due to practical considerations - because each state has varying economic needs and therefore each country's tax system is designed with different objectives. For instance, it is true that one objective of taxation is to raise revenue, but it is also the case that the government uses the tax system to encourage investment in certain types of assets or in certain specific industries (James, 2009, p.1). Against the background of differing tax regimes, multinational companies are able to use formal arbitrage to significantly reduce their tax liability.

For multinational corporations, whereas the ability to operate in several jurisdictions presents exposure to the taxing rights of more than one country, it also presents extensive opportunities for tax planning. When tax liability appears to be unavoidable, for a company looking at tax planning opportunities, it can lower the tax liability by reducing the tax base or the tax rate, the elements that determine the tax payable.

For international taxation planners and multinational entities, the tax planning tool kit to achieve this typically involves: i) avoiding a taxable presence in relation to the activities performed by subsidiaries in the high tax source country; ii) reducing the tax base in high tax source

countries by means of deductible payments to other subsidiaries in low tax jurisdictions; iii) ensuring no taxable profits at the level of the parent company in the parent company's residence country; and finally: iv) using hybrid mismatch arrangements that take advantage of differences in legal regimes such as residence rules, to provide particular benefits in eliminating the taxes that may be payable by intermediate subsidiaries.⁴

Such a tax planning tool kit, if merged with other harmful practices such as treaty shopping, transfer mispricing, and sham transactions, results in artificial profit shifting, an aggressive strategy of tax avoidance which contravenes specific and general anti-avoidance rules and hence falls within the prescriptive envelope of illegality (UN, 2017, pp.76-83).

A critical analysis of the tax planning tool kit of Heritage reveals extensive artificial profit shifting. A case study of the protracted tax dispute between Heritage and the government of Uganda provides excellent material for a discussion of artificial profit shifting. In this case, the tax planning tool kit of Heritage contained ingredients that violated Uganda's anti-tax abuse laws.

Heritage Oil and Gas Limited: Artificial Profit Shifting in Uganda – A Case Study

Source taxation rules require that a source country can only tax a foreign business if the business has a permanent establishment in the source country. If this is not the case, taxation by a source country can only be justified if the income being generated by the foreign business comes from immovable property. When it comes to income derived by a resident of a contracting state (residence country) from immovable property situated in the other contracting state (source country), such income may be taxed in that other state (source country) (OECD, 2017, Article 6, para1). In such a case, the source country has the right to tax income accrued in the source country (full taxing right), while the residence country, which has only a limited taxing right, is obliged to apply measures to eliminate double taxation, such as the credit method or the exemption method.

Uganda's Income Tax Act Cap 340 provides the basis of source taxation rights over income derived from sources in Uganda, including proceeds of the disposal of an interest in immovable property located in Uganda (Government of Uganda, 1997, section 79 (e)). In *Heritage Oil and Gas Limited v Uganda Revenue Authority* (2011), Heritage had attempted to establish that it had no rights in immovable property in Uganda. However, the tribunal found that Heritage was liable to pay tax on income from the sale of its interest in immovable property in Uganda.

Heritage contended that the exploration licences it had been granted did not confer on it any right to take possession or ownership of any oil from the exploration areas or to create any rights in respect of the land, and that therefore it had not derived income from immovable property.

⁴ An example of a hybrid mismatch arrangement is provided by a high profile tax avoidance scandal involving Apple. The tax planning tool kit used by Apple involved the incorporation of a holding company in Ireland, a country whose residence rules required effective management, and yet Apple maintained its effective management in the USA, a country that did not provide under its law for effective management but rather incorporation as the basis for tax residence. By taking advantage of such a mismatch arrangement, Apple was able to create a holding company which, although incorporated in Ireland, was resident in neither Ireland nor the USA for tax purposes. This enabled what has come to be known as stateless income. See BBC Panorama (6 November 2017). Paradise Papers: Apple's secret tax bolthole revealed. <https://www.bbc.com/news/amp/world-us-canada-41889787>

However, the tribunal found that the income generated by Heritage was income from interests in immovable property in Uganda. Heritage was therefore obliged to pay to the government of Uganda capital gains tax of approximately US\$405 million from the sale of its interests to Tullow.⁵

However, the basis on which the case was determined did not give the tribunal the opportunity to determine matters of artificial profit shifting, specifically of abuse of the Uganda Mauritius Double Tax Agreement which Heritage was widely thought to have abused to try to avoid taxes by shifting its profits artificially to Mauritius. The artificial profit shifting mechanisms involved in Heritage's tax planning tool kit included:

i) The use of sham transactions without substance.

The case facts revealed that, while Heritage was incorporated in the Bahamas prior to the sale of its interests to Tullow, it was later registered in Mauritius in 2010, although it carried out no commercial activity in Mauritius (Heritage v URA, 2011, p.5).

The revelations from the Panama Papers later showed how in fact Heritage had re-domiciled to Mauritius only 11 days before the sale of its interest to Tullow, just to avoid the capital gains tax due on the transaction.⁶ This move meant that Heritage would benefit from the Uganda Mauritius Double Tax Agreement which would ensure that Heritage, being resident in Mauritius for tax purposes, could not be taxed in Uganda. For Heritage, the fact that Mauritius is a low tax jurisdiction having a double tax agreement (DTA) with Uganda made it a perfect destination to which to shift profits, even though Heritage in fact had no physical presence in Mauritius.

The use of sham transactions means that a company will involve the use of 'mail-box companies', also often referred to as 'paper companies'. These companies do not exist in reality but only on paper. Such transactions are considered to violate the sham doctrine and substance rules under Action 5 of the Base Erosion Profit Shifting (BEPS) Action Plan (OECD, 2013, p.18).

ii) Treaty abuse of the Uganda-Mauritius double tax agreement.

Treaty abuse means that a company takes advantage of a tax treaty between two countries in order to facilitate what is commonly referred to as double non-taxation, i.e. when the company is taxed in neither the country where it generated/sourced the income nor where it is resident.

While appearing as a witness in Tullow Uganda Ltd v Heritage Oil and Gas Ltd and Another (2014) in the High Court of Justice, Queens Bench Division Commercial Court, the court discovered that Mr. Paul Richard Atherton, the director of Heritage, had given false evidence on oath to the Tax Appeals Tribunal of Uganda, in that he had stated that the re-domiciling from the Bahamas to Mauritius was "not purposely done to take advantage of the benefit Mauritius could offer in light of the transaction with Tullow", when in fact the re-domiciling was purposely done to take advantage of the Uganda-Mauritius DTA (para 51).

⁵ This figure excludes US\$30 million which was another tax assessment subject to another tax dispute between the Uganda Revenue Authority and Heritage (Heritage Oil and Gas Limited v Uganda Revenue Authority, 2010). The focus of this paper is the tax dispute in relation to the assessment of US\$ 405 million.

⁶ BBC (8 April 2016). Panama Papers: How Jersey-based oil firm avoided taxes in Uganda.
<https://www.bbc.co.uk/news/amp/world-africa-35985463>

International tax rules also require that entities must not structure transactions to purposely derive a tax benefit from DTAs. This rule is captured by “the principal purpose test” under the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, also known as the Multilateral Instrument (MLI) (OECD, 2018, Article 7 (1)).

Although international taxation has currently developed legal rules to address concerns of tax abuse, these legal rules still merely act as a deterrent. This is primarily because there is a paucity of judicial precedent to signal judicial cooperation with anti-abuse tax rules. It becomes increasingly difficult for tax authorities to enforce the anti-abuse rules without the certainty of judicial cooperation.

In Heritage’s case, because it had no assets in Uganda by the time of the tribunal’s decision, the government of Uganda used its enforcement mechanisms to issue agency notices on Tullow, which had purchased the interest of Heritage, and appointing Tullow as Heritage’s agent in respect of its tax liability. Tullow ultimately made a payment to the Government of Uganda pursuant to those notices. It then commenced proceedings against Heritage in order to obtain a contractual indemnity, pursuant to a provision in the Sale and Purchase Agreement that gave Tullow the right to an indemnity in respect of capital gains tax imposed on Heritage but charged to Tullow by the Government.

Protecting Source Taxation against Artificial Profit Shifting with Judicial Cooperation

The international taxation framework captured under UN Model Tax Convention makes allowance for domestic anti-avoidance rules, as well as judicial doctrines to address tax abuse (UN, 2017, p.72).⁷

Because anti-tax abuse rules have moved from the realm of law referred to as *lex ferenda*, i.e. the law ‘as it ought to be’, to the realm of law referred to as *lex lata*, i.e. the law ‘as it is’, it is imperative that courts provide the doctrinal precedent necessary to support the applicability and enforcement of these rules.

Anti-avoidance rules may be either general or specific. Specific Anti-Avoidance Rules, also referred to as Targeted Anti-Avoidance Rules, are designed to deal with particular transactions. Common Specific Anti-Avoidance Rules include: transfer pricing rules, thin capitalization rules or rules limiting interest deductibility, limitation of benefit rules/clauses, and controlled foreign company rules (UN, 2017, p.76).

The General Anti-Avoidance Rule (GAAR), on the other hand, is intended to prevent abusive arrangements that are not dealt with through the Specific Anti-Avoidance Rules. The GAAR is underscored by the UN Model Tax Convention (UN, 2017, Article 29 para. 9). Several countries have already implemented the GAAR to combat abusive tax avoidance. These include India, Italy, Australia, Canada, China, Germany, South Africa, the United Kingdom, Belgium, France, New Zealand, the United States and the Netherlands.

However, without judicial cooperation through judicial decisions that establish anti-avoidance doctrinal precedents, the anti-avoidance rules will lose their deterrence effect. Nonetheless, while the need for anti-avoidance doctrinal precedents is critical, it should not be at

⁷ Judicial doctrine refers to a court’s reasoning in support of its decisions. This reasoning takes the form of principles. When judicial doctrine is laid out by a court through one of its decisions, it becomes doctrinal precedent and hence a source of authority in settling subsequent disputes.

the expense of impartiality or independence of the judiciary, lest litigants lose faith in the courts as custodians of justice. The judiciary must ensure that neither side violates the equity principle, either through arbitrary tax administration by the tax authorities or through illegal tax planning activities by taxpayers.

It must be mentioned that, standing in the way of judicial cooperation in the applicability of anti-avoidance rules may be the absence of anti-avoidance rule(s) in the relevant DTA. Because DTAs generally override domestic tax statutes, if artificial profit shifting involves the abuse of a treaty, it may go unchecked even if there exists a GAAR in the domestic law provisions (Baker, 2013).

For that reason, states which are not a party to the MLI should rethink their position. The MLI is a good option because it avoids the burden of lengthy renegotiation of double tax treaties. Action 15 of the BEPS Action Plan (OECD, 2013) establishes that the BEPS Action 6, which deals with the prevention of treaty abuse as a minimum standard, is to be implemented through the MLI. Article 6 of the MLI incorporates/appends its provisions automatically into the bilateral tax treaties of its states parties.

Conclusion

As a result of post-colonial resource nationalization and a general recognition of the principle of permanent sovereignty over natural resources by the international community, specifically under United Nations General Assembly Resolution A/RES/3171 (1973), states have taken up resource nationalistic identities (Stevens, 2016, p.4). However, resource colonialism threatens to rare its ugly head in a different fashion.

IFFs by international companies in the oil sector remain a concern. To understand the significance of this problem to poor countries like Uganda, it is important to bear in mind that the amount of capital gains tax involved in the Heritage dispute “is more than the Ugandan government’s annual health budget” (Myers, 2010, p.2). Some commentators have gone as far as asserting that such tax avoidance (which oversteps the threshold of legality) by IOCs in developing countries “perpetuates and reinforces ‘resource colonialism’” (Evans et al., 2013, p.17).

The proper applicability of anti-avoidance rules protects the legitimate right of the individual tax payer while preventing the abuse of that right by tax payers themselves. Hence these anti-avoidance rules, along with judicial cooperation, are necessary to curtail the ever-increasing use of artificial profit shifting by multinational entities to reduce their tax liabilities.

References

- Baker, Phillip. (2013). Improper Use of Tax Treaties, Tax Avoidance and Tax Evasion. Paper No. 9-A, Papers on Selected Topics in Administration of Tax Treaties for Developing Countries. United Nations Department of Economic and Social Affairs.
https://www.un.org/esa/ffd/wp-content/uploads/2013/05/20130530_Paper9A_Baker.pdf
- Bindemann, K. (1999). Production Sharing Agreements: An Economic Analysis. Oxford Institute for Energy Studies. WPM 25.
<https://www.oxfordenergy.org/wpcms/wp-content/uploads/2010/11/WPM25-ProductionSharingAgreementsAnEconomicAnalysis-KBindemann-1999.pdf>

Cape Brandy Syndicate v IRC. (1921). [1] KD 64

Devold, H. (2013). Oil and Gas Production Handbook: An Introduction to Oil and Gas Production, Transport, Refining and Petrochemical Industry. ABB Oil and Gas.

https://library.e.abb.com/public/34d5b70e18f7d6c8c1257be500438ac3/Oil%20and%20gas%20production%20handbook%20ed3x0_web.pdf

Energy Charter Secretariat. (2008). Taxation Along the Oil and Gas Supply Chain: International Pricing Mechanisms for Oil and Gas.

https://energycharter.org/fileadmin/DocumentsMedia/Thematic/Taxation_Study_2008_en.pdf

Evans, M., Galkina, A., Marriott, J., Minio-Paluello, M., Shoraka, S., & Smith, K. (2013). Making a Killing: Oil Companies, Tax Avoidance and Subsidies. Platform London.

<https://platformlondon.org/wp-content/uploads/2013/02/MakingAKilling-LOWRES.pdf>

Garbarino, C. (2014). Legal interpretation of Tax Law: Italy. In R. Krever & R. Van Berderode (Eds.), *Legal Interpretation of Tax Law* (pp. 213-249).

https://papers.ssrn.com/Sol3/papers.cfm?abstract_id=2967246

Global Financial Integrity. 2018. A Scoping Study of Illicit Financial Flows Impacting Uganda.

https://www.gfintegrity.org/wp-content/uploads/2018/10/Uganda-Report-2018_12.20.18.pdf

Government of Uganda. (1997). Income Tax Act, Chapter 340.

<https://ulii.org/akn/ug/act/1997/11/eng@2000-12-31>

Government of Uganda. (2012). Model Production Sharing Agreement for [Petroleum Exploration, Development and Production] or [Petroleum Development and Production].

<https://www.unoc.co.ug/wp-content/uploads/2018/06/MPSA.pdf>

Gudmestad, O., Zolotukhin, A., & Jarlsby, E. T. (2010). *Petroleum Resources with Emphasis on Offshore Fields*. WIT Press.

Henderson, J. V., & Poole, W. (1991). *Principles of Microeconomics*. Volume 1: D.C. Heath.

Heritage Oil and Gas Limited V Uganda Revenue authority (2010), (TAT Application-2010/28) [2011] UGTAT 6 (23 November 2011).

<https://ulii.org/ug/judgment/tax-appeals-tribunal-uganda/2011/6>

Heritage Oil and Gas Limited v Uganda Revenue Authority (URA), (2011) (TAT Application-2010/26) [2011] UGTAT 8 (23 November 2011).

<https://ulii.org/ug/judgment/tax-appeals-tribunal-uganda/2011/5>

High Level Panel. (2015). Track it, Stop it, Get it. Illicit Financial Flows. Report of the High Level Panel on Illicit Financial Flows from Africa. Commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development.

https://www.unodc.org/documents/NGO/AU_ECA_Illicit_Financial_Flows_report_EN.pdf

- James, S. (2013). Tax and Non-Tax Incentives and Investments: Evidence and Policy Implications. Investment Climate Advisory Services of the World Bank Group. <http://www.estimacionestributarias.com/archivos/Effectiveness.pdf>
- Johnston, D. (2003). *International Exploration Economics, Risk, and Contract Analysis*. Penn Well Books
- Kamugisha, D. (2010). Legal Ownership of Oil: Socio-Economic Implications for Uganda. In Oil Watch Africa Network, Oil Production in Africa: Livelihoods and Environment at Stake: Should the oil rather remain in the ground? <https://www.nape.or.ug/publications/ecosystems-restoration/28-oil-production-in-africa-livelihoods-and-environment-at-stake/file>
- Klemm, A., & Liu, Li. (2019). The Impact of Profit Shifting on Economic Activity and Tax Competition. IMF Working Paper, WP/19/287. <file:///C:/Users/User/Downloads/wpia2019287-print-pdf.pdf>
- Lakuma, C. P. (2018). Oil Wealth in Uganda: Analysis of the Macroeconomic Policy Framework. Centre for Research on Peace and Development (CRPD) Working Paper No. 62. <https://soc.kuleuven.be/crpd/files/working-papers/crpd-no-62-lakuma-full.pdf>
- Myers, K. (2010). Selling Oil assets in Uganda and Ghana – A Taxing Problem. Revenue Watch Institute. https://resourcegovernance.org/sites/default/files/documents/myers_rwi_taxing_problem_08_2010.pdf
- OECD. (2013). Action Plan on Base Erosion and Profit Shifting. <https://www.oecd.org/ctp/BEPSActionPlan.pdf>
- OECD. (2017). 2017 Update to the OECD Model Tax Convention. <http://www.oecd.org/ctp/treaties/2017-update-model-tax-convention.pdf>
- OECD. (2018). Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. <https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf>
- OECD. (2020). Revenue Statistics in Africa 2019 – Uganda. <https://www.oecd.org/countries/uganda/revenue-statistics-africa-uganda.pdf>
- Prest v Petrodel Resources Limited and others, [2013]. UKSC (Supreme Court) 34. <https://www.supremecourt.uk/cases/docs/uksc-2013-0004-judgement.pdf>
- Rodrik, D. (2002). Globalization for Whom? Time to change the rules – and focus on poor workers. Harvard Magazine. <https://www.ias.edu/sites/default/files/sss/pdfs/Rodrick/commentary/globalization-for-whom.pdf> or <https://drodrik.scholar.harvard.edu/files/dani-rodrik/files/globalization-for-whom.pdf>

- Shay, S. E., Fleming, J. C. Jr., & Peroni, R. J. (2002). The David R. Tillinghast Lecture: "What's Source Got to do With It?" Source Rules and U.S. International Taxation. *Tax Law Review*, 56. https://papers.ssrn.com/Sol3/papers.cfm?abstract_id=2704604
- Signe, L., Sow, M., & Madden, P. (2020). Illicit Financial Flows in Africa: Drivers, destinations, and policy options. Africa Growth Initiative at Brookings. Policy Brief. <https://www.brookings.edu/wp-content/uploads/2020/02/Illicit-financial-flows-in-Africa.pdf>
- Stevens, P. (2016). International Oil Companies: The Death of the Old Business Model. Research Paper. Chatham House. <https://www.chathamhouse.org/sites/default/files/publications/research/2016-05-05-international-oil-companies-stevens.pdf>
- Tordo, S. (2007). Fiscal Systems for Hydrocarbons: Design Issues. World Bank Working Paper 123. <https://openknowledge.worldbank.org/bitstream/handle/10986/6746/409020PAPER0Fi1C0disclosed0Sept0181.pdf?sequence=1&isAllowed=y>
- Tullow Uganda Ltd v Heritage Oil and Gas Ltd and Heritage Oil Plc. [2013]. EWCA 1615 (Comm.). In the High Court of Justice, Queen's Bench Division Commercial Court, Royal Courts of Justice Strand, London, WC2A 2LL.
- Union of India and Another v Azadi Bachao Andolan and Another [2003] 132 Taxman 373 (SC).
- UN. (1973). Permanent Sovereignty over Natural Resources. General Assembly resolution A/RES/3171 (XXVIII). [https://undocs.org/pdf?symbol=en/A/RES/3171\(XXVIII\)](https://undocs.org/pdf?symbol=en/A/RES/3171(XXVIII))
- UN. (2017). Model Double Taxation Convention between Developed and Developing Countries. https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf
- Vodafone International Holdings B.V v Union of India and Another, (2012). 6 SCC 613. <https://www.casemine.com/judgement/in/5608fc58e4b014971114bf36/amp>
- Vogel, K. (1986). Double Tax Treaties and Their Interpretation. *International Tax and Business Lawyer*, Volume 4:1, 1-85 <file:///C:/Users/User/Downloads/fulltext.pdf>
- World Bank Group. (2018). Financing Growth and Development: Options for Raising More Domestic Revenues. Uganda Economic Update, 11th Edition. <https://documents.worldbank.org/curated/en/425631526323380885/pdf/126184-WP-PUBLIC-FinalReportUgandaEconomicUpdate.pdf>

Illicit financial flows and the extractives sector on the African continent: Impacts, enabling factors and proposed reform measures

Philip Mutio¹

Abstract:

This article is based on research in the literature on illicit financial flows (IFFs) in the context of the African extractives sector. It summarizes the adverse economic, political, and environmental impacts of IFFs and identifies key gaps in current legislation and policy and weaknesses in national tax systems. Specific actions to strengthen the effectiveness of current legal and regulatory measures are proposed.

