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GEGAFRICA
RESPONSIVE AND EQUITABLE ECONOMIC GOVERNANCE
FOR AFRICA AND THE GLOBAL ECONOMY

SPEAKING NOTES

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NEW RULES FOR GLOBAL FINANCE, WASHINGTON, DC

1. Introduction:

Thank you to the South African Institute for International Affairs and to their partners in the Global Economic Governance Africa for their kindness of inviting me to participate in this important event.

New Rules for Global Finance works to enhance the voice and perspectives of the most under-represented in the international financial rule-making bodies—especially the Financial Stability Board (FSB), the IMF, and the international tax rule-making entities: the UN Tax Committee, the OECD, and the IMF, especially through its technical assistance programs.

To understand our work better, I invite you to read our 2014 Global Financial Governance and Impact Report. In collaboration with a total of 16 authors we assess the quality of governance and of impact on inequality in the poorest countries of the G20, FSB, IMF, WB, and OECD. Please do read the text; the numeric scores are attention grabbers; we do try to indicate where there has been improvement, and where policies are pro-poor, even if publicly accessible data do not yet demonstrate that improvement.

New Rules approaches its work from an analysis of power, assuming that to understand power, you must follow the money. In our work we ask: Who wins? Who loses? Who decides? From there, we assume that those at the decision table are most likely to win, while those excluded are most likely to

I have been asked to talk about 3 issues: Financial Inclusion; Sovereign Indebtedness; and International Tax Reforms. Throughout I will indicate where and how there can be increased role and visibility for African voices and perspectives. I will close by indicating a few key sources for additional information and engagement.

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2. Financial Inclusion:

The working definition for financial inclusion in the G20 context refers to the “unbanked” getting access to banking services, as in: “half of working adults still ‘unbanked.’” The G20 has extensive consultative documentation on this issue. For those of you following this issue as G20 defines, you will be disappointed in this presentation. I refer you to the documents accompanying the G20 Brisbane concluding communique.

Financial Inclusion also is used to refer to Remittances: the money emigrants send home to support their families. The G20 gratefully is committed to reducing the cost paid by migrant workers to send this money home. The size of remittances now exceeds the size of official development assistance, and as such as a large and core source of hard currency income for many countries. However, the trend in costs for sending remittances appears to be increasing instead of decreasing: banks sending international money transfers claim they are afraid of going afoul of new banking regulations. They don’t want to assume the risk of not conducting sufficient ‘due diligence’ thereby breaching their Anti-Money Laundering obligations. This is a dubious rationale. In fact, there are options for the poorest to transfer their funds at no cost; here I refer to the work of an entrepreneur, Mr. Christopher Williams cwilliams@rtpay.org. I should also note that this is an area of work the FSB could address on behalf of the G20.

My preferred focus for discussing Financial Inclusion is bringing the voice and perspectives of the poorest countries into the agenda setting and representation of financial-rule making bodies. For example, this audience is well aware of global efforts to reform the governance of the IMF Executive Board by adjusting the measurement of countries (giving greater weight to purchasing power parity [PPP], measuring ‘openness’ and cross-border trade differently, etc. [see the work of Ralph Bryant at Brookings and of Ted Truman at Peterson Institute for International Economics]). The new formula would reduce the over-representation of small open Euro-zone countries and expand the representation of growing emerging markets especially China. Additional steps not yet taken would be: inclusion of population in the formula for calculating the quota, and additional allocation of Basic Votes – allocated to all members equally by virtue of membership. Getting the US Congress to approve the 2010 Seoul Agreements is the essential first step. New Rules has been working on this issue since its establishment—and will continue to do as long as necessary.

Turning now to the Financial Stability Board (FSB), which the G20 established in 2009 and brings together the major financial regulators of the 25 largest economies, in collaboration with Standard Setting Bodies (SSB), such as the Basle Committee for Banking Standards, the International Organization of Securities Oversight (IOSCO), regulators of insurance, banking deposit insurance, and the International Accounting Standards Committee. SSBs range from completely intergovernmental, to mixed private and governmental, to completely private.

Right now I would like to call your attention to a document the FSB submitted to the G20 regarding its representational reforms:



Regional Consultative Groups: The FSB set up 6 regional groups based on geography, which meet twice yearly. The co-chairs are regulators from one FSB member and one FSB non-member country. Little is known about exactly who attends, the agenda, the decisions. However, increasingly the RCGs are becoming more self-directing and public, as shown by the papers the Asian and the Latin American RCGs developed and submitted to the FSB. Another positive step is that the FSB has decided that all non-member Co-chairs are welcome to attend the FSB biannual Plenary meetings where decisions are taken. Further, Emerging and Developing country that have had only 1 representative will now have 2 chairs, which the SSBs agreed to vacate.

Other points for insertion of African perspectives vis-à-vis the FSB are: 1) All policy documents now have a public consultation period before finalized and submitted to the FSB for approval. And, all comments received are made public, unless specifically requested by the author to the contrary. 2) The new FSB representation document indicates that all committees and working groups are welcome and encouraged to seek the best experts available for the issue at hand, not limiting themselves to the countries of the committee members or even of FSB members.

