



Enhancing the effectiveness of transfer pricing regulation enforcement in reducing Base Erosion and Profit Shifting in African countries. A scoping review

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Abstract

Purpose: This study was motivated by the fact that despite several recommendations being proffered by researchers, some of these noble suggestions just remain in paper. Furthermore, the problem of transfer pricing (TP) manipulation is more detrimental to the African continent as well as the fact that it is far from being addressed. Through a scoping review, this study sought to synthesise research evidence on the possible solutions to minimise transfer pricing manipulation in African countries through categorisation of these recommendations into key themes.

Methodology: This study employed a qualitative research approach through a scoping review. Through a comprehensive review of literature, the nature and extent of the possible solutions to curbing illicit financial flows through transfer pricing was identified, assessed and evaluated for applicability. Considering that transfer pricing is a hot topic and legislation is still in its infancy in African countries, database searches were done through Google scholar for both peer reviewed articles and grey literature.

Findings: The findings revealed that solutions can be grouped into three categories, which include politically oriented, legislative focused and administrative recommendations. It was evident that there is need for political commitment by governments, improvements to the current legislation as well as enhanced administrative capacities of revenue authorities in order to reduce TP abuse.

Originality or Value: Transfer pricing manipulation in international trade is a challenge in most developing economies. Transfer pricing and tax evasion are important and topical concerns as they relate to base erosion and profit shifting in developing countries. This is linked to the fact that ethical practices, corruption, illicit financial flows and other similar concepts speak to Sustainable Development Goal 16 (peace, justice and strong institutions). In response to challenges of transfer pricing and the need to ensure maximum revenue mobilisation, developing countries have put in place transfer pricing legislation to regulate transfer pricing activities and to reduce the tax revenue losses resulting from transfer pricing manipulation by multinational enterprises. Several studies have been carried out in African countries to investigate the transfer pricing exploitation strategies, assess the effectiveness of transfer pricing legislation in curbing Base Erosion and Profit Shifting. This study sought to provide an aggregated synopsis of recommendations on how to enhance legislation and effectiveness of the regulation, with the hope that this summary would provide policymakers with a one-stop shop for possible solutions as well as evaluating their applicability.