Legislative and policy gaps and weak taxation systems in African countries have allowed legislation to be circumvented or interpreted by mining companies or governments in a way that perpetuates IFFs, for example through manipulation of local content requirements or transfer mispricing. Weak taxation systems mean that mining companies do not pay tax commensurate with earnings. Where beneficial ownership full disclosure is not implemented, complex corporate structures lead to lack of transparency and linkage to politically exposed persons open to corruption.

To address these shortcomings taxation systems must be strengthened by improving the quality of human resources in taxation agencies. Beneficial ownership requirements should be strengthened, and local content requirements reformed and implemented effectively.

Keywords: Illicit Financial Flows, Money Laundering, African Extractive Industries, Beneficial Ownership Disclosure.

Definition of Illicit Financial Flows

There are different definitions of illicit financial flows (IFFs). As per the normative interpretation, IFFs comprise 'capital taken abroad in a hidden form, perhaps because it is illegal, or perhaps because it goes against social norms, or perhaps because it might be vulnerable to economic or political threat' (cited in Reuter, 2017, Literature Review IFFs). IFFs can also be defined as 'money illegally earned, transferred or utilised,' including corruption and its proceeds, money laundering,

¹ I would like to acknowledge my employers, Transparency International Kenya, for encouraging personal career development through the writing of this paper. My post as Programme Lead, Social Justice and Economic Accountability Programme has provided me with experience of measures to address illicit financial flows in the context of the African extractives sector. This article was written independently, and the views expressed in the paper do not necessarily reflect those of Transparency International Kenya. I am enormously honoured and privileged to have received the guidance of Professor Thomas Pogge of the Global Justice Program, Yale University, and his team, who have supported me in editing my original essay for which I received the Amartya Sen essay competition award in 2020. I am also grateful to academics and policy makers who have contributed to our growing understanding of illicit financial flows in the African extractives industry. I did not receive any funding while writing this article, and there is no conflict of interest in respect of the research, authorship, or publication to declare.

tax evasion and tax avoidance (cited in Le Billon, 2011, p.2). In this essay the term 'illicit financial flows' is intended to encompass all of the activities noted in the definitions above.

IFFs and sustainable development

Illicit financial flows and measures to combat them are complex areas of international and national economic, development, security, and rule of law policy. They affect, and are affected by, many wider policy objectives and involve many disparate actors across a variety of governmental and non-governmental policy disciplines. Therefore, there is a risk that policies with regard to IFFs might be confusing or badly coordinated and that their implementation may result in lack of sustainability, unintended consequences, or competing priorities. Consequently, IFFs are a priority area for policy coherence regarding sustainable development (OECD, 2014a).

The negative effect of IFFs on development is recognised in the Sustainable Development Goals, which include among their targets the significant reduction by 2030 of IFFs, along with the strengthened recovery of stolen assets and the combating of all forms of organised crime.² Additionally, while IFFs are related directly only to one target, they are relevant to many other targets that are central to the sustainable development agenda.

IFFs and the African continent extractives context

Numerous instruments have been adopted at the international, national, and regional level targeting the extractive industries sector as well as addressing IFFs. However, the effectiveness of these instruments remains limited, as revealed by recent scandals that have tarnished this sector (Lemaître, 2019). Mining companies and government officials are creative and innovative in circumventing legislation designed to combat these illicit practices. Manipulation of the rules in this sector is made possible not only through the support of intermediaries but also the weaknesses in the existing legal systems (African Union Commission, 2019). This implies that although there are existing legal systems, in practice they are not effective.

About 80 countries have abundant prized natural resources such as oil, minerals, forests, or precious stones. These countries often base their economic development on the export of these resources, which represent significant revenues for their economies. In some countries, these resources may account for more than 90% of total exports and 60% of total government revenue (IMF, 2012). The extraction of natural resources can lead to exceptional profits. Well managed, these revenues could represent a great opportunity for the economic and social development of producing countries. However, natural resources are often located in countries with a low human development index, a high level of corruption, and weak legal frameworks and law enforcement (UNDP, 2015). Revenues generated from mining rarely benefit the general population, including indigenous people and local communities, and the exploitation of natural resources is often associated with IFFs (Oxfam, 2009; Williams & Le Billon, 2017).

IFFs represent billions of dollars in lost revenues for countries all over the world. For Africa, lost revenue from IFFs has been estimated as equivalent to the average official development

² See Sustainable Development Goals. Goal 16: Promote just, peaceful, and inclusive societies. Target 16.4. <https://www.un.org/sustainabledevelopment/peace-justice/>

assistance (ODA) and dedicated assistance budget each year (UNECA, 2015). This level of lost revenue dramatically reduces the resources available for essential public services such as education or health, which may undermine achievement of the Sustainable Development Goals.

IFFs within the extractive sector can be explained by numerous factors: the involvement of multiple actors (public officials, national and multinational corporations, intermediaries); the exceptional profits generated; opacity and secrecy; and weak governance (Kolstad & Søreide, 2009). In addition, these resources are located in only a few countries, while most economies heavily rely on oil, gas, and mining products to function. For example, the European Union (EU) imports over 90% of its oil, 60% of its gas, and 40% of its uranium, while China is the second largest importer of oil (European Commission, 2014; IEA, 2016). Therefore, these resources are essential and of major strategic interest to many countries.

According to a study conducted by the Organisation for Economic Co-operation and Development (OECD), the extractive industries (oil, gas, and minerals) sector is the one most prone to foreign bribery (OECD, 2014b). Transparency International's 2017 Corruption Perceptions Index seems to show a link between corruption and the extractive sector: numerous oil, gas and mineral producing countries are at the bottom of the ranking each year. In 2017, out of 180 countries, Angola ranked 167th, the Republic of the Congo 161st, Uganda 151st and Nigeria 148th (Transparency International, 2017).

Corruption in this sector takes the form of petty bribery, grand corruption, extortion, undue influence, embezzlement, profiting from unclear rules, manipulating the law, or turning a blind eye to illegal activities. Corruption takes place at all stages of the value chain: from allocation of licences, negotiation of contracts or procurement of goods and services to revenue collection and monitoring of operations (OECD, 2016). Tax evasion and tax avoidance in the oil, gas and mining sector are also prominent and constitute manipulation through transfer pricing, inflated costs of goods and services, under-reporting of production volumes, underestimation of the value, or treaty and law shopping (Hubert, n.d.). For example, over the period 2000-2009, 56% of trade mispricing from Africa came from the extractive industries sector (UNECA, 2015). Numerous mechanisms and systems, including the use of tax havens, secrecy jurisdictions, legal/regulatory havens and specially designed corporate vehicles, enable the hiding of proceeds from corruption and tax avoidance.³

Some multinational companies are arguably at the heart of cross-border capital movements, in some instances using their power and connections to conceal illegal activities or evade taxes. It has been estimated that over 60 percent of total illicit flows are derived from legal commercial transactions (Baker, 2005). Motivation for IFFs may also be linked to a country's own internal investment risks, such as the threat of expropriation or confiscation of private property, economic and political uncertainty, financial repression, or devaluation. However, the enormous capital outflows from Africa can no longer be explained solely by domestic risks factors (UNECA, 2018). Besides, the local investment opportunities sufficiently outweigh the risks of doing business.

³ 'The term "secrecy jurisdiction" is used instead of tax haven to refer to jurisdictions that specialise in enabling individuals to hide their wealth and financial affairs from the rule of law, more than in enabling multinational corporations to shift tax out of the countries where they operate in order to pay less tax.' Tax Justice Network. <https://taxjustice.net/topics/tax-havens-and-secrecy-jurisdictions/>

According to the OECD, in 2015 all the 54 African countries combined had a joint consolidated tax revenue to GDP ratio of about 19%, whereas Latin American and Asian countries had an average of about 22% and 15% respectively. By comparison, in OECD states the average was 34%.⁴ The OECD notes that a variety of factors affect the ability of countries to generate tax revenues: “the presence of large informal and subsistence sectors, narrow tax bases, and dependence on volatile export commodities.”⁵ Kar and Spanjers (2015) estimate that in 2013, developing countries lost US\$1.1 trillion through IFFs. They note that this estimate is highly conservative because it overlooks movements of bulk cash, the mispricing of services, and many types of money laundering. They further state that about 45% of capital flight ends up in secret financial jurisdictions, and 55% ends up in developed countries. The movement of IFFs from developing to developed countries, where most of the stolen funds and assets are hidden, demonstrates why this is a global problem that requires holistic global efforts and approaches.⁶ The promotion of strong international architecture that is ready to combat and fully eliminate the problem is of prime importance.

African countries are yet to develop country-specific working definitions of IFFs with practical application in the mining sector. The definition provided by the High Level Panel on Illicit Financial Flows provides a useful building block for country-and sector-specific definitions of IFFs (UNECA, 2015). The report’s emphasis on illegality along the leakage chain makes it highly focused, tracking flows that violate laws in the source countries through the transfer process, and their motivation and use (UNECA, 2017). The term illicit is flexible enough to accommodate strictly legal aspects and practices that go beyond established norms, including tax avoidance.

Impact of Illicit financial flows on the mining sector in Africa

Economic impact

The status of domestic resource mobilization in Africa is improving, albeit slowly. Owing to sustained economic growth, revenue collection has increased over the last ten years. Overall, public revenues mobilized internally grew from 17.5 per cent of GDP in 1980 to 22.3 per cent in 2010 (UNECA, 2017). The progress has been underpinned by the improvement of institutions. According to the recent Mo Ibrahim Index of African Governance (Mo Ibrahim Foundation, 2019), public management as an aggregate score increased over the last five years at 1.5 per cent over the period.

This progress, however, masks the damaging institutional impact of IFFs. African economies bear a disproportionate brunt, with the highest IFF to GDP ratio in Africa at 5.7 per cent. Like a vicious circle, IFFs erode the tax base of most African countries, and weakened fiscal

⁴ Radha Kulkarni. “Taking global action against illicit financial flows: The scope of the issue and how can the international community act in support of the 2030 Agenda.” UNDP Blog, October 22, 2018.

<https://www.undp.org/content/undp/en/home/blog/2018/taking-global-action-against-illicit-financial-flows.html>

⁵ Ibid.

⁶ Seleman Yusuf Kitege. “The Global Dilemma of Illicit Financial Flows: Time for Collective Action.” African Union Development Agency (AUDA-NEPAD), March 27, 2020.

<https://www.nepad.org/news/global-dilemma-of-illicit-financial-flows-time-collective-action>

bases in turn allow the acceleration of illicit practices. Considered on a per capita basis, tax collection has diminished across the continent. “In the EAC and SACU, tax revenue to GDP increased steadily - at a much faster pace in the latter group, largely a South Africa effect. The resource sector played a very minor role in this development, and none in EAC, which is the only group among the five not to report resource revenues “(Mansour, 2014, p. 14).⁷

While natural resource endowment affords opportunities for fiscal transformation, resource-rich Africa remains unable to take advantage of this wealth. In fact, resource-rich African countries have not performed any better than their resource-poor counterparts with regard to revenue mobilization (Ndikumana & Abderrahim, 2010). Several reasons may account for this gap, including the damaging effects of IFFs on institutions. Due to limited fiscal revenues, mineral-rich countries are unable to build the type of capacity necessary to negotiate contracts that place effective restraints on IFFs, formulate policies that are effective and create an efficient tax administration to mobilize fair tax collection from their natural resources (UNECA, 2017).

Mineral-rich Africa is not only collecting less revenue from its natural resources than it should but is also unable to support other sectors of the economy effectively. A negative correlation is observed between resource revenues and non-resource (aid) revenues, even though increased resource revenues may outweigh the loss. For example, the Democratic Republic of the Congo, with an illicit outflow to tax revenue ratio of 373 per cent (Spanjers & Foss, 2015), had an increase in the resource revenue-to-GDP ratio from an average of 17 per cent in the early 1980s to 32 per cent in the late 2000s. During that period, the non-resource revenue ratio dropped from 15 per cent to 7 per cent (Ndikumana & Abderrahim, 2010). During the same time in Equatorial Guinea, with a capital outflow to tax collection ratio of 138 per cent, the resource revenue-to-GDP ratio increased from zero to 35 per cent, while the non-resource revenue ratio dropped from 20 to less than 2 per cent (UNECA, 2017).

If efforts to curb the over \$50 billion in IFFs leaving Africa were successful, the continent would be more than able to meet its infrastructure needs, a binding constraint to economic growth (UNECA, 2015). UNECA projects that by targeting readily attainable objectives in terms of modernizing tax administration, governments could generate an additional 50 billion in tax revenues within the next five years alone (UNECA, 2017). All countries including African countries have no option but to look inward, making every effort to seal capital flight gaps as aid levels dwindle and become relatively marginal for meeting the seventeen Sustainable Development Goals. Notably, it will cost the world over \$4.5 trillion in state spending to meet the endorsed SDG 169 targets. This is 33 times the total overseas development assistance for a year (UNECA, 2017).

Political

The corresponding relationship between IFFs and governance is complex. IFFs impact both strong and weak states, albeit to varying degrees. However, there appears to be a weak correlation between degrees of IFFs and common governance barometers, including the Fragile

⁷ The five groups referred to are “...the East African Community (EAC), the Economic Community of West African States (ECOWAS), the Economic and Monetary Community of Central African States (CEMAC), the Southern African Customs Union (SACU), and the West African Economic and Monetary Union (WAEMU).” Mansour, 2014, p.14, footnote 12.

States and Corruption Perception Indices, as well as the World Bank's Country Policy and Institutional Assessment (CPIA) (Spanjers & Foss, 2015). The "the paradox of plenty"- the great mineral wealth which exists side by side with pervasive poverty in Africa and the need to push for continent-wide legislation on access to data and statistics from revenue and profits analysis on this has been in discussion for a long time at the African Union level.

This suggests that IFFs constitute an African and global problem. IFFs undermine political governance in African countries rich in natural resources as well as the destination countries. Capital flight from mineral-rich states provides an avenue for the breakdown of lawfulness and opens an enabling environment for corruption and its devastating impacts on domestic revenue collection institutions. Laundered money often reroutes its way back into the political system, eroding trust in the judicial system, as well as politics. Over 80 per cent of mineral-rich African countries associated with high IFFs underperformed in the areas of the rule of law and government effectiveness, according to the recent Natural Resource Governance Index (NRGI), an accountability and transparency tool for the mining sector (NRGI, 2017). More than 50 per cent of the poorly performing countries were from Africa (UNECA, 2017).

Environmental

The boom in extractives and exploration of natural resources in Africa poses major risks of environmental degradation and a source of corrupt practices leading to lack of transparency and an increase in IFFs.

The criminal component of IFFs also results in widespread and systematic degradation of the environment. While it is difficult to establish clear causation, it is reasonable to assume that the under-pricing of African minerals will accelerate their depletion. Under-reporting the timber exports from a country like the Democratic Republic of Congo, for example, accelerates the deforestation of one of the world's critical ecosystems (Greenpeace, 2008; UNECA, 2017). Abusive transfer mispricing of minerals may also under-price the environmental cost of mine closures, leaving the state to assume the liability, with a lasting impact on the population's health and safety (UNECA, 2017).⁸

Conditions that enable the persistence of IFFs in the extractives sector

Gaps and unintended consequences of legislation and policy on IFFs

In the last decade, innovative legislation has been introduced at the national, regional, and international level to reduce opacity, combat IFFs and promote the sound management of the extractive industries sector. However, in some instances, legislation has been modified or interpreted in a way that allows mining companies or governments to continue to perpetuate IFFs, as highlighted by recent scandals that tarnished the sector (Lemaître, 2019). Modifying the rules of the game is achieved through the support of middlemen and the existence of weak legal systems and tools (African Union Commission, 2019).

⁸ The underpricing of mine closures means less funds are available to meet the cost of mitigating the adverse environmental impacts of the mining process and the abandoned mine sites.

Most countries lack a consistent whole-of-government policy framework, and while there is increasing awareness of multinational companies' practice of avoiding tax in the sector, no clear working definition of capital flight exists in any of the mineral systems (UNECA, 2017). Some countries have incorporated various anti-avoidance measures into their policies, laws and regulations, targeting precise features of IFFs including transparency and accountability, corruption, money laundering and financing of terrorism. In the meantime, business investment initiatives created to attract overseas direct investment in the sector are excessive and not aligned with domestic resource mobilization objectives. Due to tax exemptions in the sector, tax authorities in countries like Zambia are losing over \$1.6 billion annually in foregone tax revenue (UNECA, 2017).

Beneficial ownership disclosure in the extractive sector- 'a path fraught with pitfalls'

Knowing who really owns a company has been a key advocacy theme for civil society organisations combatting secrecy and opacity within the extractive industries sector (see for example NRGI, 2016). Disclosing beneficial ownership is a great deterrent to IFFs, because knowing who really owns a company is important when, for example, revenue collection authorities wish to check whether a company has paid its taxes commensurate to earnings. Complex corporate structures have enabled both public and private actors to hide who directly or indirectly ultimately owns a company, which may contribute to concealing suspicious activities. Transparency of beneficial ownership makes it possible to determine whether the company is linked to politically exposed persons open to corruption.

In the last couple of years, the issue of beneficial ownership disclosure has been at the forefront of the Extractives Industry Transparency Initiative's (EITI) work to improve the transparency of the extractive industries sector. In 2013, the EITI Standard was revised to include, among other things, a provision on beneficial ownership, (EITI, 2015a, Requirement 3.11, pp. 24-5). EITI also launched a pilot project that was conducted between 2013 and 2015 to assess the feasibility of requiring beneficial ownership disclosure. Eleven countries took part in the pilot project (Burkina Faso, the Democratic Republic of the Congo, Honduras, Kyrgyz Republic, Liberia, Niger, Nigeria, Tajikistan, Tanzania, Togo and Zambia). Lessons learned from the pilot project led to a series of recommendations to revise the EITI Standard, and in February 2016 a new measure was introduced requiring implementing countries to disclose beneficial ownership information in their EITI report from 1 January 2020 (EITI, 2015b; EITI, 2017, Requirement 2.5, pp. 19-21).

According to the EITI Standards, "[a] beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity" (EITI, 2016, p. 3). Hence, a beneficial owner is never a corporation but always an individual or individuals.

Most implementing countries have not adopted legislation on beneficial ownership, and this lack of suitable legal instruments has made it difficult to enforce beneficial ownership requirements. For example, in the Democratic Republic of Congo (DRC), although Congolese law does not define beneficial ownership, a non-binding definition was proposed by the national multi-stakeholder group in charge of the EITI, hence the reason beneficial ownership is not fully

effective on its own, since it lacks legal force and is therefore difficult to enforce (ITIE-RDC, 2015). However, as it is not mandatory for companies to disclose beneficial ownership information, several extractive companies did not provide the information, or only partially responded to the questionnaire submitted by the multi-stakeholder group in charge of EITI (Minier, 2016). Some companies also made the choice of only disclosing the legal owner instead of the natural person(s) in ownership positions, arguing that, since Congolese law does not require the disclosure of natural persons, they were not obliged to comply with the request from the multi-stakeholder group in charge of EITI (ITIE-RDC, 2015).

Another way in which the effectiveness of beneficial ownership is undermined relates to the establishment of an ownership threshold, i.e., a threshold below which extractive companies would not be required to disclose their beneficial owners (EITI, 2017, pp. 20-1). In the DRC, a threshold of 25% was proposed while in Liberia the threshold is 5% (EITI, 2015b). Setting up a threshold means that natural persons under the agreed threshold will not be required to disclose their identity. This situation can undermine transparency efforts and provide an opportunity for opacity and concealing the identity of the ultimate owner. For example, in the DRC, the EITI pilot project highlighted that an important number of beneficial owners of extractive companies held less than 25% of the companies, and thus were not required to disclose their identities. There is a significant risk that beneficial owners will restructure their participation percentage to be below whatever threshold is chosen (Sayne et al., 2015). To ensure full transparency of beneficial ownership, it would be best if no threshold were applied.

Despite the potential pitfalls, disclosure of beneficial ownership is an important instrument to improve transparency and deter corruption. More and more countries are establishing publicly available registries of beneficial ownership of companies, including EU Member States through the effective use of the 4th anti-money laundering directive.⁹

Local content requirements: Current loopholes in a measure for curtailing IFFs

Over the last few years, many resource-rich countries have introduced legislation or specific provisions known as "local content policies" or "local content requirements" into their regulatory frameworks. The objectives of these policies are to create jobs, promote enterprise development, and increase the transfer of skills and technologies at the national and local level so that the country as a whole benefits from extractive activities.

Local content rules can take various forms: they can be quantitative (i.e. when targets or quotas are set to be achieved by companies) and/or qualitative, i.e. when they require technology transfer, training of staff and the like (Ramdoo, 2016).

Although local content policies were designed to shape and strengthen economic development, they have been misused and manipulated to generate corruption, elite capture and rent seeking in various instances (OECD, 2016). This led to the conclusion that local content requirements have "a dual nature", with some business entities viewing local content policies as a means of appropriating rents (OECD, 2016). The literature highlights cases where public officials "encouraged" or even required foreign companies to enter into partnerships with

⁹ See Council of Europe. (2019). "Project to assess compliance of EU Member-States with the 4th EU Anti-Money Laundering Directive (4 AMLD Project)." <https://www.coe.int/en/web/corruption/projects/4amld>

specifically designated local companies to operate in the country. These local companies were eventually revealed to be shell companies with disguised ownership or in which politically exposed persons and their proxies held interests (Martini, 2014).

