**Fiscal Governance Program Portfolio Review Document—Illicit Flows and Tax Portfolio**

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**Introduction**

This portfolio review document assesses FGP’s investments under its concept around developing a nascent field on illicit financial flows (IFF) and effective taxation for development, covering the period from March 2013 - October 2014.

**Our Hypothesis: Why Tax and Illicit Financial Flows?**

1. **Taxation is the most sustainable source of development finance**, and a more productive tax system will enhance the ability of countries to realize their national development goals in health, education, water, etc., meaningfully reduce poverty and aid dependence;
2. **A country’s tax system reflects the quality of governance in the country** such that governments that are more reliant on non-tax revenues vs tax revenues tend to be less accountable to their citizens;
3. **Paying taxes can increase citizen demand for improved public service delivery** (particularly at the local government level);
4. **Taxes can potentially encourage certain economic behavior** (e.g. local content) and **reduce income inequality** (e.g. more progressive vs regressive systems);
5. **Developing countries lose more through illicit flows than they receive in aid,** and many of these losses are largely avoidable**;**
6. **The same vehicles that are used to shift profits and aggressively reduce/subvert tax obligations** are also used by corrupt government officials and criminals **to launder and hide ill-gotten wealth**
7. **Reducing global financial secrecy can help reduce the amount and adverse impact of illicit flows.**

**Our Ambitions:**

FGP’s Director, Julie McCarthy, began this work in early 2013 in an effort to take advantage of growing political momentum within OECD and developing countries to address the problems of money laundering, corruption and tax evasion/aggressive tax avoidance, particularly as they affect the domestic resource mobilization potential of low-income countries. High profile tax avoidance scandals by large multinational corporations (MNCs) in Europe during the height of fiscal austerity in late 2012/early 2013 had a transformative impact on the political climate around previously taboo subjects such as beneficial ownership transparency and country-by-country financial reporting for MNCs, leading to new policy opportunities in both OECD and low-income countries.

FGP’s goals through its grant making and operational work around this concept were to:

* Strengthen a set of anchor organizations within the US, Europe and the global south to play a more effective role on policy advocacy internationally and within low income countries on illicit flows and tax policy concerns;
* Ensure that OECD debates included southern voices and addressed southern concerns in their policy proposals;
* Build a more solid evidence base around the detrimental developmental and governance impacts of illicit flows and tax evasion/avoidance in the global south;
* Diversify the field’s resource base and put it on a more sustainable footing;
* Achieve specific policy goals on beneficial ownership transparency in the U.S. and EU.

**Our Place:** Background and Context for FGP’s interventions

It was not until the aftermath of the global financial crisis when EU country budgets as well as their foreign aid commitments were ever-shrinking, that we saw renewed attention to the importance of domestic resource mobilization, and specifically, the potential role for taxation to meaningfully improve both development and governance outcomes and reduce income inequality. This sudden attention was a political windfall for groups like the Tax Justice Network (TJN), which since 2003 had been trying to raise awareness about the harmful impacts of tax evasion/avoidance and the role of tax havens in undermining domestic resource mobilization in both developed and developing economies. Richard Murphy, a founding member of TJN, has been credited with creating the first draft country-by-country financial reporting standard, which is finally becoming an OECD reporting standard. Similarly, the work of Léonce Ndikumana and James Boyce (2001) and later Raymond Baker (2005, 2008), founder of Global Financial Integrity (GFI), on capital flight and IFF respectively, began seeing increased traction in development circles; specifically their research findings that developing countries lose more revenue through IFF than they receive in official development assistance (ODA). To reverse these illicit flows and their negative impacts, GFI and others have recommended strengthening tax administration capacity to better detect tax evasion and reduce corruption, as well as the adoption of a suite of global financial transparency solutions, namely:

1. **mandatory beneficial ownership disclosure of all legal vehicles;**
2. **country-by-country reporting by MNCs;**
3. **automatic information exchange of information; and**
4. **strengthened anti-money laundering legislation.**

By the time illicit flows and tax justice concerns began appearing on the global political agenda in 2012, more civil society groups (e.g. Christian Aid, Action Aid, Oxfam UK and Novib, Jubilee South Asia Pacific Movement on Debt and Development) had begun to focus on taxation and IFF, forming a nascent, largely disconnected and poorly funded ‘tax justice movement.’ Global Witness had also been working on issues of money laundering and anonymous shell companies, particularly as they relate to the extractive industries, since the early 2000s, and was well poised to take advantage of the new political momentum, increasingly in partnership with new peers more focused on tax justice concerns.