There is precedent for including non-FSB member country experts. In the October 2011 paper on Financial Issues of the Emerging Markets and Developing Economies, the working group that authored the paper included Louis Kasekende, the Deputy Governor of the Central Bank of Uganda. He and Victor Murinde, formerly with the African Development Bank's Institute and again at the University of Birmingham, UK, wrote papers for New Rules on banking reforms from low income country perspectives. Kasekende's principles for cross border banking resolution were included in the 2011 paper; these same principles have been carried forward into FSB principles for all cross border banking resolutions (bankruptcies).

There are also opportunities for informal inclusion: Experts and advocates alike are encouraged to meet with their national regulators. There are also opportunities during meetings such as the World Bank-IMF Spring Meetings and Annual Meetings for informal conversations.

And beyond informal, private meetings, it is essential that African experts and regulators—such as the C20—hold public press conferences to drive home their agenda, their priorities, their perspectives. This enables both governmental supporters and non-profit organizations alike to support those priorities.

3. Sovereign Debt:

Many countries of Sub-Saharan Africa have benefitted from the HIPC and MDRI initiatives—coupled with much hard work on the part of governments “encouraged” to manage debts by reducing expenditures—basically through austerity programs—even while working to increase the size of their economies and address inequalities.

The current issue for sovereign indebtedness relates to the money provided through foreign bond sales. Argentina is the most obvious case, with the Argentines the most pugnacious. This fight points out the importance of the contracts accompanying those bond sales: which legal system, which courts decide in cases of dispute? How can the borrower redesign the terms of repayment when/if the original schedule becomes untenable?



All borrowers are encouraged to include Common Action Clause, whereby for each bond issuance, the contract states what percentage of bond holders must agree to any debt restructuring. CACs have been shown to be insufficient because they apply only to that specific bond sale; not to preceding sales. The IMF and International Capital Markets Association (ICMA) both recommend that going forward ALL contracts be covered, well beyond separate agreements for each bond sale.

Major issues remain: can such agreements be applied retro-actively? And from the lenders view, can a Sovereign ever be expected to behave as a non-sovereign? There are no—and are unlikely to be—any options comparable to the bankruptcy proceedings available to individual and corporations. Nor will sovereign debtors enjoy the protection available to “sub-state” political entities (cities, counties, etc.) as found in the United States (Orange Country, Detroit, Stockton). No “judge” or arbitrator has authority over national sovereigns, despite contracts signed saying the “law of New York” or of the United Kingdom will apply. Further, the IMF has said it will NOT attempt to re-open the SDRM (Sovereign Debt Restructuring Mechanisms)

So, be careful with bond sales. Maybe Argentina will smooth the way, but not for a good long while: Greece and Zambia paid in full when “vulture funds” sued; Grenada and the Democratic Republic of the Congo seem to be facing similar threats.

The only good news is that the G20 recognized the problems the judgment of New York Judge Griesa decisions regarding Argentina present for all future efforts to mitigate the debt burden of a sovereign:

At the end of their Brisbane Communique, the G20 listed 3 issues “to be dealt with in the future” including Debt:

Given the challenges litigation poses and in order to strengthen the orderliness and predictability of the sovereign debt restructuring process, we welcome the international work on strengthened collective action and pari passu clauses. We call for their inclusion in international sovereign bonds and encourage the international community and private sector to actively promote their use. We ask our Finance Ministers and Central Bank Governors to discuss the progress achieved on this and related issues.

I would encourage each and all of you to visit the New Rules website. There, with the Centre for International Governance Innovation (CIGI), we are hosting an online discussion on next steps for Sovereign Debt Restructuring. It includes opportunities for frequent webinars, and possible regional video-conferences. I encourage you to explore this webpage, comment, participate in Webinars, suggest topics and offer to lead discussions!

4. International Tax Reforms:

With the financial crisis of 2008 morphing into the Great Recession, advance economies have discovered a new urgency to collecting all taxes due, and a greater intolerance for tax evasion and avoidance schemes. Therefore, last year, they mandated the OECD to work to eliminate the problem of “Base Erosion and Profit



Shifting” (BEPS). The OECD has worked diligently on this task, releasing in February 2014 its recommendations, and in July 2014 its commentaries on how to implement those recommendations.

Separate from BEPS but closely related, especially in the minds of Tax Justice Campaigners is the issue of Beneficial Ownership, or rather hiding the ultimate owner of wealth hidden in trusts, foundations, shell companies or whatever in secrecy jurisdictions.

In reverse order I will describe the current status of reforms regarding these two matters, and what remains to be done.

