



## AFRICAN TAX ADMINISTRATION FORUM (ATAF)

*Leading Africa in Tax Administration*

**Ensuring a sound tax base in developing countries: Are the current international initiatives sufficient?”**

**Dr. Nara Monkam: ATAF Director Research**

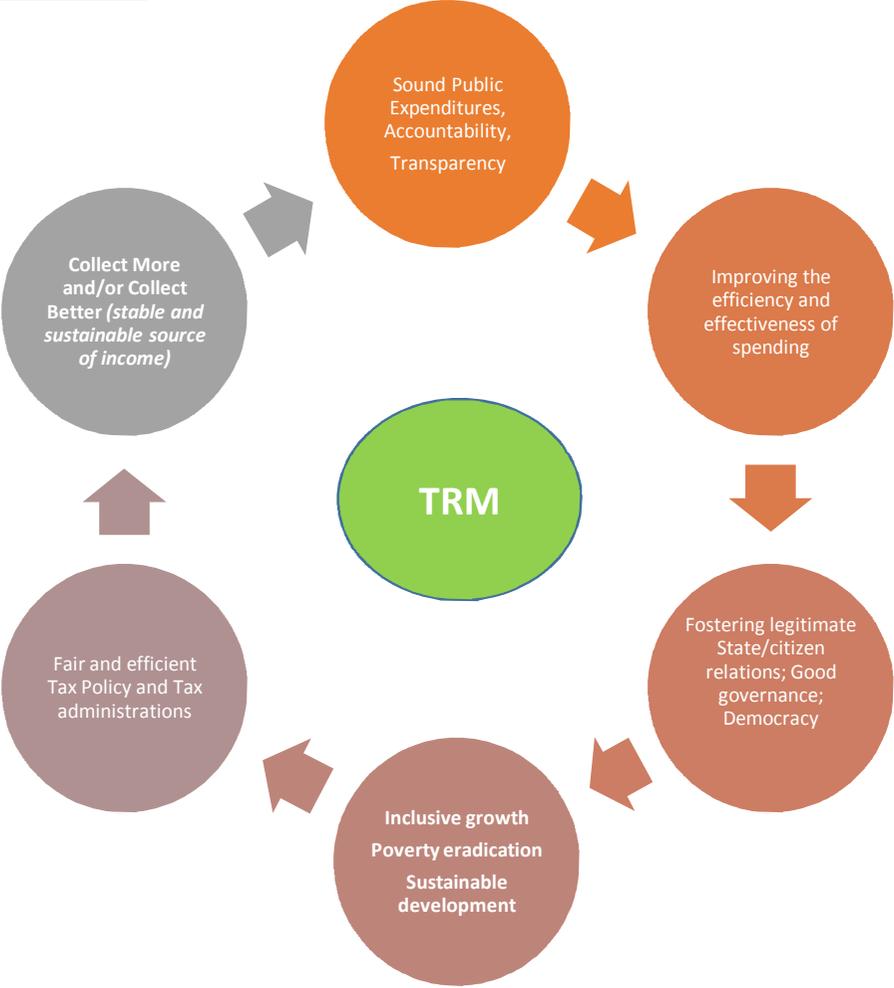


**Pay your taxes where you add the value**

**Ministry of Foreign Affairs  
The Hague, the Netherlands**

**Thursday, 2 July 2015**

# TAX REVENUE MOBILISATION (TRM) IN AFRICAN COUNTRIES



# TAX REVENUE MOBILISATION (TRM) IN AFRICAN COUNTRIES

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- Developing countries, and especially countries in Africa, face numerous *risks and challenges to their base*, especially in securing a **stable tax base** able to include specialized industries such as:
  - ❖ Financial sector (banks, insurance),
  - ❖ Extractive industries (mining, oil and gas sectors),
  - ❖ Electronic services or internet (e-commerce),
  - ❖ Telecommunications, tourism and gaming sectors; as well as
  - ❖ “Modern” forms of revenues sources such as industry intangibles including intellectual property rights, brands, and sales of companies.
    - These forms of revenue sources are still not well understood, making them vulnerable to tax avoidance and tax evasion.

