



# Tax Justice and Poverty in Kenya

By: *Andebo Pax Pascal*

*Kibera Slums*

## 1 Introduction

The “Tax Justice and Poverty” research project was undertaken in Germany, Kenya and Zambia so as to assess the rising levels of poverty and inequality that affect the countries and their people as well as the (missing) links to tax justice. The goal was to find ways of “narrowing the wealth gap and reducing public dependence on external financing” through improved domestic resource mobilization. This resonates with SDG 17, Target 1 which aims to “strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection”. The research aimed at addressing the problems of poverty and inequality encompassed in the SDGs 1 and 10 respectively:

- ❖ of ending extreme poverty in all its forms because millions of people in the country still live on less than \$1.25 a day (SDG 1), and many more are incapacitated to fully function as members of their community and citizens of the country;
- ❖ of reducing the ever increasing inequality within and among countries where the rich get richer and the poor get poor (SDG 10).

In 2015, Kenya accepted the Addis Ababa Action Agenda (AAAA, July 2015) to: further strengthen the mobilization and effective use of domestic resources, requiring progressive tax policy reforms and more efficient tax collection in a transparent manner; and reducing actual and potential tax revenue loss, as governed by the domestic legal processes and cooperation among countries (AAAA, Nrs. 20-29). The Kenya Revenue Authority's Sixth Corporate Plan indicates as a strategic objective the need for: enhancing revenue mobilization by broadening the tax-payer base, combating tax evasion; strengthening administrative capacity, enhancing transparency and fairness.

The joint findings of our research are published in; <https://www.taxjustice-and-poverty.org/>. This summary highlights the Kenyan context, reflecting causes and policy implications. A longer paper with references is available on <https://www.taxjustice-and-poverty.org/results/kenya.html>

### Brief Country Information

Kenya has an estimated population of 48.5 million by 2016 figures, increasing by an estimated one million a year, with about 73 per cent below 30 years of age. The vast majority of the population live in the rural areas.

Kenya's GDP is estimated to be at US\$74.94 billion (2017) and GDP per capita estimated at US\$1,455.36 in 2016. This is largely supported by the services, agriculture and manufacturing sectors in varying proportions; services (especially tourism contributing about 60 per cent), agriculture (slightly over 20 per cent) and manufacturing (about 14 per cent). Kenya has posted economic growth at about 6 per cent in 2017, though oscillating between rises and falls indicating the economy is vulnerable to risks such as

inflation and global financial shocks. Diaspora remittances were estimated to be about \$ 266.2 million, (about 2.3 per cent of the country's GDP) by June 2018.

Being a member of the Eastern African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA) as well as the African Union (AU) has advantages for Kenya. These enable regional and international cooperation between Kenya and other countries, including for improving the country's taxation, legislation and administration, for greater economic progress.

### Key Assumptions

A number of economists, mainly now basing on neo-liberal ideologies, have argued that economic inequalities among persons and nations are beneficial for all, in terms of reducing poverty, and thus inequality. The overall benefits of economic growth, even if led by a few, are expected to “trickle-down”. As such, they advocate for reducing taxes on businesses and the wealthy in society as a means of stimulating savings and investments in the short term, with the aim of benefiting the larger society in the long term as “the rising tide lifts all boats”. While this hypothesis may be true to some extent, any exaggeration harms.

It has been proved that this hypothesis has instead contributed to the increasing poverty and inequality. The growth in incomes and wealth has only given rise to millionaires and billionaires at the top of society, while income and wealth levels of those at the bottom of society have remained stagnant, or even continued to shrink, with many becoming indebted and poorer. As such: What is the redistributive effect of this economic approach?

## 2 Methodology

This research used a Mixed Methods Approach combining both quantitative and qualitative methods. The researchers reviewed existing literature; carried out interviews with key informants and average taxpayers. Academics, NGO staff, KRA staff, tax consultants and Church leaders approached were helpful in information gathering. Collaborating with academics and civil society groups, and other like-minded organisations working on similar topics, also helped to obtain additional information.

More details of how all these are dealt with in more depth can be found in Chapter II of the overall research Introduction and can be accessed via <http://tinyurl.com/tjp-02methods-scope>

## 3 Core Issues

The Tax Justice and Poverty research findings presented here has analysed the situation in Kenya in regard to: poverty, income and wealth inequality, informal economy, Illicit Financial Flows, bribery and corruption, education, social protection, and dependence on external financing, elaborated further below.

### a. Poverty

Kenyans living below the \$1.90 (KSh. 197), signifying the extreme

poverty threshold, were estimated to be 14.7 million (29.4 per cent of the national population). However, the World Bank estimates about 17 million (35.1 per cent) Kenyans in the extreme poverty bracket. With Amartya Sen's (1983) wider concept of poverty, these figures could be more as it considers poverty in terms of a "capability approach"; as the state of individuals and groups in society failing to achieve certain minimum capabilities to function within the society, leading to exclusion.