By 2013, this growing political interest and public disquiet over high profile tax avoidance scandals by MNCs culminated in the UK government’s decision to make IFF and tax a central theme of its 2013 G8 presidency, as well as in the European Parliament’s decision to introduce new Accounting and Anti-Money Laundering Directives. The OECD itself was mandated by both the G8 and G20 to develop new work streams reviewing current international tax arrangements in order to better address base erosion and profit shifting (BEPS) practices by MNCs. Additionally, around this time through its Task Force on Tax and Development program, the OECD sought to to deepen its technical assistance to developing countries through initiatives such as the Tax Inspectors without Borders (TIWB) pilot scheme and Transfer Pricing Capacity Building Program, in partnership with the European Commission and the World Bank.[[1]](#footnote-1)

At the same time, low income countries—particularly in Africa—began to demonstrate renewed interest in assessing the effectiveness of their tax regimes as well as addressing the development and governance costs and consequences of IFF. For example, the African Tax Administration Forum, borne of a meeting on “Taxation, State Building, and Capacity Development in Africa,” was established in 2009 to foster mutual cooperation amongst African tax administrators and relevant stakeholders to improve tax laws and administration. In addition, the 2010 edition of Africa Economic Outlook focused on public resource mobilization and aid, which the African Development Bank followed up with a regional review of East African tax systems in 2011. In that same year, the 3rd Joint Annual Meetings of the AU/ECA Conference of Ministers of Finance, Planning, and Economic Development held a panel discussion on IFF and subsequently mandated the establishment of the UN High Level Panel on Illicit Financial Flows from Africa (or the “Mbeki Panel”). The final report of the Mbeki Panel will be presented at the Heads of State Summit in Addis Ababa in January 2015. In 2013, a joint study of the African Development Bank and GFI on IFF and net resource transfers from Africa, and the Africa Progress Panel Report on Equity in Extractives, both reiterated the need to strengthen tax administrative capacity to better detect tax evasion, improve tax policy (e.g. impose capital gains and windfall taxes, develop alternative transfer pricing rules), and increase transparency through mandatory disclosure of beneficial ownership and strengthened banking regulations.

In short, the past few years have seen more political momentum in high and low income countries around addressing illicit flows and tax then the past several decades combined. Recognizing that these opportunities are typically rare and short-lived, FGP sought to capitalize on it by helping strengthen civil society capacity to engage policymakers on ambitious reforms at the international, regional and national level, particularly in Africa. There was a real concern that political momentum within OECD countries would focus on policy measures to crack down on illicit flows and tax evasion/avoidance only as they affected high-income countries, rather than using the opportunity to consider more broadly how efforts to address anonymous shell companies, tax havens, transfer pricing and other relevant issues in this area could have a critical impact on the governance and development prospects of low-income countries.

In scanning the field, it was clear to FGP that only a handful of talented but thinly resourced groups existed to seize upon this opening and ensure that civil society—including from the Global South—had a voice in emerging debates and new policy proposals. In the Global North, only one donor, the government of Norway, had been sustaining the main international actors to date (e.g. Global Financial Integrity, the Financial Transparency Coalition, Tax Justice Network, EURODADD) and other large organizations had been cobbling together scant funding, primarily at the country office level (e.g. Christian Aid, Action Aid) to do ad hoc reports and advocacy work. Still others such as Oxfam America, ONE and NRGI were eager to become engaged in this field as a natural outgrowth of their work on extractives and broader financial accountability issues, but were not networked with key groups in this space and struggled in some cases to get buy-in from senior leadership and funders. In the Global South, the base of activism was in many ways stronger and more diverse with groups like the Tax Justice Network-Africa (and its membership such as the National Taxpayers Association in Kenya, Policy Forum in Tanzania, and AFRODADD in Zimbabwe), the Center for Budget and Governance Accountability in India, Third World Network-Africa in Ghana, Transparency International national chapters, and LATINDADD demonstrating strong interest and increasingly sophisticated analysis of IFF and tax policy concerns, but again with no serious resource base. Likewise it was clear to FGP that all of these groups could benefit from being more connected to each other, their Northern counterparts working in this space, as well as international institutions developing potentially relevant policies (e.g. OECD/G20 BEPS project, the Mbeki Panel, and the Financing for Development agenda).

When FGP began expressing interest in this issue area in mid-2013, there were no other donors actively considering how they might take advantage of new policy openings and supporting the illicit flows/tax justice field. There were political concerns within many private foundations about whether their leadership would view engagement on tax havens in particular as too radical and/or a public relations challenge. Nonetheless, when FGP began speaking to other donors (primarily those in the Transparency and Accountability Initiative) about our strategy and ambitions in mid-2013, it quickly generated cautious enthusiasm at Omidyar Network, the Hewlett Foundation and the Ford Foundation, and ultimately resulted in these donors following us into the field in 2014.

