Civil Society Financing for Development (FfD) Group Inputs to FACTI Panel

24 May 2020

The Civil Society FfD Group, representing a wide range of organizations, federations and networks from diverse regions and constituencies around the world (including the Women's Working Group on FfD), respectfully submit the following statements that were presented to the FACTI Panel at the launch and the civil society townhall. These statements are based on our collective submission on the FACTI panel when it was announced.

Civil Society FfD Group Statement: FACTI Panel's virtual global townhall with civil society

28 April 2020

Delivered by *Caroline Othim, Policy and Campaigns Coordinator at Global Alliance for Tax Justice (GATJ) and co-convener of the GATJ Tax and Gender Working Group*

The current crisis has clearly exposed the impacts of the unbearable restrictions on the policy and fiscal space of developing countries, stifled by illicit financial flows and unsustainable debt burdens as well as limited by multiple layers of policy conditionalities that narrowed the capacity to focus on human rights and gender equality-based socio-economic transformation strategies.

The depth of gender inequalities, as the crisis generates, once again, a multi-layered, intensified burden on women, considering all social roles where women are over-represented and unpaid or under-paid, from social reproduction to care, from daily wage earners to small business owners, from food workers to food distribution and as frontline workers in the health and social sectors. This exposes how unpaid domestic and care work remains the greatest obstacle for women to access their human rights and the primary origin of economic and productive inequalities stemming from the sexual division of labour.

The Beijing Declaration and Platform for Action (1995) commits all countries to eradicate all forms of discrimination, including that which is driven by IFFs, tax laws and policies. Illicit financial flows, including corporate tax abuse, obstruct redistribution and drain resources that are crucial to challenging inequalities, particularly gender inequality. The African Union Assembly Special Declaration on Illicit Financial Flows highlighted the need for domestic resource mobilisation and addressing illicit financial flows as central to the attainment of social and economic structural transformation of the continent. The task of the FACTI panel is to work towards these calls for structural transformation, not tinker in the margins.

We are therefore deeply disappointed that the first background paper of the FACTI panel does not build on the momentum of these previous high level initiatives and agreements – a call made by the Civil Society FfD Group at the launch in early March.

G77 and China have repeatedly called for the creation of a universal and transparent intergovernmental tax commission under the auspices of the UN noting their concern '*that there is still no single globally inclusive intergovernmental forum for international tax* *cooperation*'. In addition, Africa Group has called for an '*international convention on tax*' to '*serve as the backbone'* of such a UN intergovernmental tax commission to tackle all aspects of illicit financial flows. There should be no confusion about the clear calls for a universal intergovernmental negotiation process at the UN on setting international tax standards.

We are therefore deeply concerned to note the proposal instead in the FACTI panel background paper is to establish a 'UN financial transparency convention' rather than a 'UN tax convention'. We had already expressed concerns at the FACTI panel launch in March of the risk of high level panels being captive to narrow or selective political interests and we reiterate our call to the FACTI panel to remain above narrow political agendas.

The FACTI panel background paper is also very weak on the key political issue: exposing the democratic deficits within supposedly global standard-setting processes related to illicit financial flows. Currently, international standards are being set by bodies where developing countries are only allowed to participate on the condition that they sign on to existing standards and agreements that have been negotiated in non-inclusive forums.

Most developing countries were excluded from agenda setting, negotiations and decision-making of the OECD BEPS package that was adopted by OECD and G20 in 2015. Yet, developing countries are now invited to join the OECD Inclusive Framework only on the condition that they implement those OECD BEPS decisions that they were not part of negotiating. Similarly, the OECD-based Global Forum on Transparency and Exchange of Information for Tax Purposes is a forum that only *implements* information exchange standards, including on automatic exchange of information, *designed and adopted* by OECD and G20.

It is therefore hardly surprising that the 2019 IATF Financing for Sustainable Development Report (FSDR) highlights that the OECD Common Reporting Standard on automatic exchange of information has 108 members of which 33 are middle income countries and 1 LDC. Similarly, the OECD MCAA exchange of country by country reports has 74 members of which 17 are middle income countries and 2 LDCs. This is not a capacity building issue, but a reflection of standard setting processes that remain OECD-led and produces standards irrelevant for most developing country contexts.

Having been built on top of the tax practices within the imperial trading blocs of the 1920s, the international tax system has historically been against developing country interests. The direction of current reforms within OECD processes only reinforces this status quo of an international tax system built in the 1920s. The impacts of this broken international tax system are felt most acutely by the most marginalised sections of society, who face a greater risk of rights abuses along with the lack of adequate public spending on key areas that would improve equality, including gender equality. We therefore disagree with the assertion in the FACTI panel background note that "*The above OECD-led reforms from the past ten years represent a major change in international tax cooperation*" (page 7).