Despite impressive gross domestic product (GDP) figures signifying growth, Kenya's performance in poverty reduction has been poor, pointing to poor wealth distribution. Kenya's efforts to eliminate extreme poverty by 2030, in line with the UN's Sustainable Development Goals (SDGs) and the country's "Agenda 2030", is a distant dream and requires deliberate poverty reduction policies.



*The irony of improved growth and increasing poverty. Credit: Daily Nation, October 1, 2018.*

### b. Inequality

Kenya has seen increased GDP growth at about 5.6 per cent since 2008, but the benefits of this growth are not being shared equally. A minority of about 8900 super-rich Kenyans are accumulating wealth and enjoying the benefits of this growth, owning more wealth than the rest of the population combined. About 19 million Kenyans (40 per cent by 2014 figures) were considered as poor by multidimensional standards. In spite of progress made, the Kenya National Bureau of Statistics considers about 16.4 million Kenyans still live below the poverty line.

This form of inequality is as bad for the rich as it is for the poor. As inequality increases, it makes the whole society become poorer because it results in poorer health, lower educational attainment, and higher crime rates, lower spending of social capital, lower cooperation with and trust for the government. Kenya's spending on education and health has been steadily declining since the early 2000s. An estimated 2.6 million people fall into poverty due to ill-health while 1 million learners cannot access education. Connections exist between poverty and inequality.



*Such informal sectors need to be developed for job creation*

### c. Informal Economy

A big section of Kenyans live or work under "informal" ("Jua Kali") economy, which is presumed to be expanding, having grown to 82 per cent against only 18 per cent of the formal sector. A Government report reveals that the informal sector has the largest share of employment accounting for 82.7 per cent and the total number of self-employed and unpaid family workers was estimated to have increased from 83,800 in 2013 to 103,000 in 2014.

In 2005, tax collections of the informal sector were estimated to be about KSh 55 billion. However, there is a formidable knowledge gap on the informal economy.

### d. Illicit Financial Flows

Illicit Financial Flows (IFFs) refer to money that is illegally earned, transferred or used; with the flow of these monies violating laws in their origin, during their movement or use. The ultimate intention is to hide the money, even money that may have been legitimately earned. Illicit Financial Flows can be broken down into three main types:

- Proceeds from corrupt dealings: e.g. bribes to secure public contracts/permits or declaring false corporate profits, in order to evade tax payment.
- Proceeds from criminal activities: e.g. from drugs or human trafficking, or sale of illegal arms), and transferring the money through banks or legitimate businesses - "money laundering".
- Proceeds from commercial tax abuse: evading taxes (illegal) and/or avoiding (legal but morally wrong) taxes, e.g. by using anonymous shell companies in secret places/countries. Also over quoting imports or under quoting exports, to hide the real value of products, and therefore profits—a process known as "trade mispricing".

Kenya has lost over US\$10.6 billion in accumulated illicit financial flows since 1970, one of the worst cases in Africa. Between 2002 and 2011, Kenya is believed to have lost about \$1.51 billion to trade misinvoicing (trade mispricing). The country's tax losses from trade misinvoicing are estimated to be as high as 8.3 per cent of government revenue. Banks, the growth of information and communications technology, unregulated money transfer services, legal loopholes and seemingly good developments like the establishment of the Nairobi International Financial Centre all aid these IFFs.

### e. Education

Education is one tool that enables faster and more stable social mobility and thus helps close the gap of social stratification. Providing access to equal and universal education helps tackle inequality by providing virtual income, opportunities for decent



*An open - air classroom.*

work, increased participation and autonomy. The 2010 Constitution of Kenya (Chapter 4; Sections 41f, 54b and 56b) has enshrined the right to education for all, with special emphasis for groups like the persons with disabilities and minorities.

However, Government expenditures in education have declined, despite increased school enrolment from 62 per cent (earlier), to 87 per cent in 2015 and more kids reaching secondary school and 84 per cent of literacy rates for those above 14 years. The gap in providing quality education in Kenya, has been filled by the rise of private schools that have made education costly for the ordinary



*Such citizens need special Government support*

Kenyan. This makes Kenya fall below other countries with comparable poverty rates.

#### **f. Social Protection**

Social protection is useful in fighting poverty and promoting inclusive growth. It promotes: essential healthcare and benefits for children, informal workers, the unemployed, the elderly and people with disabilities. The 2010 Constitution of Kenya (Article 43) and the country's Vision 2030 uphold the individual right to social security.