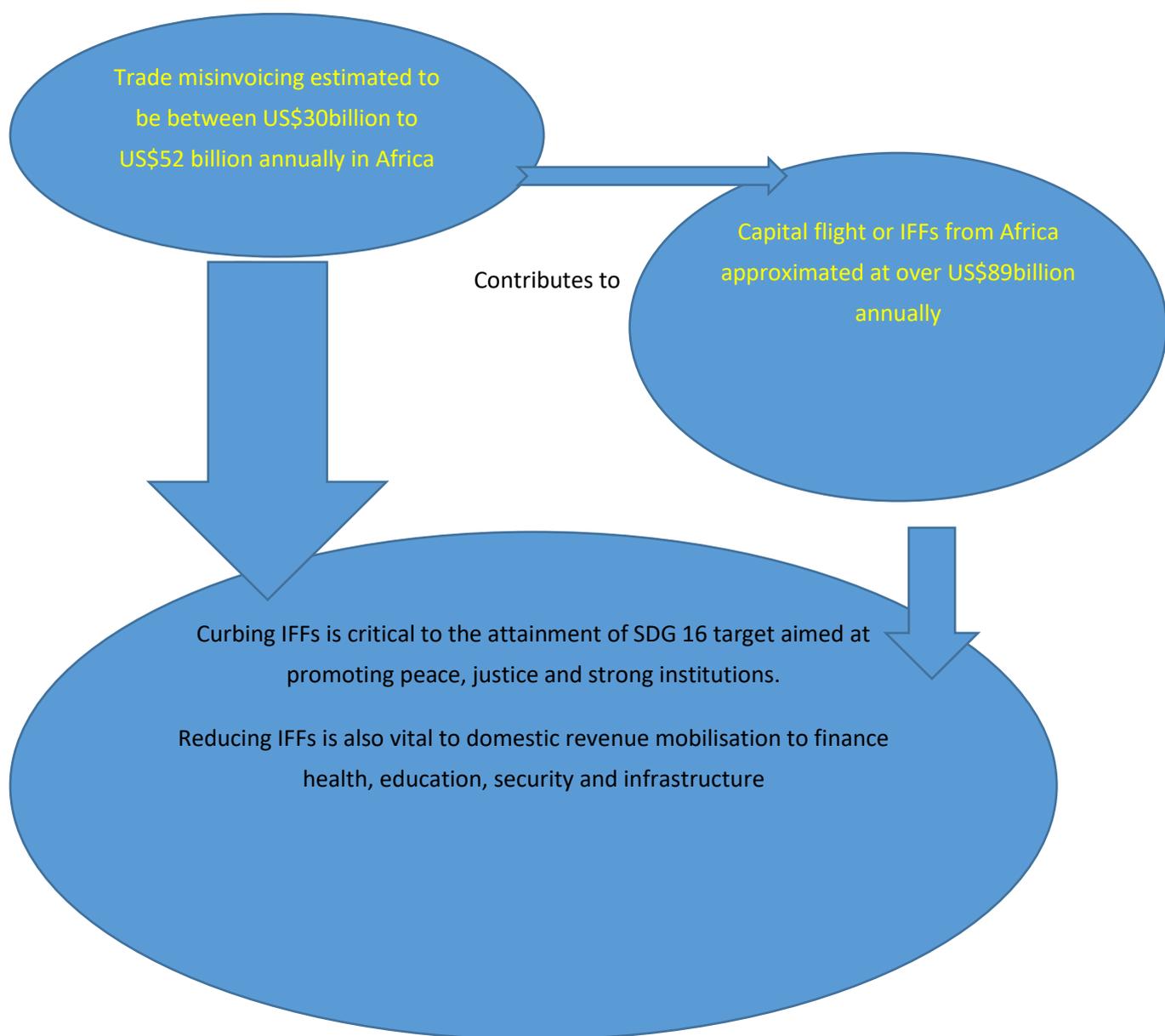
Introduction

Enhancing domestic revenue mobilisation is an important priority for developing countries and the African countries in particular. This is important for the realisation of sustainable development and critical for any country's responsiveness to public needs such as health, education, infrastructural development and job creation (as outlined in the Sustainable Development Goals of 2030 Sustainable Development Agenda) (Readhead, 2016). Effective tax revenue collection is also essential in championing democratic accountability through re-construction of the social contract between the state and its citizens as well as building state legitimacy (Tax Justice Network, 2011). The African Development Bank (ADB (2010), asserts that major losses of public revenues in African countries can be linked to weak taxation of the extractive sector as well as the inability of African countries to curb illicit financial flows (IFFs) and revenues losses due to transfer pricing (TP) abuse by MNEs. It is a challenge to regulate and tax TP transactions as they do not occur in an open market and are often not at arm's length due to the related nature of the transacting parties (Curtis & Todorova, 2011). Due to their globalised nature, MNEs are prone to having more related party transactions as well as complex structures. Therefore, transfer mispricing and base erosion and profit shifting is rampant among these MNEs as they take advantages of differences in tax rates and tax laws in the different tax jurisdictions they operate. Several strategies of TP manipulation have been discussed in literature. These include: the use of tax havens, management fees, mispricing, misinvoicing, debt shifting, technical fees and other intra-group services, royalties transfer of assets, use of intangibles among others (Beebeejaun, 2019; Kwaramba, Mahonye, & Mandishara, 2016; Mashiri, 2018; Sebele-Mpofu, Mashiri, & Schwartz, 2021; Twesige & Gasheja, 2019). African countries suffer more from TP mispricing and manipulation, due to their overreliance on corporate tax (Kabala & Ndulo, 2018).

IFFs are hindering development in Africa by siphoning foreign exchange, constraining effective revenue mobilisation, impeding on trade and macro-economic

stability, perpetuating poverty and inequality (Asongu, 2016; Asongu & Kodila-Tedika, 2017; Christensen, 2009; Donnelly, 2015). IFFs also undermine transparency and accountability, erode trust in revenue authorities and other government institutions, increase capital flight, tax avoidance and constrains the broadening of the tax base (Boyce & Ndikumana, 2012; UNCTAD 2020). Figure 1 presents a summary of the magnitude of IFFs in Africa.

Figure1: Summary of IFFS in Africa annually.



Source: UNCTAD (2020).

In light of the negative impact of TP abuse by MNEs, several studies having been conducted to investigate the motives for TP (Bhat, 2009; Klassen, Lisowsky, & Mescall, 2017; Sebele-Mpofu et al., 2021) and the strategies involved (Asongu, 2016; Beebeejaun, 2019; Mashiri, 2018). Others have focused on the challenges faced by governments in regulating TP activities (Barrogard, Calderón, de Goede, Gutierrez, & Verhelel, 2018; Beebeejaun, 2018) and some on the impact of TP abuse on the African countries (Twesige, Gasheja, Barayendema, & Uwamahoro, 2020). These studies have made several recommendations on how developing countries can enhance transfer pricing regulation effectiveness. Through a scoping review, this study provides an overview of research recommendations on how to improve the effectiveness of TP legislation and efforts to curb TP abuse in African countries in order to curb BEPS. TP continues to be a thorny issue in African countries, topical in development agendas and revenue authorities' major concerns (Sebele-Mpofu, Mashiri, & Korera, 2021). This paper consists of four sections. Having introduced the study in Section 1, the next section discusses the review methodology employed, Section 3 outlines the literature review and summarises the findings in tabular form and Section 4 concludes the paper.

Review Methodology

According to Munn, Peters, Stern et al (2018), scoping reviews are a considerably novel approach to synthesising evidence. Grant and Booth (2009) assert that scoping reviews are important in identifying the nature and extent of availed evidence or knowledge, inclusive of ongoing research. Scoping reviews are useful when there is need for a detailed or broad overview of evidence especially when the topic has not been comprehensively reviewed or is complicated and heterogeneous (Mays et al., 2001). There are essential mapping up availed evidence in order to inform policy and/practice. Scoping reviews are conducted for several reasons, which also include pinpointing and evaluating knowledge voids, assist in the clarification certain of how concepts are defined, categorised and interpreted in literature and to lay a foundation for a systematic review. This study adopted the Arksey and O'Malley

methodological framework. The framework prescribes six stages of the review process: identifying the research problem or question, searching for the relevant studies, selecting the right studies, charting the data, aggregating, summarising and reporting the findings and lastly conducting an optional consultative exercise (Arksey & O'Malley, 2005).

Studies were searched for from the Google scholar database. The search terms used were " Transfer pricing in Developing countries", " Transfer pricing in African countries", " Transfer Pricing Challenges in Developing countries", " Transfer pricing challenges in African countries". The other search phrases included " Enhancing transfer pricing regulation effectiveness in African countries", " improving transfer pricing effectiveness in developing countries". The Google scholar database was chosen because it enabled access to a wide scope of papers from Scopus indexed, web of science indexed papers among other databases as well as grey literature. Eighty-six papers were accessed and these were screened by reading the abstract and introduction and those that focused on African countries were selected. Some papers focused on developing countries, some of these being African countries such as Ghana, Kenya, DRC Congo, Sierra Leone and Zambia among others (Readhead, 2016; Barrogard et al, 2018). These were included and those that focused on developing countries other than African countries were excluded. The papers from Google scholar were further buttressed through citation mining from the selected papers. The researchers went through the reference lists of the selected papers and performed forward and backward snowballing (Jalali & Wohlin, 2012) of leading scholars on Base Erosion and Profit Shifting matters in the African continent such as Oguttu (2016, 2017, 2020) and Readhead (2016, 2017) among other authors. Through the screening of studies 42 papers were found relevant, thus these were reviewed and cited. These papers were captured in the NVIVO 12 software. These papers were captured and named using the name of the first author and year of publication. This enabled the researchers to be able to easily trace and link the content extracted to its sources during analysis and write up. Since this is a

qualitative analysis, thematic analysis was used, with the subthemes under each main theme identified as child nodes. Memos and annotations were also used to capture systematically some issues that emerged during the reviewing and analysis process (Mpofu, 2021). Literature was review was considered saturated when new papers reviewed produced nearly the same proposed solutions as those already captured previously. This was in line with the views from Sebele-Mpofu (2020b), Hennink, Kaiser and Marconi (2017) and Guest, Namey and Chen (2020) as the point where no new themes and codes emerge from further data analysis. Using NVIVO was beneficial in that having one database and a clearly documented protocol enabled the three researchers to review, deliberate and share views on the reviewed studies (Bandara, Miskon& Fielt, 2011) as well as to revisit it where there were differences in opinions

Literature Review

IFFs and TP abuse continue to be problems bedevilling African countries (Adeleke, 2019; Kekana, 2020). This section builds on the introduction in Section 1 and reviews relevant related literature to accentuate the suggested solutions proffered by various researchers to address the problem of BEPS by MNEs operating in African countries as well as how to regulate TP transactions through the enactment and enforcement of productive TP legislation. This is to ensure effective tax revenue mobilisation and fair allocation of taxation rights. Section 3.1 briefly articulates the challenges of effectively enforcing TP legislation in African countries, while section 3.2 gives an overview of the research recommendations in line with the thematic framework presented in section 2.