Other schemes include foreign companies establishing a consortium with local companies ultimately owned by government officials to win a bidding process for licenses. Local content legislation can also be drafted to favour legal entities with close connections to public officials. In that regard, the Republic of the Congo's local content provisions are interesting. The Republic of the Congo presented to parliament a revised code on hydrocarbons in March 2015 with the objective of modernizing its oil and gas legal framework. In addition, extractive companies aiming to exploit oil and gas in the Republic of the Congo were required to partner with one or more "national private companies," i.e., a company incorporated and having its headquarters in the Congo and of which more than half of the shares are either held by Congolese nationals or by legal entities of which more than half of the shares are owned by Congolese nationals. A minimum share of 15% in the oil contract must be granted to these national private companies when a contract is awarded after the entry into force of the revised code. The share shall be up to 25% when an oil permit is renewed.

At first glance the requirements in the revised code in hydrocarbons adopted by the Congo seem to promote local content. Nevertheless, when one looks at the provisions in detail, it is striking to see how these rules could be perverted to perpetrate IFFs. Indeed, the code remains unclear in several places, opening a loophole that could allow the government to require extractive companies to work with local partners in which it has an interest. Article 143 of the code states that each extractive company must select national private companies to conclude an oil contract, but it does not specify how the national private companies should be selected, when the selection should take place or on the grounds on which it should be made. The answers to these questions could allow the government scope to intervene in the selection process and influence the extractive company's choice of partner.

Local content policies are not the only weak spots used by extractive companies and governments to circumvent legislation and initiatives designed to combat illicit practices. Other areas such as mandatory social contributions and subcontracting are increasingly favoured by some companies and governments to preserve their interests. For example, suspicions of corruption were raised after Statoil disclosed in 2015 that it paid Sonangol in Angola EUR 6 million for the Sonangol Research and Technology Centre, a research centre that apparently "exists only on paper" (Statoil, 2016). These payments were part of its mandatory social contributions included in its oil contract. Other extractive companies such as BP and Cobalt International Energy have also funded this mysterious research centre. In March 2017, the Securities and Exchange Commission (SEC) in Angola informed Cobalt International Energy that it had initiated an informal inquiry regarding the Sonangol Research and Technology Centre, but in January 2018 it ended its investigation and did not bring an enforcement action against the company.¹⁰

¹⁰ See Jaclyn Jaeger. "Cobalt: SEC ends second FCPA probe." *Compliance Week*, Jan 31, 2018. <https://www.complianceweek.com/cobalt-sec-ends-second-fcpa-probe/8819.article>

Lack of Policy and legislative reform; a loophole along the entire mining value chains

Transfer mispricing is one of the sources of IFFs from the extractive sector in Zambia, for example, which is said to have lost nearly 10 per cent of its GDP every year as a result of corporate tax avoidance schemes, including transfer mispricing, since the extent and efficacy of policy and legislative systems differ from state to state (UNCTAD, 2020). All case-study countries included in UNECA 2017 (the Congo, South Africa, Tanzania and Zambia) have some sort of legislation in place to curb transfer mispricing, but many have yet to formulate specific complementary regulatory guidance. The Democratic Republic of the Congo introduced a provision on transfer pricing in its Law No. 004/2003 of 13 March 2003 reforming tax procedures (UNECA, 2017), but no specific guidelines exist to date for determining the transfer pricing positions of multinational companies. Countries including South Africa, Tanzania and Zambia have created specific guidelines on transfer pricing. The penalties levied by South Africa and Zambia are much lower than similar mining countries like Chile and Australia, with average fines in the former countries between 40 and 50 per cent (including interest) of those in the latter for transfer mispricing deals designed to evade or minimize tax liabilities.

Excessive leveraging conducted by mining companies is a pivotal source of the erosion of the domestic tax base. The measures adopted to avoid this are ineffective and incorporate destructive seeds. Since interest gained from debt can be deducted from tax liabilities, mining companies have a strong tendency to borrow internally from their allied companies, rather than increase their capital through selling their shares. In comparable advanced countries, like Canada and Australia, debt-to-equity ratios are much lower (UNECA, 2017). Except for South Africa, no African countries have adopted the earnings stripping approach, which limits the interest as a portion of earnings that may be deducted from taxable income (UNECA, 2017).

Regarding the tensions between national and global systems

The scope and detail of the structure of global standards appropriate to IFFs puts severe constraints on countries' capacity to make policy decisions that are independent. Countries can, in principle, choose not to become a party to the conventions, standards, and initiatives (OECD, n.d). Nevertheless, the costs of doing so are high, since non-participation may lead to non-reciprocation and potential blacklisting by other states, loss of access to global financial markets or credits, as well as sanctions and countermeasures. Countries that do participate in the global framework to combat IFFs have significant constraints on their discretion. International standard-creating bodies oversee compliance, implementation, and effectiveness, using peer review mechanisms to assess whether the standards are properly applied. Maintaining the capacity required to comply with standards and to monitor implementation can be burdensome and expensive, especially for poor countries.

The international community has made progress over the last decade in improving the way in which it evaluates applications to join or subscribe to international standards. Both these approaches, either to become party to an international convention or not, take a more meaningful view of implementation, placing more weight on how a country has practically addressed the IFF threats it faces, and minimizing the emphasis on steps which may not be appropriate, or on formal obligations that are not practiced. This has led to the development of much-needed flexibility in

the assessments of different levels of assets and capacity (Barasa, 2018). The risk-based approach adopted by the Financial Action Task Force (FATF) on money laundering and countering the financing of terrorism is good example. This approach requires countries to assess their effectiveness and technical compliance through mutual evaluation. It helps countries assess risks of money laundering, terrorist financing and other risks they are exposed to and to apply proportionate measures to counter and mitigate them.

There is a wide policy space between mandatory, global standards and their implementation in the unique context of each country. There are no global standards that can specify how every country is to implement the requirements, and each country must adapt the requirements into a form that is in alignment with their legal, administrative systems and policy aims (OECD, 2014a). This creates a pressing need for policy coherence at the national level, and for coherence in the context of implementation as well as of policy.

Measures to combat IFFs

Strengthening legal and policy frameworks to promote transparency and mobilize domestic resources

Good governance is vital to raising adequate domestic resources and sealing gaps that allow IFFs. This involves the ability to develop and implement effective strategies, policies, laws and regulations that facilitate optimal revenue mobilization from the mineral sector. At the lowest level, this involves minimization of capital outflows and, at best, removing resource-mobilization impeding activities along the mineral value chain. Governance of domestic resource mobilization is also shaped by institutional and political economy factors, at both national and international levels. Incentives for IFFs stem from policy and compliance loopholes, permitting foreign and domestic interests to benefit from tax evasion and institutional weaknesses. In addition, corrupt revenue administration undermines the enforcement of policies designed to hinder IFFs.

To challenge and fight IFFs within the extractive industries sector, the international community has undertaken various actions and initiatives over the last two decades. International instruments to combat corruption were adopted by the OECD's Anti-Bribery Convention in 1997 (IMF, 2001), the UN Convention against Corruption in 2003 (UNCAC, 2004), the UK's Bribery Act 2010 (UK, 2010) and the French 2016 Law on Transparency and Bribery (Sullivan & Cromwell LLC, 2016).

More and more extractive companies are putting in place compliance programmes to prevent corruption, either through the development of their own programme or the implementation of anti-bribery standards such as ISO 37001:2016 (a standard adopted by the International Organization for Standardization in September 2016 that provides guidance for establishing, implementing, reviewing, and improving compliance programmes (ISO, 2016). Along with the fight against corruption, commitments have been made to revise international taxation regulations, notably through the OECD Base Erosion and Profit Shifting Action Plan, also known as the BEPS Action Plan (OECD, 2013).

Some of the measures covered in the BEPS Action Plan include automatic exchange of tax information, international exchange of country-by-country reports between tax

administrations, and modifications of tax treaties. Even though these measures do not specifically target the extractive industries sector, they do provide a response to the challenges encountered in this sector.

Instruments have also been designed to precisely combat IFFs within the extractive industries sector. EITI was launched in 2003 to "promote the open and accountable management of natural resources" and improve transparency (EITI, 2017). EITI is composed of representatives from governments, the private sector and civil society organizations. More than 51 countries that are rich in oil, gas and minerals are presently complying with the "EITI Standard".

The EITI Standard demands that "implementing countries", that is countries that have joined the Initiative, disclose a wide range of information, such as companies' payments, government's revenues, revenue allocations, and social and economic spending (EITI, 2017). Voluntary in nature, EITI only applies to countries that have joined the Initiative. Currently, several extractive countries such as Kenya and Angola are not part of EITI, which undermines transparency efforts undertaken throughout the sector. The adoption of EITI by all extractives countries in Africa would strengthen the capacity of individual countries and the continent to combat IFFs.

In addition to EITI, home countries of extractive companies have adopted legislation that requires their companies to disclose annually and publicly payments made to governments in which they have extractive activities, on a country by country basis and on a project by project basis. This is, for example, the case for the European Union with the Accounting Directive (2013/34/EU) and the Transparency Directive (2013/50/EU). Similar legislation was adopted in the United States in 2010, in Norway in December 2013 and in Canada in December 2014 (Gaita & Hubert, 2018).

Africa will have to mobilize more revenues in taxes than in aid to achieve its development priorities, and great potential exists for closing the revenue loopholes. The African Development Bank estimates that African governments can raise an additional \$300 billion in tax revenues yearly (ADBG, 2020).

Strengthening beneficial ownership requirements

Disclosure of beneficial ownership is an important instrument for curtailing IFFs, but weak requirements in this area pose a major problem and make it easier for criminals to misuse corporate vehicles and shell companies to hide ownership, to carry out transactions using illegal funds or to cover up illegal activities. All jurisdictions should require their financial institutions to determine the beneficial owner(s), and to ensure that this information is mandatorily available to relevant authorities and institutions. Without the need to gather, verify, keep, and make available information on the real beneficial owners of corporate entities and legal structures, other actors including banks, trust and company service providers and law enforcement authorities cannot comply with their requirements. The EITI's 2016 Standards recommend "... that implementing countries maintain a publicly available register of the beneficial owners of the corporate entity(ies) that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted" (EITI, 2017, p. 19).

According to Transparency International, secrecy jurisdictions (where beneficial owners are not disclosed), have a crucial role in facilitating IFFs (Martini, 2014). Therefore, governments must establish mandatory, public registers that disclose the beneficial ownership of trust funds and companies to allow IFFs to be more easily traced and make it even harder for individuals to benefit from the proceeds of corruption and crime. Introducing registers to catalogue who the actual beneficiaries are from activities within a jurisdiction will enable authorities to improve the transparency of transactions as well as to appropriately conduct investigations in the instance of suspicion of criminality. Given the complexity and the multijurisdictional structure of businesses, determining who the real beneficial owners are can prove a challenge.

The concerns raised about the grey area between transparency and privacy are to be treated with care, especially when considering developing country contexts, where the political class tends to be both the lawmakers and the lawbreakers. To this end, appreciating the trade-offs associated with increasing transparency while at the same time maintaining levels of privacy are important if there are meaningful reforms in the offing.

The World Bank states that having beneficial ownership transparency provides that the hidden power, their associates, and facilitators are not able to operate in secrecy and impede development. Improving the environment in which business can be done in a transparent and legal manner is central to developing countries being able to overcome the vicious cycle of poverty and dependency. Beneficial ownership registers are not the panacea for fighting IFFs, but they are an important step in the right direction.

Reform local content requirements breach to avoid perpetuating corruption

It is estimated that 90% of extractive countries in Africa are implementing local content requirements (UNECA, 2017). Angola, Ghana and Nigeria have adopted legislation entirely dedicated to local content issues and Uganda, the Republic of the Congo and Liberia have included local content provisions in their recent revision of their petroleum code. Local content policies often require foreign extractive companies to employ local staff from the mining areas with varying levels of knowledge at different stages of the extractive work. These policies can also include obligations to award a percentage of procurement of goods and services to local companies or enter into joint ventures with local partners to operate in the country. Local content requirements have the potential to promote economic development at national and local levels and to curtail IFFs. However, gaps in current legislation need to be addressed to avoid abuse and perpetuation of corruption.

General measures that have and can be adopted to prevent and curb corruption in local content requirements in the oil and gas sector include:

- (i) The adoption of anti-corruption clauses. Such clauses seek to spell out the behaviour expected from the contracting partners and send a strong signal regarding the government's or company's commitment to fight corruption. The oil and gas sector has created anti-corruption clauses in petroleum contracts between governments, international oil companies, joint ventures, and on agreements between international companies and local stakeholders.

- (ii) Creation of independent oversight bodies to assess and monitor local content implementation.
- (iii) Putting in place strict procurement rules that are transparent and that guarantee fairness throughout the process is central to preventing corruption within the local content process. These rules should take account of the fact that the number of companies bidding in local content tenders is usually small and then create measures to avoid overpricing, bid rigging and cartels. Within this framework, several countries have included provisions covering the procurement of local content. For example, Mozambique law requires that preferential treatment when buying local goods and services is given, especially when such goods and services are globally comparable in terms of standard, availability, and the amount required and given at prices including taxes (Transparency International, 2017).
- (iv) A requirement that contracts include information regarding the implementation of local content rules for transparent reporting on local content covering the number of local community members employed, goods and services that are procured by overseas and local companies, and beneficiaries of local policies. Such a requirement, together with publication of all contracts and licensing agreements awarded, will help in the assessment of whether local content rules are implemented in a way that supports the achievement of their objectives.
- (v) The creation of effective compliance systems by multinational corporations doing business in mineral-rich countries, including whistle-blower policies.

Additionally, in order to effectively stem corruption in the application of local content rules in the oil and gas sector, precise steps should be taken to address the corruption threats identified in the previous section, including the creation of rules stipulating conflicts of interest, revolving door arrangements, gifts and entertainment. Government workers and senior executives of state-owned companies should be required to declare their assets, access to information laws and the transparency of decision-making processes should be strengthened, and civil society participation in and oversight of oil agreements should be ensured.

Reforming taxation system and revenue transparency

Unless the underlying issue of taxing rights is addressed, African countries will remain susceptible to significant revenue losses. Therefore, African countries' interests must be defended in forums where their concerns can be aired and where alternative and substantiated views on global corporate taxation can be discussed.

There is an urgent need to improve the quality of human resources and institutions of taxation offices to ensure optimization of tax revenue, as well as to control and monitor the taxation sector. Revenue transparency should be promoted, especially in mining production, trading, and export and in ensuring the readiness of monitoring processes and validation for tax and revenue calculation (Kar & Spanjers, 2015).

African countries should focus on an intergovernmental position given the current momentum for global taxation reforms. The talks on the second wave of the OECD Secretariat proposals on the BEPS initiative, labelled pillar one and pillar two, began in early 2019 and are

planned to be held through multiple meetings until the end of 2020. Regarding the pillar two proposal, titled the Global Anti-Base Erosion Proposal, the focus is on tax challenges arising from the digitalization of the economy (OECD, 2019). As they stand, with their focus on tax and digitalization, these two proposals deal inadequately with the specific gaps that limit the taxation rights of African states. The gaps in the OECD proposals underline the urgent need for strong political leadership from Africa on international taxation reforms (OECD, 2019).

Furthermore, African countries should avoid signing tax treaties that impinge significantly on taxing rights. In addition, withholding taxes is a strong initial protection against profit-shifting for countries with weak administrative systems and capacity. Therefore, countries should not accept having withholding taxes significantly lowered by tax agreements. Correspondingly, tax agreements often completely absolve some types of income earned in the source state from taxation. Countries should assess the costs of removing these taxing rights against the expected benefits in increased foreign direct investment.

African countries should also aim at defining ways to curtail tax competition among themselves. Related efforts should include context-based analytical assessments of the welfare effects of falling headline tax rates and the proliferation of tax incentives across the continent. African countries should leverage the African Continental Free Trade Area (AfCFTA) as a platform to avoid a race to the bottom. More critically, African countries should build on the formidable negotiations forum that the continent has established in the context of AfCFTA. Currently the negotiations include senior officials of trade ministries and ministers of trade. Ideally mechanisms would be introduced to bridge the gap between these trade-focused groups, ministers of finance and the High-Level Panel on Illicit Financial Flows.

Improving tax compliance and strengthening data integration

Compliance should be ensured from the beginning, which is the licensing process. The relevant licensing authority should ensure that a mining license is only given to a company that has obtained a tax file number, while imposing penalties on license holders without a tax file number. Compliance also can be increased through improving internal controls and the strengthening of tax courts (Igbatayo, 2019). Moreover, strengthening data integration is an essential requirement to ensure compliance, as it determines the role of open and big data to prevent gaps in tax revenue.

Progressivity (the taxing of higher incomes at a progressively higher rate) is a sound principle for designing optimal tax instruments, but it remains a major challenge. African governments incorporate a wide range of systems for effective revenue mobilization from the extractives sector, including profit and production-based taxes. Nevertheless, efforts to ensure tax stability, efficient tax tools and implementation capacity remain weak. South Africa is the only African country that applies a profit-based structure for calculating royalty rates on different minerals (Igbatayo, 2019). Most of the case-study countries considered in the UNECA study on the impacts of IFFs on domestic resource mobilization apply ad valorem or sales-based royalty mechanisms, which factor in evolving market prices (UNECA, 2017). While resource rent taxes are generally recognized as having a neutral impact on investment decisions, none of the case-study countries apply an excess profit tax. Zambia has dithered with windfall tax changes, which were introduced in the 2008 Mineral and Mines Act and later withdrawn in the face of opposition from the extractive industry (Igbatayo, 2019).

Bridging information gaps regarding geology remains key to effective compliance and narrowing the tensions between national and international systems

Mineral-rich African countries are yet to leverage key information and knowledge of the sector in a forward-looking manner. All case-study countries in UNECA (2017) recognize the importance of geological information, but they have failed to implement investment and governance structures in ways that effectively mobilize revenue collection and stem IFFs. Mandatory submission of geoscience information by extractive companies to African governments is restricted by clauses requiring confidentiality, thus stopping African states from keeping custody of geo-scientific data. A further difficulty is created by the practice of incorporating geological information into legislation as records, rather than as data that could be aggregated and analysed for effective tracking and monitoring of IFFs. With the exception of South Africa, there is no requirement that pre-competitive data be submitted to the government to be digitalized. Data are often submitted in PDF format, which makes analysis difficult. Consequently, African countries lose billions of dollars in undervalued assets as well as underutilizing a critical tool for attracting foreign investment (Igbatayo, 2019). This lack of effective data management extends along the value chain. None of the UNECA case study countries' regulations include provisions for the tax administration to continuously review benchmarks for transfer pricing conditions or require the documentation submitted to reflect the changing norms endorsed by mining companies. This implies that regulations are likely to lag behind mispricing practices, with the threat of serious leakages through lack of information. There is also a need to ensure that financial institutions and all other designated non-financial institutions and professions conduct proper client assessment procedures when starting a business relationship and throughout the relationship.

Vital to build investigative capacities to tackle economic crime in the African countries

Combating IFFs and corruption in all its forms must be given greater priority across Africa. According to a European Commission estimate, mining and extractive companies are responsible for 65% of Africa's tax fraud, through tax avoidance and evasion and transfer pricing (Aranda, 2020). The capacity of law enforcement departments in African countries to investigate and prosecute economic criminality is very limited, and it is essential that this capacity is strengthened, where necessary with the assistance of international development partners such as the European Commission.