In spite of this, Kenya has one of the worst social protection services in Sub-Saharan Africa. Investment in social security provisions for the poor are still low, or non-existent. The growing number of unemployed youth, and changing socio-economic trends have eroded even the traditional intergenerational solidarity that protected the vulnerable. To improve this, more revenue is required, together with enhanced administrative and policy measures, to address the challenge of providing adequate social protection in the country.

#### **g. Dependence on External Financing**

Kenya's dependence on external financing is a further key driver of poverty in the country. Estimates show Kenya's debt portfolio is between KSh 4.7 – 5.1 trillion, the fifth highest in Africa. The country's debt to GDP ratio stands at 60 per cent in 2016/2017 financial year, up from 52.1 per cent in the 2015/2016 financial year. This is believed to have doubled in the past five years. Since the debt is mainly owed to foreign investors, this gives them leverage to influence policy to avert risks to their investments.

The debt burden owed to lenders is expected to increase. This trend threatens the country's economic recovery and growth. The question is: how long will the country continue to borrow? How can the options for raising domestic revenue be improved?

### **4 Taxation Legislation and Policy in Kenya**

#### **a. History of Taxation in Kenya and Later Developments**

Taxation in Kenya has had both traditional and foreign influences. Local leaders used to raise revenue through in-kind levies on their

subjects and foreigners trading in their territories. Later the Arabs at the coast of East Africa, introduced the *zakat*, *jizya*, *sadaka*, *khums* (all based on Islamic traditions), on the coastal communities and the in-coming traders. The Portuguese who later took over from the Omani Arabs continued this practice, subjecting the Arabs and the coastal peoples in the course.

The British colonial administration in Kenya in the early 20<sup>th</sup> century, imposed the hut tax, poll tax, land tax, graduated personal tax and income tax to facilitate the exploitation of indigenous labour and natural resources. The country's tax system and laws have thus been evolving with the introduction of various forms of taxes.

#### **b. Taxation Policy and Deficits**

Improved tax revenue collection relies on proper tax policy. This section scrutinizes Kenya's laws regulating taxes, levies and tax-like contributions and assesses the need for reforms, or the effectiveness of the reforms that have been implemented.

The "Vision 2030", emphasises competitiveness in the entire document but little treatment of taxation and related issues or revenue. The Second Medium Term Plan 2013-2017 in the document highlights "tax reforms", but overall, the tone of the document indicates that the priorities of the country's development are elsewhere other than through domestic revenue mobilisation. Vision 2030 places Foreign Direct Investment (FDIs) at the heart of the development model, by adopting the export-led and private sector-driven strategy. This orientation towards private sector business implies that Kenya's tax policies continue to support the status quo that favours the rich against the poor. To affirm this, the Corporate Plan of KRA, places "paying taxes" within the strategy of creating an inductive business climate. This again implies that the KRA revenue collection targets are guided by how well they contribute to supporting the business climate.

#### **c. Tax Legislation and its Deficits in Kenya**

Tax legislation is very crucial. The tax laws of a country should serve the public interest, i.e. to meet the revenue raising needs of the country. This includes: assessing, collecting and auditing government-imposed taxes, as well as preventing fraud.

##### **I. National Legislation**

The Constitution of 2010, Article 209 provides two the levels of government (national and county), each with the relevant powers to impose taxes and charges:

1. Article 209 (Section 1: a-d) the National government to impose income tax; value-added tax; customs duties and other duties on import and export goods; and excise tax. Section 2 also gives the Parliament powers to authorize the national government any other reasonable tax or duty.
2. Article 209; Section 3 a-c allows the county governments to impose property rates on property or estates, entertainment taxes and any other tax within its territory, as authorised by an Act of Parliament.

A number of relevant legal instruments for taxation exist like the:

- Tax Procedures Act, 2015,
- Capital Market (Amendment) Bill (2016),

- Finance Bill, Prevention of Terrorism Act,
- the Proceeds of Crime and Anti-Money Laundering (Amendment) Act (POCAML), and
- the Public Finance Management Act.

However, the Kenyan tax system relies heavily on two sources of taxation:

- Income Taxes – such as pay-as-you-earn (PAYE on wages and salaries), Personal Income Tax (on rent, profits, dividends, interest, pensions, royalties, or professional fees) and Corporate Income Tax (CIT).
- The Value Added Tax: on Turnover, Consumption, Goods and Services, charged to the sale of goods and services at each stage of production and distribution chain as the difference between what a producer pays for raw materials and services, and what the producer charges for finished/final goods and services.

There are also cross-cutting business taxes like Excise Duties (to limit the consumption of certain goods and services) and import and export duties on goods coming to and leaving the country, respectively.