Challenges of administering and enforcing TP regulation in African countries

Despite the fact that some African countries have put in place TP legislation in order to regulate TP activities by MNEs, several challenges have encountered in the application of these regulations in a productive manner (Kabala & Ndulo, 2018; Kekana, 2020; Readhead, 2016). Some of the countries have adopted the OECD

regulations as they are, some have combined them with the United Nations guidelines and some have adopted both and further enhanced them with their own domestic regulations. These countries include Zimbabwe, Zambia, Tanzania, Kenya, South Africa, Ghana, Rwanda and Nigeria among others (Asongu, 2016; Barrogard et al., 2018; Kabala & Ndulo, 2018; Mashiri, 2018; Readhead, 2016). The challenges to constructively applying and enforcing TP regulations in developing countries in general and African countries in particular include the feasibility of applying the OECD guidelines and BEPS action plans in a developing country context (Burgers & Mosquera, 2017; Oguttu, 2016, 2017). The constraints also further include inadequate capacity to enforce TP legislation, the lack of clear TP legislation, the absence and/ineffectiveness of tax treaties such as APAs and MAPs (Readhead, 2016; Mashiri, 2018), weak dispute resolution mechanisms (Kekana, 2020) and the unavailability of comparable data to enforce the arm's length principle (Oguttu, 2020) as well as weak TP audit frameworks that are ineffective (Sebele-Mpofu et al., 2021).

The challenge of weakly developed TP legislation in African countries has been one of the key challenges (Oguttu, 2016). It has been pointed out in countries like Zimbabwe (Kwaramba et al., 2016; Mashiri, 2018), Ghana, Guinea, Sierra Leone, Tanzania and Zambia (Readhead, 2016), Burkina Faso, Cameroon, DR Congo, Gambia, Honduras, Liberia and Uganda (Barrogard et al., 2018). The underdevelopment and lack of clarity on these TP regulations has made enforcement challenging, led to lack of consistency in their application, and opened them to abuse and disputation by taxpayers. Readhead (2016) and Oguttu (2016) allude to the fact that the other problems relating to the applicability of the OECD guidelines to the African context. The researchers point out that these guidelines, particularly some of the BEPS action plans do not speak to the realities of the African economies. For example Readhead (2017), Kabala and Ndulo (2018), Mutio (2020) as well as Signé, Sow, and Madden (2020) point the African countries being more vulnerable to TP abuse in the extractive industry particularly the mining sector. Readhead (2017) points to the

fact that the OECD guidelines do not fully address this vulnerability of African nations. The researcher further argues that in most countries' in the TP rules, are ambiguities especially about the mining sector as contracts rarely refer to generally applicable TP regulations, opening crevices for exploitation and disputes.

These constraints are further compounded by weak administrative capacities of the majority of these African nations. According to Readhead (2016), the 26 countries surveyed in Africa in the study lacked the capacity to implement TP rules. Administration and enforcement capacities lacking ranged from financial resource, skilled workforce with the requisite TP skills, experience and technical advice, specific TP units to effective tax courts to deal with TP matters (Mashiri, 2018). This becomes one of the major challenges faced with revenue authorities as they try to regulate MNEs. MNEs have abundant financial resources to hire skilled and experience personnel such as tax consultants, engineers, accountants and geologists among other professionals to help them structure their transaction in complex ways that allow for tax avoidance, help them prepare TP documentation and for tax audits as well as to prepare their defence in cases of litigation (Mashiri, Dzomira and Dzingirai, 2021; Shongwe, 2019).

There is also a scarcity of comparability information in most African countries making it challenging to enforce the arm's length principle (Oguttu, 2020) or even to fully defend adjustments made by revenue authorities in a court of law (Mashiri, 2018). Kabala and Ndulo (2018) point out that some transactions are unique to few companies hence comparable data is not available locally and in cases where these can be accessed in foreign databases subscriptions and access fees are expensive. According to Readhead (2016), data specific to the mining sector is unavailable; leading to non-availability of comparable information or benchmarks, hence sometimes revenue authorities rely on data from other regions, which is often not wholly applicable, expensive and difficult to adjust.

Political interference and the lack of political will and commitment are also some of the challenges highlighted by researchers to be constraining effective administration and enforcement in African countries (Kabala & Ndulo, 2018; Oguttu, 2016). The lack of co-ordination and co-operation between the various arms of governments such as the Ministry of Finance, Ministry of Industry, Ministry of Mines and the Revenue Authorities in most African nations (Kwaramba et al., 2016; Mashiri, 2018; Oguttu, 2016 Readhead, 2017) also couples this. Corruption and weak audits were also some of the obstacles pointed out by researchers (Jaffer, 2019; Shongwe, 2019). Perhaps the realisation by governments and politicians that taxation is both an economic and political issue that requires commitment from both angles can go a long way in dealing with institutional corruption and political interference.

Suggested solutions to enhance TP legislation effectiveness in Developing Countries

In light of the above challenges that have been articulated by the different researchers, an array of recommendations have been tabled. These include: the development and refinement of TP legislation to speak to the realities of African Nations, training and capacity building in revenue authorities in relation to TP, focused TP enforcement and audits that target vulnerable areas such as the extractive sector, strong governance and fiscal enforcement (Goredema, 2017; Readhead, 2017; Sadi, 2019; Twesige & Gasheja, 2019). Other researchers have suggested the need for co-ordination of activities on all governments department that deal with MNEs on issues such as contracts, costs and pricing as well as taxation of TP transactions, reduced political interference, increased political will and commitment as well as the creation of databases or subscribing to foreign ones if necessary (Kabala & Ndulo, 2018; Mashiri, 2018). As guided by the themes in Section 2, literature in relation to the recommendations was reviewed guided by the three themes: Politically focused efforts, the legislative focused initiatives and the administrative recommendations. The diverse recommendations were categorised in those three groups for this review, but it must be borne in mind that these categories

are not exhaustive and they are overlapping too (meaning that a recommendation can fall in more than one group). These categories are discussed as follows: Politically oriented suggestions (3.2.1), Legislative oriented recommendations (3.2.2) and administrative recommendations (3.2.3).

