“Inaugural Annual Developing Country Forum for Cooperation in International Tax Matters”

Alvin Mosioma Executive Director, Tax Justice Network-Africa

Allocating Taxing Rights!

To whose Benefit?

Introduction: Tax Treaties

- political settlements, which divide the fiscal gains from cross-border investment between two countries.
- Supposed to provide relief from double taxation
- bind future governments into specific tax policy decisions, including certain tax rates.

Source vs Residence

The two main models for tax treaty are:

- –The OECD model, originally intended for treaties between developed countries.
- –The UN model, explicitly designed for treaties between developed and developing countries.

Despite this, most clauses of most treaties between developed and developing countries follow the OECD model (IBFD, 2013).

Arguments for DTAs

Tax treaty advocates argue that they:

- mop up outstanding double taxation
- guarantee tax stability reduce certain tax rates overall
- create a framework for cooperation/dispute resolution
- send a signal that a country is open for business

(badge of respectability)

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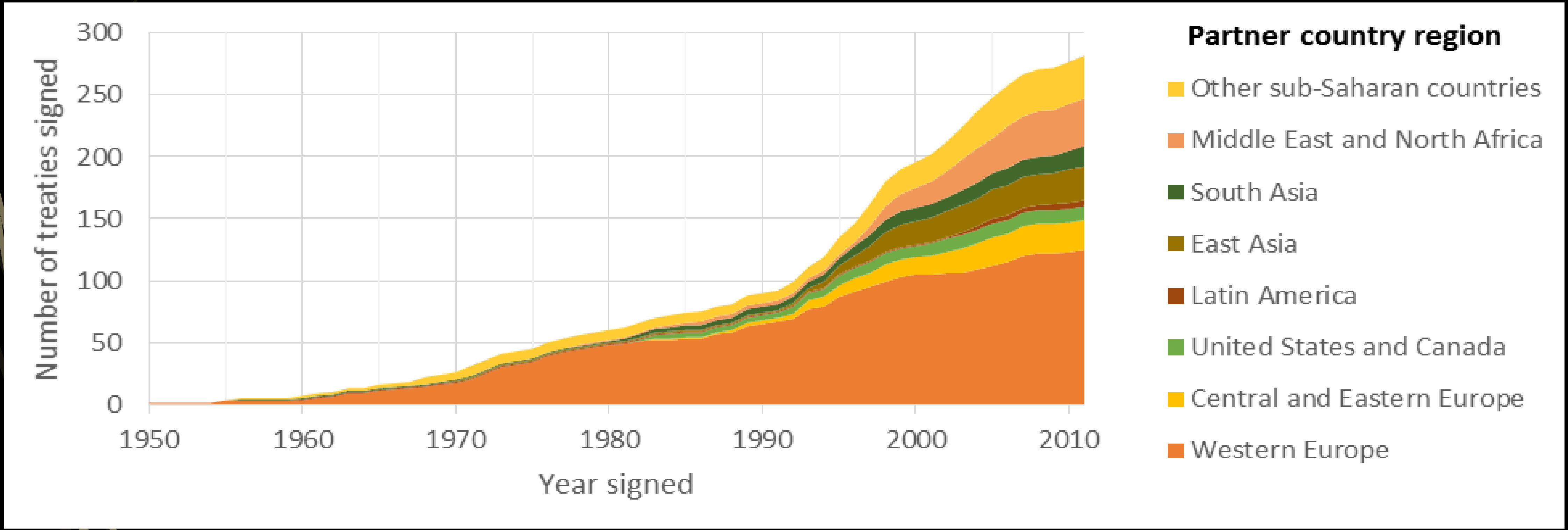
Challenges facing implementation of DTAs