Reforms such as lowering the rates of the taxes such as CIT made such taxes less progressive and almost flat tax. The self-assessment and self-declarations for PIT and CIT leave loose ends which private wealth holders, tend to exploit by declaring less taxable income. Corruption and fraud, also make KRA staff susceptible to cutting deals instead of enforcing taxes that are due.

#### ***i. Legislation on Wealth Relevant Taxation***

There is need to target taxing the wealthy as a source of increased revenues in Kenya for a number of reasons:

- They tend to avoid and evade taxes through complex and aggressive tax planning,
- they have high potential for revenue contribution, and
- the tax compliance impact of the wealthy on the integrity of the tax system is great.

However, tax compliance among the wealthy is challenging because economic elites have great political influence as some are members of the political elite. In Kenya they successfully resisted the government's attempts to implement a capital gains tax on the sale of property and shares and reinstated it afterwards in a weakened form. Some politicians also successfully lobbied for VAT exemptions for lighter aircrafts in 2013, leading to VAT exemptions for heavy aircraft with the argument of making travels less costly.

Currently property tax in Kenya is restricted to land (real estate) and rent while improvements (e.g., buildings and structures) are not taxed. Some land such as communal land, leasehold, places for public religious worship, cemeteries, crematoria and burial or burning grounds, health facilities, educational institutions, charitable institutions and libraries, outdoor sports, and national parks are exempted as they are not for profit. The registration process of land in the country is also incomplete, making it impossible to identify taxable land and the rates are low. The main argument against taxing improvements on land is that this will discourage investment and lead to underutilization of land.

Taxing real property (land and residential buildings) do not affect

labour supply, investment, human capital and innovation decisions in a big way, and are more difficult to evade. Besides, taxing property would be a good avenue to contribute to infrastructure financing and development in the country through domestic revenue.

#### ***ii. Legislation on Illicit Financial Flows in Kenya***

Are there laws in Kenya to detect and penalize activities that encourage Illicit Financial Flows from the country? And if so, how effective are these laws? The following laws guard against fraudulent individuals and corporations in Kenya, when it comes to taxation:

- a. The Constitution – Chapter 6
- b. the Ethics and Anticorruption Commission Act 2011,
- c. the Anti-corruption and Economic Crimes Act 2003,
- d. the Public Finance Management Act, No.18 of 2012,
- e. the Public Procurement and Disposals Act 2015,
- f. Witness Protection Act 2006,
- g. the Proceeds of Crime and Anti-Money Laundering Act 2009 (revised 2016 and its Amendment Act was signed into law in 2017),
- h. the Leadership and Integrity Act 2012,
- i. the Public Audit Act 2012,
- j. the Bribery Act 2016, and
- k. the Central Bank Act 2015

Institutions like the: Financial Reporting Centre (FRC), Asset Recovery Agency and the Africa Academy for Tax and Financial Crime Investigation, support to implement these laws and regulations.

However, loopholes exist in some of these laws. For instance the initial version of the POCAML did not explicitly indicate tax evasion as a “major profit generating crimes”, did not prohibit anonymous or numbered accounts and did not adopt the definition of 'beneficial owner' as stipulated by the Financial Action Task Force (FATF). Even in its amended form of 2017, it still has a number of loopholes that are exploited by private and corporate and criminal wealth holders and their lawyers, making the combating IFFs in Kenya difficult.

#### ***II. International Legal Norms and Taxation in Kenya***

As a member of global community, Kenya's laws and actions regarding taxation are guided by what goes on around the world. For matters of trade and other issues like the IFFs, Kenya needs to work in partnership with other countries and members of the global community. The Constitution of Kenya Article 2 (6) accepts treaties or conventions ratified by Kenya, as part of the Kenya law. Kenya is a member of the Financial Action Task Force (FATF), the East African Community's Protocol on Preventing and Combating Corruption, and the African Union (AU) Convention on Preventing and Combating Corruption (2003). Kenya has also engaged in international treaties and Tax Information Exchange Agreements (TIEAs). As such, it has signed several international instruments on combating organized crime, suppression and countering terrorism. Kenya is under obligation to implement these international agreements and the President is required under Article 132 (iii) to

submit a report to Parliament on the progress made in fulfilling the international obligations.

Apart from these, Kenya is a signatory to bilateral agreements with countries like Switzerland (2016) in combatting IFFs through Memoranda of Understanding (MoU) for mutual legal assistance. This particular MoU, helped in 2018, to secure a deal from Switzerland to return to Kenya KSh72 billion hidden by corrupt Kenyan officials in Swiss banks.

However, Kenya needs to have a comprehensive domestic law on mutual legal assistance to be able to benefit better from such MoUs and Double Tax Agreements that other countries take advantage of.