Politically focused recommendations

Researchers on the challenges of regulating TP activities in African countries allude to the fact that despite politicians being aware of the detrimental effects of tax avoidance, IFFs, corruption and loss of tax revenue (some of them have called for stricter measures), but limited commitment and consistency has been displayed (Mashiri, 2018; Jaffer, 2019). This is more evident in the mining sector, which appears to be largely politicised in most African countries, where government ignores corruption-linked scandals involving prominent politicians. This casts doubt on government's commitment to enforcing compliance with TP rules (Readhead, 2016). Such lack of commitment lowers tax authority morale to enforce tax regulations (Sebele-Mpofu, 2021). Political interference in tax administration, enforcement and audits in the majority of African countries (such as Zimbabwe, Zambia, Ghana and Tanzania among others) has been pinpointed as a challenge (Sebele-Mpofu, 2020). Researchers such as Readhead (2016) and Mashiri (2018) have linked the interference to TP legislation implementation ineffectiveness especially in relation to the mining sector where the political meddling hinders systematic tax audits of mining companies. Tax officials end-up avoiding audit mining companies to avoid unwarranted political attention and witch-hunting. Politically oriented suggestions are thus necessary. The question is on the practicability of separating the economic decisions from the political economy of taxation in these African countries. How can politicians be made aware of this inextricable link between their activities, decisions including actions and contractual agreements as well as revenue mobilisation?

Political will and commitment

Barrogard et al. (2018) and Kabala and Ndulo (2018) highlight that TP is not a top priority or in the political agenda of African countries. The researchers highlight the need to raise political awareness on the TP concept especially the magnitude of the annual revenue losses as shown in the UNCTAD (2020) and the impact on infrastructural development, security, education and health. UNCTAD (2020) submits that the huge sums of outflows from Africa through illicit flows are a significant drain on capital and revenue for development, that hamper the continent's ability to fulfil the UN's Sustainable Development Goals (SDGs) by the envisaged year 2030. Perhaps these awareness efforts will trigger political will and commitment, the missing ingredients when it comes to tax administration.

Civil society and parliamentarians must hold government and its ministries accountable for the effective application of TP legislation

These organisations must ensure that their membership also includes professionals with tax expert knowledge, understanding of contracts, TP issues especially in relation to the mining sector, which is the most vulnerable sector in the majority of African countries (Readhead, 2016). Table portrays a summary of recommended political initiatives to improve TP regulation enforcement in African nations.

Table 1: Suggested Politically Focused initiatives

Recommendation	National/Country level	Africa Continent	Studies
Increased Political will and commitment	<ul style="list-style-type: none"> Political will and commitment to address base erosion by addressing weaknesses in tax administration, tackling corruption and limiting political interference Civil society organisations and parliament should hold government accountable and push for political 	<ul style="list-style-type: none"> Equip tax policy officials, academics and other stakeholders with the necessary financial resource to carry out effective research. Make use of regional bodies such as COMESA, SADC and ATAF to develop to a combined approach to the taxation of cross border activities, promulgate regional laws on these activities Civic bodies in the continent must be more engaged in tax 	(Kabala & Ndulo, 2018; Sebele-Mpofu et al., 2021; Stiglitz, 2008)

	commitment (they can only be effective if they are knowledge of tax matters and TP in particular).	matters, acquiring knowledge , training and understand in order to equip members from countries within the region and continent so that they hold governments accountable	
Enhanced cooperation and information exchange	<ul style="list-style-type: none"> At national level, governments should encourage cooperation between institutions that can help curb BEPS such as Ministries of Industry and Commerce, Finance, Trade and Investment as well revenue authorities. Nations could join and work with regional bodies such as ATAF 	<ul style="list-style-type: none"> Support the United Nations suggestions for a global tax body. African countries to cooperate. The continent could maybe draft a customised African TP guidelines from the UN and OECD TP guidelines. Countries to also share and exchange information on TP databases, administration and challenges to strengthen cooperation 	(Kabala & Ndulo, 2018; Jaffer, 2019)
Revisit, re-evaluate and review tax treaties	<ul style="list-style-type: none"> Countries to re-assess their tax treaties for relevance, fairness and effectiveness. 	<ul style="list-style-type: none"> African countries to revisit their tax treaties 	(Asongu, 2016; Readhead, 2016, 2017)
Capacitation of revenue authorities	<ul style="list-style-type: none"> Countries need to build capacity in revenue authorities in the areas of technological, human and financial capacity. Political will and commitment for capacity building. Build tax treaty negotiation and dispute resolution capacity 	<ul style="list-style-type: none"> The continent to come up with coordinated way to build the African continent team with capacity (technical expertise, experience and knowledge) to address tax matters, negotiate and resolve TP disputes 	(Barrogard et al., 2018; Cooper, Fox, Loeprick, & Mohindra, 2017; Kabala & Ndulo, 2018; Kwaramba et al., 2016; Mashiri, 2018; Nakayama, 2012; Sebele-Mpofu et al., 2021)
Governments to ensure support for revenue authorities through reduced political interference	<ul style="list-style-type: none"> National governments must ensure political interference is reduced. Politicians must be held accountable for corrupt activities as well interference and intimidation of tax officials 	<ul style="list-style-type: none"> Regional bodies such as SADC, COMESA, ATAF during their discussions must seek to address these issues and equip governments on the importance of striking a balance between economic activities and political activities 	(Mashiri, 2018; UNECA, 2018)
Minimise power of	<ul style="list-style-type: none"> Reduce the 	<ul style="list-style-type: none"> The excessive power of 	(Mashiri,

tax officers and reduce corruption	discretionary powers and too much authority given to revenue officers and deal with corruption decisively	revenue officers has been an issue in most African countries. TP rules should be detailed and transparent to reduce too much discretionary powers of revenue officer.	2018; Sebele-Mpofu et al., 2021)
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Source: Own Compilation

Legislation focused recommendations

The challenge of unclear and not fully documented TP legislation cannot be overlooked in African countries. This calls for an urgent need to develop general and detailed TP legislation that articulates the application of the arm’s length principles and clearly makes provisions on how tax adjustments can be made in the absence of comparable data and prices. According to Readhead (2016), some countries have constructed specific regulations that minimise dependency on comparable data. Legislative oriented suggestions are therefore, pivotal to improving TP regulation. These are discussed below and a summary of the findings presented in Table 2.