In this context, the rationale for FACTI panel's prioritisation of the third cluster on 'cooperation and settling disputes' remains unclear. The terms dispute and non-cooperation are often related to mechanisms such as secret binding arbitration or highly political blacklisting processes that target developing countries who choose not to abide by rules set by the OECD and G20. These approaches are highly concerning and should not be promoted or legitimized. This cluster could have instead been more clearly focused on global governance gaps to ensure adequate analysis and contextualisation on the key issue of systematic exclusion of developing countries from standard setting processes.

On international tax, the key challenge is ensuring that standards and solutions are easy to administer to *prevent* disputes. The Committee of Experts on International Cooperation in Tax Matters (or UN tax committee), has recommended that from a developing countries' point of view, the solution to the issue on taxing profits of digitalized businesses should be simple to administer as "*Developing countries often neither have the capacity to administer complex solutions nor are they equipped to handle costly international dispute settlement processes*" (para 22). Trying to fix dispute settlement before addressing the relevance of global standards for developing country contexts is putting the cart before the horse.

We reiterate once again that the central issue is not the need for counting beans but to overcome the obstinate blocking by some OECD member states on establishing a UN process to negotiate international tax standards. We hope the FACTI panel will focus more on giving impetus to this political process and thereby encourage member states to start moving in this direction.

Thank you for your kind attention.

Civil Society FfD Group Statement – Launch of FACTI Panel

2 March 2020

Delivered by Pooja Rangaprasad, Society for International Development

I speak on behalf of the Civil Society Financing for Development (CSO FfD) Group and this statement is based on our collective submission on the FACTI panel to the Presidencies. We welcome the leadership that Nigeria and Norway have shown when it comes to placing the issue of illicit financial flows (IFF) on the agenda of the United Nations (UN). Thank you for the opportunity to share our inputs with some of the FACTI panel members today.

- The value of high-level panels lies in their ability to remain above narrow political agendas and assess how to resolve the global problems we face. On the other hand, there is a risk that such panels can get bogged down by an overly technical focus, or captive to selective or narrow political interests. We are aware that some OECD member states are very reluctant to move forward the work on tax avoidance within the UN. We are deeply concerned that this may already have resulted in political pressure to restrict the ToRs of the FACTI panel before its work has even begun.

- Developing countries and civil society organisations have expressed the need for the creation of a transparent and inclusive intergovernmental tax commission under the auspices of the UN, to address large-scale tax abuse, including avoidance and evasion.

It is from this perspective that we reflect on the opportunities and risks in relation to the launch of this panel.

- The Panel should endorse and build on the work of previous high-level initiatives, rather than duplicate it. This includes endorsing the African Union Assembly Special Declaration on Illicit Financial Flows[1] and the summary report of the 2019 UN High-Level Meeting on Illicit Financial Flows.[2] The High Level Panel on Illicit Financial Flows from Africa ("Mbeki panel") established this agenda globally, including within the SDGs. We are therefore disappointed to note that the ToRs of the FACTI panel do not include reference to these important documents.

- We recommend that the panel explicitly analyses the very central issue of tax avoidance. Corporate tax abuse, including both avoidance and evasion, emerge clearly as the major element of IFFs in the report of the Mbeki panel. As the previous World Bank president Jim Yong Kim noted, corporate tax abuse is a form of corruption that hits the poorest hardest. This must be central to the work of the FACTI panel, and not left to an unrepresentative process at the OECD in which challenging poverty is not an objective.

- We also find it important that the panel addresses the impacts that IFFs have on prospects of achieving the commitments to reduce inequality, including substantive gender inequality, as well as the cultural, economic and social rights of women and girls. The Beijing Declaration and Platform for Action (1995) commits all countries to eradicate all forms of discrimination, including that which is driven by IFFs, tax laws and policies.

- We welcome the element of regional consultations in this process. In our view, the regional consultations must take place during an earlier stage of the process, prior to the publication of the interim report. It is important to ensure sufficient time and opportunity for a broad spectrum of civil society actors to address the panel members. Such regional processes should, where relevant, reinforce and cooperate with existing regional IFF processes, including the African regional process to follow up on the work of the High Level Panel on Illicit Financial Flows from Africa.

- Finally, the FACTI panel should not detract from the need for progress on the political process on IFFs and the UN. In particular, we express our strong concern that there is currently no inclusive intergovernmental body where governments can negotiate on an equal footing and agree effective solutions to the serious problems with tax related IFFs, which have already been identified. On the contrary, international standards are being set by bodies where countries are only allowed to participate on the condition that they sign on to existing standards and agreements that have been negotiated in non-inclusive forums. This includes the ongoing negotiations under the OECD's Inclusive Framework, which aims at developing new international tax standards by the end of 2020.

- Therefore, we believe that without delay, governments must initiate a transparent intergovernmental process under the auspices of the United Nations to address large-scale tax abuse, including avoidance and evasion, as well as other types of IFFs. As presidents of the UN General Assembly and ECOSOC respectively, we call on Nigeria and Norway to play a leading role in this regard. The panel should not be a reason to delay action. Instead, the value of the panel will be in how quickly it can move forward this critical process.

- Thank you

For more details on the Civil Society FfD Group: www.csoforffd.org