References

- ADB. (2020). African Economic Outlook 2020. Developing Africa's Workforce for the Future. African Development Bank Group. ____ <https://www.afdb.org/en/documents/african-economic-outlook-2020>
- African Union Commission. (2019). Domestic Resource Mobilization: Fighting against Corruption and Illicit Financial Flows. https://au.int/sites/default/files/documents/37326-doc-k-15353_au_illicit_financial_flows_devv10_electronic.pdf

- Aranda, J. L. G. (2020). Illicit Financial Flows in the Mining sector in Africa: risks and opportunities. Africa Europe Faith and Justice Network. <http://aefjn.org/en/illicit-financial-flows-in-the-mining-sector-in-africa-risks-and-opportunities/>
- Baker, R. W. (2005). *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free Market System*. Wiley.
- Barasa, T. (2018). Illicit Financial Flows in Kenya: Mapping of the Literature and Synthesis of the Evidence. Partnership for African Social and Governance Research. <https://media.africaportal.org/documents/Kenya-Illicit-Financial-Flows-Report.pdf>
- EITI. (2015a). The EITI Standard. Revised version 2015. EITI International Secretariat. https://eiti.org/files/documents/english_eiti_standard.pdf
- EITI. (2015b). Beneficial ownership pilot evaluation report. https://eiti.org/files/documents/evaluation_report.pdf
- EITI. (2016). Developing A Roadmap For Beneficial Ownership Disclosure. EITI International Secretariat, Guidance Note 22. <https://eiti.org/files/documents/guidance-note-22-beneficial-ownership-roadmap-en-2016.pdf>
- EITI. (2017). The EITI Standard 2016. EITI International Secretariat. https://eiti.org/files/documents/the_eiti_standard_2016_-_english.pdf
- EITI. (2019). The EITI Standard 2019: The global standard for the good governance of oil, gas and mineral resources. EITI International Secretariat. https://eiti.org/files/documents/eiti_standard_2019_en_a4_web.pdf
- European Commission. (2014). Communication from the Commission to the European Parliament and the Council: European Energy Security Strategy. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0330&from=EN>
- Gaita, E. & Hubert, D. (2018). Under the Surface: Looking into payments by oil, gas and mining companies to governments. Transparency International EU. http://transparency.eu/wp-content/uploads/2018/10/Under-the-Surface_Full_Report.pdf
- Greenpeace. (2008). Conning the Congo. <https://www.greenpeace.org/usa/wp-content/uploads/legacy/Global/usa/report/2010/2/conning-the-congo.pdf>
- Hubert, D. (n.d.). Many ways to lose a billion: How governments fail to secure a fair share of natural resource wealth. Publish What You Pay Canada. <https://www.publishwhatyoupay.org/wp-content/uploads/2017/07/PWYP-Report-ManyWaysToLoseABillion-WEB.pdf>
- IEA. (2016). Key world energy statistics. International Energy Agency. <https://www.ourenergypolicy.org/wp-content/uploads/2016/09/KeyWorld2016.pdf>
- Igbatayo, S. A. (2019). Combating Illicit Financial Flows from Africa's Extractive Industries and Implications for Good Governance. A Multi-country Study of Angola, the Democratic Republic of Congo and Nigeria. *Africa Development/Afrique et Développement*, 44(3), 55-86. www.jstor.org/stable/26873436

- IMF. (2001). OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. <https://www.imf.org/external/np/gov/2001/eng/091801.pdf>
- IMF. (2012). Macroeconomic Policy Frameworks for Resource-Rich Developing Countries. <https://www.imf.org/external/np/pp/eng/2012/082412.pdf>
- ISO. (2016). ISO 37001:2016 (en). Anti-bribery management systems - Requirements with guidance for use. <https://www.iso.org/obp/ui/#iso:std:iso:37001:ed-1:v1:en>
- ITIE-RDC. (2015). Propriétaires réels des industries extractives – Rapport du projet pilote. https://eiti.org/files/documents/rapport_de_conciliation_itie_rdc_2015_-_signe_envoye_st.pdf
- Kar, D. & Spanjers, J. (2015). Illicit Financial Flows from Developing Countries. 2004-2013. Global Financial Integrity. <https://gfintegrity.org/report/illicit-financial-flows-from-developing-countries-2004-2013/>
- Kolstad, I. & Søreide, T. (2009). Corruption in natural resource management: Implications for policy makers. *Resources Policy*, 34(4), 214–226. <https://doi.org/10.1016/j.resourpol.2009.05.001>
- Le Billon, P. (2011). Extractive sectors and illicit financial flows: what role for revenue governance initiatives? CMI Chr. Michelsen Institute (U4 Issue 2011:13). <https://www.cmi.no/publications/file/4248-extractive-sectors-and-illicit-financial-flows.pdf>
- Lemaître, S. (2019). Illicit financial flows within the extractive industries sector: a glance at how legal requirements can be manipulated and diverted. *Crime, Law and Social Change*, 71(1), 107-128.
- Mansour, M. (2014). A Tax Revenue Dataset for Sub-Saharan Africa: 1980-2010. FERDI Working Paper 116. <https://ferdi.fr/dl/df-NaGTBKqzHUcyvUacbeA9Urvs/ferdi-i19-a-tax-revenue-dataset-for-sub-saharan-africa-1980-2010.pdf>
- Martini, M. (2014). Local content policies and corruption in the oil and gas industry. U4 Anti-Corruption Resource Centre. <https://www.u4.no/publications/local-content-policies-and-corruption-in-the-oil-and-gas-industry.pdf>
- Minier, P. D. (2016). Memorandum sur la mise en œuvre du processus ITIE-RDC: analyse des rapports 2013 et al 2014. Plateforme des organisations de la société civile intervenant dans le secteur minier. http://congominer.org/system/attachments/assets/000/001/151/original/POM-M%C3%A9mo_Analyse_Rapports_ITIE_2013_et_2014_vrs_finale_20161606.pdf?1466150991
- Mo Ibrahim Foundation. (2019). Agendas 2063 & 2030: Is Africa on Track? https://mo.ibrahim.foundation/sites/default/files/2019-10/African_Governance_Report_2019.pdf
- Ndikumana, L., & Abderrahim, K. (2010). Revenue Mobilization in African Countries: Does Natural Resource Endowment Matter? *African Development Review*, 22(3), 351-365.
- NRGI, (2016). Disclosing beneficial ownership information in the natural resource sector. Open Government Partnership Openness in Natural Resources Working Group. Issue Brief. <https://opengovpartnership.org/wp-content/uploads/2019/05/FIN20OGP20Issue20Brief20BO20Disc1.pdf>

- NRGI. (2017). 2017 Resource Governance Index: Measuring the quality of governance in the oil, gas and mining sectors of 81 countries. Natural Resource Governance Institute. <https://www.resourcegovernanceindex.org/>
- OECD. (2013). Action Plan on Base Erosion and Profit Shifting. <https://www.oecd.org/ctp/BEPSActionPlan.pdf>
- OECD. (2014a). Illicit financial flows from developing countries: measuring OECD responses. https://www.oecd.org/corruption/illicit_financial_flows_from_developing_countries.pdf
- OECD. (2014b). OECD Foreign Bribery Report. An Analysis of the Crime of Bribery of Foreign Public Officials. <https://www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm>
- OECD. (2016). Corruption in the extractive value chain: Typology of risks, mitigation measures and incentives. Preliminary Version. <https://www.oecd.org/dev/Corruption-in-the-extractive-value-chain.pdf>
- OECD. (2019). Global Anti-Base Erosion (“GloBE”) Proposal - Pillar Two. Public consultation document. 8 November 2019 – 2 December 2019. <https://www.oecd.org/tax/beps/public-consultation-document-global-anti-base-erosion-proposal-pillar-two.pdf.pdf>
- OECD. (n.d). Policy Coherence in Combating Illicit Financial Flows. PCSD Thematic Module. Draft. https://www.oecd.org/gov/pcsd/IFFs%20thematic%20module%20v12cl_for%20web.pdf
- Oxfam. (2009). Lifting the Resource Curse: How poor people can and should benefit from the revenues of extractive industries. Oxfam Briefing Paper 134. https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/file_attachments/bp134-lifting-the-resource-curse-011209_4.pdf
- Ramdoo. (2016). Local content policies in mineral-rich countries: An overview. Discussion Paper 193. European Centre for Development Policy Management. <https://ecdpm.org/wp-content/uploads/ECDPM-Discussion-Paper-193-Local-Content-Policies-Mineral-Rich-Countries-2016.pdf>
- Reuter, P. (2017). Illicit Financial Flows and Governance: The Importance of Disaggregation. World Development Report: Background Paper. <https://openknowledge.worldbank.org/bitstream/handle/10986/26210/112973-WP-PUBLIC-WDR17BPillicitFinancialFlows.pdf?sequence=1>
- Sayne, A., Westenberg, E., & Shafaie, A. (2015). Owing Up: Options for Disclosing the Identities of Beneficial Owners of Extractive Companies. Natural Resource Governance Institute. https://resourcegovernance.org/sites/default/files/documents/nrgi_beneficial_owners20150820.pdf
- Spanjers, J. & Foss, H. F. (2015). Illicit Financial Flows and Development Indices: 2008-2012. Global Financial Integrity. <http://www.w-t-w.org/en/wp-content/uploads/2015/06/Illicit-Financial-Flows-and-Development-Indices-2008-2012.pdf>
- Statoil. (2016). Annula Report and Form 20-F. 5.4 Payments to governments. <file:///C:/Users/User/Downloads/statoil-payment-to-governments-report-2016.pdf>

- Sullivan & Cromwell LLP. (2016). New French Anti-Corruption Law. <https://fcpa.stanford.edu/research-reports/20162113-new-french-anti-corruption-law.pdf>
- Transparency International. (2017). Corruption perceptions index 2017. https://images.transparencycdn.org/images/2017_CPI_Brochure_EN_200406_140253.pdf
- UK. (2010). Bribery Act, 2010. Chapter 23. https://www.legislation.gov.uk/ukpga/2010/23/pdfs/ukpga_20100023_en.pdf
- UN. (2004). United Nations Convention against Corruption. UN Office on Drugs and Crime. https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf
- UNCTAD. (2020). Tackling Illicit Financial Flows for Sustainable Development in Africa. UN Conference on Trade and Development. https://unctad.org/system/files/official-document/aldcafrica2020_en.pdf
- UNDP. (2015). Human Development Report 2015: Work for Human Development. http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf
- UNECA. (2015). Track it! Stop it! Get it! Report of the High-Level Panel on Illicit Financial Flows from Africa. <https://www.tralac.org/documents/resources/africa/2072-report-of-the-high-level-panel-on-illicit-financial-flows-from-africa-uneqa-2015/file.html>
- UNECA. (2017). Impact of Illicit Financial Flows on DOMESTIC RESOURCE MOBILIZATION: Optimizing Revenues from the Mineral Sector in Africa. <file:///C:/Users/User/Downloads/b11867358.pdf>
- UNECA. (2018). A study on the global governance architecture for combating illicit financial flows. <https://repository.uneqa.org/bitstream/handle/10855/24320/b1188924x.pdf?sequence=3&isAllowed=y>
- Williams, A. & Le Billon, P. (Eds). (2017). *Corruption, Natural Resources and Development: From Resource Curse to Political Ecology*. Edward Elgar Publishing.

Pulling the Plug on Money Laundering in British Columbia, Canada: lessons learned, and actions required

The Hon. Roy Cullen¹

Abstract:

While Canada has never been immune to money laundering, something began to change in 2015 when vast amounts of dirty money started to surface in British Columbia's casinos. Two reports released by the provincial government in early May 2019 revealed that more than \$7 billion had been laundered in British Columbia in 2018, including an estimated \$5.3 billion through the real estate market. In response to these reports a public inquiry was convened to examine the full scope of money laundering in the province. In this essay, the author draws on his experience as a Canadian Member of Parliament, a former parliamentary secretary to Canada's Minister of Finance and an active leader with the Global Organization of Parliamentarians Against Corruption (GOPAC) to examine how Canada arrived at this point and what can be done to turn the tide.

Keywords: Money Laundering, Corruption, Opioid Crisis, Beneficial Ownership.

How Big is the Problem?

British Columbia (BC) is a province within the federal parliamentary democracy of Canada. Although Canada covers a vast area – it is the second largest country by area in the world – its population is just under thirty-eight million people, made up of ten provinces and three territories. The population of BC, Canada's western-most province and the focus of this paper, is just over five million.

Canada has prided itself on being a jurisdiction that money launderers avoided. In 2000, the Government of Canada enacted the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA). Delays in bringing in this legislation were largely the result of the focus in the mid 1990's of the Canadian federal government on its fiscal problems. Because of this, Canada was the last of the G-7 countries to enact anti-money laundering legislation. This legislation resulted in the creation of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), Canada's Financial Intelligence Unit (FIU). Certainly, Canada has never been immune to money laundering, but beginning around 2015 something different began to surface in BC, with dirty money appearing in casinos.

In fact, the money laundering situation was viewed by the BC Provincial Government as being in such disarray that in May 2019 it called for a public inquiry into money laundering in the

¹ In his role as Parliamentary Secretary to the then Canadian Minister of Finance, the author shepherded the passage of Canada's anti-money laundering legislation through the Parliament of Canada in 2000. He would like to express his thanks to colleague Ted Semmens for his constructive comments and suggestions in respect of this paper. The author is not related to British Columbia's Supreme Court Justice Austin F. Cullen. The views expressed in this paper do not necessarily reflect those of the Global Organization of Parliamentarians Against Corruption, in which the author has played a leading role.

province. BC Supreme Court Justice Austin F. Cullen was appointed to head the Inquiry, which will examine the full scope of money laundering in the province, including real estate, gaming, financial institutions and the corporate and professional sectors. Commissioner Cullen is also examining regulatory authorities and barriers to effective law enforcement of money laundering activities. Commissioner Cullen has the power to compel witnesses to appear and to order the production of documents and records.

The mandate of the Commission is broad. Its terms of reference require the Commission to make findings with respect to:

- the extent, growth, evolution and methods of money laundering in British Columbia, with regard to specific economic sectors;
- the acts or omissions of responsible regulatory agencies and individuals, and whether those have contributed to money laundering in the province or amount to corruption;
- the scope and effectiveness of the anti-money laundering powers, duties and functions of these regulatory agencies and individuals; and
- the barriers to effective law enforcement in relation to money laundering. (Cullen, 2019a)

In addition, the Commission has the responsibility to make recommendations to address the conditions which have enabled money laundering to flourish.

The Commission submitted an interim report in November 2020 and expects to have its final report completed by December 2021. This final deadline may or may not be met given some of the pandemic logistical challenges. The approach of the Commission will be interesting to follow, as anti-money laundering largely falls under federal government jurisdiction by virtue of the federal PCMLTFA. FINTRAC, Canada's FIU, is a federal agency, and another federal agency, the Royal Canadian Mounted Police (RCMP), is tasked with proceeds of crime responsibilities. This is not to say that provinces and municipalities do not have a key role to play in the fight against money laundering, but there are jurisdictional delineations that will need to be addressed.

In 2016 the International Monetary Fund (IMF) conducted a detailed assessment of Canada's Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) framework, and the resulting report was adopted by the Financial Action Task Force (FATF).² The report was somewhat positive towards Canada's anti-money laundering regime, but critical of certain aspects.

According to the IMF, Canada's AML/CFT regime covers most high-risk areas, but it lacks coverage of lawyers, as a result of a legal ruling. This, according to the IMF and the FATF, is a significant loophole in the framework and raises serious concerns. Legal persons are at high risk of misuse for money laundering or terrorist financing purposes, and that risk is not satisfactorily mitigated by Canada, according to the IMF. When Canada's anti-money laundering regime was formally launched in 2000, lawyers were designated as reporting entities and were required to report suspicious transactions to FINTRAC. This provision, however, did not stand up to a legal

² The Financial Action Task Force (FATF) was created by the Group of Seven Countries (G7) at the G7 summit held in Paris in 1989. It is an intergovernmental organization whose mandate is to develop policies to combat money laundering. In 2001 its mandate was expanded to include terrorism financing.

challenge in the Supreme Court of Canada in 2015 brought by Canada's 95,000 lawyers on the grounds of solicitor/client privilege.

Recommendation 1

Canada's federal Government should find a way to include the legal profession in its anti-money laundering/anti-terrorist financing regime. This needs to be done in a way that complies with the Canadian Constitution and the Canadian Charter of Rights and Freedoms. One way to achieve this is to require lawyers to report suspicious transactions to their provincial law societies. The law societies in turn should be subject to review by an independent body that would ensure that law societies are complying with the legislated reporting requirements.

Certainly, the FATF will be aware of the well-publicised more recent money laundering problems in BC and elsewhere in Canada, and that could lead to another evaluation sooner rather than later. While there is no need to panic at this stage, the designation of Canada as non-compliant, or its inclusion on the FATF blacklist, would be a significant blow to Canada's international reputation and would negatively affect the flow of legitimate investment capital into this country.³

The first money laundering problems that surfaced in the media, and that came to the attention of the BC Provincial Government, related to significant amounts of money being laundered through BC casinos. The problem was apparently not a new one, but previous governments had swept the reported irregularities under the carpet. It was later estimated by BC's gaming regulator that over \$600 million in suspected dirty money was laundered through BC casinos and the BC Lottery Corporation from 2010 to 2016.⁴ This estimate was upgraded later by regulators to \$1.7 billion.

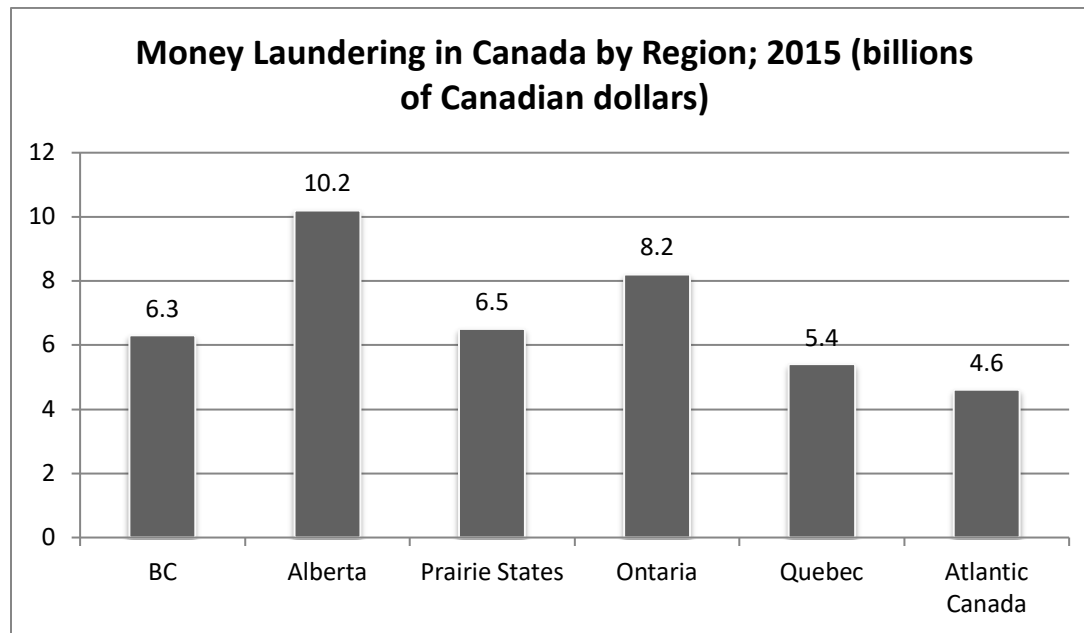
By way of context, under the Canadian Constitution, the federal government has exclusive jurisdiction to enact criminal law. For many years gaming, and in particular commercial gaming, was, with certain important exceptions, prohibited under the Criminal Code of Canada. In 1969 the Criminal Code was amended allowing provinces to run approved lottery schemes and casinos. In 1985 the Criminal Code was amended further, leaving gaming to the provinces. In BC two key public institutions are responsible for policy, management and oversight of gaming. The British Columbia Lottery Corporation (BCLC) has exclusive responsibility for the conduct and management of gaming, including casinos, on behalf of the province. BCLC is a crown corporation, otherwise known as a wholly-owned state enterprise, and in fiscal 2018/19 the corporation generated a net income of \$1.4 billion for the province. The Gaming Policy and Enforcement Branch (GPEB) of the BC Government regulates all gaming operations, including all gaming conducted, managed and operated by the BCLC, with a specific mandate to ensure the overall integrity of gaming.

Money laundering in Canada, however, is certainly not limited to BC. In 2015, it is estimated that \$41.2 billion in dirty money was laundered in Canada. These numbers are very conservative and likely underestimated. The \$6.3 billion of laundered money in BC represents

³ The 'blacklist' is a term used by the media. The list in question is officially a "call to action" addressed by the FATF to nations that are largely non-compliant with FATF standards and guidelines.

⁴ Unless otherwise indicated, all dollar amounts cited in this paper are Canadian dollars.

2.5% of Provincial GDP.



Source: Maloney et al., 2019, p. 126.

Where is this dirty money coming from, and how is it laundered?

First of all, there is the usual unfortunate flow of funds from transnational organized crime, local drug dealers, biker gangs, and youth gangs. However, one also needs to understand BC's geopolitical positioning. As Canada's western-most province, and with its proximity to Asia, more specifically to Hong Kong and the Peoples Republic of China (PRC), BC is a natural attraction for capital flows from these areas. Chinese roots in Canada go back to a time around the middle of the nineteenth century, when large numbers of Chinese workers emigrated to Canada and helped build a railway across the country. BC, and the city of Vancouver in particular, has a large Chinese population. In 2016, 11.8% of BC's population was of Chinese origin, according to the BC Census of that year, and this percentage is projected to increase. Nearly 21% of Vancouver's population is projected to be of Chinese origin in 2036 (Morency et al., 2017, Appendix 2). The mix of people entering Canada from China has changed over time, with lately a preponderance of Mandarin-speakers from mainland China compared to Cantonese-speakers from Hong Kong.