## **5 Administrative issues**

For improved revenue collection Kenya's tax administration too, needs reforms in the ever changing times and circumstances. This should be done with full consideration of the global and local environment in tax administration to determine how to modernise a tax agency like the KRA. Tax administration is key for effective and successful tax system and revenue collection. Three ingredients are essential for this: the political will to administer the tax system effectively, a clear strategy for achieving this goal, and adequate resources for the task. A number of administrative issues are assessed here.

### **a. Staff Levels**

Human resource (staff) is very important for effective tax administration and influencing the other two ingredients of political will and designing and implementation of the desired strategy. The international benchmark for staffing for effective tax administration and outreach, is supposed to be 1,000 people per tax administrator. During the year 2015/16, KRA had the lowest ratio of labour force to Staff at 2,971 persons per tax administrator. In 2015, the Sixth Corporate Plan published the (approved and current) within KRA to reflect that out of the 6,618 staff ceiling approved, the agency had only recruited 4,629, leaving a gap of 1,989 that needed to be recruited. Amidst this, there is also a high turn-over of staff, affecting efficiency as many move on to "for greener pastures". This has a link to staff satisfaction with remuneration and motivation.

### **b. Information and Communications Technology (ICT) in Tax Administration**

Appropriate engagement and use of the modern information and communications technology is crucial in obtaining, processing, storage and use of tax information by a body like the KRA. Through the Strategy, Innovation and Risk Management Reforms and Modernisation Programme, the KRA has introduced new technology in data management. The various departments of the KRA are expected to benefit from new technology. The computer software also registered about 1.6 million by 2015, according to data available. This makes tax administration cheaper, easier, transparent and more accountable, and in turn improves equity, fairness, honesty, uprightness, integrity and impartial application of the law.

These improvements notwithstanding, ICT use needs to be manned properly for intended results. Proper information management in Kenya's tax system is one of the biggest deficiencies. An estimated 8.1 million potential tax payers are not in the Personal Identification Number (PIN) data base. Data on a number of various taxpayer categories is also not properly filed in the database. Information on land registration, the HNWLs and their taxable assets is scanty. Self-reporting by enterprises is being abused to minimize tax obligations. The ICT system is also

susceptible to fraud and manipulations. Data fragmentation is still a huge problem, amidst the technological improvements. Regarding taxation, questions abound: How can the data management systems punish taxpayers who want to avoid paying taxes in an upright and fair manner? How conversant are the Kenyan tax payers are with the system?

### **c. Transparency**

The KRA has been making efforts to be transparent; publishing the names of the largest private and corporate taxpayers in Kenya from time to time. But this information is only based on what private and corporate wealth holder and their tax lawyers choose to reveal. Banks like the Charterhouse Bank successfully denied KRA information on money laundering activities, even when required by law and Chartered Bank sued for reporting about a cheque deposited from the Customs, shows that there is lack of transparency which is intended. This therefore makes tax administration difficult, especially when dealing with the wealthy. Kenya's Company Act, Section 150 supports "lifting the veil" on companies' which have subsidiary operations so that information about the subsidiaries can be accessed. Legal loopholes such as the separate personhood for companies and their owners, make it difficult to pierce the veil of secrecy, or lift the corporate veil, yet information on beneficial ownership is crucial ahead of all taxation efforts. Such legislative deficits, ambiguities backed by lack of transparency and lack of resources constitutes a severe problem for the Kenyan taxman as the wealth holders manipulate them for illicit, illegal and criminal activities.

### **d. Corruption in the Kenya Revenue Authority**

The Kenya Revenue Authority (KRA) is no stranger to fraud. Bribery is so common that it is considered a regular part of the compensation of tax officials. Such corruption undermines confidence in the tax system, negatively affects willingness to pay taxes, and reduces the country's capacity to finance government expenditures.

Attractive payment and welfare provisions and incentives like promotion, to motivate staff, are supposed to be based on merit and the strictest standards of legality and morality and motivate staff. Unfortunately, the KRA's Sixth Corporate Plan talks little about recruitment and competitive payment for staff, even though this problem was raised in the Fourth Corporate Plan. It would therefore be very important for the KRA and the government to consider these issues for review. These require deliberate planning and financing.