# RISKS AND CHALLENGES TO AFRICA'S TAX BASE

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- In boosting tax revenues, developing countries, and especially countries in Africa, face numerous *risks and challenges to their base...*
  
- International Tax Agenda
  - ❖ **BEPS Action Items in the OECD/G20 Action plan that have been identified as of highest priority to African countries:**
    - Base eroding payments: interest, royalties, management fees, technical fees (action 4, 10)
    - Treaty abuse (action 6, September 2014)
    - Permanent establishment (action 7)
    - Transfer Pricing issues relating to intangibles, risk and capital allocations (action 8 September 2014 and 9)
    - Access to information for transfer pricing purposes (action 13)

# RISKS AND CHALLENGES TO AFRICA'S TAX BASE

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## ▪ BEPS

### ❖ **Taxation of MNEs is a key issue for most ATAF members:**

- Often the major part of their direct tax base:
  - ✓ 70% in Rwanda
  - ✓ 88% in Nigeria
  - ✓ One MNE accounts for 20% of Burundi tax base
- So tax avoidance/evasion by MNEs in ATAF countries is a major risk to the tax base.
- Position exacerbated in resource-rich countries as industry dominated by MNEs.

# RISKS AND CHALLENGES TO AFRICA'S TAX BASE

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- Other base eroding issues of high priority to African countries which are not included in the BEPS action Plan
  - ❖ Other issues of priority include:
    - Lack of transfer pricing comparability data
    - The granting of wasteful tax incentives
    - The taxation of natural resources
    - The indirect transfer of assets
  - ❖ In addition:
    - Informal sector
    - The fraudulent misinvoicing of trade transactions, the largest component of Illicit Financial Flows (IFFs) from developing countries which accounted for 77.8% of all illicit flows during the period 2003-2012 (Global Financial Integrity, 2014b; AU/ECA, 2015).

## ATAF'S RESPONSE TO BEPS...

The specific risks and challenges faced by African countries need to be taken into account if the OECD/G20 BEPS project is to deliver a global solution to this global problem.

ATAF has been mandated to define the African position with its members and to communicate the African response to the BEPS project.

ATAF will present the African position to the OECD through the ATAF Technical Committee.