Draft effective TP legislation

TP legislation is underdeveloped in most African countries and not there in others. Developing countries should strive to develop appropriate TP legislation and enforce the arm’s length principle. These countries could learn from the OECD transfer pricing guidelines and the United Nations Standards on TP. The question will be how to tailor make these to suit the needs and context of developing countries in general and individual economies in particular (Cooper et al., 2017; Nakayama, 2012). The legislation could make provisions that for information power, outlining the documentation and information to be supplied by MNEs. Such provisions are essential to fall back on in cases of disputes (Kabala & Ndulo, 2018; McNair et al., 2010). Considering the unique positions of developing countries, capacity challenges, limited financial resources and informational constraints, it is difficult or nearly impossible for them to participate on an “equal footing” with developed countries that have made contributions to the crafting of the guidelines and standards and have advanced expertise and a capacity. The ideal situation is for each developing country

to assess its own unique setting and set priorities in relation to minimum conditions, standards and actions in the OECD guidelines or UN standards that are more relevant to the particular country setting (Barrogard et al., 2018). This aids in having narrower and more focused legislation and implementation. This will in turn, ensure that capacity building is not broad but lean and linked to national strategic plans on TP. McNair et al. (2010) suggests that in light of the complicatedness and administrative difficulties of TP, the implementation of TP regulations could be done gradually, perhaps by targeting the most prevalent transactions and MNEs dominated sectors such the extractive (mining and other natural resources) and manufacturing industries. This would ensure focused TP regime and efficient deployment of resources (Cooper et al., 2017; Jaffer, 2019; Nakayama, 2012). It is also essential to make the TP clear and transparent with minimal documentation requirements to minimise both the administrative and compliance burden (Kabala & Ndulo, 2018). To highlight the importance of clear and transparent regulation, Shongwe (2019) alludes to the increase in tax revenues of R29million in South Africa after the country had identified TP as one of the points of tax revenues losses and accordingly embarked on extensive reforms. Important to note, is the fact that the tax revenue increases were attributed to the clarity and certainty of the TP legislation brought by the 2012 reforms as opposed to audits. The importance of transparency, consistency and stability of tax legislation in both administration and compliance cannot be overemphasised. Clarity, consistency and stability improve tax morale and compliance while audits and penalties act as deterrents increasing enforced tax compliance. Revenue authorities must strike a balance between both voluntary and enforced tax compliance.

Creating effective and robust TP dispute resolution mechanism

The legal framework in terms of statutes must have fit with the TP regulations and their implementation. It is vital to ensure that the TP framework avoids both double taxation and failure to tax where taxing rights are within the tax jurisdiction. The system must neither be too aggressive nor be lax and porous (Cooper et al., 2017). It

must be clear how disputes are to be resolved, whether through Mutual Agreement Procedures (MAP) where there are double taxation agreements (DTAs). It is essential to make sure the DTAs, have provisions for dispute resolutions and that these are fair and transparent (Barrogard et al., 2018). There must also be clarity how disputes will be resolved the absence of DTA or where MAP are not in place, perhaps through arbitration and the likely impacts and costs must be taken into cognisance. Capacity building to ensure competent staff must consider these needs and domestic TP must allow for effective implementation. The other option is to adopt the expensive and time-consuming Advanced Pricing Agreement (Blumenthal, 2017) (the pros and cons of these dispute resolution mechanisms are not the focus of this paper. Hence these will be explored in detail in future). Developing countries can create team of experts, such as Accountants, tax consultants, Engineers, Geologists, Lawyers. In addition, TP experts from different developing countries or African countries (say under ATAF) could be fully trained, exposed to TP and fully resourced to be on standby to provide assistance to these countries with tax advice, technical and legal advice in dispute resolutions when need arises (McNair et al., 2010)

Double Taxation Agreements (DTAs) and Advanced Pricing Agreements (APAs)

These have been applied by countries such as Uganda and South Africa (Kabala & Ndulo, 2018) and are in limited use if not nascent stages of adoption by Zimbabwe (Mashiri, 2018). Jaffer (2019), Shongwe (2019) and Kabala and Ndulo (2018) encourage education on, capacity building and thorough assessments of these measure before adoptions or signing. The researchers argue that contrary to the desired outcome of enhancing TP regulations and improving dispute resolution, the results might be disastrous to developing countries leaving them more exposed and exploited if not properly evaluated. Oguttu (2017) also shares a similar view, arguing that the effectiveness of APAs is questionable, especially about how they take into cognisance the interests and administrative challenges of developing countries. The researcher further points out that relevant provision in national TP laws and tax treaties negotiated must pay attention to the unique needs and viewpoints of the

respective nations as well as their administrative capacities and capabilities. In concurrence, Readhead (2016) adduces that countries such as Zambia and Ghana shunned APAs due to the fear of being exploited by the technical well-equipped MNEs in negotiations, thus risking losing revenues over the years that the treaty remains valid. The allocation of these tax treaties' rights must also consider the source or residence systems which different tax jurisdictions are based on. It is also fundamental to do a thorough evaluation of the implications as well as the costs and benefits, both in the short run and long-term. Notwithstanding these challenges, researchers suggest that when properly negotiated these treaties can bring simplicity to administering the arm's length principle (Barrogard et al., 2018; Mashiri, 2018). Readhead (2016, p.17) asseverates, *"If done well, advance pricing agreements have the potential to significantly reduce the risk of transfer mispricing, therefore, the monitoring burden for revenue authorities"*. What is evident from the discussion is the need for capacity development in this area, perhaps development partners such as the IMF, World Bank, ADB among others could help African countries with adequate training, expertise and knowledge sharing in this often under-prioritised but important area

Restricting of service fees payable by MNEs and their affiliates to parent companies

These fees especially management fees are argued to be the most abused strategy for TP mispricing in African countries like Zimbabwe (Sebele-Mpofu et al., 2021). These tend to be used incorporate an array of administrative as well as advisory services such as technical services, accounting, auditing, human resources, legal fees and corporate planning (Bhat, 2009; Mashiri, 2018; Twesige & Gasheja, 2019; Readhead (2016) submits that in Sierra Leone a mining company's fees presented as management fees to its parent in the British Virgin Island was estimated at USD 4.5 million per year (approximately 3% of its minerals sales). Despite this kind of apportionment of management fees being prevalent with companies, this does not necessarily reflect arm's length. Revenues officers are sceptical of management fees

and believe due to the complexity of attaching value to the services, these allow for transfer mispricing. Governments should seek to find ways to put a legal capping on these fees or perhaps setting a fixed maximum deductible. For example, in Guinea management fees including royalties and any other like payments are to parent companies are only permitted as an allowable deduction if assessed as reasonable and not more than 5% of annual sales or 20% of general expenses (Readhead (2016) citing Deloitte, 2015:135). A case-by-case appraisal can also be used, maybe by employing APAs.