**Our Work**

Almost immediately after FGP’s 2014-2017 strategy was approved, it became increasingly clear to FGP’s Director that the program’s grant making and operational support were really divided along two tracks: support to a burgeoning field around illicit flows and tax policy work, and the implementation of a concept around achieving mandatory beneficial ownership transparency in Europe and the US. (FGP’s 2016-2019 strategy will reflect this division going forward.) Accordingly, FGP’s discussion below of our work within this portfolio is divided into two parts.

The first part offers reflections on whether and how FGP has helped a set of organizations within the field become stronger, more effective, resilient, and innovative over the course of our support, as well as an assessment of what we believe they have accomplished organizationally and programmatically, where we see weaknesses, and what we are learning from them to inform our strategy going forward. The second part offers reflections on a different but overlapping group of organizations and efforts we have supported around the concept of promoting mandatory beneficial ownership transparency, with a focus on how effective we and our partners have been to date, what has gone well, what could have been done differently, what surprises we have encountered along the way, and what this has taught us about how we can further refine our work on this concept going forward.

Significantly, in March 2014 FGP brought on board a Program Officer with substantial tax expertise, Vera Mshana (a former private tax attorney and tax justice activist), to assume responsibility for the portfolio’s existing investments, as well as all new grants going forward.

**Part I. Field Support around Illicit Financial Flows and Tax Policy**

Assessment of our Grantees

Within the field, beyond existing support to groups like Global Witness that were already actively engaged around illicit flows, FGP sought to support a broader set of civil society organizations that demonstrated a focus on:

1. the impacts on development of illicit flows and tax policies in the Global South, strong connections to organizations in key jurisdictions that both made and were affected by related regulations and policies (e.g. the U.S., Europe, Africa, Latin America, and Asia);
2. innovative approaches to mobilizing Southern constituencies around tax policy concerns and their impacts on development; and
3. an interest in moving beyond dubious quantifications of total illicit outflows to examining the specific kinds of illicit flows (e.g. trade mispricing in key industries, the proceeds of crime or bribery, looting of public assets) from developing countries, their particular channels, impacts on development and policy implications.

For all of our new field support grantees, FGP’s goal was to strengthen their governance and management where relevant, enhance and diversify their resource base, and provide them with the ability to conduct research, monitoring and advocacy in the US, Europe, East Africa, South Asia and Latin America around a variety of illicit flows and tax policy concerns. With these goals in mind, FGP provided grant support to the following actors:

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| --- | --- | --- | --- |
| Grantee | Main Objective | Amount ($) | Term |
|  |  | | |
| The Center for Global Development – Europe | General support grant to build a new research and policy unit focused on illicit financial flows and effective taxation for development. Importantly, their research agenda included research on the nature and forms of IFF at the country level to better develop targeted policy recommendations, of which there is a dearth. | 400,000 | 2013 – 2015 |
| The FACT Coalition | General support grant to undertake direct policy advocacy with relevant stakeholders, public outreach, and research with a view to reducing IFF in the form of corporate tax evasion both in the US and globally. | 300,000 | 2013 – 2014 |
| The Financial Transparency Coalition (FTC) | General support grant to support the growth and institutionalization of their regional engagement in Africa, Asia and Latin America by rooting the global coalition’s policy “asks” in the context-specific needs of developing countries; building greater local ownership, awareness and engagement around core policy reforms in these regions; fully integrating the Coalition’s regional work into the larger global coalition’s overall governance and management structures, and building the capacity of the three regional organizations that lead the Coalition’s work in Africa (Tax Justice Network-Africa), Asia (Center for Budget and Governance Accountability) and Latin America (LATINDADD) to be effective advocates and mobilizers within their regions. | 500,000 | 2013 – 2015 |
| The Human Security Collective | General support grant to advance their work around addressing the negative impacts of international policies on countering terrorist financing, anti-money laundering, and financial transparency on civil society. | 200,000 | 2013 – 2014 |
| The Rules | Project support to: (1) fend off highly regressive taxes that would hurt Kenya's poor and draw attention to the government's simultaneous attempts to reduce/eliminate the tax burden on multinational companies and; (2) test new strategies for stimulating broad and effective social mobilization around public resource management concerns, specifically in this case, around taxation and its relationship to development in Kenya. | 250,000 | 2013 – 2014 |

