

# **Taxation and other resource mobilization**

Dialogue seminar on “Scaling up biodiversity  
financing”

9-12 April 2014

Quito, Ecuador

# **“Innovative sources of development finance and mediation”**

- **In Search of New Development Finance,**  
World Economic and Social Survey, UN DESA.

URL:

[http://www.un.org/en/development/desa/policy/wess/wess\\_current/2012wess\\_overview\\_en.pdf](http://www.un.org/en/development/desa/policy/wess/wess_current/2012wess_overview_en.pdf)

# Public sector revenue

- Taxing sectors that benefit most from globalization/taxing global “bads” (e.g. carbon emissions)
- Small solidarity levy on airline tickets earmarked for UNITAID (USD 1 bil raised 2006-2010)
- Norway’s tax on CO2 emissions from aviation fuel (USD 20 mil annually, part to UNITAID)
- proposed carbon tax on use of fossil fuels and other products contributing to CO2 emissions (USD 250 bil annually; international agreement needed)
- Proposed tiny currency transaction tax (CTT) (USD 40 bil per year if 0.005% tax)
- Proposed financial transaction tax (if exclude CTT, USD 15 - 75 billion annually)
- Proposed international billionaire’s tax (1% on individual wealth holdings of USD 1 billion or more; USD 40-50 bil annually – not on any international agenda yet)

# Capturing global resources

- Proposed new Special Drawing Rights (SDRs) issuance at the IMF – regular annual allocations in favour of developing countries; not a form of development financing but would free up domestic resources for development (USD 160 – 270 bil annually)
- Leveraging idle SDR holdings of reserve rich countries for investment in development (assumption of USD 100 bil annually)
- Proposed Royalties for natural resource extraction beyond 100-mile EEZs (international agreement needed)

# EU FTT

## Financial transaction tax (Europe Union)

- Original European Commission, 28 Sept 2011 – harmonised FTT for entire EU and possible first step for global FTT; min. rates of 0.1% for shares and bonds, 0.01% for derivative agreements. No consensus
- European Commission proposal by 11 countries (Enhanced Cooperation Procedure), 14 Feb 2013 – “re-building the economies and bolstering the public finances of the participating Member States”; about EUR 30-35 bil annually or 0.4 to 0.5% of GDP
- UK challenged legality; EC defends

*Development budget? Biodiversity financing???*

# Tax evasion

- UK: Starbucks paid no corporate income tax 2009-2011 (GBP 1.2 bil sales); Amazon paid nothing on 3.3 bil sales Google paid 3.4 mil tax on sales of 2.5 bil in 2011
- US (2009-2011): Microsoft (USD 4.5 bil); Apple (USD 34 bil); Google (24 bil)
- “Creative” accounting methods to transfer profits earned in UK to lower tax jurisdictions or to tax havens; transfer pricing; internal borrowing to show debt; convoluted net of subsidiary companies; shell companies, etc
- Such transfer pricing has victimised developing countries for decades resulting in massive loss of revenues!

# Tax evasion

- Since 1970s, up to USD 1 trillion moved out of Africa; trade mispricing by TNCs accounts for 60-65%
- LDCs: 1990-2008 flow of USD 197 bil mainly to developed countries; tax revenue loss of USD 160 bil annually
- 10 biggest energy/mining TNCs controlled >6000 subsidiaries (1/3 incorporated in secret jurisdictions)
- World's second largest beer company (SABMiller) owns African brands and breweries in Africa, evades taxes in many African countries

(Sources: Global Financial Integrity, Christian Aid, Publish What You Pay Norway, Action Aid)

# African Mining Vision 2009

- One of the calls: Increased share of mineral revenues for African countries
- Late 1980s onwards liberalization of mining sector, privatization to foreign ownership, new concessions with low royalties, tax exemptions, long term freezing of tax rates, freedom to retain high % of earnings abroad
- Past decade: international attention on transparency to limit corruption and misuse of public funds; good governance is also a continuing domestic public/community demand
- Needed additional steps in Vision: re-negotiate mining contracts and review fiscal regimes to increase shares of revenues; international action against use of tax havens by TNCs

# International action needed

- Banking secrecy ↔ tax evasion/illicit flows
- 1996 OECD asked by G7 to develop measures against harmful tax practices
- 1998 OECD list of tax havens did not include European secrecy jurisdictions, focused on small island states.
- Bush Admin withdrew support, no action until 2008 financial crisis, new OECD guidelines, but signs of new creative evasion
- International action on tax still inadequate – TNCs/financial institutions continue to be protected except for case-by-case actions
- Developing countries propose UN tax committee be upgraded to inter-governmental commission
- Support for increased capacity in developing countries for taxation – against powerful domestic and global actors

# **“Financial Secrecy Index”**

- Initiative of Tax Justice Network: assesses a country's laws and regulations, membership of international treaties, size and importance to global financial markets. A tool for understanding global financial secrecy, tax havens or secrecy jurisdictions, and illicit financial flows
- 2013 secrecy ranking (top 10): Switzerland, Luxembourg, Hong Kong, Cayman Islands, Singapore, USA, Lebanon, Germany, Jersey, Japan (if the British overseas territories or crown dependencies were included, the UK would be # 1 from #21)