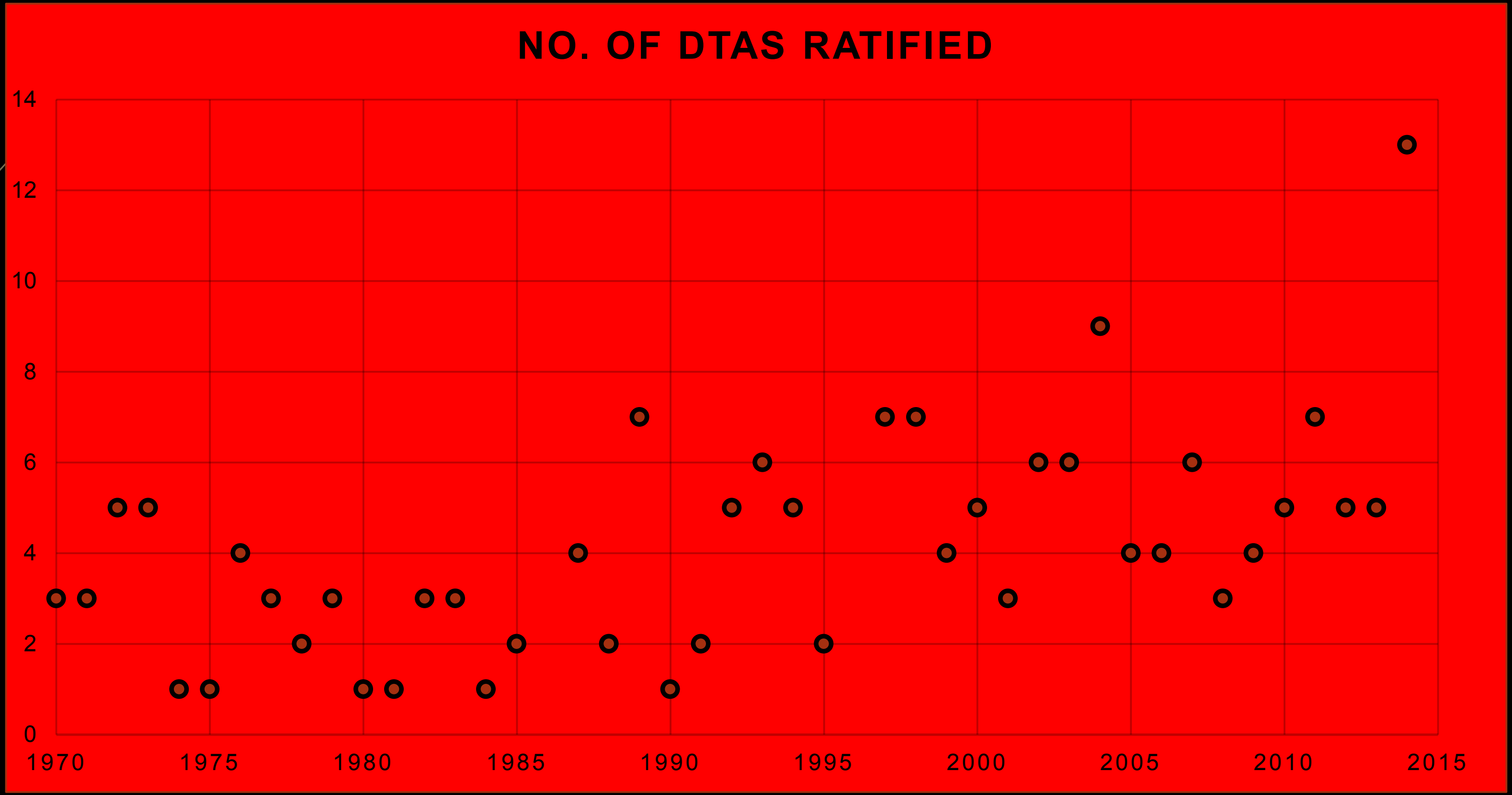
- Transparency & accountability :Legislative scrutiny of tax treaties is usually either a formality or, especially in developing countries, non-existent
- Justification: No Cost and Benefit analysis
- Deliberate misuse to avoid tax - treaty shopping
- Most of DTAs are outdated
- Evidence: Weak correlation on btn DTA and Investment:

Some Trends DTA

- Treaties Signed by SSA countries (in force in 2013)