Overall, although we have only been supporting this field for a year, it is clear that we have helped strengthen the governance and effectiveness of both the FACT Coalition and FTC (particularly its Southern membership). Unfortunately, we also experienced a false start with the Rules, who were unable to build out the tax justice movement in Kenya as hoped, as well as the Human Security Collective who, as of yet, still struggles to articulate what concrete policy proposals may be adopted to protect at-risk civil society in repressive contexts from being targeted by anti-money laundering and counter-terrorism financing legislation. Our support to CGD-Europe had a positive policy impact in a number of critical fora through contributions to the Mbeki Panel, the G8 agenda on trade, tax, and transparency, the Post-2015 framework and the Tana High Level Forum on Peace and Security in Africa. However, our expectation that CGD-Europe would carry out much-needed granular research on IFF was not met, and with Alex Cobham’s imminent exit (incidentally to lead TJN’s research unit), it is unclear whether or not CGD’s proposed research agenda under its new director, Vijaya Ramachandran, will continue this work.

On the financing front, FGP has exceeded its expectations in helping diversify the field’s resource base, which has resulted in increased funding commitments by Hewlett, Ford, and Omidyar in FTC, TJN-A, FACT, CBGA, and CGD as well as a commitment to identify other groups and initiatives we can support collectively to strengthen the field (e.g. the Global Alliance for Tax Justice, the nascent campaigning platform that spun off from TJN in 2013, increased tax reporting by independent/investigative journalists, as well as engagement in the Post 2015 Financing for Development processes). For example, FGP’s Director made several introductions to Hewlett and Omidyar on FTC’s behalf which has resulted in both of them deciding to provide substantial additional funds to FTC from 2014 onwards, and transformed the Norwegian government from their sole patron to a minority funder in the course of just over a year. It is clear to FGP that for FTC, as well as others such as FACT and CGD, funders seem to find safety in numbers on this issue. Funders have been able to point to OSF’s leadership and engagement to reassure their leadership about beginning to support work in this area. At one point Hewlett asked if they could use our US illicit flows strategy consultant to provide similar advice to them, and FGP also worked with TAI to initiate a global field scoping around illicit flows and tax to help draw in new funders.

A more detailed assessment of each of our grantees follows below.

**CGD-Europe:** FGP primarily sought to achieve two main goals through its support for CGD-Europe. Namely, to move the research debate from quantification of IFF to much needed unpacking of the nature and modalities of these flows, particularly in low income countries, as well as to begin to shift research interest towards other pertinent and complex tax policy issues beyond transparency, such as transfer pricing. Although positively responding to policy opportunities that have arisen thus far (and as mentioned above), the impending departure of the research fellow, Alex Cobham, whom FGP expected to lead this research over the term of the grant, and the decision by CGD to abandon undertaking disaggregated analysis of IFF due to data limitations has jeopardized the success of this intervention. Although we had a positive first meeting with Cobham’s successor, Vijaya Ramachandran—a successful applied econometrician with experience with the World Bank—she lacks expertise in tax and familiarity with this field, and it is unclear if she will ultimately have the capacity to carry this work forward effectively.

From a governance perspective, it is clear that CGD has become well-positioned to effectively lead in this work thanks in large part to Cobham, personally. It seems that Owen Barder, the Director of CGD-Europe is far less enthusiastic about carrying out this research from a developing country perspective, which is a step away from the organization’s policy niche of advising developed countries on the impacts of their research. Furthermore, Owen’s poor communication of Alex’s transition out of CGD-Europe and the fact that they did not ultimately draw down FGP resources this year (albeit due to fundraising successes we helped cultivate), have raised serious management concerns. Overall, these combined concerns have led us to question whether or not we should continue to support CGD-Europe, and instead consider following Cobham to TJN, where he expects to continue to carry out the research agenda he began at CGD-Europe.

**FACT:** FGP support forthe FACT Coalition was driven by our goal to strengthen a US community of advocates and researchers in key jurisdictions with global influence on the field (e.g. TJN, GFI, Global Witness, Jubilee USA) who would be well placed to raise awareness and advocate for policy reform in the US around issues such as anonymous shell companies, country-by-country reporting as well as push the US to play a more robust role on these issues within key international fora like the OECD. Unlike other US civil society organisations/groups, FACT considers the global impact of the US tax regime and vice versa, and is positioning itself to do more of this in the year ahead. The FACT Coalition’s main strength this past year has been its ability to increasingly mainstream into public discourse the adverse impact of the use of financial secrecy jurisdictions/tax havens (both within and outside the US) by MNCs, as well as indicate what reforms are necessary to reverse these trends through its public outreach and trainings involving small businesses, faith-based and public interest groups, and other civil society organisations in Washington DC.