# ATAF'S RESPONSE TO BEPS...

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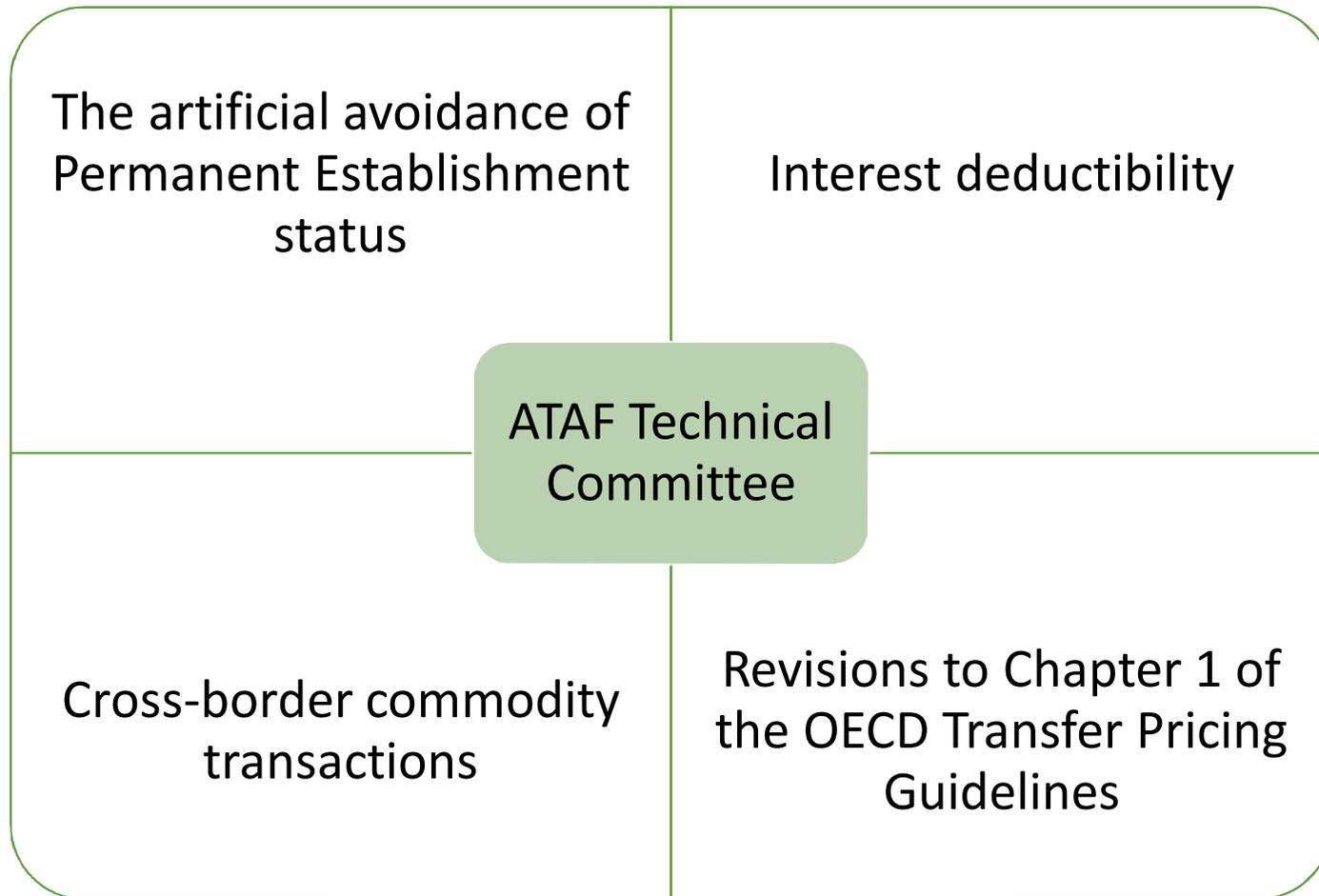
- Following the ATAF Consultative Conference on New Rules of the Global Tax Agenda held in Johannesburg, South Africa in March 2014...
- The **ATAF Cross Border Taxation Technical Committee (TC)** was created in June 2014 to:
  - ❖ Define the African position with its members
  - ❖ Communicate the African response to the OECD/G20 BEPS project and global standard setting including the development of toolkits to implement the BEPS outcomes
  - ❖ Provide ATAF members with regular updates on new global developments on international tax issues and how they impact on Africa
- **Eight tax administrations** have made available 8 experts to be part of the TC (Burkina Faso, Botswana, Kenya, Nigeria, Senegal, South Africa, Tanzania, and Uganda).

## ATAF'S RESPONSE TO BEPS...

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- ATAF, through the TC, is participating in the OECD's :
  - ❖ **Working Party 1** on Tax Conventions and Related Questions,
  - ❖ **Working Party 6** on Taxation of Multinational Enterprises, and
  - ❖ **Working Party 11** on Aggressive Tax Planning.
- In addition, in December 2014, the OECD Council approved the Committee on Fiscal Affairs' (CFA) recommendation to invite ATAF as an Observer to the CFA and participate in the CFA work on BEPS.

# ATAF'S TECHNICAL COMMITTEE AND THE DISCUSSION DRAFTS



# ATAF'S RESPONSE TO BEPS...

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- ATAF CBT TC has made already significant impact on formulation of the new standards e.g.:
  - ❖ Commodity pricing
  - ❖ Revisions to Chapter 1
  - ❖ Interest deductibility
  - ❖ PE status
- The CBT TC continues to lead ATAF input into the global work, specially around:
  - ❖ International organisations development of toolkits and
  - ❖ Further work on the new rules
    - ✓ Will require substantial ATAF Secretariat technical support

# ADDITIONAL WORK TO BENEFIT AFRICAN COUNTRIES

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Carrying out a study on current approaches by African countries to address interest deductibility issues.