The G20 Brisbane Communique speaks directly to Beneficial Ownership:

13. We are taking actions to ensure the fairness of the international tax system and to secure countries’ revenue bases. Profits should be taxed where economic activities deriving the profits are performed and where value is created. We welcome the significant progress on the G20/OECD Base Erosion and Profit Shifting (BEPS) Action Plan to modernise international tax rules. We are committed to finalising this work in 2015, including transparency of taxpayer-specific rulings found to constitute harmful tax practices. We welcome progress being made on taxation of patent boxes. To prevent cross-border tax evasion, we endorse the global Common Reporting Standard for the automatic exchange of tax information (AEOI) on a reciprocal basis. We will begin to exchange information automatically with each other and with other countries by 2017 or end-2018, subject to completing necessary legislative procedures. We welcome financial centres’ commitments to do the same and call on all to join us. We welcome deeper engagement of developing countries in the BEPS project to address their concerns. We **will work with them to build their tax administration capacity and implement AEOI**. We welcome further collaboration by our tax authorities on cross-border compliance activities.

We commit to improve the **transparency** of the public and private sectors, and of beneficial ownership by implementing the G20 High Level Principles on Beneficial Ownership Transparency.¹

These commitments of the G20 manifest great progress on the issue. Including the collection of data on ultimate beneficial ownership, the commitment to work to share information, and ultimately to promote the transparency of beneficial ownership. What is included in this statement is a further commitment to capacity building in developing countries. This will contrast with the OECD BEPS work.

The OECD BEPS work of July 2014 describes the technicalities for implementing the Common Reporting Standard for sharing tax information automatically between and across countries. Strikingly, the OECD excludes sharing any information with “law enforcement,” while the G20 provides for timely sharing with appropriate authorities including law enforcement. Further, the OECD in January supported capacity building for developing countries to be able to comply with BEPS/CRS. That language is absent from the July 2014 commentaries, but the G20 explicitly (re-)commits to support such capacity building. Ironically, if the July commentaries stand alone, only tax havens (those entities that charge no income tax) will be able to *receive information without sending information*; however, developing countries, will **not** be able to



receive information **because they cannot send information**. Gratefully, the African Tax Administrators Forum is on to this scam and is working mightily with (and against) the OECD to reverse this travesty of justice.

The Common Reporting Standard was designed to facilitate multilateral, automatic sharing of tax information. The OECD seems to be continuing to promote in practice the bilateral, on-demand, sharing of information—an approach rejected by the G7 and G20 in 2013. This pattern persists through the Global Forum, the allegedly independent group of countries supported and funded by the OECD with staff accountable only to the OECD Secretariat.

In the extensive political and legal analysis of the CRS and its Commentaries (published July 21, 2014) Tax Justice Network's Andres Nobel and Markus Meinzer, identify the absence of a "unique multilateral authority agreement (CAA) for all jurisdictions to engage in AIE with each other in a consistent way" as a critical flaw, that encourages bilateral, not multilateral automatic exchange of tax information. (p.2).

Strikingly, those wishing to hide their wealth from the "tax man" have until 2016 to register, and they need only not register any trust below \$250,000, and, tax havens are already offering to sell Tax Payer Identify Certificates to present to one's national tax authority demonstrating that there is no need to pay the latter any taxes.

Responding to the dissatisfaction from developing countries, campaigners and many others, the OECD is beginning the week of December 8-12, 2014, in Paris, to include developing countries representatives (national as well as the Regional Tax Administrative Organizations – such as ATAF from Africa and CIAT from Latin America) into the BEPS process.

5. Some useful documents/sources:

1. G20 documents
2. Tax Justice Network for updates on the BEPS and other tax changes and their Meaning: Andres Nobel and Markus Meinzer "The end of bank secrecy"? Bridging the gap to effective automatic information exchange: An Evaluation of OECD's Common Reporting Standard (CRS) and its alternatives."
3. For Remittances: Kevin Watkins at the Overseas Development Institute
 - a. Concrete, practical prescriptions; Chris Williams
 - i. Cwilliams@rtpay.org
4. On Debt: Sovereign Debt Restructuring
5. Action, engagement: **Call for papers for a Research Workshop or Tax Justice Network: SHOULD NATION STATES 'COMPETE'?** City University, London, 25th / 26th June 2015
6. www.new-rules.org
7. www.FSBwatch.org
8. <http://www.new-rules.org/what-we-do/sovereign-debt-consultation>



ⁱ High Level principles regarding Beneficial Ownership

3. Countries should ensure that legal persons maintain beneficial ownership information onshore and that information is adequate, accurate, and current.
4. Countries should ensure that competent authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely access to adequate, accurate and current information regarding the beneficial ownership of legal persons. Countries could implement this, for example, through central registries of beneficial ownership of legal persons or other appropriate mechanisms.
5. Countries should ensure that trustees of express trusts maintain adequate, accurate and current beneficial ownership information, including information of settlors, the protector (if any) trustees and beneficiaries. These measures should also apply to other legal arrangements with a structure or function similar to express trusts.
6. Countries should ensure that competent authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely access to adequate, accurate and current information regarding the beneficial ownership of legal arrangements.....