Equally, and primarily through Jubilee USA, GFI and Global Witness’ leadership, the FACT Coalition has engaged with policymakers on these issues at the federal level and increasingly at the state level (particularly Global Witness and US PIRG). One of its main successes this year has been stimulating a debate in Delaware about its role as a corporate secrecy haven. In mid-2014, FACT succeeded in getting one-half of the Delaware’s State Legislature to sign a letter to Delaware’s Congressional Delegation urging them to support bi-partisan legislation around anonymous shell company transparency. FACT members also helped move Senator Carl Levin to re-introduce the Stop Tax Haven Abuse Act, a critical piece of legislation to improve financial transparency and curb corporate tax avoidance.  For example, Jubilee USA mobilized 5,000 supporters to write their legislators to support the bill. One of the coalition’s key weaknesses is they are less impactful in framing/shaping the tax policy field in the US beyond the narrow set of issues with which they are concerned. This is evidenced in the lack of their reflection on the extent to which FATCA, which came into effect earlier this year (and which the OECD’s automatic exchange of information standard borrows heavily from), marks progress towards realizing their goals, particularly on the issue of beneficial ownership, at least from a US perspective.

Over the past year, FGP support has enabled the FACT Coalition to be more efficient (e.g. through more effective coordination of FACT resources and their media communications strategy), foster more collaboration through enabling joint research opportunities (e.g. Citizens for Tax Justice and US PIRG’s ‘Offshore Shell Games Report”), and enhance member outreach. One of the Executive Director, Nicole Tichon’s, main successes has been her ability to ensure effective collaboration amongst coalition members and ‘raise the flag’ for the coalition over and above individual member interests. Given her impending departure, however, there is a risk that without someone effectively playing this role, members may draw more attention to their individual concerns and fail to realize their collective strength as a coalition. Thus far, their leadership transition process has not raised particular governance or financial concerns, however we are mindful that Nicole’s tax knowledge and coalition-building skills are unique and hard to replace, and that she is a key form of glue holding FACT’s work together at present.

**The Financial Transparency Coalition (FTC):** FTC started off several years ago as a primarily northern based task force of CSOs including Global Witness and Global Financial Integrity that succeeded in helping raise the profile of illicit financial flows within the US and Europe but suffered from a lack of representation and buy-in from the Global South. FGP began engaging with FTC right as a talented new Coordinator, Porter McConnell, was attempting to completely restructure their governance and management to become more inclusive and regionally grounded in low-income countries affected by illicit flows and tax concerns. The founding members had created a more equitable and diverse structure, with three regional affiliates in Kenya, India and Peru respectively, but they still controlled all central funds and were reluctant to prioritize regional work. In late 2013, Julie decided to provide several hundred thousand dollars in general support funds over two years to FTC with agreement from the coalition that these funds would go exclusively towards resourcing these regional members and strengthening FTC’s base in the South—a real coup for the Coordinator as well as the Southern organizations.

While FTC’s EU Advisor based in Brussels and several key members (e.g. Global Witness) have played a central role in achieving several European legislative victories over the past year—including the EU anti-money laundering directive – to include provision for beneficial ownership disclosure—the regional affiliates have not as yet played similar roles in successfully advocating for similar policy measures, but have instead focused on building broader constituencies and civic space to engage in tax and IFF. For example, FGP support helped Latindadd, the Peruvian-based regional member, host the coalition’s annual conference, and as a result successfully engage for the first time with 15 journalists from 10 Latin American countries on these issues (money laundering being a lively ‘hook’), as well as secure an audience for the first time with Peruvian government officials from the Financial Intelligence Unit, Anti-corruption Unit, and tax administration. For CBGA, FGP support has meant broadening its regional networks and base through examining the issue of IFF in national contexts (e.g. China, Bangladesh, India, the Philippines), through partnering with interested organisations in select countries to carry out country-level research on IFF that will ultimately inform the development of national and regional level policy priorities and advocacy. In Africa, FGP support has meant capacity building of parliamentarians, media and CSOs, as well as initiating policy dialogue with several African governments on other tax policy issues, such as tax incentives and transfer pricing.