Develop a suggested approach to drafting legislation to address cross border commodity transaction issues

# ON THE ISSUE OF WHT...

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## ■ Withholding Taxes (WHT)

- ❖ The TC discussed the comments in the Public Discussion Draft on the approach of using Withholding Taxes (WHT) to address BEPS issues and discussed extensively the comment in the Draft that stated that ***unless withholding tax is applied at the same rate as corporate tax, opportunities for base erosion and profit shifting would remain.***
- ❖ The TC agreed with the statement.
- ❖ The TC noted however that the Discussion Draft was not making any comments on how countries should formulate their domestic WHT policies.
- ❖ The TC concluded that based on the wording in the Discussion Draft, *although it is not recommended that withholding taxes are a best practice for addressing BEPS, this **DOES NOT** mean that the use of WHT is recommended to be dropped from domestic tax policy for those countries that apply it.*

## OTHER BASE EROSION ISSUES...

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- Technical Committee will be carrying out work to benefit African countries. This will include:
  - ❖ **On indirect transfer of assets**, a survey will be issued to ATAF member countries to ascertain the extent of the issue in Africa, the potential tax at risk and approaches African countries have taken to address the issue. This will inform the TC's next steps on this issue.
  - ❖ **On tax incentives**, the TC will review the IMF/OECD/WBG report on tax incentives that is being published in March and will then consider whether it might develop a ***Code of Conduct or Best Practice for African Countries*** on the granting of tax incentives focusing on transparency and governance issues.

# OTHER ATAF'S RESPONSES...

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- **ATAF Model Double Taxation Agreement**
- The proposed Model would:
  - ❖ Create a common approach for the Region which is helpful when negotiating with States which, for example, propose an OECD approach.
  - ❖ Be based on the majority approach of Members in light of Agreements already negotiated.
  - ❖ Remain a Model, therefore not legally binding but puts forward a Regional view which is designed to carry more weight in negotiations outside the Region.
  - ❖ Allow for minority views if so desired can be included as reservations
  - ❖ Result in easier negotiations between Member States as the large majority of the text should be common to both Parties and therefore already be agreed.
- 9<sup>th</sup> ATAF Council Meeting in Johannesburg on April 2015: the drafting of the ATAF Model Double Taxation Agreement (DTA) for Africa was approved
  - ❖ The Council urged African Tax administrations to actively engage with the ATAF secretariat to produce a final African model DTA to be approved by Council at its next meeting.

## OTHER ATAF'S RESPONSES...

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- **The ATAF Agreement on Mutual Assistance in Tax Matters (AMATM):**
  - ❖ This multilateral instrument allows for the exchange of information, sharing of expertise, joint audits and investigations, and mutual administrative assistance among African countries
  - ❖ The AMATM is thus a key instrument in the fight against BEPS in Africa.
  - ❖ ATAF members must strengthen cooperation among each other by signing the **Agreement on Mutual Assistance in Tax Matters**.
- In addition, ATAF has also developed a **Practical Guide on Exchange of Information** to assist member countries in accessing information that would either lead to recovery of lost revenue or forestall such losses.

# ENSURING MEMBERS BENEFIT FROM GLOBAL STANDARDS

Assisting ATAF members to **put in place the legislative and administrative structures to identify and effectively address transfer pricing and other CBT risks**. This will be done by:

**Providing bi-lateral programmes** to ATAF members on a demand-led basis to support members with the design and implementation of these structures

**Developing products** that assist ATAF members in addressing transfer pricing and other CBT risks e.g. model legislation and regulations, risk assessment tools, training materials etc.

Assisting ATAF members to **address the challenges they face in obtaining all the information** the tax administration needs to identify transfer pricing and other CBT risks and address those risks. A particular difficulty reported by ATAF members is in obtaining information that is not held in the country. This is a **very serious issue for ATAF members**.

# ENSURING MEMBERS BENEFIT FROM GLOBAL STANDARDS

GLOBAL STANDARD SETTING	ASSISTING MEMBERS CHANGE LEGISLATION	INFORMATION
<p>The ATAF CBT Technical Committee (CBT TC) has already had a significant impact on the development of new standards under the BEPS Project.</p>	<p>Bi-Lateral programmes typically between 2 – 3 years in member countries.</p>	<p>The ATAF CBT TC has identified that ATAF needs to carry out a significant piece of work on the <i>political and practical problems ATAF members experience regarding signing and implementing EOI mechanisms</i> and how ATAF might assist its members on this issue.</p>
<p>Development of Toolkits</p>	<p>10 countries per year</p>	
<p>Implementation of the Toolkits</p>	<p>2017 – 14 countries</p>	
	<p>2018 – 18 countries</p> <p>Expertise built in countries will be used to develop low capacity in countries: Peer learning, leveraging existing solutions.</p>	<p>ATAF model DTA</p> <p>AMATM</p>