Restricting the deductibility of interest

Interest on debt is a tax-deductible expense provided for under the allowable deductions sections of Income Tax Acts of many countries. These finance costs are inclusive of those relating to loans from related parties and debt shifting has been used as one avenue for tax avoidance by MNEs (Sebele-Mpofu et al., 2021; Twesige & Gasheja, 2019). Companies tend to exploit thin capitalisation, finance more with debt than equity. Most countries apply thin capitalisation rules or ratios to impose limits (Mashiri, 2018), but the OECD Action 4 on BEPS encourages the use of the “earnings stripping rule” that limits deductible interest. Despite these measures, MNEs continue to find ways to circumvent the thin capitalisation rules hence the need for African countries to be more aggressive and alert in TP legislation enforcement.

Putting in place legislative provisions on the coordination of and information sharing by relevant government departments

A number of researchers on TP have bemoaned the lack of coordination and cooperation between government departments as well as between government departments and revenue authorities in African countries (Kabala & Ndulo, 2018; Kwaramba et al., 2016; Mashiri, 2018). This could be due to lack of explicit and documented procedures on how this information sharing and coordination should occur. Who is responsible to share which information and with who as well as how this sharing should occur is not clear. Readhead (2016) encourages government

departments to share information. Specifically referring to the mining sector, the researcher suggests that the Ministry of Finance, the Ministry of Industry and Commerce, the Ministry of Mines as well as the revenue authorities could ensure coordination and cooperation with each other in the identification of tax avoidance risks and TP manipulation. The sharing of information on production costs and mining agreements could shed light on important areas. The working together of these various departments could be beneficial to revenue authorities in the form of shared technical expertise and understanding, which is a gap in most revenue authorities as they lack expertise in some sectors such as mining. The revenue authority can also get assistance from experts in various sectors of the industry. For example in mining, metallurgists, engineers, geologists and surveyors that could pinpoint and effectively assess TP risks (Kabala & Ndulo, 2018; Kwaramba et al., 2016; Readhead, 2017). In a compatible opinion, Readhead (2016) outlines that in some tax disputes with the mining sector or some specific sector companies, these companies often have an advantage over revenue authorities, objecting to their treatments, assumptions and findings. They normally lean on a range of industry or sector unique considerations that the tax authorities are not privy to, due to their lack of expertise, exposure and experience of the sector.

Put in place country by country reporting requirements

In light of the complexity of MNEs, there is need for increased and improved disclosure requirements and country-by-country reporting (Barrogard et al., 2018; McNair et al., 2010). The more information available, the easier the assessment of TP risk especially where exploitative profit allocation is most probably. This would allow the optimum use of resources directed them where they are most needed. Kabala and Ndulo (2018 :23) express that in African countries such as Zimbabwe, Tanzania, Rwanda and Kenya where improvements have been made on TP legislation and MNEs are specifically obligated to have TP policy documentation in place and make them available to revenue authority auditors, disclose the their MNEs' global structure. They are also required to avail all the necessary information about the

subject matter under consideration, disclose related party transactions and their relatedness (shareholding and management structure. Despite these efforts, TP continues to have troubling impacts and faces resistance on the grounds of being time consuming, burdensome and costly (Cooper et al., 2017). This implies that more could be done on the simplification of the documentation requirements, stakeholder engagement and on the enforcement part. Table 2 summarises the findings on the possible legislative efforts that could enhance TP legislation enforcement effectiveness in African countries.

Table 2: Suggested Legislative efforts

Recommendation	National Contexts	African Continent	Studies
Formulation and enactment of legislation that addresses BEPS, for example TP regulations	<ul style="list-style-type: none"> • Enactment of legislation alone is not enough, enforcement must be strengthened and loopholes such as tax breaks and tax holidays reviewed and closed. • TP Legislation must be aligned to international standards, laws and treaties to curb double taxation. • Countries must encourage sharing of information as well as country by country reporting of cross-border transactions. • Regulate the activities of banks, accounting firms and tax consultants that relate to MNEs to ensure transparency, monitoring and control so as to effectively ensure the rightful tax revenues are collected • Regularly review domestic tax policy and frameworks, especially those relating to BEPS 	<ul style="list-style-type: none"> • African countries must review their tax laws and ways to mitigate BEPS regularly, align with best practices, and respond to identified risks accordingly. This requires monitoring of new developments in international tax laws and trade. • African countries should work together through regional bodies such as ATAF, SADC and AU to encourage coordinate tax collection efforts, regulation of MNE activities as well as to build co-operation and exchange of information on cross border transactions and tax matters • A regional transfer pricing regime or continental one that provides for issue such as information exchange, legal certainty and formal procedures for TP dispute resolution mechanisms 	(Barrogard et al., 2018; Kabala & Ndulo, 2018; Mashiri, 2018; Oguttu, 2016; Sebele-Mpofu et al., 2021; Walton, 2019)
Improve tax knowledge and build technical	Ensure knowledge legislative knowledge is regularly improved so that national laws	Ensure there is knowledge sharing in the continent through trainings on TP	(Barrogard et al., 2018; Mashiri,

expertise on tax legislation, international laws	are in line with international TP laws to minimise loopholes and manipulation as well as double taxation of transactions	legislation drafting and implementation.	2018; Sebele-Mpofu et al., 2021)
Put in place laws that promote exchange of information	Laws should encourage information sharing among different government ministries and departments with the revenue authority on TP issues and contracts that involve MNEs	Information sharing on TP matters, databases and tax administration matters to be encouraged among African countries	(Kabala & Ndulo, 2018; Jaffer, 2019)
Enact regulations that encourage transparency on MNEs transactions and other cross border transactions	Put in place report requirements that ensure clear reporting, country-by-country reporting of transactions by MNEs. Banks should also be able to provide information on the remittances of MNEs and held liable for any failure to accordingly withhold taxes on remittances	Reporting requirements in the continent should encourage information sharing and transparency on these transactions between African countries.	(Bhat, 2009; Wier, 2020)

Source: Own Compilation

Administrative focused recommendations

The actual administration of TP legislation is another critical and challenging area facing revenue administrators in African countries. How to implement and administer the legislation is crucial in ensuring successful enforcement and effectiveness of TP regulations. Therefore, suggested administrative solutions are a pivotal part of this review.