Trends of DTA Ratification Africa



STOP THE BLEEDING
CAMPAIGN TO END ILLICIT FINANCIAL FLOWS FROM AFRICA

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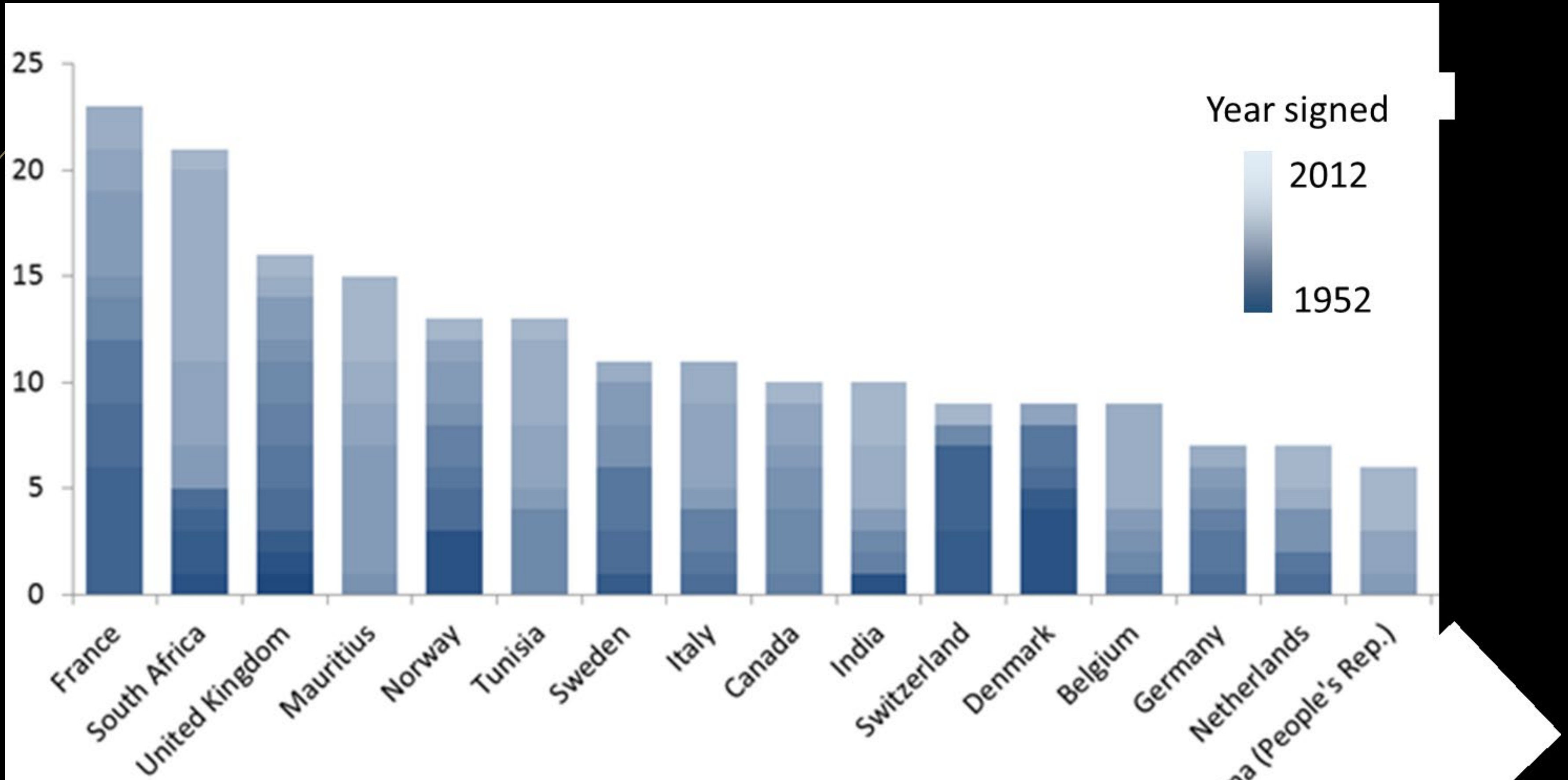
Who with Whom: Treaty Partners for SSA Countries



Tax Treaty Trends

- There are almost 300 tax treaties in force in sub Saharan Africa countries.
- About half of them are with Western European countries that are most sources of foreign direct investment and aid
- Many are more than 20 years old and were signed before the United Nations model tax treaty was first published in 1980.
- **Outdated:** content of tax treaties, patterns of investment, tax rates and systems, forms of tax planning, and political priorities changed over time

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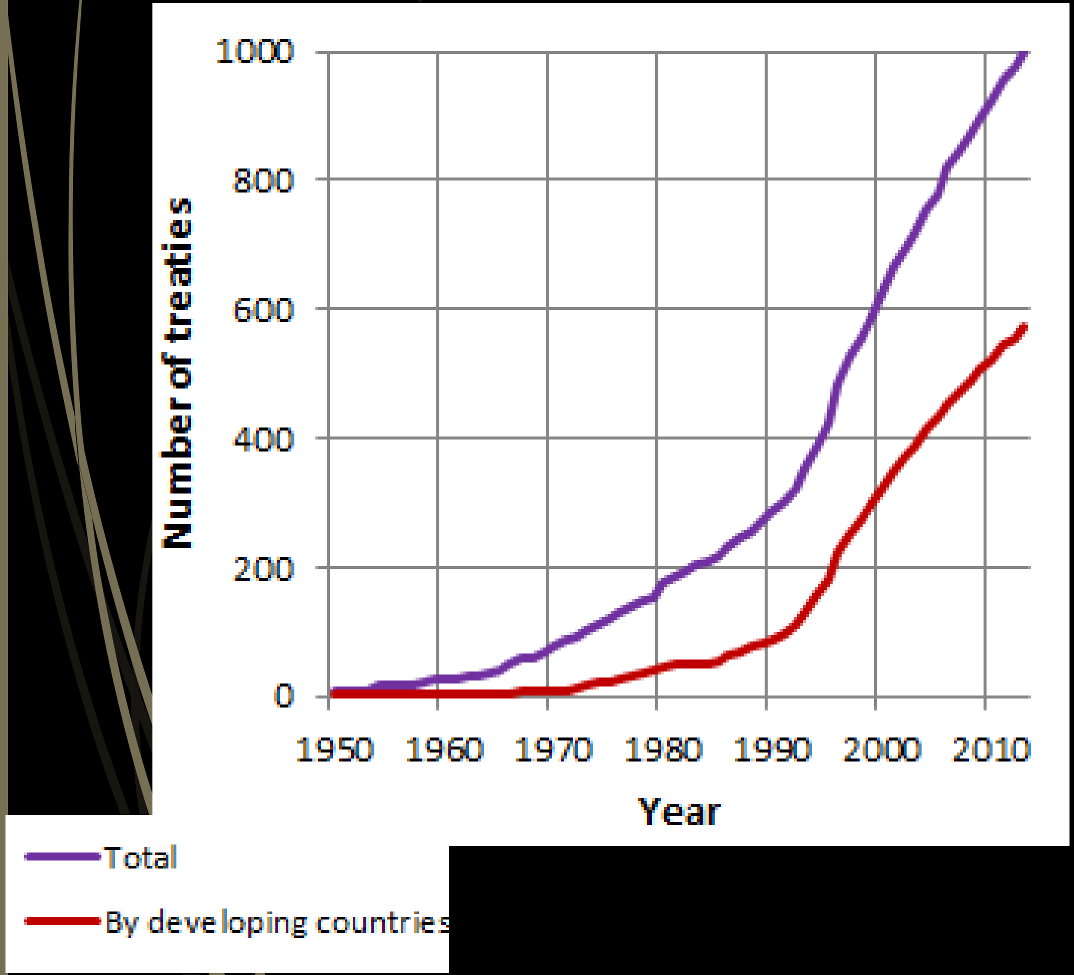
Back to the drawing board?