### **e. The Need for Whistleblowers**

To combat tax related crimes, the role of the whistleblower is paramount. The Kenya Revenue Authority (KRA) established a web-based platform to enable people to secretly report tax cheats and get rewarded for it. There is an "Informer reward scheme" in the Directory "Investigations and Enforcement", listing issues like:

- Manifest Fraud in shipment of goods
- Colluding to use fake security bonds to clear transit goods
- Diversion/Dumping of transit goods
- Customs Mis-declarations
- Smuggling, or secretly importing goods in violation of the law

- Fraudulent cancellation of export entries with intend to reclaim VAT refunds
- Import/Export of prohibited or restricted goods
- Fake payments of import taxes to avoid tax payments
- Dealing with excisable goods without a valid license
- Nil/non-filing income tax returns
- Invoice fraud for no goods, or less goods delivered
- Under-declaration of income

Section 5A(b) of the KRA Act Cap 469 provides for payment of 5 per cent of the tax or duties or KShs. 2 million as rewards to informers in the case of information leading to the recovery of un-assessed duties or taxes. Since some of the crucial items like the Customs and Excise, other forms of Domestic Taxes like Wealth Tax, cheating on Capital Gains Tax, capital flight, misuse of transfer pricing, money laundering, illicit BEPS trickery or hiding of assets are not included in the list for whistleblowers, these should be taken with concern. It is also important that the whistleblowers be duly protected while ensuring that they provide authentic information.

## 6 Results

This study of the Kenyan tax system has revealed a number of interesting issues about country's tax system, the policies and regulations. Here is a presentation of two key results.

### a. Revenue Collection; Actual and Potential

The over-reliance on Personal Income Tax (PIT), Corporate Income Tax (CIT), and tax on goods and services (value added tax (VAT) and excise duties has led to inadequate domestic revenue collection. The KRA missed its revenue collection target for the 2017-2018 financial year by KSh 172.4 billion, as the taxman collected KSh 1.48 trillion instead of the target of KSh 1.65 trillion. This is explained by the fact that some “super-rich” do not pay taxes. The contribution of Kenya's taxes as a quota of GDP is low. The Financial Year of 2017/2018 had a budget deficit of KSh 524.6 billion, equivalent to 6.0 per cent of GDP. Kenya fails to collect an estimated \$1.1 billion annually– the equivalent of one tenth of its budget and of 3.5 per cent of GDP, through tax incentives and exemptions granted to multinational corporations and businesses. With the right policies, such budget deficits could be closed.

### b. The Impact of Capitalism and the Power of the 1 Per cent

A careful re-examination of the issues indicates that Kenya is caught in a systemic crisis, due to the competitive capitalist system. Neo-liberal capitalism, resulting privatisation and deregulation has led to a new economic order in Kenya where the state surrendered power to private capitalists who deceptively or falsely promised better growth, leading to an improved society where all benefit. Though there is some economic growth with impressive figures of GDP, the benefits of this growth are not evenly distributed, as seen in the growing numbers of the people who are poor as few become richer. The few rich focus on profits and are not willing to pay their fair share of taxes.

Multinational corporations in Kenya are among the wealth holders, causing a loss of about KShs. 100 billion (\$1.1 billion), or 8.3 per cent of government revenue through trade mis-invoicing and tax incentives. These wealth owners “steal” from the country by dodging taxes through hiding wealth in tax havens. These powerful corporations and individuals influence and manipulate the country's policies to create favourable conditions for themselves to operate for capital and profits which they readily

shift elsewhere or hide from the taxman or transfer through inheritance and gift laws which they continue to influence in their favour. Therefore, can the country establish a Wealth Transfer Tax of such inheritances and gifts?

As this happens, a large number of Kenyans are now offering their labour cheaply, and getting low pay and benefits. The wealth owners have little regard for the contribution of their employees,



*The impact of the current tax in Kenya.*

who make the profits and wealth. How, can the government also ensure this wealth ethically serves the human person?

## 7 Ethical Reflection

This research adopts the Catholic Social Teaching (CST) perspective in which justice signifies the constant and firm will to recognise the other as a person.

The concept of justice in the CST is based on a value system that places the human beings at the centre of the policies, decisions and actions, instead of the market promoted through globalisation. As demonstrated, systems based on the market have failed to meet the needs of the majority of humans, who are the lead, according to God's plan of creation. Instead the current market system has created more poor people and widened inequality gaps. Such selfish and shortsighted economic decisions based on the market, are a form of “structural sin” (John Paul II, in *Sollicitudo Rei Socialis* Nr. 36). How, then, can the Kenyan economic system and society establish a truly human support system for its people?

