

European Union's Tax Haven Blacklist'17 and its impact on the Global Economy

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Introduction:

Tax havens, today, pose a big challenge to the world economy. Tax avoidance has led up to \$32 trillion in lost revenues in banking systems across the world.¹ The issue of corporate tax evasion and fraud is, therefore, high on the political agenda, given the state of public finances in many countries, particularly after the global financial crisis of 2008.² Tax havens encourage tax avoidance, as they rest almost entirely on zero or very low-income tax rates, supported by trustworthy local institutional structures that shield financial activities from the eyes of foreign authorities and allow the untaxed funds involved to be redeployed in the global economy.³ Thus, broadly, “Tax havens allow MNEs to shift profits out of high tax jurisdictions into low tax jurisdictions, most commonly via transfer pricing (Eden, 2009).”⁴

One sees all tax or regulatory attraction of activity from one state to another as a negative element of globalization that should be countered. With a similar aim, the European Union (EU) has now decided to blacklist countries with non-transparent tax regimes and structures. The argument posed by the EU is that such structures are solely designed to shield companies’ profits from tax, to reform their systems. The EU prepared a list of 17 “Blacklisted” countries and 47 “gray” listed countries by the end of 2017, on the basis of their inability to comply to the international standards of tax transparency and tax rates.⁵ In addition, these countries have not provided sufficient commitment to amend their domestic laws in order to cater to the global need

¹ Investopedia. “Top 10 European Tax Havens.” <https://www.investopedia.com/articles/wealth-management/121515/top-10-european-tax-havens.asp>

² Chris Jones & Yama Temouri, “The determinants of tax haven FDI” (2016) 51:2 Journal of World Business [Jones & Temouri]

³ Robert T Kurdle, “Tax Havens and the Transparency Wave of International Tax Legalization” (2016) 37:4 University of Pennsylvania Journal of International Law.

⁴ Jones & Temouri, *supra* at 1

⁵ Business Insider. “EU Blacklist of Tax Havens.” <http://uk.businessinsider.com/eu-blacklist-of-tax-havens-published-2017-12>

for a better world economy. Tax avoidance leads to loss of revenues to banks and governments, a major hindrance in the process of development especially in developing economies.⁶

Through this paper, I wish to analyze how changes by an interconnected system of integrated legal assemblages has the ability to produce both internal effects and external effects. This paper analyzes the criteria and reasons which form the basis of EU's stringent policy of blacklisting certain countries, denying them future EU funds (unless catering to development), and scrutinising their monetary transactions.⁷ It also examines how there is interconnectedness between a change of EU's policies which operate transnationally amongst Member states, affecting their laws at state/federal level leading to a global impact.

Essentially, changes in EU law will lead to changes in the law of Member states, which becomes change at the national level. Changes in law of Member states will therefore force changes in laws in the blacklisted countries because they will need to look for new connections globally to offset their losses. This will have a domino effect impacting the globe. In addition, the paper also attempts to see how this interconnectedness would have an effect on the blacklisted jurisdictions in terms of economic, social and political power. I have decided to take Namibia, a low-middle income country blacklisted by EU, as my case study. This would help to understand the consequences of being blacklisted and help to study the measures being taken to restore tax transparency by the EU.

⁶ *Ibid*

⁷ Business Insider. "EU Blacklist of Tax Havens." <http://uk.businessinsider.com/eu-blacklist-of-tax-havens-published-2017-12>

Understanding European Union (EU): A Union of Several Legal Assemblages:

Formed in 1958 under the Treaty of Maastricht, the European Union (EU) is an international economic and political organization consisting of 28 Member states.⁸ Over the years, EU has emerged as a single internal market functioning on a standardised system of laws that apply in all its Member states. EU policies aim to ensure the free movement of people, goods, services, and capital within the internal market, enact legislation in justice and home affairs, and maintain common policies on trade, and regional development.⁹ “In practice, this means that the Member States delegate some of their decision-making powers to the shared institutions they have created, so that decisions on specific matters of common interest can be made democratically at EU level.”¹⁰