Furthermore, each regional member has engaged in the OECD’s BEPS regional consultation processes highlighting the need for developing country voice therein, and the failure of the BEPS process as a whole, to take into account developing country tax policy priorities, such as tax incentives, and which was later admitted to by the OECD. FTC as a whole, has also successfully monitored and analyzed OECD automatic information exchange standard and the draft country by country reporting template (as first set out outputs from the BEPS process), but has not as yet been as successful in raising awareness about the weaknesses of these standards from a developing country perspective, and ramping up advocacy on this front. Vera had earlier expressed concern that our grantees in this field were not paying as much attention to ‘testing’ the suite of global financial transparency proposals initiated by the North in a developing country context. But, from FGP’s interactions with the regional members, it is clear that they fully understand the need for nuance, and local adaptation, which in the case of CBGA, they expect will become evident from some of the country case studies they have commissioned.

FTC is clearly a dynamic coalition with ambitions of becoming truly global in scope and is taking institutional development, particularly of its regional members, seriously. FGP had concerns about how, beyond re-granting funds, FTC’s coordinating committee plans to work with regional members to strengthen their advocacy and influence at the regional level, and ensure that concerns from the South play a central role in their advocacy in the north. Institutionally, FTC has plans to recruit three additional regional members and to facilitate discussions and collaboration amongst regional members. Additionally, one of the FTC’s global priorities for 2015 was devised and directly speaks to a regional member concern, which is the need for a new institutional architecture where developed and developing economies can discuss and coordinate on IFF and international aspects of taxation on equal footing (i.e. not the OECD).

**Human Security Collective (HSC):** unlike the other grantees in this portfolio, FGP’s Director chose to invest in the Human Security Collective (HSC) to ensure that the major players in the field (both groups we support, such as FTC and FACT as well as key institutions like the Financial Action Task Force/FATF) attend to concerns around the detrimental, unintended consequences of both existing and strengthened anti-money laundering legislation. To this end, Julie organized a meeting earlier this year bringing these groups together to *inter alia* foster mutual understanding of each other’s goals around anti-money laundering legislation and importantly to encourage HSC to move beyond diagnosing these problems towards offering specific policy proposals around how FATF could address negative unintended consequences while maintaining progress on anti-money laundering reform. Together with OSEPI, FGP has continued to encourage HSC to do this (including through offering space at our Brussels office for meetings with policymakers, and encouraging them to take on a presence in Brussels), but without much success. In this way, FGP’s support for HSC has not led to the organization’s increased effectiveness in this field, and based on recent interactions between HSC and FTC, relations have not strengthened between these groups, but have in fact become increasingly strained, since without offering concrete proposals to safeguard civic space, it appears to FTC and others that HSC is simply opposing FATF and anti-money laundering efforts overall. What we have learned from this experience is that if we wish to have an impact on this issue, FGP should broaden our work beyond HSC, and directly engage other stakeholders such as ICNL and grantees such as FTC and Global Witness to craft and promote specific policy proposals around the protection of civic space within both existing and proposed anti-money laundering and counter-terrorist financing provisions. This would be more of a concept rather than field-based approach, and would be done in partnership with OSEPI.

**The Rules:** Similar to FTC, our support to the Rules was intended to begin resourcing southern-focused efforts to mobilize civil society around illicit flows and tax policy concerns, this time at a national level. Based on a highly successful initial foray into social mobilization against a regressive VAT proposal in Kenya using innovative new technology to crowd source a petition from 70,000 citizens, FGP provided the Rules with a $250,000 grant to support follow-on work around highlighting Kenya’s role as a regional tax haven and the destructive and inequitable effects this was having on development and governance.

This grant was an utter failure. FGP’s Director decided to provide general support to the Rules based on their start-up status and real cash flow concerns. In structuring the grant, FGP’s Director made clear numerous times to the Rules’ Executive Director, Alnoor Lahda, that while FGP was providing general support, it would be using program impact around tax work in Kenya to decide whether or not to continue funding. Alnoor clearly acknowledged this in return. Julie’s theory around the need for flexible financing turned out to be accurate—at one point they were about to furlough staff as they waited for FGP’s funds and another small grant to come through—however they did not deliver on their promise of further cultivating a social movement around illicit flows and tax in Kenya. Instead, they spent two thirds of FGP’s grant on overhead (mainly central staff salaries), and spent the last third during the final month of the grant on what was effectively an arts festival/workshop for activists that had little to do with tax and appears mainly an attempt to build a profile and CSO base for their broader work on land and environmental concerns there. They also demonstrated serious errors in judgment on the financial management front. Despite initial positive feedback from local CSOs about their engagement in Kenya, they likewise appear to have alienated a number of respected and influential tax justice activists throughout the course of their work. As a result, Julie decided not to renew funding, and had several frank conversations with Ladha about FGP’s disappointments with how the grant unfolded.