The PRC has enacted significant foreign exchange controls which limit the amount of money (US\$50,000) that a Chinese citizen can legally take out of China. Needless to say, these limits are often circumvented with the help of financial intermediaries, Chinese companies doing business abroad, or underground banking systems. Corruption is rampant in China (estimated at 10%-15% of China's annual GDP),⁵ so moving this dirty money offshore becomes a strong motivating force. In addition, there are those in Hong Kong and the PRC

⁵ One calculation from 2001 put the cost of corruption at 14.5 to 14.9 percent of China's GDP (annually) between 1999 and 2001. A more recent estimate from 2010 put the financial cost of corruption in China at 10 percent of its GDP (China Power - <https://chinapower.csis.org/china-corruption-development>).

who wish to hedge their bets and keep a mix of their capital in both Asia and Canada. Canada has a reputation for political stability, and the Chinese-Canada cultural ties reinforce this diversification thinking.

The capital flowing from China into North American cities is significant, as the FACT Coalition outlines:⁶

The purchase of expensive real estate is another example where there are rising concerns of international money laundering. For example, [in 2016] the Chinese spent almost \$30 billion on residential property in the United States. The Chinese are also purchasing properties in major western cities such as London, Sydney, Vancouver, Toronto, and Auckland. Most of the purchases are made in cash. The flight of private wealth and tainted money leaving China appears to be due to worries about the economic outlook and the clampdown on corruption. As one former ambassador to China said, the country could very well be “the number one exporter of hot money in the world.” Yet China has strict capital controls that limit its citizens to only transferring the equivalent of approximately \$50,000 a year out of the country. Despite the restrictions, the torrent of money continues...Anonymous shell companies are a prime method for evading these safeguards, and their use in real estate transactions are widespread and rising... (Cassara, 2017, p. 13)

Between 2007 and 2017, Chinese foreign direct investment (FDI) in Canada grew from less than \$4.2 billion to more \$16.4 billion (Dumont, 2018). While the stock of FDI from the PRC in Canada is relatively small, the 14.5% annual growth rate over this period is significant.

Drugs and drug money, however, are also significantly in play. One of the significant negative impacts of drug money being laundered with relative ease is that it makes drug dealing and drug use easier. This destabilizes society and inflicts a heavy social and fiscal cost on citizens and the state. In recent times BC has experienced the extreme hardships that the sale of fentanyl and other drugs have brought upon the thousands of people who have died of overdoses, and the impact on their families and friends which will last forever.

On April 14, 2016, BC’s Provincial Health Officer Dr. Perry Kendall declared the province’s opioid crisis a public health emergency. In 2016 alone, 931 British Columbians died from overdoses, with 216 of these overdose deaths in Vancouver. Fentanyl was detected in approximately 60% of these deaths (Vancouver Police Department, 2017).

Evidence suggests that overdoses are under-reported. Illegal shipments of fentanyl from Chinese factories and fentanyl overdose deaths in North America are multiplying at an alarming rate.

According to the US Drug Enforcement Administration, illicit fentanyl, fentanyl analogues and their immediate precursors are often produced in China. From China, these substances are

⁶ Founded in 2011, the Financial Accountability and Corporate Transparency (FACT) Coalition is a non-partisan alliance of more than one hundred state, national, and international organizations that promotes policies to combat the harmful impacts of corrupt financial practices.

shipped primarily through express consignment carriers or international mail directly to the United States, or, alternatively, shipped directly to transnational criminal organizations in Mexico, Canada, and the Caribbean.

A professor in Australia, John Langdale, has coined the expression 'the Vancouver Model' to describe how Chinese citizens move assets to Canada. Guangdong Province in Southern China is largely unregulated and is cited as the most notorious location in China for the production and trafficking of illegal goods and services.

The Vancouver Model consists of two interrelated transfers of illicit money by Chinese underground banks. Firstly, these banks transfer money from sales of illegal drugs (Chinese and Latin American criminal groups) back to Hong Kong offshore financial markets, earning a commission on the transfers. Some of the illegal drug money is laundered through British Columbia's casinos. Secondly, Chinese underground banks transfer money from wealthy Chinese in China to Canada and provide them with money for gambling and/or investment in the Vancouver property market, again earning commission on the transfers. The underground banks can generally net these transfers out so as to minimize actual international fund transfers.

The Vancouver model is characterized by organized crime profiting from services at both ends of the transaction, often referred to as 'clipping the ticket both ways'. As Professor Langdale notes: "The 'genius' of the scheme is the ability to achieve two objectives and be paid for both in the same transaction" (quoted in German, 2018, p. 38).

According to former RCMP superintendent Garry Clement, Chinese Triads and Tongs have used quasi-legitimate real estate development, construction and financial companies to launder drug cash into Vancouver real estate. In one method, he notes that Triad companies send drug funds to offshore bank accounts and use these deposits to secure mortgages for purchasing and developing BC land. A lack of beneficial ownership transparency and accountability allows this to happen without much difficulty. In one reported case, a Chinese national, who in 2013 was on INTERPOL's Notice List, was the lead in a multi-million property development scheme in Vancouver. While Interpol Notice advisories are often used inappropriately by countries like Russia and China for blatant political purposes, this individual, who was the subject of an Interpol Notice, had all of the hallmarks of committing serious fraud in the PRC. This Interpol Notice was subsequently dropped without any obvious explanation. It raises the question: If an individual such as this can make significant investments in the Vancouver real estate market, who can't? Interestingly, but probably coincidentally, in June 2019 the former head of Interpol, Meng Hongwei, pleaded guilty to accepting bribes.

In less sophisticated transactions involving cash for real estate, it would appear that real estate agents are not reporting, or under reporting, certain sales. Efforts to Know Your Customer (KYC) are minimal, as are the associated due diligence measures that are required.⁷ To avoid questions from a financial institution, deposits may be staggered or combined together with other receipts. Alternative avoidance techniques are undoubtedly employed.

⁷ The KYC guidelines in the financial services sector involve applying due diligence to establish the identity of a customer or potential client and assessing the suitability of having a business relationship with them.

Federal government anti-money laundering methods and techniques and enforcement in BC have been weakened over the years. When money launderers realize that their money laundering can go ahead undetected and with relative impunity, it is not difficult to understand why the volume of dirty money laundered in BC is growing.

With respect to BC casinos, retired Deputy RCMP Commissioner Dr. Peter German points out that many mistakes were made by the British Columbia Lottery Corporation and by the Gaming Policy & Enforcement Branch of the BC Government (German, 2018). In fact, it is evident that between these two organizations there were many problems, miscommunications, overlapping responsibilities, roles that were unclear, and a failure to report all suspicious transactions to FINTRAC. Indeed, the BCLC was the subject of the largest fine ever levied in Canada in the casino industry and was the subject of many non-compliance reports by FINTRAC. Unfortunately, because of technical evidentiary legal issues, the fine was subsequently withdrawn.

Recently, videos of customers arriving at a casino with duffle bags containing millions of dollars in \$20 bills wrapped in elastic bands were displayed on local television news programs. These individuals would be escorted to the VIP lounge with staff later stating that the money could have been 'clean', reflecting a clean money bias. There was no evidence of due diligence or Know Your Customer routines at this point. Of course, once these casino customers cash out after gambling, the reimbursement cheque from the casino magically converts dirty money to clean money. Regulators were on site only during normal business hours, so it is not surprising that money launderers chose off-hours to visit the casinos. This specific problem of a lack of an around-the-clock regulatory presence has since been corrected.

There is evidence to suggest that BC Government Cabinet Ministers were briefed on the dirty money problems in the province's casinos, but no action was taken. While not seeking to impugn the motives of BC members of Cabinet, it is possible that 'turning a blind eye' was driven by a desire to maximize profits in the casinos – with clean or dirty money. There have also been recent instances of significant federal criminal cases against alleged money launderers in BC being dropped or stayed by crown prosecutors and the RCMP. It is difficult to establish whether this is a result of insufficient evidence or a lack of resources within the RCMP and/or Justice Canada to proceed with these benchmark cases.

These problems are not limited to casinos, or to BC - but more on this later. In fact, BC's Attorney General has taken some immediate steps to respond to German's 2018 Dirty Money report. The BC Government has agreed with all of the report's 48 recommendations, and has committed itself to allocating the necessary resources to implement all of them. The province has indicated that it will introduce legislation in 2021 to set up a new independent gambling control office. Changes that BC has already made include improving gambling oversight; extending funding for an integrated policing team; creating a team to review suspicious transactions at casinos; and ensuring that gambling regulators now have a 24/7 presence in major Lower Mainland casinos.

Recommendation 2

Implement, on an urgent basis, all 48 recommendations contained in the German report (2018, pp. 13-17). Key recommendations include:

- a. That a new, independent gaming Regulator, at arms-length to the British Columbia Government, be established with governance accountability to a Board of Directors;
- b. That the Gaming Control Act (B.C.) clearly delineate the roles and responsibilities of the British Columbia Lottery Corporation and the Regulator referred to in Recommendation a. above;
- c. That Gaming Service Providers be responsible for completing all necessary reports to FINTRAC, including Suspicious Transaction Reports (STRs);
- d. That Gaming Service Providers be designated as direct reports to FINTRAC, failing which that reports from Gaming Service Providers be sent in an unaltered form to FINTRAC by the British Columbia Lottery Corporation; and
- e. That a Designated Policing Unit [police force] be created to specialize in criminal and regulatory investigations arising from the legal gaming industry, and that this unit have specific responsibility for anti-money laundering.

Embezzlement by Selected Political Leaders

Individual	Country	Estimates of allegedly embezzled funds (\$US)
Mohamed Suharto	President of Indonesia 1967–98	15 to 35 billion
Ferdinand Marcos	President of Philippines 1972–86	5 to 10 billion
Mobutu Sese Seko	President of Zaire, 1965–97	5 billion
Sani Abacha	President of Nigeria, 1993–98	2 to 5 billion
Slobodan Milosevic	President of Serbia/Yugoslavia, 1989–2000	1 billion
Jean-Claude Duvalier	President of Haiti, 1971–86	300 to 800 million
Alberto Fujimori	President of Peru, 1990–2000	600 million
Pavlo Lazarenko	Prime Minister of Ukraine, 1996–97	114 to 200 million
Arnoldo Alemán	President of Nicaragua, 1997–2002	100 million
Joseph Estrada	President of Philippines, 1998–2001	78 to 80 million

Source: Transparency International, 2004, p.13.

Where monies laundered in BC have been misappropriated in foreign countries, BC is indirectly contributing to lost opportunities in these countries – be they developing countries, failed states, or so-called ‘first-world’ jurisdictions. In addition to impeding many serious crimes like drug dealing, human trafficking, tax evasion and terrorism, effective anti-money laundering regimes are designed to act as a deterrent to corrupt leaders and other criminals. If they cannot launder their ill-gotten gains, the motivation to commit these crimes should be diminished. Some of the most corrupt leaders are noted nearby, where the amounts

embezzled are in the millions and billions of dollars. And let's not forget the billions embezzled by some of the more contemporary leaders like Libya's Muammar al-Gaddafi and Egypt's Hosni Mubarak.

How many schools, hospitals, immunizations and kilometers of roads could have been put into place if these billions had not been lost to corruption? If we take the mean in the range of the amounts stolen by these leaders of \$29-\$58 billion (i.e. \$44 billion), one can imagine how this money could have been used in the developing world to, for example:

- Provide millions of households with water; or to
- Build thousands of kilometres of road; or to
- treat millions of people living with HIV/AIDS.

Estimating what portion of money laundered in BC, and in Canada as a whole, is derived from corruption as opposed to other criminal activity is a challenging task. On a global scale, the IMF and the United Nations Office on Drugs and Crime estimate global money laundering at between two and five percent of global GDP, or approximately US\$1.5 to \$3.7 trillion annually. According to one estimate, corruptly acquired monies crossing international borders in the early 2000s totaled between US\$30 billion and US\$50 billion annually (Baker, 2005, p. 172, Table 4.4). The balance, according to Baker, comprised drug money, counterfeit goods, smuggling, and human trafficking, to name a few.

What are the challenges and opportunities associated with more transparent and accountable beneficial ownership regimes?

One of the ways in which dirty money is laundered in the real estate sector, or indeed in the economy as a whole, is through the use of companies and trusts that hide the true identity of the beneficial owner of the asset. Beneficial owners are persons/groups that enjoy the economic benefits of ownership of a property, fund, or asset, even though another person appears as the registered owner. Money launderers have developed various schemes, which have become sophisticated and creative over time, to launder illicit funds. These individuals use nominee shareholders and directors (lawyers, accountants, family or friends), some taking a fee for the use of their name, to distance themselves from transactions by concealing the true source of the dirty money. Often companies/trusts are 'layered' with multiple companies through holding and subsidiary ownerships and/or in different tax havens or unregulated jurisdictions. Nominees can be used at each stage of the money laundering cycle. These complex arrangements make it very difficult for government authorities and anti-money laundering enforcement agencies to trace the real origin of the dirty money.

Requirements by governments for declarations of beneficial ownership make it harder for criminals to mask their identities and their connection to illicit funds.

In response to the money laundering problems in the province, the BC Government brought in legislation establishing a public registry of beneficial owners of property in the province. Effective May 1, 2020, the BC Land Owner Transparency Act requires corporations, trusts and partnerships that buy land to disclose their beneficial owners in the registry, with significant fines for the failure to disclose.

By requiring a Declaration of Beneficial Ownership, financial intermediaries and the state create one more mechanism to track the source, movement, and destination of illicit funds. To be truly effective, however, a government, or otherwise independent authority, must perform comprehensive due diligence to ensure that the beneficial ownership declaration is valid.

In 2016, to its credit, the United Kingdom introduced the world's first fully open register of the real owners of its companies. Greater company ownership transparency marked a very important first step. According to the British NGO Global Witness, however, with inadequate checking of the beneficial owner information, important and disturbing anomalies surfaced.

For most companies registering their beneficial owners – known as Persons of Significant Control (PSC) in the UK – is straightforward, with an average of 1.13 beneficial owners for each UK company. In fact, after two years, 87% – almost 3.6 million companies – of companies are filing at least one beneficial owner. However, our analysis also reveals that thousands of companies are filing highly suspicious entries or not complying with the rules – problems we never would have found were it not for the open data nature of the register. Common methods for avoiding disclosure of a company's real owners include filing a statement that the company has none, disclosing an ineligible foreign company as the beneficial owner, using nominees or creating circular ownership structures. (Global Witness, 2018, Executive Summary).

To underline the seriousness of beneficial ownership declarations, declarers could be required to sign a legal declaration attesting to their veracity. Penalties for false declarations could include the freezing of accounts and the ultimate forfeiture of account balances, funds, properties, or assets. While such a measure would not eliminate false declarations, it would act as a deterrent for many would-be dishonest people.

The requirement to Know Your Customer, and the need to perform comprehensive due diligence to achieve this, can be very demanding for financial intermediaries. The reason for this is the often very complex layering of companies and the use of nominee shareholders and directors. Bearer shares can also be employed to hide the true beneficial owner. There are many reputable financial institutions and other financial intermediaries who have very robust business ethics policies and who are committed to the Know Your Customer principles. Such organizations can also be motivated in their own self-interest to avoid heavy fines and mitigate reputational risk. For example, nine major international banks paid a total of US\$20 billion in fines from 2012 through 2015 for lax anti-money laundering controls and incidents. In one case the Hong Kong and Shanghai Banking Corporation hired 4,000 employees to better monitor suspicious transactions following a US\$1.9 billion fine it incurred in 2012. These fines are becoming more significant and not easily justified by companies as necessary business expenses, as was the case not many years ago. A recent report in *The Economist* confirms this trend when it says that "African kleptocrats are finding it tougher to stash their cash in the West. The days of brazen looting and laundering have passed."⁸ Let's hope so.

⁸ The Economist. "Catch me if you can: African kleptocrats are finding it tougher to stash cash in the West." October 10, 2019.

There are other less ethical entities, however, who will conduct 'pro-forma' due diligence and not undertake full and comprehensive analysis to truly establish the true owner of the depositor or party to a transaction. It must be recognized that there is an inherent conflict-of-interest when, for example, a bank is approached by a potential customer wishing to open an account in the millions of dollars. Turning away business, or rejecting new clients, is not something that is attractive to financial institutions. With regard to corruption, data bases chronicling Politically Exposed Persons (PEPS) can be an important tool in the Know Your Client arsenal, if taken seriously.⁹

Although perhaps somewhat dated, a study conducted between 2000 and 2003, based on RCMP proceeds of crime case files, concluded that "deposit institutions, the insurance industry, motor vehicles, and real estate are the four most frequent destinations for the proceeds of crime" (Beare and Schneider, 2007, p. 86). Real estate was involved in 55.7% of the documented case.

When the Canadian government brought in its anti-money laundering regime in 2000, those involved in the real estate sector, excluding property management businesses, were deemed to be reporting entities under the legislation and regulations. Reporting entities were required to report certain defined (suspicious) transactions to FINTRAC. The real estate industry lobbied strenuously, as did many other sectors, to be excluded as a reporting entity on the grounds that this reporting process could potentially damage client/real estate agent relationships. The federal government resisted these overtures, quite rightly, as they did with many other exclusion requests, but the government did agree to some additional minor 'user-friendly' reporting requirements for the real estate sector. Finance Canada, the federal Finance Department, took the position that at the launch of the anti-money laundering regime the suite of reporting entities would be very broadly defined, with the notion that at a subsequent date, based on a few years of experience, modifications to the reporting entities, if necessary or desirable, could be made.

Disclosures of beneficial ownership cannot be limited to real estate, however, but must include all corporations and trusts. The BC government promised to introduce legislation in 2020 requiring companies to maintain internal records of shareholders with direct and indirect control. BC finalized details of its rules requiring companies to keep these records. It amended its corporate legislation to this end in April of 2019, then filled in gaps with regulations and announced an in-force date of October 1, 2020. The information gathered under this legislation will, however, only be accessible to law enforcement agencies and not the public-at-large. Not being a public registry is a weakness because the more eyes on the information and declarations, the better. Once this legislation is enacted, the BC Government will need to allocate the necessary resources

⁹ According to Financial Action Task Force Guidelines, a "politically exposed person (PEP) is...an individual who is or has been entrusted with a prominent public function...many PEPs are in positions that potentially can be abused for the purpose of committing money laundering (ML) and related predicate offences, including corruption and bribery...The potential risks associated with PEPs justify the application of additional anti-money laundering/counter-terrorist financial (AML/CFT) preventive measures with respect to business relationships with PEPs...These requirements are preventive (not criminal) in nature, and should not be interpreted as stigmatising PEPs as such being involved in criminal activity." (FATF, 2013, p. 3).

to a unit of government that will perform the necessary due diligence required to ensure that beneficial ownership disclosures by companies are factual. The debate over whether or not a registry of beneficial owners of companies should be public, or limited to government and law enforcement agencies, is an important discussion. In Canada, because of its privacy laws and its Charter of Rights and Freedoms, governments, in particular the federal government, have been reluctant to make such a register public. Concerns about confidentiality and competitive secrecy are sometimes cited as legislative constraints. Certainly, big business in Canada would lobby against public disclosure. Perhaps governments in Canada should be bolder and test the waters on this issue, and allow the courts to render their judgements.

Greater beneficial ownership transparency and accountability is needed, not only in BC but in all provinces and territories in Canada, and equally, or more importantly, at the Federal Government level. Nearly 235,000 companies are incorporated under the federal Canada Business Corporations Act, and fully fifty percent of Canada's largest publicly-traded companies are incorporated under this Act. The remainder are incorporated in Canada's provinces and territories. In its initial response to dirty money flowing through the BC real estate sector, the provincial government has announced its intention to create a new regulator for the sector by 2021. In parallel with this move, the Real Estate Council of BC is launching a mandatory anti-money laundering course for BC real estate agents and property managers. This is a needed and positive step.

Recommendation 3

The BC government should establish a transparent and accountable Beneficial Ownership Registry for all BC companies and trusts, including but not limited to real estate interests.

The costs and impacts of money laundering in British Columbia are huge

Money laundering is very damaging to the public-at-large. It is definitely not a victimless crime. As the Expert Panel on Money Laundering in BC Real Estate so aptly puts it:

Money laundering significantly damages our society and causes ongoing harm, not limited to the real estate sector or other economic sectors. Money laundering is a contagious, corrupting influence on society, damaging the reputations and stability of professions and institutions needed to enable complex money laundering schemes and spreading that damage throughout civil society. It facilitates other criminal activities, contributing in particular to drug trafficking and the violent crime and opioid deaths that result, as is sadly so evident in BC. It deprives the public and public services of the benefit of taxation revenue. It affects real estate markets and contributes to the housing affordability problem. (Maloney et al., 2019, p. 1)

The BC real estate sector is a key player in money laundering in that province, and the result of this participation is reflected in higher than expected housing costs. This often results in young families, or individuals at the start of their career, being kept out of the housing market. Housing affordability in BC is a significant problem.