For a new EU law to come in to existence, it has to go through several stages. The *Right to Initiative* i.e. proposing and drafting new laws, solely lies with the European Commission.¹¹ Both the European Council and European Parliament may propose their ideas for new laws but these can be refused by the European Commission if they have reason to do so. In addition, laws proposed by the European Commission have to be adopted by the European Parliament and the Council (also called the Council of the European Union).¹² In some cases, a new legislative procedure can be brought in by either of the following: 25% of Member states, Court of Justice of the EU, European Investment Bank or European Central Bank. In addition, European Citizens can also bring in a new EU law if they can get 1 million EU citizens from 7 different Member states to sign their petition. One could also submit their idea directly to the European Parliament.¹³

⁸ *The European Union - what it is and What it does*, 1st ed. (Luxembourg: Publications Office of European Union, 2018).

⁹ European Commission. "The EU Single Market: Fewer barriers, more opportunities".
< https://web.archive.org/web/20071001122551/http://ec.europa.eu/internal_market/index_en.htm >

¹⁰ The European Union, *Supra* at 7

¹¹ *Ibid* at 9

¹² *Ibid* at 9

¹³ *Ibid*

After the new EU law is proposed, the “Consultation Process” starts, where the European Commission consults various experts, international organizations and NGOs for their advice.¹⁴ During the process, *Green Papers* and *White Papers* may also be issued. *Green Papers* are documents used by the commission to “invite relevant parties/bodies to the process come and participate in the consultation process for proposed EU laws.”¹⁵ *White Papers*, on the other hand, are used when the commission is seeking to “launch a debate with the public, stakeholders, the European Parliament (EP) and the Council in order to gain consensus for proposed EU laws.”¹⁶ Once the consultation process ends, the College of Commissioners adopts the proposal. Thereafter, the proposal is sent to the European Parliament, Council and also to all the national parliaments. Once the proposal of the new legislative is accepted by the European Parliament and Council, the new EU law comes into existence.¹⁷

“In principle, Member states retain the authority to reverse these unanticipated institutional and policy developments...The role of the national parliaments is not to amend or approve the EU law, but they can raise objections using their *Principle of Subsidiary*. ”¹⁸ This principle ensures that the EU does not unnecessarily infringe the national government’s legislation. A minimum of 1/3rd of the Member states need to vote against it (in order to issue a *Yellow card*) to get a review and ½ of the Member states together can give an *Orange card* to the commission to review or withdraw the proposal.¹⁹ “If half of the European Parliament or Council agree with the national government, the proposal is dropped...If it gets approved by all, it comes into force immediately. This law is

¹⁴European Parliament. “Law-Making in the EU.” <<https://www.youtube.com/watch?v=clmSKbV5Z9w&t=95s>> ed (2016)

¹⁵ *Ibid*

¹⁶ *Ibid*

¹⁷Jeremy Richardson, *European Union - Power and Policy-Making*, 2nd ed (Abingdon [U.K.]: Routledge, 2006): 31

¹⁸ *Ibid* at 32

¹⁹ *Ibid* at 49

then ratified by all Member states in their national parliaments and becomes binding for all EU citizens.”²⁰

This brings to our attention the “multi-level, multi-faceted governance role that EU plays. The functioning of EU shows how laws passed at the international level can have their effects regionally. “The concept of multi-level governance emphasizes the fluid and open-ended nature of the EU system within which a broad range of actors operating at different levels, from the local to the international, have the potential to play an influential role.” There are distinctions between them based on “...the different types of decision taken, the different actors which dominate and the different types of rationality which inform their actions, at the various levels of analysis identified within the EU.”²¹ But these different level actors operate in groups forming governance structures from the local/regional to the international level formulating policies and laws which transcend national boundaries of the Member-states, operating transnationally.