Risk identification and management

In light of the increased recognition of the risks emanating from TP in developing countries, key among these risks being BEPS, developing countries need to find ways of mitigating and managing these risks to protect tax bases and remaining a preferred destination for FDIs and international trade (Cooper et al., 2017; Mashiri, 2018). It will be important for developing nations to focus on understanding TP as it relates to the context of developing countries and their individual settings. Focus on the sectors prone to TP and the nature of the transactions, as the effective identification of the highest risks cases would enhance the efficiency in resource deployment (Kabala & Ndulo, 2018). In affirmation the OECD (2012) posits that the selection of cases based on risk assessment is also crucial for the provision of a

strong investment climate and ensuring certainty to the business environment. It is crucial to have an understanding of MNEs operations in the jurisdictions. For example, how many MNEs operate in the area and what activities are they involved in? What sort of TP risks are likely to emerge (manipulation of management fees, exploitation of intangibles mispricing and mis-invoicing)? Which other countries do they operate in and do have double taxation agreements with them? What are the provisions of the DTAs and risk emanating from these? These are some the questions that the risk assessment can focus on. It is important for governments and their revenue authorities to understand their environments, identify the risks and challenges, design TP tax policy and implement in a way that responds to the identified risks (Barrogard et al., 2018; Silberztein, 2009). TP legislation should be monitored and evaluated regularly in order to respond to the ever evolving and dynamic business environment and none static because risks are increasing and changing due to globalisation, digitalisation and complexity of MNEs transactions (Oguttu, 2016, 2017). OECD guidelines can be an initial starting point and that of reference in the development of national TP policy, rules and regulations, with countries selecting the minimum standards and actions applicable to them. In this case TP regulation, capacity building and assistance sought can be more focused as instead of being overly broad concentration is limited to what a nation can achieve in its individual capacity. Of course, International cooperation cannot be over emphasised.

Creation of and subscription to databases for comparable data

The challenge of comparable information and prices is a serious one in African countries (Barrogard et al., 2018; Oguttu, 2020; Wier, 2020). Therefore, it is crucial for African countries at national, regional and continental level to strive to improve the range of comparable data for African countries as well as its availability and accessibility (Cooper et al., 2017; Kabala & Ndulo, 2018; Mashiri, 2018). Revenue authorities are also encouraged to subscribe to TP databases; this might be expensive though and would require government support in availing financial resources.

Readhead (2016) emphasises the exploitation of this lack of databases in the mining sector yet, this is one crucial sector that is highly exploited through TP mispricing leading to significant revenue losses and IFFs (UNCTAD, 2020).

Capacity building

The skills gaps in relation to TP is apparent in developing countries especially African countries, signalling the need for comprehensive capacity building (Cooper et al., 2017; Oguttu, 2016). Experienced TP auditors, lawyers, economists and tax experts are scarce in developing country revenue authorities yet TP is a major challenge (Kabala & Ndulo, 2018). Developing countries need to work tirelessly to build capacity and capability. This can be done through allocation of adequate financial resources to fund training and staff development, secondment of some key personnel to understudy TP in developed nations or developing countries like SA, infrastructural needs, technology (McNair, Dottey, & Cobham, 2010). It is also crucial for revenue authorities to remunerate their staff fairly and competitively in order to retain them because capacitating and losing them will be futile exercise. Transfer pricing is a national, regional, continental and a global issue all in one that requires a combined effort in tackling it. Developing countries have a great deal to learn and tap from each other on practical solutions to their challenges (capacity constraints, dispute resolutions, knowledge deficiencies among many) (OECD, 2012). In this vein developing countries can enhance capacity building through knowledge, experience and expertise sharing between developing countries and between their tax authorities as well as through already established bodies and networks such as Tax without Borders (TIWB), ATAF, SADCC, COMESA and the Tax Justice Network-Africa (TJIN-Africa) that provide room for dialogue, engagement and resources pooling (Kabala & Ndulo, 2018). The interactions could be through collaborations, workshops, seminars, forums and conference with specific focus on the needs, challenges and suggestions on customisation of the internationally recognised TP guidelines and standards to developing economies or African continent depending on the particular platform (Barrogard et al., 2018; Jaffer, 2019; OECD, 2012).

International organisations such as the OCED, the World Bank and the International monetary (IMF) as well as other developed counties can be ideal partners and advisors on as they have better experience, knowledge and expertise derived from vast on TP. Readhead (2016) observes that it would be more beneficial to have “transfer pricing specialists who have done it, confronted problems and developed pragmatic approaches attached to developing countries”. The researcher further warns that formal training of revenue officers on TP matters might not be the panacea to TP administration effectiveness, but the willingness to go an extra mile is needed, as TP specialist are not keen to deal with complex TP issues. They often go for the low hanging fruits such as royalties, management fees and interest deductions.

Put in place an effective audit department and carry out regular TP audits

Mashiri et al (2021), Shongwe (2019), Kabala and Ndulo (2018) call for improved TP audits and regular monitoring. The researchers encourage African countries to be more aggressive on the TP matters, to perhaps, build consistently from auditing easier cases to more complex cases as experience and expertise is slowly enhanced. The issue of capacity could be boosted through secondments to other revenue authorities that are well experienced in TP matters such as South Africa and Kenya. The other option could be employing experts or requesting assistance in the form of experts that become part of the TP audit team for a period to impart knowledge, training and expertise to the local team. Readhead (2016, p.21) submits “*In Zambia, two transfer pricing experts are embedded in mining audit team combining with transfer pricing expertise with knowledge and experience from the mining sector to improve transfer pricing identification and evaluation*”. In trying to create a balanced audit team, revenue authorities should also be careful not to duplicate skills and above all the remuneration must be attractive enough to attract qualified personnel.

Put in place a specific TP unit to focus on TP matters and audits

A number of researchers have called for African countries to have dedicated TP pricing units to focus on TP administration, taxation of such transaction and audits, considering the specialised and technical nature of TP (Mashiri, 2018). Readhead (2016), though acknowledging the importance of having such units, the researcher is equally sceptical. The researcher suggests that a dedicated TP unit may not be appropriate in developing countries with financial resource constraints and just a smaller number of MNEs and the likelihood of co-ordination problems. Therefore, in making this decision of whether to have a separate unit or not, important considerations have to be made. For example, whether the investment capital required for a separate unit versus the risk of TP manipulation by MNEs in a particular country justify the costs in terms of financial and human resources for maintaining the separate unit. It is also vital to assess how cooperation between this unit and the rest of the revenue authority departments will be fostered. This includes issues such as how cases will be discussed and transferred from the general tax auditors to the TP focused unit, information sharing and availability as well as how technical expertise will be shared to assess and unpack TP risks.