At the Cullen Commission Public Meeting in Victoria BC on November 4, 2019, one participant told the story of how her young adult children were not able to buy a home or condominium in BC:

[One participant] addressed the Commission on the issue of how ML [money laundering] affects ordinary Victorians. In her submission, ML has affected affordability on Vancouver Island. She is angry that ML in Vancouver has not been sufficiently addressed and people are now moving illicit wealth to Vancouver Island. She says she is aware of businesses and joint ventures who are set up to launder money.” (Cullen, 2019b, p. 4)

The Expert Panel on Combatting Money Laundering in BC Real Estate concluded that:

Money laundering investment in BC real estate is sufficient to have raised housing prices and contributed to BC’s housing affordability issue. The data limitations that make it difficult to estimate the level of money laundering make it even more challenging to estimate the allocation of money laundering to specific economic sectors, such as real estate and the impact of that investment on house prices. The Panel cautiously estimates that almost 5 percent of the value of real estate transactions in the province result from money laundering investment. The estimated impact of that would be to increase housing prices by about 5 percent. Successfully reducing money laundering investment in BC real estate should have a modest but observable impact on housing affordability. (Maloney et al., 2019, p. 2)

According to a recent study, for most major urban centres in the U.S.A. there is a strong correlation between housing prices and homelessness:

Among large metros, New York, Los Angeles, Washington, D.C. and Seattle show the strongest relationship between rising rents and increased homeless population.

In New York, our model shows that a 5 percent average rent increase would lead to nearly 3,000 more people falling into homelessness.

A 5 percent increase in Los Angeles rents would lead to roughly 2,000 additional people experiencing homelessness. Rents there rose 4.2 percent over the past year.

In Washington, D.C., our model shows that a 5 percent average rent increase in 2016 would have translated to 224 additional people experiencing homelessness, for a total of 8,722.

In Seattle, that increase would add 258 people to the homeless population for a total of 12,498.¹⁰

¹⁰ “Highlights from Research on Rents and Homelessness.” Zillow Research. August 3, 2017. <https://www.zillow.com/research/highlights-rent-homelessness-16131/> The research is based on Chris Glynn and Emily B. Fox, “Dynamics of Homelessness in Urban America”. arXiv:1707.09380 [stat.AP] 2017. <https://arxiv.org/abs/1707.09380>

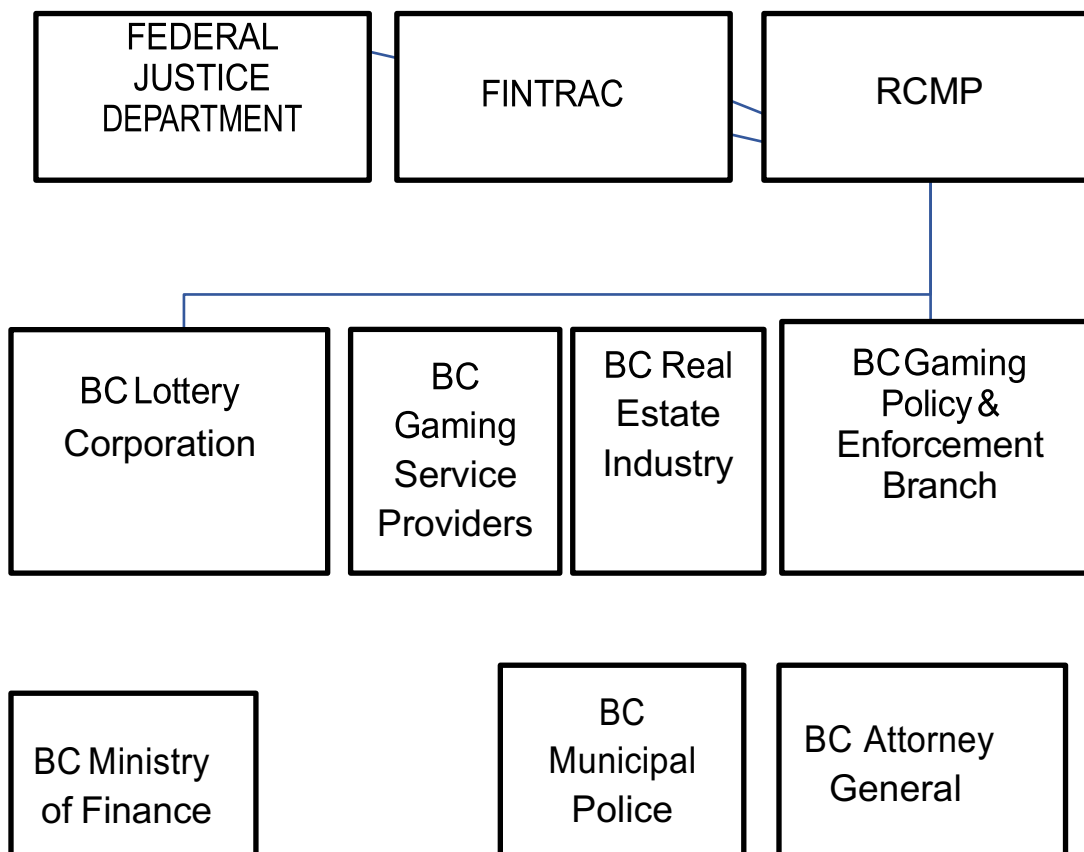
While similar research data are not available for Vancouver, it would be surprising if the results and conclusions were markedly different.

In addition to the effects of money laundering on housing, one cannot ignore dirty money linked to the opioid crisis, and the fiscal consequences it is having in BC and indeed across Canada. The tragic human costs of opioid addiction do not lend themselves to metric analysis. However, the 2018 Canadian federal budget committed more than \$230 million over five years to address the opioid crisis, including \$150 million for a cost-shared Emergency Treatment Fund. For BC specifically, in 2018 the governments of Canada and BC signed a bilateral agreement committing more than \$71.7 million for innovative and comprehensive treatment options in the province.

Some of the Federal Government's failures and Issues

In Canada there are a number of players involved in the fight against money laundering and terrorist financing. At the federal level the Federal Justice Department, FINTRAC, and the RCMP play key roles. The Government of Canada in its 2021 budget announced its intention to create a public registry of corporate beneficial ownership, dedicating \$2.1 million to the development of the project over the next two years.

Key anti-money laundering agencies and departments/ministries in Canada and in B.C.



BC organizations engaged in the fight against money laundering are:

- British Columbia Lottery Corporation;
- gaming service providers (corporations that operate casinos and gaming facilities);
- Gaming Policy & Enforcement Branch (the Regulator);
- Ministry of Finance (responsible for establishing a beneficial ownership registry for corporations and trusts);
- the municipal police (often contracted to the RCMP); and
- the Attorney General (responsible for establishing a beneficial ownership registry for real estate).

In addition to the problems occurring at the provincial level described above, there are also problems at the federal level with respect to the spike in money laundering in BC.

Reporting entities are required to report suspicious and certain other transactions to FINTRAC. These reporting entities are:

1. Accountants
2. Agents of the Crown
3. British Columbia notaries
4. Casinos
5. Dealers in precious metals and stones
6. Financial entities
7. Life insurance companies, brokers and agents
8. Money services businesses
9. Real estate; and,
10. Securities dealers.

There are fines for failing to report suspicious transactions via Suspicious Activity Reports (SARS), but these sanctions do not appear to be significant enough to act as an effective deterrent for non-compliance. In addition, FINTRAC does not do an effective job of auditing reporting entities to ensure that suspicious transactions are being reported to it as required by law and regulation. Anecdotal evidence surrounding casinos, luxury car sales, and real estate transactions would appear to support this claim. Either FINTRAC needs more resources to monitor the performance of reporting entities, or FINTRAC needs to manage its resources better. FINTRAC's legislated authority and mandate in this area may also need strengthening.

Recommendation 4

Ensure that FINTRAC does a much better job of monitoring Reporting Entities for compliance. FINTRAC's legislated authority and mandate in this area may also need strengthening.

The RCMP is Canada's federal police force. Division E is located in BC, and at one time the Division had a Proceeds of Crime Unit in Vancouver. Regrettably, this Unit no longer exists, and

has not been operating for some time. One of the primary responsibilities of this group was to follow-up money laundering leads provided by FINTRAC. Recently, a number of very substantial money laundering information packages – solid leads – prepared by FINTRAC were submitted to Division E for follow-up, but they were not acted upon by the RCMP. This should not be surprising, given the fact that the Proceeds of Crime Unit has been wound down! If money laundering activities in BC are to be addressed, this Unit needs to be re-established and reinvigorated with an influx of officers. Obviously, this will require an infusion of new resources, or a reprioritizing of existing budgets by Division E of the RCMP. Economic crime typically plays ‘second fiddle’ to property and personal injury crime, but it is a fallacy that white-collar crimes like money laundering are victimless.

Recommendation 5

Re-establish the Proceeds of Crime Unit within RCMP Division E, and indeed across Canada if necessary, so that law enforcement officers can adequately investigate suspicious transaction leads received from FINTRAC.

In the year 2000 Canada’s anti-money legislation was introduced, passed by the House of Commons and Senate, and became law. Canada was the last G-7 country to bring in anti-money laundering legislation. The relevant legislation is named the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*. This legislation resulted in the creation of FINTRAC, Canada’s Financial Intelligence Unit, or FIU.

It is often observed that FINTRAC is well financed and mandated and it is well respected worldwide. FINTRAC is very active within the EGMONT Group – the international umbrella body of FIUs – and it is evident that Canada plays a leading role in this organization and is often looked to for AML best practices. The Egmont Group, whose Secretariat is in Canada, consists of one hundred and sixty-five FIUs around the world. These FIUs exchange expertise and financial intelligence to combat global money laundering.

There are those in Canada, particularly in law enforcement, who have suggested that FINTRAC should be repositioned to reside within a law enforcement agency like the RCMP. Independence and privacy matters must be considered before any such re-alignment takes place.

In determining the governance structure of FINTRAC, extensive consultations were undertaken by the Government of Canada and Parliament. In the end, the federal government decided that FINTRAC would come within the purview of the Minister of Finance. It is essential that the Minister responsible for the oversight of an FIU is completely removed from operations and day-to-day decisions. This is the case in Canada.

Governance models for the FIU in existence at the time of the review that were examined included the following:

1. Administrative (e.g. the FIU located in the Central Bank);
2. Law enforcement type FIU (the FIU located in a law enforcement environment);
3. Judicial or prosecution FIU (the FIU located within the jurisdiction of the prosecution authorities); and,
4. Hybrid FIU (a combination of administrative FIU within a law enforcement authority).

It was recognition of and respect for Canada's strong privacy laws, and a belief that an FIU should be just that – a gatherer and synthesizer of financial intelligence to be forwarded, as required, to the RCMP, the Canadian Security Intelligence Service (CSIS), and the Canada Border Services Agency, for further analysis or action – that led the Canadian Liberal government of the day to conclude that the FIU should be housed in the Finance portfolio. It was the view of the government that the FIU should be independent of law enforcement.

When setting up FINTRAC the government at that time was confident that the resources allocated to FINTRAC, and its legislated mandate, based on relevant benchmarks, were adequate for the task at hand.

Recommendation 6

Leave FINTRAC within the purview of the federal Department of Finance.

Money Launderers are not being effectively prosecuted in BC and across Canada

In addition to lapses in casino regulation, beneficial ownership transparency and suspicious transaction reporting and enforcement, Canada, and BC specifically, has a poor record in prosecuting money laundering offences, as the following passage attests.

From 2000-2016, Canada recorded 321 guilty verdicts in money-laundering cases, according to an analysis of data provided by Statistics Canada. Another roughly 809 cases were either stayed, withdrawn or dismissed, according to the data, resulting in a conviction rate of around 27 per cent. That's far fewer than other crimes, as roughly 63 per cent of all adult criminal court cases in 2017 resulted in a guilty verdict...

The U.K. and the U.S. have been far more successful in prosecuting money launderers. Between 1999 and 2007, there were 7,569 money-laundering prosecutions in the U.K., resulting in 3,796 convictions (a roughly 50 per cent conviction rate). The most recent data available from the U.S. Department of Justice show that in 2015, 727 people were prosecuted for money laundering, with 615 being convicted – a rate of 85 per cent.¹¹

There are undoubtedly a number of reasons for this poor performance, including the following:

- a shortage of both law enforcement and prosecutorial resources to lay charges and follow-through in the courts;
- law enforcement agencies being more comfortable investigating and laying charges for the predicate offence underlying the money laundering activity. These offences include drug dealing, corruption and human trafficking. In many cases money laundering charges are 'tagged-onto' the predicate offence.

¹¹ Andrew Russell. "Not just BC: Most provinces in Canada fail to secure convictions in money-laundering cases." Global News. Updated February 10, 2019. <https://globalnews.ca/news/4939801/provinces-canada-fail-to-convict-money-laundering/>

- There may well be the erroneous view within law enforcement that prosecuting money laundering offences requires the identification of a predicate offence.

The Criminal Code of Canada is quite explicit in stating that charges for money laundering offences may be laid notwithstanding the absence of charges relating to a predicate offence. You need only prove that the money launderer knew or believed that the funds came from illegal activities:

Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of (a) the commission in Canada of a designated offence; or (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence. (Government of Canada, Sec. 462.31(1)).

It is also the position of the international anti-money laundering standard setter, the Financial Action Task Force (FATF), that countries should have the ability to charge and prosecute money launderers without having to prove the underlying (predicate) offence.

Recommendation 7

The Attorney General of Canada, and Provincial Attorneys General, should mount training and education programs for federal and provincial crown prosecutors and law enforcement agencies to encourage the laying of charges for money laundering offences, notwithstanding the absence of charges being laid for the predicate offence(s).

Lessons Learned

Information and Monitoring: National and sub-national governments must collect information about financial intermediaries and others, and monitor the extent to which dirty money is permeating their economy. When problems are identified, prompt and decisive remedial action must be taken.

Continuous Improvement: A country's anti-money laundering regime must be subjected to a process of continuous improvement. What worked before may not work today, recognizing that it is a constant challenge to stay ahead of criminal activity. The mandates of, and resources allocated to, anti-money laundering regulatory bodies must be monitored to ensure that these institutions have the tools they need to keep a tight lid on the flow of dirty money.

Building Blocks: An anti-money laundering regime, to be effective, must comprise all of the essential elements, including legislation, regulations, and guidelines and an appropriately mandated and resourced Financial Intelligence Unit with thoroughly trained and motivated staff.

Likewise, law enforcement and prosecutorial officials must be thoroughly trained in the application of the money laundering laws, and not be hesitant to bring money launderers to justice.

The Weakest Link: Money launderers will be motivated to operate in those jurisdictions where the anti-money laundering rules and regulations are weak, and/or where enforcement is lacking or non-existent. In BC a lax environment signaled to the dealers in dirty money that their laundering activities could be expanded in that province. Over time this growth became exponential since such behaviour could be conducted with relative impunity.

Reporting Entities: Entities that are required by law to report suspicious transactions to an FIU should be defined very broadly and inclusively, and include the legal and other professions. In other words, no one that could be a party to these transactions should be excluded.

Tip of the Iceberg: Money laundering in casinos is often the tip of the iceberg and symptomatic of deeper problems with dirty money. Money laundering, as is the case in BC, will often extend to the real estate sector and to businesses and trusts generally.

Huge Societal Costs: The negative impacts of money laundering are significant. The lack of an effective money laundering deterrent can lead to a spike in transnational criminality, including increased drug trafficking, opioid addiction, and lost and harmed lives – not to mention the pressures on social service and health care services. A loss of confidence in the integrity of financial systems discourages legitimate investment. Money laundering in the real estate sector negatively affects housing affordability.

Transparent and Accountable Beneficial Ownership Disclosures: Money launderers must not be permitted to hide the illegal source of their funds by using layered shelf companies, nominee directors, bearer shares and the like. Transparent and accountable beneficial ownership public registries are key to preventing this. Validating beneficial ownership declarations requires the significant application of due diligence, with attendant resources, to minimize false disclosures. These are critical factors for success. Likewise, sanctions, including the freezing and ultimately the confiscation of funds, should be in place as penalties to deter false beneficial owner declarations.

Prosecute, Prosecute, Prosecute: Law enforcement officers are generally more at ease pursuing charges for the predicate offences that lead to the laundering of dirty money. Over time this results in less than acceptable levels of prosecution of money launderers, and a more permissive environment for such crimes. Law enforcement agencies need to have the training and the resources needed to confidently lay charges for money laundering offences. Attorneys- General and prosecutors should encourage and support such action.

Relationships and Communication: Sharing of information with other jurisdictions, using mechanisms that exist within the EGMONT Group of FIUs, is critical when tracking transnational criminals and in benchmarking best practices. Senior government elected officials must take money laundering seriously. A coherent communications strategy is essential to constantly deliver the message to the public about the negative impact of money laundering, and the progress being made to hinder and eliminate it.

Summary of recommendations

Recommendation 1

Canada's federal Government should find a way to include the legal profession in its anti-money laundering/anti-terrorist financing regime. This needs to be done in a way that complies with the Canadian Constitution and the Canadian Charter of Rights and Freedoms. One way to achieve this is to require lawyers to report suspicious transactions to their provincial law societies. The law societies in turn should be subject to review by an independent body that would ensure that law societies are complying with the legislated reporting requirements.

Recommendation 2

Implement, on an urgent basis, all 48 recommendations contained in the German report (2018, pp. 13-17).

Recommendation 3

The BC government should establish a transparent and accountable Beneficial Ownership Registry for all BC companies and trusts, including but not limited to real estate interests.

Recommendation 4

Ensure that FINTRAC does a much better job of monitoring Reporting Entities for compliance. FINTRAC's legislated authority and mandate in this area may also need strengthening.

Recommendation 5

Re-establish the Proceeds of Crime Unit within RCMP Division E, and indeed across Canada if necessary, so that law enforcement officers can adequately investigate suspicious transaction leads received from FINTRAC.

Recommendation 6

Leave FINTRAC within the purview of the federal Department of Finance.

Recommendation 7

The Attorney General of Canada, and Provincial Attorneys General, should mount training and education programs for federal and provincial crown prosecutors and law enforcement agencies to encourage the laying of charges for money laundering offences, notwithstanding the absence of charges being laid for the predicate offence(s).

Acronyms

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism framework
BC	British Columbia
BCLC	British Columbia Lottery Corporation
FATF	Financial Action Task Force
FDI	Foreign Direct Investment
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
FIU	Financial Intelligence Unit
GPEB	Gaming Policy and Enforcement Branch (British Columbia Government)
IMF	International Monetary Fund
PCMLTFA	Proceeds of Crime (Money Laundering) and Terrorist Financing Act
PEP	Politically Exposed Person
PRC	People's Republic of China
RCMP	Royal Canadian Mounted Police

References

- Baker, R. W. (2005). *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System*. John Wiley & Sons.
- Beare, M. E., & Schneider, S. (2007). *Money Laundering in Canada: Chasing Dirty and Dangerous Dollars*. University of Toronto Press.
- Cassara, J. A. (2017). Countering International Money Laundering: Total Failure is 'Only a Decimal Point Away'. FACTCOALITION.
<https://thefactcoalition.org/wp-content/uploads/2019/12/Countering-International-Money-Laundering-Report-August-2017-FINAL.pdf>
- Cullen. (2019a). Website of the Committee of Inquiry into Money Laundering in British Columbia. Introductory Statement from Commissioner Cullen.
<https://cullencommission.ca/comm-statements/>
- Cullen. (2019b). Website of the Committee of Inquiry into Money Laundering in British Columbia. Victoria Public Forum Summaries.
<https://cullencommission.ca/files/PublicMeetingSummaries-Victoria.pdf>
- Dumont, M. (2018). Trade and Investment: Canada-China. Library of Parliament of Canada Research Publication No. 2018-588-E.
https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/TradeAndInvestment/2018588E

- FATF. (2013). FATF Guidance: Politically Exposed Persons (Recommendations 12 and 22). <https://www.fatf-gafi.org/media/fatf/documents/recommendations/guidance-pep-rec12-22.pdf>
- German, P. M. (2018). Dirty money: An independent review of Money Laundering in Lower Mainland casinos conducted for the Attorney General of British Columbia. https://news.gov.bc.ca/files/German_Gaming_Final_Report.pdf
- Global Witness. (2018). The Companies We Keep: What the UK's open data register actually tells us about company ownership. Executive Summary. <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/companies-we-keep/#chapter-0/section-1>
- Glynn, C., & Allison, M. (2017). Rising Rents Mean Larger Homeless Population. Zillow Research. <https://www.zillow.com/research/rents-larger-homeless-population-16124/>
- Government of Canada. Criminal Code of Canada. <https://laws-lois.justice.gc.ca/eng/acts/c-46/>
- Maloney, M., Somerville, T., & Unger, B. (2019). Combatting Money Laundering in BC Real Estate. Expert Panel on Money Laundering in BC Real Estate. <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/real-estate-in-bc/combating-money-laundering-report.pdf>
- Morency, J-D., Malenfant, E. C., & MacIsaac, S. (2017). Statistics Canada. Immigration and Diversity: Population Projections for Canada and its Regions, 2011 to 2036. Appendix Two: Population by visible minority group, place of residence and projection scenario, Canada, 2011 and 2036. <https://www150.statcan.gc.ca/n1/en/pub/91-551-x/91-551-x2017001-eng.pdf?st=rlNutBd4>
- Transparency International. (2004). Global Corruption Report. https://images.transparencycdn.org/images/2004_GCR_PoliticalCorruption_EN.pdf
- Vancouver Police Department. (2017). The Opioid Crisis: The Need for Treatment on Demand. Review and Recommendations. <https://vpd.ca/police/assets/pdf/reports-policies/opioid-crisis.pdf>

Western Modernization of Agriculture in Africa Produces Malnutrition

Michiel Korthals¹

Abstract:

Jointly established in 2006 by the Rockefeller and Gates Foundations, AGRA was meant to bring scientific agriculture to Africa. Despite large investments by 13 African states, the promised doubling of incomes has not materialized, and healthy nutrition, biodiversity and water availability have all deteriorated. Successful agriculture in Africa must be sensitive to local conditions and build on local knowledge and experience.