Julie spent a tremendous amount of time prior to and during grant with the CEO and board chair, Liz McKeon, encouraging them to set up a proper board, and establish an operational structure that mirrored their commitment to being southern owned and southern based, and highlighting their initial successes with other funders. They no doubt emerged stronger and better governed as an organization for all this effort, but with little to no impact on the illicit flows and tax justice field that we can ascertain today. In retrospect, FGP’s Director should have tuned in earlier to the CEO’s peripatetic intellectual tendencies, spotted the potential for him to take the work in a different direction than was agreed, and crafted a tighter project support grant with flexibility on overhead spending to keep the Rules afloat for the duration of the project. In an ideal world, she would have also monitored it more closely during the implementation phase, although without a staff at the time, this was unrealistic. Finally, FGP’s Director tried and failed multiple times to get input from OSIEA, which might have turned up some questions earlier on about the Rules’ ability to effectively engage with a broad base of relevant civil society over the medium term—a concern that became immediately apparent once FGP’s Program Officer, Vera Mshana, who is familiar with Kenyan civil society, joined.

Assessment of the Field: Emerging Lessons and Concerns

One of the overall concerns that has emerged for FGP is the credibility issues plaguing the IFF data (primarily GFI’s data), which underpins much of what is known and discussed in policy circles around IFF to date. Despite GFI’s transparency about their methodology, the two leading international financial institutions (the International Monetary Fund and the World Bank) are markedly silent on the issue even though the trade statistics used by GFI emanates from the IMF. Behind the scenes both the World Bank and IMF grumble about the quality of the data and GFI’s methodology, but no serious peer review has yet emerged. While FGP supports having a plurality of perspectives on the nature/drivers of IFF, with only one existing intellectual analysis of the problem, it is unclear whether or not the policy recommendations emerging from this analysis will ultimately be effective. From our perspective, we are far less concerned with the magnitude of IFF than we are about what the numbers signify, particularly at country and regional level, and how a more nuanced understanding of the various forms of IFF can be used by policymakers to make informed, evidence-based decisions. As discussed above, it remains to be seen whether or not our support to CGD will ultimately help address this research gap, which is much needed to positively develop the field and counter the potential political ‘backlash’ against IFF efforts if the credibility concerns are not taken seriously. We also plan to encourage/support proper peer review of GFI’s work.

Another issue that has emerged is the conceptual tension within the leading groups between those who remain narrowly focused on ‘tax transparency’ as the silver bullet strategy to addressing illicit flows and tax evasion/aggressive tax avoidance, and those that focus on ‘tax policy.’ This division is clearest within FTC, in which members officially describe themselves as coalescing around transparency of information that will inform tax policy choices. However, in separate conversations with the regional members, it was clear that they recognized that tax transparency is one of numerous tax policy issues (and therefore they are in fact working on tax policy issues, even if not identified as such), and that much more than a ‘tax transparency’ agenda will be needed to address the myriad of tax leakages experienced in their regions, such as dealing with tax incentives (and the attendant harmful tax competition), informal sector taxation, transfer price abuse (prevalent within the extractives industry), the tax treatment of indirect transfer of interest/asset, tax treaty abuse, and the failure to demonstrate the value proposition of paying taxes for citizens. Since the public messaging around the IFF and tax campaign is primarily couched in terms of transparency, there is a risk that public and political momentum will dwindle as progress is made on the transparency front, but little impact is seen around domestic resource mobilization, for example. Further, it is unclear if the international IFF groups are willing to shift their focus towards other tax policy issues that remain of great concern to their developing country counterparts, which would be a missed opportunity for meaningful collective action, as they continue to carry out the transparency agenda.

Finally, an emerging area of concern that is clear from recent media reports is the apparent lack of support that the groups we fund as well as key institutions (e.g. AU) provide to low income developing countries ONCE they have adopted tax reforms and other policy measures to combat tax evasion and avoidance. Without continuing to ‘stand by’ these countries it will be difficult to expect them to not immediately reverse these reforms in the face of backlash from MNCs (e.g. Zambia and the large copper mining industries over the VAT refunds) and also expect others to follow suit.

**Part II. Concept around Mandatory Beneficial Ownership Transparency in the U.S. and Europe**

The EU’s 4th Anti-money laundering directive (AMLD) is currently being revised in order to bring it up to date with the February 2012 recommendations (#24 and #25) of the Financial Action Task Force to combat money laundering and terrorist financing. The AMLD is of central concern to FGP and its grantees due to its provisions for: (a) **centralized public registers of beneficial ownership** of companies; and (b) **inclusion of trusts** (legal arrangements between at least two parties whereby property is held by one party for the benefit of another), **foundations, mutual and other legal entities** in the scope of the directive. Similarly, the US Incorporation Transparency and Law Enforcement Assistance Act would require the creation of registries available to law enforcement agents (potentially publicly available at the state level) that would store current beneficial ownership information for companies.