These groups, as argued by Gavin Sullivan, are a kind of “legal assemblages.”²² He says, “the concept of assemblage has been rarely used in legal theory because of its emphasis on materiality, distributed agency and heterogeneity challenges received notions of legal formalism and the way international norms are ordinarily thought to be constituted, transmitted and contained. Yet I suggest that it is precisely these qualities that provide the assemblage with analytical advantage in understanding regime functions in the transnational context.”²³ He says that the concept of ‘assemblage’ can be highly useful in understanding the legal globalisation. “In short,

²⁰European Commission. “Passing EU Laws – An Ordinary Legislative Procedure” https://ec.europa.eu/commission/index_en

²¹ Richardson, *Supra* at 66

²² Gavin Sullivan (2014) Transnational Legal Assemblages and Global Security Law: Topologies and Temporalities of the List, *Transnational Legal Theory*, 5:1, 81-127, DOI:10.5235/20414005.5.1.81

²³ *Ibid* at 6

the concept refers to the symbiotic co-functioning (or ‘assemblage’) of heterogeneous elements across different social fields and is used analytically to examine ‘the ongoing labour of bringing disparate elements together and forging connections between them...When applied in the context of transnational legal ordering, therefore, the assemblage opens up relatively novel ways of understanding how law is constituted, negotiated and contested.’²⁴

Thus, EU forms a system of various interconnected levels, functioning through constant integration and regulation maintained by several legal assemblages at every level. Eve Darian-Smith talks about how it is necessary to see the multiple arenas of legal activity as intrinsically related, mutually constituted, and always in dynamic interaction. She argues that, “laws at the global/transnational level, laws at the federal/state level, and laws at the domestic/local level should all be viewed as elements of an interconnected and unfolding global legal system. In this interconnected realm, William Twining notes, it is illuminating to conceive of law as a species of *institutionalised social picture* that is *oriented to ordering relations between subjects* at one or more *levels* of relations and of ordering (Twining 2009:116)”²⁵

In a similar way, changes at the level of European Union, needless to say will cause changes in Member countries, which in turn will lead to several changes at the regional/local levels in terms of trading and markets. Thus, it is true that EU’s step towards changing their relations with non-Member states will have a multiple level effect, not only in the Member states, but also within non-Member states and globally. Global, because it could have an effect on the credibility of non-Member states while transacting with other countries around the world. Darian-Smith rightly mentions, “western legal systems in the global north are subject to unpredictable influences from

²⁴*Ibid* at 12

²⁵ Eve Darian-Smith, *Laws and Societies in Global Contexts - Contemporary Approaches*, ed (New York: Cambridge University Press, 2013)

their interaction with non-western legal systems in the global south. Even if a country is a global superpower, such as the United States, its legal interaction with the wider world changes that country's legal system even though this may not be considered desirable or be immediately self-evident."²⁶

Not only this, "In situating law within international and global settings, it is argued that law has been (and continues to be) constituted through its interaction with other legal systems that are similarly culturally constituted. The world is made up of assemblages or "constellations" of overlapping legal systems that embody a diverse range of values, norms and meanings (BendaBeckman et al. 2009b:4). These legal assemblages are in constant tension with, and concurrently defined through, interactions with each other. Compounding the complexity is that some legal systems are seen to hold together greater authority and legitimacy. The result is a complex of legal interconnectivity in which some countries (i.e. US law, German law) are presented as more legitimate and valuable than others..."²⁷

Thus, it is true that EU's step towards changing their relations with countries which do not offer transparent tax regimes will have a multiple level effect, not only in the Member states, but also in the blacklisted countries. The shifting of spatial and temporal legal relations between states and other legal actors/institutions, along with the question of western law's dominance in the global arena will together have repercussions for blacklisted jurisdictions. Therefore, this step taken by EU on account of tax evasion can produce changes in relationship between globally. In order to understand why EU has taken up the task to blacklist certain jurisdictions, it is imperative to understand more about the tax evasion and tax havens. It is important to do so, because it would

²⁶ *Ibid* at 11

²⁷ *Ibid* at 39

help understand how a change in EU's policies will curtail and effect the political, social and economic status of the blacklisted countries.