Keywords: AGRA, Green Revolution in Africa, Agroecology, Malnutrition, Large Scale Farming

Many people think that Africa is the same everywhere, a bit like Europe, but a bit wilder and less developed. So, to feed Africans, they should follow the West and import Western technologies like fertilizers, genetically modified crops and irrigation. The Rockefeller Foundation and the Bill and Melinda Gates Foundation therefore joined forces in 2006 to establish the Alliance for a Green Revolution in Africa (AGRA). They received financial and economic support from the governments of 13 African countries: \$1 billion in contributions, of which they distributed roughly \$524 million in grants.² The program explicitly targets small farms, aiming to stimulate them to raise the yields of their plots, and to double their incomes, by using genetically modified crops, synthetic fertilizers and pesticides. By funding PhD projects, genetic research in disease-resistant strains of maize and other university research projects, AGRA's general strategy is to reduce poor farmers' food insecurity by stimulating science. At first, former UN Secretary General Kofi Annan chaired the foundation; after his death Agnes Kalibata, Rwanda's former Minister of Agriculture and Animal Resources, took over. The goal of the foundation is "to increase incomes and improve food security for 30 million smallholder farm households in 11 African countries by 2021."³

The governments of Mali, Burkina Faso, Niger, Ghana, Nigeria, Uganda, Ethiopia, Rwanda, Kenya, Mozambique, Tanzania, Zambia, and Malawi participated with millions in subsidies, and with governmental regulations, forbidding for example the production of indigenous crops like millet and sorghum and discouraging the use of organic fertilizers. By 2021, the small farms of the participating states were supposed to be out of poverty, malnutrition and hunger were to have been halved, and prosperity to have increased. Louise Fresco, president of Wageningen University Research and a well-known agri-food professional, also thinks that science-driven, large-scale agriculture is possible everywhere in Africa. Mechanization, robotization and irrigation were to be rolled out even more

¹ Professor of Philosophy, University of Gastronomic Sciences, Pollenzo/Bra (Italy); Emeritus Professor of Applied Philosophy, Free University (Amsterdam) and Wageningen University. The views expressed in the paper do not necessarily reflect those of the relevant institutions. No funding support has been received. There are no conflicts of interest with respect to the research, authorship or publication of the paper. ORCID: orcid.org/0000-0002-0575-9433

² <http://www.agra.org/>, accessed 06-09-21

³ <http://www.agra.org/>

intensively.⁴ These ideas aren't utopian: this approach to agriculture is being realized in many developing countries in the large plantations producing crops, mostly fodder for Western animal production. Sometimes these plantations are obtained through land grabbing.

Evaluations after 14 years show, however, that the results of AGRA for the targeted small farms are quite meager. The implementation of the AGRA program and the spending of billions of dollars, partly by African governments, led to an enormous reduction in the yields of crops used by local farmers and consumers. Indeed, the yield of maize for export to the West increased, mostly due to expansion of agricultural areas, but yields of local crops, well adapted to the climate and offering sufficient nutrients, declined, e.g. millet minus 24%, sweet potatoes minus 7% and groundnuts minus 23% (Mkindi et al., 2020, p. 29). Poverty and malnutrition increased. These results are reported from various quarters, and the cause of increasing malnutrition is identified as a one-sided diet based on meals of one crop, mostly maize.⁵ For example, in Tanzania, the number of undernourished people was 13.6 million during 2004-06 and 17.6 million during 2016-18, an increase of 4 million.⁶ As Mkindi et al. (2020, p. 21) testify in respect of Rwanda:

During the AGRA period, extreme poverty remained high, falling only three percent to a shocking 60 percent between the years 2006 and 2018. Although undernourishment decreased by nearly eight percent to 37 percent, the number of severely hungry people increased by 500,000 to 4.5 million. It is notable that poverty reduction in Rwanda was more effective in the 12 years before AGRA, when the number fell by 500,000 people.

The AGRA program has been criticized from various points of view. The Food & Business Research Program, supported by Dutch national science organizations, points out that the unilateral focus on export crops comes at the expense of improving water and land use for crops that are eaten by the local population. Moreover, the type of water management used with these export crops is irrigation with open water channels and sprinkler systems which, given the extreme heat of the tropics, causes high evaporation. Dutch researchers, by contrast, have aimed to improve local crops and practices, like soil conservation methods, integrated pest management, and water management by constructing swales, i.e., shallow trenches planted with water-absorbing berry and fruit bushes that retain rainwater that would otherwise be lost running down the slopes of hilly landscapes (Lammers and de Winter, 2020).

In much more detail, Timothy Wise and others from the Institute for Agriculture and Policy based in the US and Germany have examined the results of the AGRA program. Their report, shows that the AGRA program did not keep its promises (Mkindi et al, 2020; see also Wise, 2020). The strong emphasis on maize exports meant that more maize has been produced by taking up more land, but malnutrition due to lack of nutrients has increased by 30% since the start of the program. According to the report:

⁴ <https://www.volkskrant.nl/kijkverder/2018/voedselzaak/artikelen/louise-fresco-zoals-er-een-klimaataakkoord-van-parijs-is-moet-er-ook-een-groot-voedselakkoord-komen>

⁵ Timothy Wise. "Replacing hunger with malnutrition": Former UN official calls out failing African Green Revolution." IATP, August 19, 2020. <https://www.iatp.org/blog/202008/replacing-hunger-malnutrition-former-un-official-calls-out-failing-african-green>. Jomo Kwame Sundaram. "Address Malnutrition with Food Insecurity." IPS, August 4, 2020. <http://www.ipsnews.net/2020/08/address-malnutrition-food-insecurity>

⁶ FAOSTAT Food Security Indicators. <http://www.fao.org/faostat/en/#data/FS>, updated October 2019.

Data clearly shows that maize support programmes are increasing total maize production far more through expansion than through productivity improvements. Some countries, such as Zambia, have nearly doubled the area planted with maize as a result of the Green Revolution incentives to plant the crop, yet their productivity growth over the 12-year period is just 27 percent (Mkindi et al., 2020, p. 20).

Prosperity in the 13 countries has also not increased. The production of millet, grown in mixed cultivation with legumes, decreased by 24% (Mkindi et al, 2020, pp. 18, 20). Millet, but also groundnuts, sorghum and nuts require low input and are often subject to innovative practices of local farmers. These crops are better adapted to local soil and weather conditions than export crops. But in Rwanda, for example, farmers who grow those ecologically responsible crops were even fined! The enormous space, energy and water use of the export crops hampers the work of the vast majority of small, potentially sustainable and biodiverse farmers.

Another US-based NGO, AGRA Watch, signals the same problems and shows that the specific scientific, top-down approach of the AGRA program is not neutral and does not pay attention to, for example, scientific research on agroecological and nature-inclusive forms of agriculture. It argues for more innovations in that direction (AGRA Watch, 2020).

The AGRA program seems to give priority to the lab, on the premise that scientific results, producing synthetic fertilizers for example or improved seeds of export crops like maize, flow through and can make a big difference to farming practice (“trickle down science”; Reidpath & Allotey, 2019). The poor results of the AGRA program show that this is a misconception and that, in agricultural matters, local conditions and local challenges must first be considered. The program doesn’t pay attention to local markets and processing of crops; instead, it takes it for granted that producing for global markets automatically improves the livelihood of poor farmers. However, firstly, participating farmers had to buy more inputs (seeds, synthetic fertilizers) and secondly, were more dependent on volatile (global) markets for their returns. Rising poverty is the result. Interestingly, as early as 2013 the warning had been given that a top-down science-based approach would not work to improve the welfare of small farmers: “There is a need for targeting in a “best fit” approach from a basket of options, rather than pushing best-bet approaches or “silver bullet” solutions” (Tittone & Giller, 2013, p. 88).

The 2020 *State of Food Security* report generally shows that malnutrition is on the rise and that agroecological approaches and sustainable crops with a lot of nutrients help against this (FAO et al., 2020). Crops and trees are selected in mixed cultures according to their fruit-bearing capacities and their potential to keep common enemies at bay. Diversity of local crops has a positive effect on diverse, healthy diets and reduces malnutrition caused by insecure dependency on one crop. During my travels in Ghana and Uganda I have seen quite a few farms with variations of this approach.

Interestingly, in some Western European countries, like Belgium and the Netherlands, and in the United States, an alternative to large scale industrial farming is a type of agriculture that focusses on agroecological approaches and a large variety of crops and trees in the field. Some of these approaches are inspired by the African example of mixing forests and crops, what is called agroforestry or food forest (Leary, 2017).

So, there are good alternatives that counteract both malnutrition and the reduction of biodiversity (Tittonell et al. 2016; Goswami et al., 2017; Bezner Kerr et al., 2019). German and French development organizations and the aforementioned Dutch program are committed to these agroecological approaches, which are closely linked to local knowledge, practices and markets. For example, many different crops (e.g. sweet potato, yam, cassava, amaranth) are usually grown on small plots of land at the same time, thus providing a versatile, diverse daily menu with many nutrients. These programs work on innovations and knowledge platforms that are not aimed at export but at the improvement of local and regional production and distribution. The Slow Food 10000 Gardens Facebook page gives a vivid picture of these developments.⁷

The results of these programs look good, which is why the European Union urged the high-level forum Africa-Europe 2018 to support mixed cultivation with local crops by small farmers.⁸

References

- AGRA Watch. (2020). Messengers of Gates' Agenda: A Case Study of the Cornell Alliance for Science Global Leadership Fellows Program. Community Alliance for Global Justice. <https://cagj.org/2020/08/new-agra-watch-report-messengers-of-gates-agenda-a-case-study-of-the-cornell-alliance-for-science-global-leadership-fellows-program/>
- Bezner Kerr, R., Hickey, C., Lupafya, E., & Dakishoni, L. (2019). "Repairing rifts or reproducing inequalities? Agroecology, food sovereignty, and gender justice in Malawi." *The Journal of Peasant Studies*, 46:7, 1499-1518. DOI:10.1080/03066150.2018.1547897
- FAO, IFAD, UNICEF, WFP & WHO. (2020). The State of Food Security and Nutrition in the World 2020. Transforming food systems for affordable healthy diets. Rome, FAO. <https://doi.org/10.4060/ca9692en>
- Goswami, R., Saha, S., & Dasgupta, P. (2017). "Sustainability assessment of smallholder farms in developing countries." *Agroecology and Sustainable Food Systems* 41:5, 546–69. DOI:10.1080/21683565.2017.1290730
- Lammers, E., & de Winter, D. (2020). Smallholder outcomes for increased food production. NWO. https://knowledge4food.net/wp-content/uploads/2020/07/FBRsynthesis07_SmallscaleFarmers_paper.pdf
- Leary, J. (2017). *One Shot: Trees as Our Last Chance for Survival*. Trees Press.
- Mkindi, A., Maina, A., Urhahn, J., Koch, J., Bassermann, L., Goita, M., Nketani, M., Herre, R., Tanzmann, S., & Wise, T. A. (2020). False Promises: the Alliance for a Green Revolution in Africa (AGRA). INKOTA-netzwerk and Rosa Luxemburg Stiftung. https://www.rosalux.de/fileadmin/rls_uploads/pdfs/Studien/False_Promises_AGRA_en.pdf
- Reidpath, D, D., & Allotey, P. (2019). "The problem of 'trickle-down science' from the Global North to the Global South." *BMJ Global Health* 2019;4:e001719. doi:10.1136/bmjgh-2019-001719

⁷ <https://www.facebook.com/groups/slowfood.gardens.africa/>

⁸ "Promoting climate action and improving access to private finance, among recommendations for rural Africa." European Commission News, 18 December 2018. https://ec.europa.eu/info/news/promoting-climate-action-and-improving-access-private-finance-among-recommendations-rural-africa-2018-dec-14_en

- Tittonell, P., & Giller, K. E. (2013). "When yield gaps are poverty traps: The paradigm of ecological intensification in African smallholder agriculture." *Field Crops Research*, 143, 76–90. <https://doi.org/10.1016/j.fcr.2012.10.007>
- Tittonell, P., Klerkx, L., Baudron, F., Félix, G. F., Ruggia, A., van Apeldoorn, D., Dogliotti, S., Mapfumo, P., & Rossing, W. A. H. (2016). "Ecological Intensification: Local Innovation to Address Global Challenges," in E. Lichtfouse (Ed.), *Sustainable Agriculture Reviews*, vol. 19, 1–34. Abstract available at https://link.springer.com/chapter/10.1007/978-3-319-26777-7_1
- Wise, T. A. (2020). Failing Africa's Farmers: An Impact Assessment of the Alliance for a Green Revolution in Africa. Global Development and Environment Working Paper No. 20-01. Tufts University. https://sites.tufts.edu/gdae/files/2020/07/20-01_Wise_FailureToYield.pdf

Understanding Farmer Protests in India

Sudha Narayanan¹

Abstract:

No national occupational group in the world contains more people, or more poor people, than India's agricultural sector, which is now being shaken by massive farmers' protests against three pieces of legislation recently passed by the Indian government. In this invited opinion piece, I examine the grounds of the farmers' fears and show the way toward a more democratic path of reform that would be sensitive to the concerns, needs and vulnerabilities of India's smallholders and landless agricultural workers.

Keywords: Agribusiness, Agricultural Produce Marketing Committees, Contract Farming, Farmer Protests, Indian Farm Acts, Land Reform, Smallholders.

This is the Indian farmer's "Winter of Discontent." At the time of writing, an estimated 200,000–300,000 farmers from some 30 farmer organizations have camped out in the biting cold, along highways that lead to the Indian capital Delhi, moving in from the neighboring States of Punjab, Haryana and Uttar Pradesh. Farmers from several other States, in smaller numbers, have joined them in solidarity. Barriers prevent them from entering the capital city. But this has not deterred them from their resolute call to repeal three pieces of legislation that farmers call the Black Laws, which allow unprecedented freedom to private players to buy, stock and contract for produce. First introduced on 5 June 2020 by India's Government as ordinances, these Farm Acts were hastily passed by the two Houses of Parliament on 17 and 20 September, via voice vote with little discussion, and they obtained presidential assent on 24 September 2020.

Several protests have since been held, but the present one, timed by the farmers to commence on 26 November, after their winter farm operations ceased, represents the strongest sustained pushback yet, on a scale that has taken India by surprise and inspired much awe and admiration. Within a month, this protest has acquired larger significance, well beyond the limited goal of protesting the contents of the three Acts. The protesting farmers appear to have a far more incisive understanding of the implications of the Acts than most commentators thus far. This present opinion piece focuses on some of the larger concerns around these Acts and their implications for India as a whole.²

¹ Sudha Narayanan is Research Fellow at the International Food Policy Research Institute (IFPRI), New Delhi. She wishes to thank without implicating Jean Drèze, Reetika Khera, Thomas Pogge and Sreenivasan Subramanian for their comments and suggestions on an earlier draft. The views expressed in this article are those of the author and do not necessarily reflect those of the institution she belongs to. The author declares no potential conflicts of interest with respect to the research, authorship and/or publication of this article.

² For a detailed assessment of the Acts themselves, see Narayanan (2020).

The predicament of the Indian farmer

To appreciate the significance of these protests and of the Acts themselves, it is important to note that, although agriculture contributes only around 15% of India's Gross Domestic Product, approximately half of its population relies on agriculture as a source of livelihood. As of 2015–16, India has an estimated 146.5 million farms. Yet an overwhelming 86% of farms were less than one hectare in size, not much larger than a soccer field. Over time, incomes from farming have not kept pace with incomes in other, especially salaried, occupations. In 2012–13, households operating and managing farms of under one hectare reported earning less than their monthly household expenditure, and 52% of all farm households had substantial debt – even though farm households do not sustain themselves by agriculture alone but receive about 32% of their income from working on others' farms or in non-farm occupations (National Sample Survey Office, 2014, p. 13).

Although Punjab, the State with the largest farmer protests, has historically derived much of its prosperity from agriculture, its smallholders are not very different from their counterparts elsewhere, with many farms getting smaller without a commensurate increase in productivity or prices. The shrinking size of Indian farms results from subdivision across generations, but India's policies of imposing ceilings on land ownership and restrictions on ownership transfers to non-farmers and on corporate land ownership have also fostered the trend by enabling smallholders to survive, even though many have joined the ranks of the functionally landless over the past decades. Although limited to specific States (notably Jammu & Kashmir, Kerala and West Bengal), land reforms aiming to transfer land to the tillers have also favored smallholdings over consolidation. Another factor is that India's economic growth has not generated decent work for all, prompting smallholders to retain farmland as a fallback option in a precarious economy. Thus far, India's agrifood chain, too, has been dominated by small players, despite growing consolidation in processing and retail. It is against this background that the Farm Acts and the farmers' response to them must be understood.

The Three Farm Acts

India's Constitution assigns responsibilities to different levels of government. "Agriculture," "markets and fairs" and "trade and commerce within a State" are responsibilities assigned to State governments, while the federal or central Government (the Centre) is responsible for ensuring "freedom of trade, commerce and intercourse" by governing inter-State and international trade. Heretofore, laws pertaining to agricultural marketing have thus been the domain of the States. Almost all States provided a regulatory framework via a State-level Agricultural Produce Marketing Committee (APMC) which issued licences to traders and intermediaries (commission agents) whose mediating role enabled farmers to sell to buyers via auctions and closed tenders.

The first of the three Acts, ***the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020***,³ wrests control away from States by limiting APMC oversight and jurisdiction to the APMC "market yard," while also, under federal control, allowing agricultural produce transactions to take place in a "trade area" and providing a "facilitative framework for electronic trading."

³ <http://egazette.nic.in/WriteReadData/2020/222039.pdf>

The second Act, ***the Essential Commodities (Amendment) Act, 2020***⁴ amends a preexisting Act that allowed the Centre and the States to impose stocking limits on private traders to prevent hoarding and market manipulation. The new amendment removes some of these restrictions, which can now be deployed only in “exceptional circumstances.” This easing has been welcomed especially by large businesses who had found these restrictions constraining.

The third Act, ***the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020***,⁵ allows “sponsors” to engage with farmers via written contracts and frees downstream players in the supply chain from State APMC regulations by permitting them to operate outside the purview of any “State Act” or of the 1955 Essential Commodities Act (Chapter II, Section 7, Paragraphs 1 & 2 of the third Farm Act).

Although purporting to serve the interests of farmers, all three Acts focus not directly on farmer welfare but on improving the “ease of doing business” for supply chain actors, especially non-traditional private players, such as agritech companies and retailers. So far, States have taken the lead in implementing these reforms, with the Centre merely providing broad direction. Indeed, in recent years, several States have allowed private agribusinesses to establish private market yards or collection centres to undertake contract farming and to buy directly from farmers. Private-sector players operated within the ambit of the State-level APMCs, under the same regulatory umbrella in which APMC market yards served as the backbone, bringing buyers and sellers together to trade in one place. The new reforms under the Farm Acts now create a different structure, outside the regulatory purview of APMCs and therefore of State governments, fully under central Government control. So far, however, virtually no rules exist for this new space: transactions need not be recorded or documented, and nothing ensures competition or the absence of collusion (Narayanan, 2020).

Ominous signs: Control, consolidation and corporatization

In essence, therefore, though the Acts profess to free up trade for farmers, they really remove constraints on buyers and shift control over trade from States, as envisioned in the Constitution, toward the Centre, which can now fully regulate and control agriculture in ways that foster consolidation of select businesses that find favor with the Government in power (Drèze 2020). Much of the fear of protesting farmers and other commentators is about how this new trade area and electronic trading will be shaped.

It is no accident that the protesting farmers have singled out two specific conglomerates as illustrative of the potential perils of these Acts – Adani Agri Logistics (AAL) and Reliance Industries Limited (RIL). Since 2016, the Government of India has turned to AAL to construct and manage publicly-held food stocks under 30-year contracts that provide guaranteed returns. In AAL’s own words, they are pioneers “in providing an end-to-end bulk supply chain solution to Food Corporation of India and various state governments” with a vision of “transforming the future of food security for India.”⁶ These investments have barely created jobs locally in the farming communities where they are located, relying on high levels of mechanization to carry out operations that were hitherto the

⁴ <http://egazette.nic.in/WriteReadData/2020/222038.pdf>

⁵ <http://egazette.nic.in/WriteReadData/2020/222040.pdf>

⁶ <https://www.adaniagrilogistics.com/Home/about-us> (accessed on December 14, 2020; subsequently the site has been edited by the firm)

responsibility of the public enterprise Food Corporation of India. The emergence of large-scale agri-logistics operators is also perceived by activists to result in job losses for many workers in agrifood supply chains, which can outweigh potential gains in employment with the entry of smaller players.