To support its goal of achieving a norm of mandatory beneficial ownership transparency in the U.S. and Europe, FGP made a series of strategic investments in mid-late 2013 to help generate political momentum behind these reforms and then advocate for the specific changes we and our grantees (FACT, FTC, Global Witness, and One Campaign) were seeking.

FGP worked very closely with Global Witness and the ONE Campaign, along with OSF’s Brussels and Washington, DC offices to conduct direct advocacy and feed in research inputs at critical points of the debate. Examples include FGP commissioning a consultant to develop a policy brief responding to frequently raised objections around the costs and consequences of introducing beneficial ownership transparency that groups including Global Witness, ONE and FTC shared with UK politicians and European MPs at critical points in the debates over public registries of beneficial owners to reportedly positive effect in 2013. FGP’s similar rapid response in commissioning of a European legal scholar to prepare a policy brief responding to EU MP concerns that beneficial ownership transparency would violate EU privacy (data protection) laws, again helped partners bring MPs on board and armed them with the necessary arguments required to defend public registries in discussions around the AMLD in particular. Further FGP’s support for ICIJ had a transformative impact on their ability to conduct and launch their offshore tax havens reporting at a critical time, just prior to the UK’s G8 annual meeting, which in turn generated unprecedented political coverage and fall out in more than 30 countries. From France to Luxembourg, Ministers caught red-handed with hefty offshore accounts resulted in public outcries and dramatic new commitments to promoting beneficial ownership transparency and tax information exchange throughout Europe. For example, ICIJ’s reporting was directly credited by European leaders with putting this issue at the center of the European Parliament’s reform agenda in 2014.

Over the past year, FTC, through its EU Advisor (Koen Roovers) based in Brussels and with Global Witness (Robert Palmer), has been leading advocacy at the EU level on beneficial ownership transparency, as well as coordinating and providing capacity support to other organisations working on these issues such as Transparency International and Christian Aid, and the One Campaign. Given their overlapping representation with the FACT Coalition, both GFI and GW have been able to link and bridge their collective work on beneficial ownership in the US and Europe. Global Witness has particularly been able to publish rapid response cases of how anonymous shell companies have been used to facilitate corruption (e.g. former Ukrainian President, Viktor Yanukovych) relevant to current events, as a means to maintain public interest and momentum on these issues. As a result of their continued advocacy, these groups were successfully able to persuade the UK government to adopt a controversial policy position and the UK became the first country to commit to the creation of public registries containing beneficial ownership information for companies.

Whilst this is a big success for the campaign, if urgent attention is not paid to ensure that other legal vehicles are subject to the same disclosure rules, this will leave an opportunity for nefarious characters to transfer assets to trusts and foundations, rendering the campaign useless. FTC, Global Witness and ONE have been leading campaigning efforts here to include all relevant legal vehicles in the new anti-money laundering directive, along with several groups FGP does not currently fund including TI and Eurodad. The results so far have been positive, but the inclusion of trusts and foundations is highly fragile and will go down to the wire, and later be fought out at the country level during transposition and implementation.

Though facing much stiffer resistance in the U.S., FACT (though Global Witness and Americans for Democratic Action) successfully carried out targeted public outreach in Delaware to generate public support at the state level for legislative reform at the federal level on beneficial ownership disclosure. FACT hopes to replicate this success in other key states in the coming year (e.g. New York and California). However, as the impact of FATCA hits home in the coming years and its adverse effects become manifest, there is a risk that political support for incorporation and broader tax transparency in the U.S. will dwindle. It is not clear how well FACT is positioning itself to respond to this potential risk.

More broadly, and as stated earlier, with respect to combatting aggressive tax avoidance, the impact of beneficial ownership disclosure is hugely overstated in the absence of equally combatting tax treaty abuse (e.g. tax treaty concepts of beneficial ownership may differ), transfer pricing abuse in cross-border related party transactions, and closing tax loopholes.

There are few groups right now in the field that seem to recognize the shortcomings of beneficial ownership and are capable of working on the complimentary suite of tax issues involved in helping stem illicit flows and increase domestic resource mobilization in low income countries. The Tax Justice Network, Action Aid and Third World Network (Africa) are among those that show promise in helping evolve the field here.

1. The International Monetary Fund, World Bank Group, and the UN Tax Committee are also key providers of technical assistance, as well as bilateral agencies such as DfID, GIZ, and NORAD. [↑](#footnote-ref-1)