Tax Havens – A Hindrance in Development:

Before understanding the role of Tax havens in the world economy, it is important to understand the distinction between two major concepts related to them – Tax evasion and Tax avoidance. Even though commonly used interchangeably, these two terms are very different from each other. “Tax avoidance is a means by which tax payers reduce tax liability by planning their affairs so as to attract the least tax possible but still acting within the provisions of the Income Tax Act. It refers to types of transactions that result in the alteration of the incidence to taxation in a manner or in circumstances contrary to the purpose and policy of the relevant Revenue provisions.”²⁸ Simply put, Tax avoidance is the legitimate minimizing of taxes, using methods approved by the law like using tax deductions, tax credits etc.²⁹ On the other hand, “Tax evasion is an illegal action as it constitutes a deed where the person is breaching the provisions found in the Income Tax Act.”³⁰ It is illegal because by underreporting income or showing less revenues, multinational corporations (MNCs) tend to report more expenditure so that revenue comes down.³¹

Tax havens then, can be defined as, “tax havens are places or countries (not all of them are sovereign states) that have sufficient autonomy to write their own tax, finance, and other laws and regulations. They all take advantage of this autonomy to create legislation designed to assist non-

²⁸ Ann Xuereb, "Tax avoidance or tax evasion? The difference between tax avoidance and tax evasion is the thickness of a prison wall.", online: <https://www.um.edu.mt/library/oar/bitstream/handle/123456789/3080/Tax%20Avoidance%20or%20Tax%20Evasion.pdf?sequence=1&isAllowed=y>

²⁹ The Balance, “Tax Avoidance vs Tax Evasion.” < <https://www.thebalance.com/tax-avoidance-vs-evasion-397671>>

³⁰ Xuereb, *Supra* at 220.

³¹ The Balance, *Supra*

resident persons or corporations to avoid the regulatory obligations imposed on them in the places where those non-resident people undertake the substance of their economic transactions.”³² It is now being argued by various international organizations that tax evasion is proving to be a hindrance for the global economy and development of emerging economies, thus constituting a new form of global problem. “Tax havens are not working on the margins of the world economy, but are an integral part of modern business practice...Indeed, we take the view that tax havens not only are conduits for tax avoidance and evasion but belong more broadly to the world of finance, to the business of managing the monetary resources of an organization, country, or individuals. They have become one of the most important instruments in the contemporary, globalized financial system, and one of the principal causes of financial instability.”³³

This has given rise to the EU’s action against countries with ambiguous tax regimes. “The EU’s listing process uses three sets of criteria to identify tax havens: transparency, fair taxation, and participation in international fora on tax. Importantly, the EU has acknowledged the danger of (extremely) low corporate tax rates and included assessment on this under the ‘fair taxation’ criteria.”³⁴ While Tax havens serve as opportunities to benefit by paying lower taxes in lower tax jurisdictions, EU’s blacklist would help to discourage that and encourage multinationals to pay their actual taxes. Another reason why EU has decided to take action against such low tax jurisdictions is because, “corporate tax revenue losses are estimated to cost developing countries \$100bn a year. Just one-third of this amount would be enough to pay for the essential healthcare

³² Ronen Palan, Richard Murphy & Christian Chavagneux, *Tax havens - How Globalization Really works*, 1st ed (New York: Cornell University Press, 2010):5

³³ *Ibid* at 6

³⁴ Oxfam, *Blacklist or Whitewash?* (Oxfam, 2017)

<https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bn-blacklist-whitewash-tax-havens-eu-281117-en_0.pdf>

that could prevent the needless deaths of eight million people. Corporate tax continues to be relatively more important to developing countries' government revenues, accounting for 16% of tax receipts compared with a little more than 8% for high-income countries. Governments have a responsibility to protect and improve corporate tax collection."³⁵