Create TP awareness through tax education and stake holder engagement

One of the missing links to effective implementation in both developed and developing countries, but more prone to developing countries is the lack of knowledge and awareness amongst both taxpayers and tax administrators on TP (OECD, 2012). Therefore creating more awareness and educating all stakeholders on TP, the legislation, the documentation requirements, penalties and interests as well as the potential reputational damages could go a long way in addressing the knowledge gap. Reiterating, the importance of an inclusive approach of considering taxpayers as partners in revenue mobilisation, Cooper et al. (2017), it is important for governments to assess the impact of TP on the investment climate and MNEs. Through comprehensive stakeholder engagement and dialogue, adopt an inclusive

approach that addresses their concerns, as the public, private sector and taxpayers. This would reduce their concerns, antagonistic view of the tax authorities and minimise the compliance burden and indirectly reducing the administrative burden. Table 3 provides a summary of suggested administrative initiatives that can adopted by African countries to improve TP legislation enforcement and effectiveness.

Table 3: Suggested Administrative level efforts

Recommendation	National Contexts	African Continent	Studies
Enhance tax administration capacity, strengthen tax policy	<ul style="list-style-type: none"> Countries need to tweak their tax policies, align them with the with the changing business world, BEPS strategies and other loopholes that are exploited for tax avoidance Do away with outdated administrative systems and take advantage of information technology and digitalisation. Build transfer-pricing units that are well- resourced in terms of experience, expertise, technical skills knowledge and financial resources. 	There is need to build a continental TP team through bodies like ATAF so as to enhance TP administration and enforcement in the continent	(Barrogard et al., 2018; Cooper et al., 2017; Nakayama, 2012; Sebele-Mpofu et al., 2021; Silberztein, 2009)
Build a knowledge base on international tax laws, TP other international tax related issues	<ul style="list-style-type: none"> African nations’ revenue authorities need to put policies in place that ensure recruitment and retention of qualified, competent and diversified team of tax officers. The team could include geologists, computer technicians and analysts, accountants, lawyers and economists. The team could be trained and continuously developed through seminars, secondments and others courses to ensure they are up to date, appreciate and competently interpret and administer international tax legislation 	Regional and continental workshops to be held by tax experts on TP matters and by organisations such as ATAF. These organisations can provide platforms for knowledge sharing, training (offer short term, medium term and long-term courses). The regional and continental bodies in conjunction with international bodies like the OECD could also assist countries at national level with tailor made solutions that speak to the countries’ most TP abuse vulnerable areas, the whole tax system as well as the loopholes caused by tax exemptions and incentives.	(Bhat, 2009; Kabala & Ndulo, 2018; Kwaramba et al., 2016; Nakayama, 2012)

Thin capitalisation rules and withholding taxes on certain incomes	Tax policies should incorporate these measures. Those countries that already have these in place must continue to assess the effectiveness of these measures on a regular basis and accordingly respond to identified risks	African countries should continue to assess their debt to equity requirements on companies as well as the internal group debt arrangements.	(Barrogard et al., 2018; Reuter, 2012; Sebele-Mpofu et al., 2021)
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Source: Own Compilation

General recommendations

This section looks at recommendations that could not be placed under the categories of political, administrative and legislative suggestions

More research on TP

The importance of TP in revenue mobilisation in developing countries and African countries in particular cannot be overemphasised. Regulating TP arrangements and getting taxes due and at the same creating a conducive climate for investment, FDI inflows and international trade as well as eliminating double taxation continues to be key, yet TP methodologies prescribed by the UN and OECD are difficult to apply appropriately to developing country contexts. This point to the need for more research on TP. This raises questions on the appropriateness of international comparable data and the arm's length principle to developing countries. Developing countries need to invest a lot more on research on a number of issues relating to TP. For example, how information can be exchanged and shared between governments and their revenue authorities, capacity building, TP legislation and implementation, dealing with digital transactions (Kabala & Ndulo, 2018) and how to improve commodity pricing the mining sector (where Africa is losing billions in mispriced commodities and illicit flows) (Shongwe, 2019).

Conclusions, Recommendations and Areas of further research

TP is a thorny area that African countries cannot afford to ignore in their efforts to strengthen domestic revenue mobilisation and protect the tax base from BEPS by MNEs. Several political, legislative and administrative suggestions have been reviewed throughout the paper. In summary researchers call for political will and

commitment by African countries to the enactment and enforcement of TP legislation as well as reduced political interference and corruption in revenue administration. In relation to the administrative reforms, suggestions focus more on the need to fully develop TP legislation that is clear in terms of its legislative and administrative requirements, documentation required from the taxpayer (when, how and in what form) and penalties for default among other things. In view of the fact that most African countries adopted the OECD guidelines partially or fully, there must be clarity when the OECD rules or national rules apply and which supersede the other when there is conflict. Detailed and clear TP rules would enable rigorous, transparent and consistent application of the TP legislation. This is key to effective dispute resolution. In addition, it is imperative that in design of TP regulations must be done in concordance with tax regulations governing the relevant sectors and industries especially the vulnerable sectors in each individual country. For example in the case of Zimbabwe, TP rules must be made with reference to the Income Tax Act , Chapter 23:06 (Section 98B as read with the 35th schedule as well as section 15 as read with section 16 allowable and prohibited deductions). About administrative reforms, capacity building, creation of databases, knowledge sharing and cooperation in terms of information sharing were considered pivotal at national, regional and continental level. Information sharing and coordination of the different government departments and ministries could go a long way in strengthening TP enforcement and dispute resolution on TP matters. For example, having experts that are hands on a particular sector would help in sharing knowledge and understanding of the costing structures in that sector, the separation of components, the by-products, the life spans of products as well as the terms used in the contracts. Revenue authorities might not be privy to such information, thus this would be helpful in identifying worthy cases and risky scenarios. Secondments of revenue officers to other African countries with technically advanced TP and risk assessment could also help build capacity. This could provide hands on experience on handling complex TP cases as well as exposure to TP manipulation in vulnerable sectors like the extractive sector. Assistance from organisations such as World Bank, Taxes without Borders, OECD and the IMF among

others could also help strengthen TP administration and enforcement in African countries. Such training could be TP focused not just general, for example TP audit training. Further research could focus any empirical evaluation of the impact of these initiatives in ameliorating the challenges of TP regulations in countries that have implemented them.

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