The Covid19 lockdown also saw another large conglomerate, RIL, enter online retailing, aggressively taking on existing e-commerce giants and online food and grocery stores. A \$5.7 billion deal between Facebook and RIL in 2020 notes that their digital wares will target as clients “India’s 60 million micro, small and medium businesses, 120 million farmers, 30 million small merchants and millions of small and medium enterprises in the informal sector, in addition to empowering people seeking various digital services.”⁷ The intention is to leverage data to ostensibly provide support to farmers and connect them to retail markets. There are potential benefits if all this happens in a transparent manner while safeguarding farmers’ rights and freedom of choice. At the same time, across the world, data technologies have emerged as a “powerful new driver of consolidation.” The International Panel of Experts on Sustainable Food Systems (IPES) recommended, for example, that the European Union block agribusiness mergers leading to over-consolidation of farm data that in turn might weaken the relative position of farmers in terms of their say in production practices, access to financial products, the ability to act collectively and to negotiate for better prices (IPES 2019, pp. 53, 66 & 81).

It is not hard to read the tea leaves in the case of India. In the Government’s own vision of the future of Indian agriculture and its highly-publicized slogan of Doubling Farmers’ Incomes (DFI) by 2022, data-driven technologies occupy pride of place. Not unlike its large unique identity number (UID), Aadhaar, a biometric project widely regarded as deeply problematic, the Government articulates a grand design to ensure that “Aadhaar offers a unique platform to track the performance of ... subsidies and, if designed well, a means to track DFI in real time” (Ministry of Agriculture and Farmers Welfare, 2020, p.16).⁸ The Government has the stated goal of creating an Agri stack – a database that would include profiles of farmers, their identities, bank accounts and Government benefits as well geographically explicit information on their farms – enabling public-private partnership for the use of such data and allowing private players to build on and monetize these data stacks. Yet there is little clarity on how this Government-developed stack will be transferred to the private sector and the rules that will govern its use and monetization by public or private players. Many ag-tech players are already developing sophisticated tracking and scoring systems, data analytic tools and algorithms to distinguish credit and insurance-worthy farmers from those who are unbankable or uninsurable. Such engagement with farmers is often motivated by the goal of selling fintech (the use of technology to create, enhance or automate financial products, services and processes) and financial products as much as it is about providing farm advisory services or market linkages for farmers. Some worry that many of these data-driven interventions to assist farmers with production practices support industrial monocultures and would in fact promote large agribusinesses at the expense of diverse and sustainable production systems.

⁷ Facebook to Invest ₹ 43,574 Crore in JIO Platforms for a 9.99% Stake. Media Release, Reliance Industries Limited/JIO, Mumbai, April 22, 2020. <https://www.ril.com/getattachment/f8f5c090-6286-42f0-96e5-db05b1ded9f4/FACEBOOK-TO-INVEST-%E2%82%B9-43,574-CRORE-IN-JIO-PLATFORMS.aspx,p.2>

⁸ For details of the Government’s vision, see National Conference: New Initiatives (2020) and Department of Agriculture, Cooperation and Farmers Welfare (2020).

Under the current Farm Acts, the promotion of electronic platforms that provide a “facilitative framework for electronic trading” can drive rapid consolidation of firms that manage digital platforms and provide data analytics services. It appears therefore that the Farm Acts allow a data consolidation path into the agricultural sector, enabling these firms to exercise indirect control over agrifood supply chains where they have thus far found it hard to consolidate their position as direct participants in the agrifood retail, processing and inputs sectors. This is a clear and present danger for Indian farmers.

To be clear, the concern is not that agribusinesses are bad. Across States that have reformed agricultural marketing, there are many examples where farmers supplying modern agribusinesses have benefitted. Farmer disenchantment with agribusiness comes not so much from their ignorance of these lucrative possibilities but from their underwhelming experience in engaging with large corporations. The farmers from Punjab, who are leading the protests, have been at the forefront of many key innovations in Indian agriculture. They were the stewards of the Green Revolution in wheat and rice, which was instrumental in India becoming self-sufficient in food grains. One of the first organized contract farming schemes in India that involved a corporate entity was enabled by the Punjab government in 1988–89; and indeed, most early examples of successful organized corporate sector engagement with farmers are from Punjab. Yet many of these have largely failed to gain traction due to risks associated with contract farming and poor contract enforcement.

There are similar cautionary episodes from elsewhere. In 2019, PepsiCo took potato farmers in the Western State of Gujarat to court claiming unauthorized use of their seeds. In another high-profile case, in 2016 the Competition Commission of India opened an investigation into accusations that Monsanto Holdings Pvt. Ltd (MHPL) was abusing its dominant position in the GM-cotton seed industry. MHPL’s conditions around the provision, marketing and sale of its proprietary seeds were deemed to undermine and threaten the development of alternate seed technologies by other seed producers. These are grim reminders for farmers of the ways of big business and what small farmers might face down the line, even if not in the short term. A gradual erosion of the network of State-regulated markets under APMC, in the face of private competition and/or benign neglect, would leave small farmers especially vulnerable. Despite their flaws, APMCs provide an organized space and commonly known or shared possibilities for price discovery, providing a benchmark price for collective bargaining and recourse to dispute resolution in the event of disagreements around quality, quantity and payment default. Thus, even without the spectre of agribusiness consolidation, farmers view deregulation without any safeguards to protect farmer interests as potentially catastrophic.

State support in jeopardy: fiscal and global pressures

Another key demand of farmers pertains to the Minimum Support Price (MSP), a defining feature of Indian agricultural policy. Instituted in the 1960s, when India still depended on food grain imports from the US under PL480, the MSP is a price floor maintained by the government for 23 commodities. It is the price at which the Government implicitly promises to buy from farmers, should market prices fall below it. Government MSP procurement is however heavily concentrated on wheat and rice with only limited procurement in other crops. Existing research suggests that the MSP can be an effective price support, but also that it is perhaps the only credible de-risking mechanism for farmers. There is consensus today that India’s food self-sufficiency under the Green Revolution was largely enabled

by a system of procurement of food grains at a guaranteed price and by subsidies on fertilizer and electricity. In 2019–20, India stocked 70 million tons of food grains, much more than the norms established for buffer stocks. These grains are channeled into a wide network of fair-price shops or the Public Distribution System which in principle distributes subsidized grain under the National Food Security Act (NFSA). In the past decade, however, this system has come under fire. On the one hand, global pressures led by the United States and other grain exporting countries in the World Trade Organization (WTO) have repeatedly sought to curtail or even to dismantle India's food procurement and subsidy program. Domestically too, expert committees and economists have consistently urged the Government to transition away from support to farmers in the form of discounted input prices or guaranteed output prices to reduce the fiscal burden of these operations. A 2015 Report on the role of the Food Corporation of India, which manages this system, advocated a gradual transition to income support for farmers and cash transfers for consumers away from the current system (High Level Committee, 2015, pp. 22-23, 26, 46).

Against this background, farmers see the Farm Acts, which do not allude to the MSP at all, and the entry of private players into public procurement of food grains, as first steps toward dismantling a support regime that has formed the backbone of their livelihood. Farmers have thus demanded that the Government commit to guaranteeing MSP as a legal entitlement, extending to private purchases as well.

Defense of democratic and federal principles

Interestingly, the farmers' protest goes well beyond the Acts themselves, calling also for the restoration and preservation of federal and democratic principles.

India's current Government has built a dubious reputation for decisive action with scant regard for its effects on the poor. Prominent examples are the 2016 demonetization, which within hours rendered invalid 86% of all cash in circulation, the hasty transition to a centralized tax regime (GST) that hurt medium and small enterprises disproportionately, and the stringent nationwide lockdown to contain the spread of Covid-19.

The same Government has also systematically resorted to actions that undermine India's federal structure, even while India's Constitution vests States with wide-ranging powers to legislate and shape the nature of economic growth and development. In passing these three Acts as ordinances during the Covid19 crisis, the Government has shown a willingness to overlook the preferences and local needs of the States. While advocates of the Farm Acts claim, correctly, that such agricultural market reforms have been discussed for two decades, the fact is that these Acts themselves saw no discussion at all. Their rushed passage in Parliament prompted former Indian prime minister, H. D. Deve Gowda, a farmer himself, to express anguish at the lack of any substantive discussion in Parliament on the merits of the Acts.

The farmers and also some commentators see these three Acts as emblematic of a trend towards growing centralization of powers within the country and of a routine disregard for democratic and federal principles. For farmers, their respective State governments have been far more accessible and benign players, accountable even if woefully imperfect. One demand of a section of

the farmers is therefore that the Centre should not interfere in State affairs and should “decentralize its powers.”⁹

Some farmer groups have gone even farther. The Bharatiya Kisan Union (Ekta-Ugrahan) has demanded the release of farmers who had been jailed for protesting,¹⁰ and has also called for the release of “political prisoners” held across the country for defending human rights in a number of causes ranging from the citizenship rights of religious minorities to rights against discrimination of tribals and historically oppressed castes. This has provoked the Government and its ideological or opportunistic supporters to accuse the farmers of being “anti-national” and to claims that the protests have been hijacked by dissidents out to destroy the country. Critics of an apparently milder disposition have dismissed these protests as led by elite farmers who have too long been mollycoddled with public support; one economist likened the Acts to “snatching away the milk bottle” of a privileged few. The Prime Minister himself has accused the opposition of “playing tricks” with the farmers and misleading them.

Concluding remarks

Few disagree that India needs continued reforms in agricultural marketing and critical investments to enable an adequate and sustainable livelihood for farmers. Not all of the protesting farmers’ demands necessarily serve this end. Yet the more critical question is what kind of support, what sort of regulation and what kind of reform serve Indian farmers best. In question is also whether reforms are better executed at the State level and via a deliberative process sensitive to local needs. This approach has led to substantial, if gradual, progress in agricultural marketing reform over the past decade and has offered ample opportunities for learning from various State-level experiences and for course correction. Ramming through the Farm Acts in this context seems therefore an effort toward centralization more than reform, subservient to the interests of big business more than of farmers.

No doubt the Government’s stakes in the matter are high. But they cannot match the importance and urgency of what is at stake for the farmers. In such a situation, it is especially unhelpful, not to say insensitive, to dismiss the issues raised by protesting farmers as the concerns of a privileged few. In some ways, repealing these laws might hurt the Government; but a repeal would ultimately enable the country to set Indian agriculture on a trajectory that is responsive to its problems and not to the partisan interests of the Government and its natural allies. If ever India needed a lesson on the importance of democratic decision making, it is reflected in the present episode. How the stalemate is resolved will have serious implications not just for India’s agriculture and economy but for India’s democracy itself.

⁹ Agitating farmers hand over letter to Centre, demand special Parliament session to repeal new farm laws. *Zeenews*, December 3, 2020. <https://zeenews.india.com/india/agitating-farmers-hand-over-letter-to-centre-demand-special-parliament-session-to-repeal-new-farm-laws-2328305.html>

¹⁰ BKU (Ugrahan) – the outlier kisan union that the farmers’ protest cannot do without. Chitleen K Sethi, *ThePrint*, 16 December 2020. <https://theprint.in/india/bku-ugrahan-the-outlier-kisan-union-that-the-farmers-protest-cannot-do-without/567097/>

References

- Committee for Doubling Farmers' Income. (2018). Science for Doubling Farmers' Income. Report XII. Ministry of Agriculture and Farmers Welfare, Government of India. <https://farmer.gov.in/imagedefault/DFI/DFI Vol-12A.pdf>
- Department of Agriculture, Cooperation and Farmers Welfare. (2020). Landmark Reforms in Indian Agriculture: Opening Up of Agri Markets. <https://www.ncdc.in/documents/notice-circular/1615030920New-Ordinances-for-Cooperatives.pdf>
- Drèze, J. (2020). DRAMA at the Farm Gate. *The Economic Times*. <https://economictimes.indiatimes.com/blogs/et-commentary/drama-at-the-farm-gate/>
- High Level Committee. (2015). Report of the High Level Committee on Reorienting the Role and Restructuring of Food Corporation of India. <https://fci.gov.in/app2/webroot/upload/News/Report of the High Level Committee on Reorienting the Role and Restructuring of FCI English.pdf>
- IPES. (2019). Towards a Common Food Policy for the European Union. *International Panel of Experts on Sustainable Food Systems*. http://www.ipes-food.org/_img/upload/files/CFP_FullReport.pdf
- Narayanan, S. (2020). TIF - The Three Farm Bills. *The India Forum*. <https://www.theindiaforum.in/sites/default/files/pdf/2020/10/02/the-three-farm-bills.pdf>
- National Conference: New Initiatives. (2020). Background Paper for Science and Technology; Agriculture Start-ups; ICT in Agriculture. Government of India. Ministry of Agriculture and Farmers Welfare. http://nmoop.gov.in/conference/docs/Background_Paper_Group_4.pdf
- National Sample Survey Office. (2014). Key Indicators of Situation of Agricultural Households in India. Government of India. http://mospi.nic.in/sites/default/files/publication_reports/KI_70_33_19dec14.pdf

Call for Papers

Academics Stand Against Poverty (ASAP) is an international multidisciplinary journal with the aim to support researchers, scholars, teachers, and students in publishing their poverty-focused work in a scientific venue. *Journal ASAP* is published under the ISSN 2690-3458 (electronic edition) and ISSN 2690-3431 (print edition) by Academics Stand Against Poverty, a non-profit organization based in United States (EIN # 32-0324998). *Journal ASAP* aims to connect academics from diverse disciplines toward collaborative work on poverty and its eradication. To ensure the significance and high quality of published contributions, Journal ASAP relies on a wide network of poverty-focused experts who serve on its editorial board or as reviewers.

We are cordially inviting authors to submit their manuscripts for the first volume of 2021. It will contain two issues, due to appear in mid and late 2021, respectively. Information about the different kinds of welcomed contributions can be found under the tab [Submission Guidelines](#) and on the following pages. There are no submission, processing, or publication fees, nor any charges for reading *Journal ASAP*. We aim to make first decisions on submissions within four weeks.

For more details, please visit the *Journal ASAP* website (<http://journalasap.org/index.php/asap>).

Feel free to contact us.

Best Regards,

Academics Stand Against Poverty Editorial Team

editor@journalasap.org

<http://journalasap.org/index.php/asap>

Author Guidelines

Thank you for considering us for your manuscript. *Academics Stand Against Poverty (Journal ASAP)* is a multidisciplinary open-access English-language journal that publishes quality articles describing original and unpublished results of theoretical, empirical, normative or analytical research on poverty-related topics. *Journal ASAP* has electronic (ISSN 2690-3458) and print versions (ISSN 2690-3431). Its mission is to publish high-quality articles that genuinely promote understanding, prevention and eradication of poverty and its effects. It encourages contributions by authors from the global South and authors who articulate the needs and concerns of the global poor.

Original articles that fit *Journal ASAP*'s mission and are not under review elsewhere can be submitted through our [website](#)'s online system by clicking "Make a new submission" and following the instructions. We prefer that manuscripts be double-spaced Microsoft Word files, following the style of the American Psychological Association (APA) 6th edition. They should contain a brief abstract (under 200 words) highlighting core arguments and achievements, 4-9 keywords, and a bibliography limited to cited publications. Tables and figures should be within the text.

To facilitate double-blind reviewing, please do not include author names or author-identifying information in your submission; instead, name the author(s) in a separate document, nominating one main correspondent when there are multiple authors. We would appreciate, but do not require, one-page author biographies providing educational background, workplace, research interests, and highlights of previously published work.

Types of Articles

Journal ASAP publishes Research Essays, Review Papers, Research Notes, Reports, Book Reviews, Opinions, Letters and Interviews.

Research Essays present mature work, requiring a clear hypothesis or research question and a well-developed argument as well as suitable presentation of the relevant background, methodology, data and analysis. A typical research essay will be around 8,000 words (including abstract, figures, tables, references, and bibliography). Longer research essays may in some cases be accepted.

Review Papers are articles that present the current state of understanding on a topic. Review papers survey, summarize, and assess previously published work, providing a useful introduction to the existing literature and conveying the current state of a field of study. A typical review paper is around 8,000 words (including abstract, figures, tables, references, and bibliography).

Research Notes are short, often preliminary, studies or descriptions of a poverty-relevant topic that is worthy or in the process of development through further research. A typical research note will be under 2,000 words (including abstract, figures, tables, references, and bibliography).

Reports are notices on poverty-related issues or events. They may analyze a topic discussed at a recent conference or symposium, for example, or an ongoing debate about a poverty-related law, policy, initiative, treaty, or decision. Also in this category, we welcome analyses of current methods or practices by governmental agencies or nongovernmental organizations. Reports will

normally not exceed 2,000 words. Prior discussion of a planned report with the Editors is encouraged but does not guarantee final acceptance.

Book Reviews are critical discussions of one or more recent books on a poverty-related topic. They will typically be up to 2000 words, but we are open to longer reviews of multiple or especially important books. We maintain a list of poverty-focused books in all languages, to which everyone is invited to contribute.

Opinion is a forum for the exchange of expert views on poverty. Opinion pieces are invited by the Editors and reviewed only by them. They will typically be under 3,000 words.

Letters are comments on recent publications in *Journal ASAP* or author responses to such comments. Letters should be under 700 words and require no abstract or keywords.

Interviews are conversations with prominent experts and policy makers aimed to elicit their reflections on poverty-relevant issues and challenges. They are initiated by the editors.

Special Issues will bring together diverse experts on a poverty-related theme. We are open to guest-editing proposals, to be sent, with the proponent's CVs, to editor@journalasap.org. Decisions will be made within one month.

Article Preparation Checklist

1. Your contribution fits *Journal ASAP*'s mission and one of the listed article types.
2. It is unpublished and not committed or under consideration elsewhere (unless an explanation is provided in the cover letter).
3. The submitted electronic file is in Microsoft Word and follows the guidelines provided.
4. Where available, URLs for the references have been provided.
5. The text is double-spaced, uses 12-point font, employs italics rather than underlining (except for URL addresses), and all illustrations, figures, and tables are placed within the text at the appropriate points.

Copyright Notice

Journal ASAP permits its authors to post submitted or published essays on personal websites or institutional repositories while mentioning the essay's current status with the *Journal*.

Privacy Statement

Names and email addresses entered at *Journal ASAP*'s website will be used exclusively for the *Journal*'s stated purposes and not be made available to other parties or for other purposes.

Ninth Annual Amartya Sen Essay Prize 2022

This year, [Global Financial Integrity](#), [Academics Stand Against Poverty](#) and Yale's [Global Justice Program](#) will be awarding the ninth annual Amartya Sen Prizes to the two best original essays examining one particular component of illicit financial flows, the resulting harms, and possible avenues of reform. Essays should be about 7,000 to 9,000 words long. There is a first prize of USD 5,000 and a second prize of USD 3,000. Winning essays must be available for publication in [Academics Stand Against Poverty Journal](#).

Illicit financial flows are explicitly recognized as an obstacle to achieving the Sustainable Development Goals and singled out as target #4 of SDG 16. They are defined as cross-border movements of funds that are illegally earned, transferred, or used – such as funds earned through illegal trafficking in persons, drugs or weapons; funds illegally transferred through mispriced exchanges (e.g., among affiliates of a multinational firm seeking to shift profits to reduce taxes); goods misinvoiced or funds moved in order to evade taxes; and funds used for corruption of or by public or corporate officials.

Components of illicit financial flows can be delimited by sector or geographically. Delimitation by sector might focus your essay on some specific activity, business or industry – such as art, real estate, health care, technology, entertainment, shipping, weapons, agriculture, sports, gaming, education, politics, tourism, natural resource extraction, banking and financial services – or on an even narrower subsector such as the diamond trade, hunting, insurance, or prostitution. Delimitation by geography might further narrow the essay's focus to some region, country, or province.

Your essay should describe the problematic activity and evaluate the adverse effects that make it problematic. You should estimate, in quantitative terms if possible, the magnitude of the relevant outflows as well as the damage they do to affected institutions and populations. This might include harm from abuse, exploitation and impoverishment of individuals, harm through subdued economic activity and reduced prosperity, and/or harm through diminished tax revenues that depress public spending.

Your essay should also explain the persistence of the harmful activity in terms of relevant incentives and enabling conditions and, based on your explanation, propose plausible ways to curtail the problem. Such reform efforts might be proposed at diverse levels, including supranational rules and regimes, national rules, corporate policies, professional ethics, individual initiatives, or any combination thereof. The task is to identify who has the responsibility, the capacity and (potentially) the knowledge and motivation to change behavior toward effective curtailment. Special consideration will be given to papers that provide a detailed description of how change may come about in a particular geographical or sectoral context.

We welcome authors from diverse academic disciplines and from outside the academy. Please send your entry by email attachment on or before 31 August 2022 to Tom Cardamone at SenPrize@gfintegrity.org. While your message should identify you, your essay should be stripped of self-identifying references, formatted for blind review.