Thus, "limiting tax tricks can simultaneously benefit growth and reduce income inequality. Fairer revenue redistribution tied to education, especially for girls, can reduce gender inequality and boost women's empowerment. While tax havens are ripping off developing countries, they are doing little to benefit local people...Tax havens and the tax race-to-the-bottom are not benefitting anybody but a small elite composed of rich individuals and large multinationals."³⁶ Therefore, it becomes essential for stopping and taking action against countries serving as tax havens which are helping big businesses to cheat their host/source countries and their citizens out of billions of dollars in revenue every year.³⁷ "It is essential to stop this phenomenon by identifying, transforming and ultimately sanctioning those jurisdictions."³⁸

EU Member-states and Making of the EU List for Non-Cooperative Jurisdictions:

While the EU serves as the over-arching supervisory institution in all matters, the national governments are responsible for setting their own tax rates and collecting taxes. This is done because the EU ensures that people or businesses from another Member State are not discriminated against and that taxes do not hinder the EU's single market.³⁹ In addition, the "Member State governments are broadly free to design their tax laws according to their national priorities.

³⁵ *Ibid* at 6

³⁶ *Ibid* at 6

³⁷ *Ibid* at 7

³⁸ *Ibid* at 8

³⁹ European Commission, *Supra* at 40

However, in doing so they must respect certain fundamental principles, such as non-discrimination and respect for free movement of goods and services in the single market. More and more companies and individuals are active in more than one country, making it easier for them to try and pay the least tax possible ('tax avoidance') or to not pay taxes due ('tax evasion') through legal means. A single country cannot tackle these issues on its own, so EU Member States work together to make sure that taxation is fair."

Even though the EU does not have a direct role in raising taxes or setting tax rates, it ensures to play its role in supervising that the national tax rules to are consistent with certain EU policies such as: promoting economic growth and job creation; ensuring the free flow of goods, services and capital around the EU in the single market; making sure businesses in one country do not have an unfair advantage over competitors in another; ensuring taxes do not discriminate against consumers, workers or businesses from other EU countries.⁴⁰

Not only this, the governments of all Member States must enforce the decisions made by EU on tax issues so that the interests of every EU country are taken into account.⁴¹ For some taxes, such as value added tax or excise duties on petrol, tobacco and alcohol, Member States have agreed to broadly align their rules and minimum rates to avoid unfair competition within the single market.⁴² "The tax laws of one Member State should not allow people or businesses to escape taxation in another. EU-wide action is essential to tackle the problem and important progress has been made in recent years, including the adoption of an EU action plan to fight tax fraud and tax evasion. Close coordination between tax administrations also helps to prevent companies from

⁴⁰ *Ibid* at 40

⁴¹ *Ibid* at 40

⁴² *Ibid* at 40

exploiting loopholes between different countries' systems with the aim of reducing the amount of taxes they pay.”⁴³

The EU now wishes to extend its close coordination and EU-wide action outside its Member States, in order to achieve higher level of tax transparency. In a recent report, it was stated that, “after a number of massive tax scandals such as LuxLeaks and the Panama Papers, both the EU and the G20/OECD committed to produce blacklists of tax havens. In June 2017, the OECD absurdly reported that only one country – Trinidad & Tobago – had failed to comply with international transparency standards. Meanwhile, the EU decided to draft a blacklist based on more ambitious assessment criteria, which it released in November 2016. Those criteria, which include a zero percent corporate tax rate indicator and an assessment of the fairness of tax systems, are more comprehensive than those used by the OECD.”⁴⁴

This blacklist also stems from the release of “Paradise Papers”, which in addition to individuals, as mentioned in Panama Papers, also named various Corporations for tax evading by transferring their assets to lower tax jurisdictions or tax havens.⁴⁵ The International Consortium of Investigative Journalists (ICIJ), released the Paradise Papers in 2017.⁴⁶ “The leaked documents, dubbed the Paradise Papers, show how deeply the offshore financial system is entangled with the overlapping worlds of political players, private wealth and corporate giants, including Apple, Nike, Uber and other global companies that avoid taxes through increasingly imaginative bookkeeping