To escape this system, the Principles of Catholic Social Teaching can contribute. The country deliberately needs to re-establish a fair system through the following principles:

- The Principle of the Person (Personalism), i.e. the rights and dignity of each individual of the 48.5 million of the country's people, including those about 16 million who live in abject poverty, should be fully recognized in policy-making. This will necessitate adopting policies on using the resources of the country for the Common Good of All. There should be deliberate efforts to protect the poor and vulnerable persons through a preferential Option for the Poor who are also important.
- The Principle of Solidarity: i.e. active support of those in need, or fellow human beings because they are human.
- The Principle of Subsidiarity: i.e. identifying adequate structures in the country to secure the involvement and participation of all, as citizens of the country.
- The Principle of Subsidiarity and Social Justice: - to establish structures to enable and assist individuals and groups to develop their capabilities to be able to do what they can do, in an environment (physical and social) that can continue to support these capabilities over time,

becoming sustainable and empowering people to take charge of their own affairs.

With policies based on such principles that recognize all peoples (citizens), it will eliminate the influence and domination of few people in decisions and practices to favour them. This also has the potential to reduce corruption. This will ensure that all will work and share the benefits of their work and the resources of Common Good, in a more equitable economic order.

In fulfilling its commitments to the Sustainable Development Goals, especially of reducing poverty and inequality, Kenya can borrow from the CST Principle of "Option for the Poor" which aims to establish minimal rights for each and everybody. The country should deliberately facilitate development programmes for the



*Receiving treatment, Mukuru Slums, Nairobi. Improved revenue contributes to improved service delivery. Photo Credit: Jesuit Hakimani Centre Archives.*

disadvantaged and marginalized citizens to benefit from the country's economic progress.

#### a. Catholic Social Teaching and Taxation

Taxation is a relatively new topic within the Catholic Social Teaching but fits with the Church's teaching on injustice which made Paul VI to criticize tax evasion in his encyclical letter *Populorum Progressio*. He condemned the idea of citizens generating sizeable incomes from the resources in their countries and depositing the profits foreign countries for the sake of private gains.

Over time, the church has come to regard taxation as a form of sacrifice made by those who are able in the community, towards the common good and to support those who are less well-off. Payment of taxes by the citizens is seen as a form of solidarity shown by the able citizens towards the less able ones. The resulting expenditure of the revenue from these taxes redistributes resources to provide equal opportunities for the citizens and encourages all of them to use their talents.

Pope Benedict XVI considered taxes as one way the political



*Quality education requires deliberate investments*

community uses to redistribute through the state. He saw it as a necessary way to balance inequalities and distortions which result from economic activities that merely aim at profit maximization and wealth creation. The Compendium on Catholic Social Doctrine advocates for redistribution of the resources of the country as a way to determine wellbeing in a country, as the process allows everyone to access what is necessary for their needs. Therefore, economic well-being in a country requires suitable social policies established for the redistribution of income based on merit and the needs of each citizen.

#### b. Obligation and Opportunities for Church in Kenya

In the face of these challenges, the Catholic Church in Kenya has both obligations and opportunities to participate in taxation issues in the country. Here are potential activities:

- challenging the free market idea which benefits the individual rather than all. The Catholic Church in Kenya should emphasize that every form of property in the country is a social mortgage, intended to benefit all the citizens.
- Through the Principle of Subsidiarity from the CST, the Catholic Church can influence the regulation of money that is in the hands of few rich, through appropriate laws and policies. The government acts on behalf of its people and in the interest of the common good, to establish bilateral and multilateral relations to combat tax evasion and avoidance and curb Illicit Financial Flows from the country.
- Given current disputes about the lack of fairness in national and global tax governance, the Church in Kenya can play a role of mediating tax issues between the government and business entities, individuals and foreign countries to urge for improvements in laws, policies and agreements for fairer tax governance.
- The Catholic Church in Kenya can utilize its structures like the Small Christian Communities to raise grassroots awareness about the obligations of the Christians to pay their share of taxes and also the need for them to participate in revenue spending decisions and seeking accountability.
- The Kenya Conference of Catholic Bishops, Catholic Secretariat and departments like the Justice and Peace Commission can also influence just national tax policy development through policy briefs, engaging with the parliament, the legal fraternity and civil society organisations to discuss and influence tax policies and legislation in Kenya.
- The AMECEA and SECAM provide another level for the Church in Kenya to influence regional and global action towards fairer and just taxation in the region through, e.g. at EAC and the AU level to advance reforms.

The following points are very important for the Catholic Church in Kenya to consider as well:

- The Church in Kenya should share the CST and use it to highlight important socio-economic issues like taxation and the stand of the church.
- The Catholic Church founded institution like the universities and other institutions of education, parishes, social centres, movements, groups and federations can be enlightened to deepen and spread knowledge about tax justice and the increasing inequality and poverty.
- The Church in Kenya should show example by paying taxes upon profit making assets, or paying social security obligations for its own staff.

- The church should collaborate with other stakeholder to actively identify the root causes of social injustices like poverty, inequality, corruption and finding lasting solutions, for justice and peace.

The Catholic Social Teaching can provide the Catholic Church in Kenya with a moral ground to actively participate in discussing tax justice as part of social justice.