<http://www.financialsecrecyindex.com/introduction/fsi-2013-results>

# Policy space for mobilizing domestic resources including taxation (developing countries)

- Sustainable development  $\leftrightarrow$  productive economy
- Policies to attract FDI include tax incentives (since 1960s); financial liberalisation to allow capital flows (since the 1980s)  $\rightarrow$  policy prescription of IMF, World Bank, OECD
- Financial (in)stability at the global level
- Trade agreements: World Trade Organization, bilateral, regional and plurilateral trade agreements
- Commodity prices (in)stability
- Bilateral investment agreements enhancing rights of corporations

# **Foreign investors against States:**

## **Bilateral investment treaties**

- Balance between autonomy of States to decide on policy/law and investors' interests (upgraded to "rights")
- Conflict between multilateral treaties (human rights, environment, health etc) and investor protection
- Foreign investors can take action against host countries in international arbitration tribunal (International Centre for Settlement of Investment Disputes – ICSID, a World Bank body) by-passing national courts
- Conflict of interests, lack of transparency in arbitration tribunal: "Profiting from Injustice" report

# Profiting from Injustice report (2012)

- 38 cases (1996) to 450 cases (2011)
- In 2009/2010, minimum claim per case USD 100 million
- Many ICSID arbitrators vocally rejected a proposal by International Court of Justice Judge Bruno Simma to give greater consideration to international environmental and human rights law in investment arbitration

<http://www.tni.org/briefing/profitting-injustice>

# Some recent ICSID cases

- Ecuador: USD1.77 billion for cancelling a contract with major US oil company, Occidental Petroleum (largest award in ICSID history in 2012), on appeal
- Indonesia: sued by British company, Churchill Mining under UK-Indonesia BIT; Central Government cancelled company contract with local government (USD 1-2 billion)
- El Salvador: sued by Canadian mining company, Pacific Rim (USD 300 mil – almost half the national budget)
- Germany: case by Swedish company, Vattenfall for phasing out nuclear power (wholly owned by Swedish state)
- Uruguay (BIT with Switzerland), Australia (BIT with Hong Kong): cases by Philip Morris for regulations on plain packaging for tobacco products
- *Costa Rica and Harken Energy, US oil company??*

# Some actions by States

- Withdrawal from ICSID (Bolivia, 2007; Ecuador, 2009; Venezuela 2012)
- South Africa terminated all BITS; Indonesia terminated BITS with the Netherlands (March 2014) and will terminate another 63; India reviewing BITS with no new BITs negotiated for now
- Ecuador's special commission to audit BITS and arbitration cases (2013); initiated alliance of Latin American countries (2013)

# Investor-state dispute settlement mechanism in trade agreements

- North American Free Trade Agreement (NAFTA)
- Bilateral free trade agreements with the US – Chile, Colombia, Peru, Central American countries (CAFTA), Panama, Australia, Jordan, Morocco, Singapore, Republic of Korea, etc.
- *Trans-Pacific Partnership (TPP) – US, Canada, Mexico, Chile, Peru, Australia, New Zealand, Singapore, Malaysia, Vietnam, Brunei, Japan – widespread protest in Malaysia*
- *Transatlantic Trade and Investment Partnership (T-TIP) – Germany and France object; EC suspended ISDS negotiations for 90 days for public consultations (January 2014)*

# Implementing CBD's 3<sup>rd</sup> objective – still elusive

- Genetic resources and traditional knowledge of uses of biological resources still patented/commercialised with no or unfair/inequitable benefit sharing
- **Skin care products about USD 90 billion annually by 2015.** Avon Products: 6 US patent applications over 16 Asian plants for use in skin creams – all had traditional medicinal uses. Patent claims also in Canada, Japan, Europe and many developing countries
- Rutgers University: patent claims over extracts from West African kombo butter and kinkeliba plant for medicines - known traditional medicinal uses
- Dupont: obtains exclusive licence from Kansas State University that has patent claims over a valuable gene from a sudangrass collected in 2006 in Bolivia, and on plants that contain the gene. The gene is now in several sorghum varieties that Dupont (and its subsidiary Pioneer Hi-Bred) will sell in the US, Argentina, Australia, Brazil and Mexico
- And many other cases on food crops, medicinal plants, microorganisms ...

# Nagoya Protocol

- Global Multilateral Benefit Sharing Mechanism: the “need” is still contested
- EU regulations just approved in European Parliament disappointing and scope is narrower than Nagoya Protocol
- Many developed countries in Feb/March negotiations at WIPO/IGC on genetic resources and traditional knowledge are backtracking on Nagoya Protocol

# Whither financing for biodiversity?

- Numbers: Adoption of numerical targets at COP 12 in 2014 would be a major signal of good faith in implementing the CBD resource mobilization strategy
- CBD commitments of developed countries to provide new and additional financial resources for agreed full incremental costs – not just ODA or multiple accounting of ODA. If new sources of finance become real, political commitment to finance biodiversity?
- For developing countries to also mobilize domestic resources, in addition to domestic actions, there must be matching policies/actions by developed countries (implement CBD 3<sup>rd</sup> objective/Nagoya Protocol; appropriate rules related to taxation, trade and investment) – these are major challenges but necessary to stop systemic financial transfers from developing countries