# KEEPING TRACK OF THE BASICS

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- How to continue to effectively take into account the different levels of readiness and ensuing diverse needs of various ATAF member countries?
- How to increase the nexus between tax policy and tax administration in Africa in the context of encouraging foreign direct investment (FDI), maximising domestic revenues, and influencing the global tax agenda to benefit African countries?
  - increasing the political will at the highest level?
  - increasing the involvement of African Heads of State in the implementation of agreed proposals contemplated in the OECD/G20 BEPS
  - increasing the participation of African tax administrations in regional economic communities
- ❖ How to increase the nexus between tax administration and Customs (EoI) for an improved protection and widening of the African tax base?

## STATEMENT 1:

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- Global and national efforts in DRM should not mean reducing ODA. Instead it should mean increasing ODA to support sustainable DRM programmes including work in the area of revenue mobilisation and taxation, support for Regional Tax organisations, to fund global tax cooperation, technical assistance and capacity building for improved public revenue/taxation and thus allow developing countries to ultimately finance their development.

Global and national efforts in DRM should not mean reducing ODA. Instead it should mean increasing ODA to support sustainable DRM programmes

A. Agree

B. Disagree

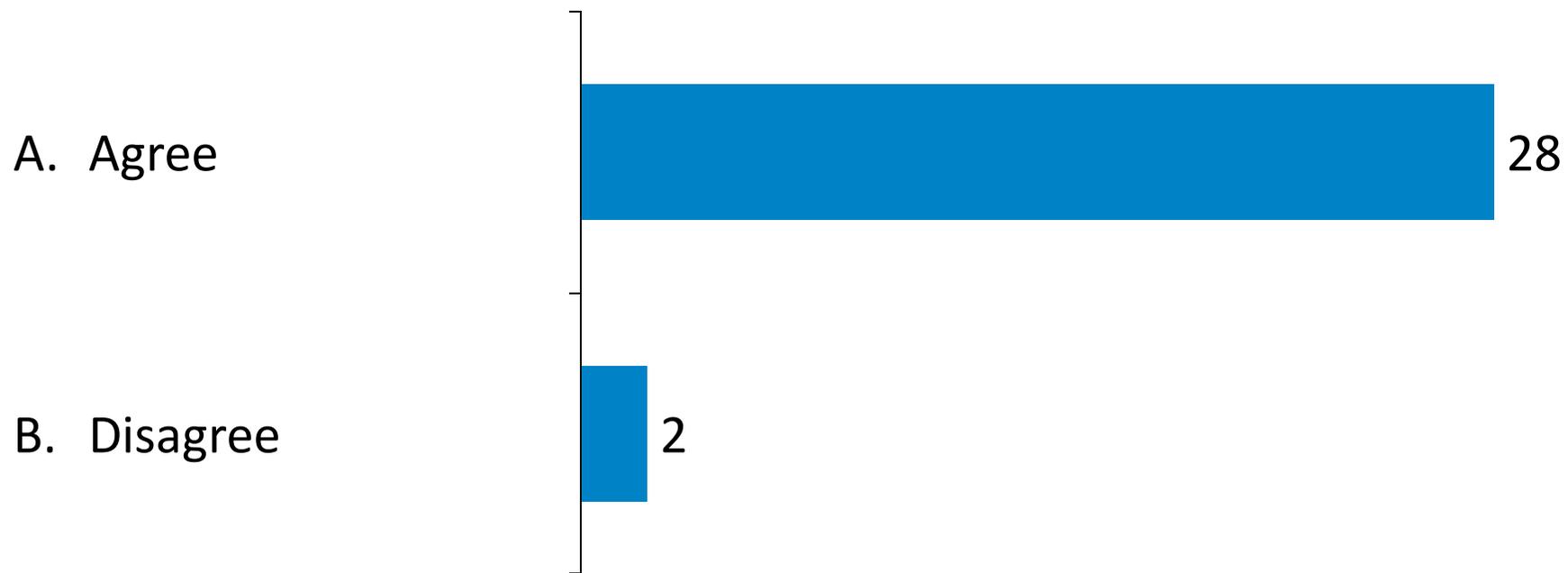
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## STATEMENT 2:

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- On the international tax agenda, Developing Countries must ready themselves for the implications of the outcome of OECD and Global Forum processes. Whether part of it or not, these tend to become global standards. A more inclusive and real global process would be ideal. This would require:
  - ❖ Establishing an inclusive framework in the international tax agenda, with all countries on an equal footing, where developing countries will be able to engage on tax matters and make their voice heard and where their concerns will be legitimately taken into account.
  - ❖ An increased role of the UN Committee of Experts on International Cooperation in Tax Matters and Regional Tax organisations.

A more inclusive and real global process would be ideal. 1 - Establishing an inclusive framework in the international tax agenda where developing countries will be able to engage on tax matters and make their voice heard. 2 - An increased role of the UN Committee of Experts on International Cooperation in Tax Matters and Regional Tax organisations

A. Agree

B. Disagree

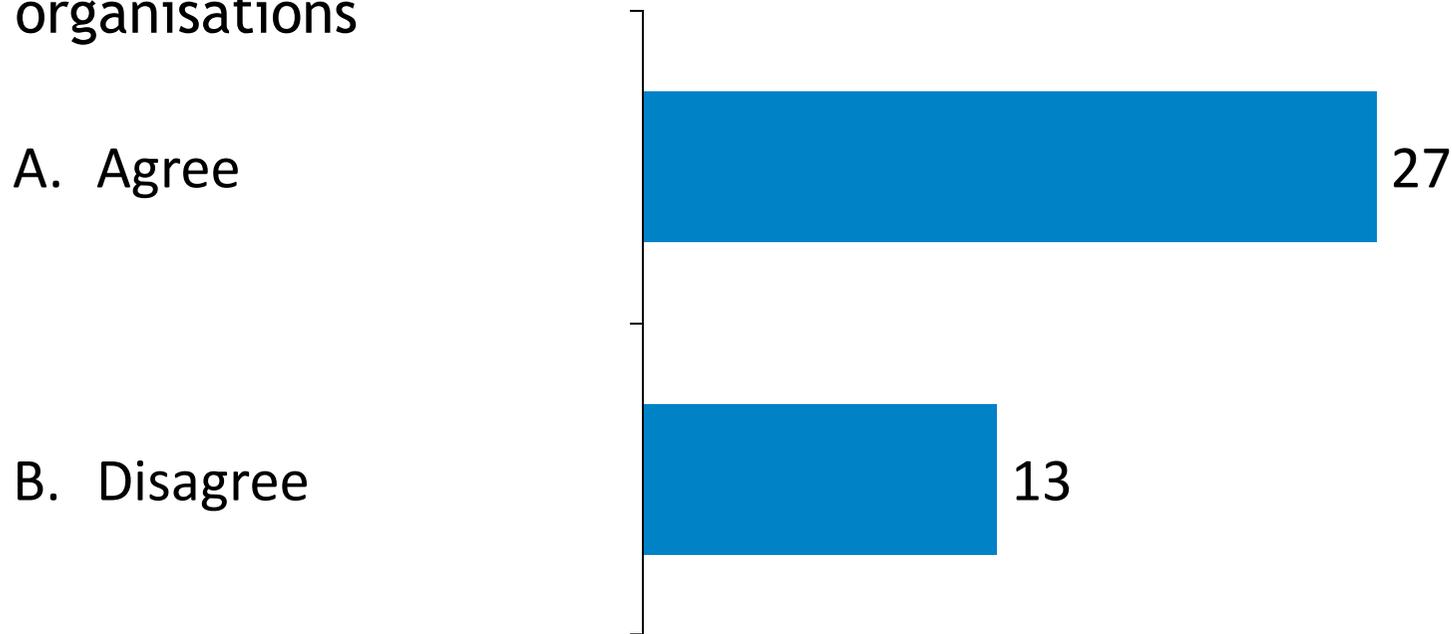
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