⁴³ *Ibid* at 40

⁴⁴ Oxfam, *Supra* at 6

⁴⁵ *Ibid* at 11

⁴⁶ International Consortium of Investigative Journalists (ICIJ). “Paradise Papers.”
<https://www.icij.org/investigations/paradise-papers/>

maneuvers.” The recent Paradise Papers have also shown how West African development was undermined by the tax practices of multinationals such as Glencore, a Swiss commodity giant.⁴⁷

Before moving forward, it is imperative to understand how companies on the Paradise Papers are being accused of committing tax evasion. The world governments and institutions, today, are tackling with a lot of problems due to tax evasion and tax fraud because tax is a large portion of revenue for the government and it is getting shifted to other countries. This is hindering growth and development in several developing economies and also widening the gap between the rich and poor.⁴⁸ As rich invest their money in tax havens and pay less or negligible taxes, the burden of development seems to have come upon the middle and lower classes of such countries. So, the world’s governments are now taking measures to push tax havens to share banking and financial information with international tax agencies and NGOs which are concerned about offshore evasion by citizens.⁴⁹

Companies and individuals looking to shift their assets create a “shell company” in their choice of tax haven. “The term “shell company” generally refers to limited liability companies and other business entities with no significant assets or ongoing business activities. Shell companies – formed for both legitimate and illicit purposes – typically have no physical presence other than a mailing address, employ no one, and produce little to no independent economic value.”⁵⁰ This Corporation is then a legal entity, with no operations, employees or infrastructure. The company only appoints a person to handle and run the affairs of that country or jurisdiction. People invest a

⁴⁷ *Ibid* at 13

⁴⁸ Palan, Murphy & Chavagneux, *Supra* at 7

⁴⁹ *Ibid* at 8

⁵⁰ Financial Crimes Enforcement Network, The Role of Domestic Shell Companies in Financial Crime and Money Laundering - Limited Liability Companies (Department of the Treasury, 2006):4

large portion of their earnings in these places to evade taxes. “Shell companies are often formed by individuals and businesses to conduct (monetary) transactions, such as domestic and cross-border currency and asset transfers, or to facilitate corporate mergers and reorganizations.”⁵¹ This is done by showing that major earnings are being generated in the tax havens. This money is non-taxable by the host country until brought back to country to pay its shareholders or in the form of revenues.⁵²

Despite this, “tax havens are legal entities, for the simple reason that they are sovereign states or suzerain jurisdictions, both of which have the legal right to write their own domestic laws. They may choose to write their tax codes and financial laws in ways that others consider harmful. Legal in this context means “allowed under the law,” “recognized or established by a court of law,” or “officially permitted.” Legality has very little to do with either opinion or ethics. These places are exercising their rights, and their defense is that international law allows them to do so.”⁵³ It is very important to note that because these offshore jurisdictions have “strict confidentiality” rules, it becomes much easier for investing companies and corporations to hide their assets. Along with having lower taxes, this is another reason why tax havens have become a very lucrative escape for individuals or corporations who want to shift their earnings to these places and it makes it easy for them to hide their assets.⁵⁴

⁵¹ *Ibid* at 4

⁵² *Ibid* at 5

⁵³ Palan, Murphy & Chavagneux, *Supra* at 3

⁵⁴ International Consortium of Investigative Journalists (ICIJ), “Paradise Papers”
<<https://www.icij.org/investigations/paradise-papers/>>

Currently, EU's blacklist consists of 9 blacklisted and 47 grey-listed countries. Countries which are blacklisted face sanctions from the EU.⁵⁵ The EU has decided to take action and argue that this list is part of the EU's work to fight tax evasion and avoidance and aims to create a stronger deterrent for countries that consistently refuse to play fair on tax matters. "The EU's list is intended to promote good governance in taxation worldwide, maximising efforts to prevent tax avoidance, tax fraud and tax evasion. It was prepared during 2017 in parallel with work within the OECD."⁵⁶ The countries currently on the blacklist are: American Samoa, Bahamas, Guam, Namibia, Palau, Samoa, Saint Kitts and Nevis, Trinidad and Tobago and the US Virgin Islands.⁵⁷ These jurisdictions will not be eligible for any future EU funds (unless catering to development), and will have their monetary transactions scrutinised until they meet become transparent and remove their "strict confidentiality" policy by letting out names of their clients.