Selected recent cancellations (C) and/or renegotiations (R):

- Mongolia-Luxembourg 2012 (C)
- Argentina-Spain 2012 (C,R)
- Rwanda-Mauritius 2012 (C,R)
- South Africa-Mauritius 2014 (R)
- Malawi-Netherlands 2014 (C)
- Zambia-UK 2014 (R)

Country Case Study: Kenya /Mauritius DTA

- **Kenya Treaty Network**
- **Ratified and In force**: Zambia Norway Denmark Sweden UK Germany Canada India
- **Signed but not in force**: Italy Tanzania Uganda, Mauritius
- **Draft Agreement under (Re)Negotiation:** Tanzania Uganda, France Thailand India
- **Draft Agreement for Negotiation:** Seychelles Nigeria South Africa, Finland Russia United Arab Emirates, and Iran

Mauritius Treaty Network

- 39 Concluded Tax treaties (12 with African countries)
- 6 Treaties awaiting ratification (5 with African countries)
- 5 awaiting Signature (4 with African countries)
- 15 being negotiated (5 with Africa countries)

Kenya/Mauritius DTA: Key Highlights

- **Interest:** DTA Limits source WHT to 10% while Kenyan domestic rate currently 15%
- **Royalties:** DTA Limits source WHT to 10% Kenyan domestic rate currently 20%
- **Management/technical service: DTA** doesn't have any provision for WHT while in domestic law, these fee payments are taxed at 20%
- **Capital Gain Taxes**: There is no provision in the capital gains article (13) to tax the sale of shares in companies

TJN-A Litigation against DTA -Kenya-Mauritius DTA

- Transfer of tax rights from Kenya -Extending unnecessary tax exemptions- capital gains, WHT, Dividends
- Promotes profit shifting and loss of tax revenue: Treaty shopping &Round Tripping
- Need for Cost benefit Analysis to determine possible gains and losses
- Public Participation and
- Ratification through Parliament
- Ruling Expected anytime;

Questions rarely Asked:

- **<u>Whose Agenda:</u>** How are tax treaties understood by policymakers in developing countries? What motivates their tax treaty policymaking?
- **<u>Policy Alignment:</u>** Do outcomes correspond to a clearly defined policy?
- <u>Who is on the table:</u> Which stakeholders are involved in the decision? Officials/ministers? Tax or investment promotion? Role of business? Outside organizations e.g. OECD, IMF?
- What is the role of the treaty partner (instigator/reactor?) and what are their preferences?

Conclusions and few Recommendations

- Tax treaties have (tax) costs and (tax/non-tax) benefits. Outdated DTA's should be Cancelled/ Reviewed/Renegotiated
- It's not just about OECD v UN model: think outside the box and then try to change the models by adopting homegrown models (ATAF DTA Model)
- Most developing countries' existing treaty networks do not reflect a deliberate strategy. Countries should formulate a policy, based on cost-benefit analysis: how much are they willing to give up, and for what?

High Level Panel On Illicit flows

"We recommend that African countries review their current and prospective double taxation conventions, particularly those in place with jurisdictions that are significant destinations of IFFs, to ensure that they do not provide opportunities for abuse.

Report of the High Level Panel on Illicit Financial Flows from Africa

THANK YOU!!