## 8 Guidelines and criteria for policy development

The findings of the research have been used to derive guidelines and criteria for policy development. Attempts have been made to do this based on the empirical findings of the research to derive policies and legislation on taxation and related issues of inequality, poverty and sustainable ecology using facts and ethical reflections based on the Catholic Social Teaching.

### a. General Guidelines

- 1) Kenya's tax policies and laws should serve the citizens, their dignity, capabilities, labour and quality of life instead of focusing on capital (money), economic growth, goods and profits as the main thing.
- 2) Business/ employers should: pay fair wages and account for use of natural resources, and services (Corporate Social Accountability (CSA) before undertaking any form of Corporate Social Responsibility, Social Impact Investment and other charitable activities.
- 3) The Government of Kenya should take taxation as a means for redistribution of wealth and should make reforms for the private wealth holders to provide towards the Common Good of All.
- 4) Taxes control the negative social and ecological harms arising from market activities, thus protecting the people and natural resources.
- 5) Kenya should actively engage in bilateral and multilateral cooperation with other countries and institutions to establish, implement and monitor taxation policies and regulations from improved revenue collection across boundaries.
- 6) Kenya should adopt concrete, pragmatic and empirical analysis and assessment of the broad concept of justice; social, distributive, legal, commutative, contributive, ecological, intergenerational, international legal and restorative/retributive/corrective justice. This will shape policies and strategies to address its challenges of poverty and inequality.

## 9 Policy Recommendations

From the above concerns the following policy and legislative recommendations, have been suggested.

### a. Suggestions towards Legislation for Kenya

- The government should initiate a review of the Proceeds of Crime and Anti-Money Laundering (POCAMLA) Amendment Act 2017 to address gaps.
- Kenya should review and revise its Double Tax Agreements (DTAs) with a number of countries.
- The Government should review policies that improve transparency in tax revenue.
- The Government should review its policies on tax privileges like tax exemptions or other tax incentives.
- The Kenya Government should establish laws that allow the wealthy to be taxed progressively (according the amount of their wealth).
- The Government of Kenya should consider increasing direct progressive taxes like the Corporate Income Tax (CIT), Personal Income Tax (PIT) and Capital Gains Tax (CGT).

- The Government of Kenya (Attorney-General-Department of Justice, 2015).

### b. Suggestions towards Administration

- The Kenyan Government should initiate better national, regional and transcontinental cooperation with other countries or regional bodies.
- The Government should facilitate the KRA in training experts on international tax enforcement issues.
- Other government agencies like the police, land registrars, licensing departments and even reputable social groups should also be trained and involved in finding tax evaders.
- The KRA should engage in analyzing tax policy and assessing effects of taxation on efficiency, fairness, equity, and competitiveness as well as on compliance and administrative costs

### c. Suggestions for the Kenyan Tax Payers

The Kenyan taxpayers are important stakeholders and they should deliberately get involved in decisions on taxation.

- The tax payers should show interest in learning the basic information on taxation.
- Citizens should engage in discussions with their representatives and leaders to influence tax policy formulation.
- Tax payers should also understand their commitment to pay taxes and need to be compliant.

### d. Possible Issues for Policy Dialogue

The following issues have therefore been identified for policy dialogue:

- I. Reducing revenue loss through review of tax incentives and blanket privileges granted to unscrupulous multinational corporations (MNCs). These incentives to investors should be pegged to "good behaviour".
- II. Reducing:
  - a) Illicit Financial Flows from Kenya by reviewing and enforcing laws and policies.
  - b) Bribery and corruption by reviewing the POCAMLA (Amendment 2017) and enforcing it.
- III. Taxing progressively, proportionally or equitably according to the Principle of "Ability to Pay".
- IV. Improving transparency in taxation policy and legislation in terms of review, reforms and implementation.
- V. Reviewing taxation policy to grant tax allowances to support low income households in lieu of social protection gaps.

## 10 Conclusion

There is enough money out there for public tasks, but it is increasingly difficult for the governments like that of Kenya to get their hands on it. This is because the tax system strongly favours the wealthy. With little involvement of the government in regulating them, the wealth holders in the country have found ways to hide wealth from the KRA and can easily influence decisions and policies in their favour. As such, taxes are not levied according the Principle of Ability to Pay. As Kenya is suffering from a heavy and increasing debt burden, it needs to be freed from this burden by having a source of revenue that can reduce the country's urge to borrow. In order to reduce this, Commissioner General Waweru, observed that Kenya's citizens should: "Kulipa ushuru ni kulinda uhuru"- 'Pay your taxes and set your country free', - the Motto of the Kenya Revenue Authority.