But if such countries lose financial support from the EU, what happens to them? How will they function? Does it affect their standing in the global market or does it place them in a disadvantageous position with other countries as well? And if this happens, will companies continue to use such jurisdictions as places to invest? From all of the above listed jurisdictions, I wish to focus more on Namibia, located in the south-west portion of the African Subcontinent.

⁵⁵Financial Times. "EU puts 17 jurisdictions on its Blacklist." <https://www.ft.com/content/c4d721dc-d9cf-11e7-a039-c64b1c09b482>

⁵⁶ European Commission. "Common List of Third Country Jurisdictions for Tax purposes." https://ec.europa.eu/taxation_customs/tax-common-eu-list_en

⁵⁷ European Council. "Taxation: 3 Jurisdictions removed, 3 added to EU list of Non-Cooperative Jurisdictions." <<http://www.consilium.europa.eu/en/press/press-releases/2018/03/13/taxation-3-jurisdictions-removed-3-added-to-eu-list-of-non-cooperative-jurisdictions/>>

Namibia and EU: Past, Present and Potential Future:

Located on the western shores of South Africa, Namibia is a less densely populated country, with a “medium-level” Human Development Index (HDI) positioning itself at the 125th rank out of 188 countries and territories. The rank is shared with Guatemala.⁵⁸ As per the European Commission’s report, “Namibia's income distribution is among the most unequal in the world. And despite undeniable progress towards the achievement of the MDGs (notably access to water and education enrolment), the country still faces many challenges related to widespread poverty, severe income inequality and high unemployment. Furthermore, the HIV/AIDS epidemic and high vulnerability to climate change act as further breaks on the country’s development. Under the 11th European Development Fund (2014-20), the National Indicative Programme 2014-20 for Namibia an amount of €68 million has been allocated to the country.”⁵⁹

These funds were allocated by the EU to emphasise the importance of developing sectors like education, skills and agriculture, between 2014-2020. This allocation of funds is important for the development of human resource and infrastructure in Namibia, given its current state. The report also argues how “focus on Education and Skills is due to the relevance of the sector as a critical enabler for Namibia’s transition to a globally competitive country (NDP4). Notwithstanding progress towards universal primary education, the repetition rates are not decreasing...A key factor of underperformance of the agricultural sector is the weak link of the

⁵⁸ United Nations Development Programme, Namibia: Human Development Report 2016(2016). Online: < http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/NAM.pdf>

⁵⁹European Commission. “International Cooperation and Development: Building Partnerships in Developing Countries.” < https://ec.europa.eu/europeaid/countries/namibia_en>

rural sector to available markets. Support to agriculture is based on the need of integrating the rural economic actors into the formal market as a priority for economic growth. A sector already identified for support is livestock with the aim of strengthening the livestock value chain.”⁶⁰ Given Namibia’s plans for development, it is imperative that it continues to receive EU’s support and guidance.

While Namibia serves as Tax haven for several companies and individuals, it is ironically true that the citizens of Namibia itself live in severe multidimensional poverty.⁶¹ The EU not only financially allocates funds to Namibia, it also supports it through “Annual Action Programmes.” The first one in 2015, included following actions: “the Support to Technical and Vocational Training in the focal area of education and skills; the support to the National Authorizing Officer (NAO) and technical cooperation facility. The programme in Support to VET addresses some of the key systemic issues: lack of industry relevant VET programmes in relation to the main economic sectors, poor quality of training programs, inadequate number of training places for school leavers and out of school youth, etc.”⁶²

Another action plan established by the EU was “The 11th EDF Education Sector Reform Contract (ESRC) also adopted in 2015, will support the improvement of cognitive, linguistic, social and emotional development of children entering primary education by enhancing equitable and inclusive access, efficiency, resource management and quality during early childhood development and pre-primary education.”⁶³ Even though such policies are based on development

⁶⁰ *Ibid*

⁶¹ United Nations Development Programme, *Supra* at 8

⁶² International Cooperation and Development: Building Partnerships in Developing Countries, *Supra* at https://ec.europa.eu/europeaid/countries/namibia_en>

⁶³ *Ibid*

plans and reforms, what seems uncertain is if EU will continue to support development as it claims now? If not, then support for development without monetary help would only help in achieving limited goals, as Namibia clearly does not possess enough funds to undertake this task of development.

Before this, Namibia worked alongside EU preparing “Country Strategy Papers between 2008-2013, which presented the strategic framework for the cooperation of the European Commission with Namibia under the European Development Fund (EDF). In total, the allocation to Namibia from EU amounts to €129.60 million, concentrating on both Human Resource Development and Rural Development, the latter with an emphasis on water and sanitation.”⁶⁴ Then in such a dynamic power-based relationship, will it be favorable for Namibia to get blacklisted as a tax haven?

Being blacklisted by EU would thus mean, a fall in Namibia’s social standing in the global market and a potential damage to its relationship with other countries. “Namibia is the fourth largest exporter of non-fuel minerals in Africa and the world's fourth largest producer of uranium. There has been significant investment in uranium mining and Namibia is set to become the largest exporter of uranium.”⁶⁵ Not only this, while Namibia maybe predominantly known for its gem diamonds and uranium deposits, a number of other minerals are extracted industrially such as lead, tungsten, gold, tin, fluorspar, manganese, marble, copper and zinc and exported to various other parts of the world.⁶⁶

⁶⁴ *Ibid*

⁶⁵ Namibia and Mining. Online <<https://en.wikipedia.org/wiki/Namibia#Economy>>

⁶⁶ *Ibid*

Namibia also possess some of the offshore gas deposits in the Atlantic Ocean that are planned to be extracted in the future.⁶⁷ But this could be severely damaged if EU's blacklist is published to discourage illicit tax and other financial activities. It has also been reported that the blacklist will be linked to EU legislation so that jurisdictions implicated will not be eligible for funds from the bloc, except where funds are for development. Thus, the export and mining business in Namibia will have to face severe losses and can potentially move a larger portion into poverty.

Conclusion - Possible Changes at the Global Level:

While the EU is aiming to reach a more transparent tax regime and compliance of international tax standards at the world level, it is ironic that this attempt seems half-hearted. It has been argued in various reports, interviews and newspapers that if EU's aim is to operate as good governance structure and to stop extreme tax dodging practices via tax havens, it needs to apply strong criteria in an objective way and also to its own Member States like Ireland, Malta and Luxembourg, which are highly ranked tax havens in the world.⁶⁸

One of the things EU demonstrates effectively is its interconnectedness with its Member states and other different parts like the Parliament, Council and Court of Justice. In my analysis, I wished to see how this integrated legal system worked as one single unit, generating changes not only internally, but also externally. Clearly, the blacklist seems to generate a domino effect which will destabilize some of the dependent jurisdictions like Namibia, if blacklisted by EU. But it also raises questions of uncertainty of formation of another unionised integrated system working against EU and targeting its Member States for discriminating and protecting themselves while

⁶⁷ *Ibid*

⁶⁸ Oxfam, *Supra* at 3

dealing with a larger goal of a tax-free world. While there is high-level risk for Namibia to suffer damage due to impact on trade and financial support, it is unsettling to think about what would happen if it turns to countries like Russia for assistance. Such an alliance could prove to be more damaging in the longer-run.

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