

Acknowledgements

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List of Abbreviations

AMECEA	Association of Member Episcopal Conferences in Eastern African
AML/CFT	Anti-Money Laundering and Countering Financing of Terrorism Act
ATAF	African Tax Administration Forum
AU	African Union
BEPS	Base Erosion and Profit Shifting
CBK	Central Bank of Kenya
CEO	Chief Executive Officer
CGT	Capital Gains Tax
CIT	Corporate Income Tax
COMESA	Common Market of Eastern and Southern Africa
CSO	Civil Society Organisation
CST	Catholic Social Teaching
DTA	Double Tax Agreement
EAC	East African Community
EACC	Ethics and Anti-Corruption Commission
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FATF	Financial Action Task Force
GDP	Gross Domestic Product
HNWI	High-Net-Worth-Individuals
ICPAK	Institute of Certified Public Accountants of Kenya
ICT	Information and Communications Technology
IFFs	Illicit Financial Flows
KACC	Kenya Anti-Corruption Commission
KRA	Kenya Revenue Authority
MNC	Multi-national Corporation
NGO	Non-governmental Organisation
NHIF	National Hospital Insurance Fund
NIFC	Nairobi International Financial Centre
NSSF	National Social Security Fund
OECD	Organisation for Economic Co-operation and Development
PAYE	Pay As You Earn
PIN	Personal Identification Number
POCAMLA	Proceeds of Crime and Anti-Money Laundering Act
SCT	Single Customs Territory
SDG	Sustainable Development Goals
SECAM	Symposium of Episcopal Conferences of Africa and Madagascar
SME	Small and Medium-sized Enterprises
TIEA	Tax Information Exchange Agreements
TVET	Technical and Vocational Education and Training
UHNWI	Ultra-High-Net-Worth-Individuals
VAT	Value Added Tax

Executive Summary

The increasing poverty and inequality in Kenya are affecting every citizen, though in varying degrees. Kenya is a country with an estimated population of 48.5 million. Out of this population, 73 per cent are below 30 years of age. According to figures of 2014, 19 million Kenyans (40 per cent of population) were considered poor by multidimensional standards; 14.7 million were living below the \$1.90 (KSh. 197) per day extreme poverty threshold, while 6 million (about 13 per cent) were regarded as destitute. This shows that the “promises” of free market theories, of granting wealth for all are not yielding results soon, as would be expected. In contrast, about 8,960 people in Kenya – less than 0.1 per cent, own disproportionately large share of income and wealth than the remaining 99.9 per cent and the number of the few super-rich Kenyans is expected to grow by over 80 per cent in the next ten years.

The 2015/2016 budget also shows that only about 700,000 Kenyans (about 2 per cent) are employed in the public service and are assured of an income from salary and remunerations. Their wage bill took an estimated KSh. 627 bn (50 per cent) of Kenya’s KSh 1.3 trillion tax revenue that year. Youth unemployment rate is high, estimated at 67 per cent. Only 155,000 of the over one million youth joining the labour market annually, are able to get jobs. Limited skills of the youth and the government’s inability to create new jobs means this trend cannot be easily reversed.

Education and social protection programs need to be urgently improved to address the increasing poverty and inequality. Education can provide avenues for skills training while social protection programs take care of the vulnerable members of the society. Faced with lack of funds, the Government of Kenya has instead resorted to reducing the budgets for these sectors. The contributory social welfare schemes like the National Hospital Insurance Fund (NHIF) and the National Social Security Fund (NSSF), only benefit the wage income-earners, leaving the vast majority of Kenyans to grapple with the grueling effects of poverty and inequality.

These, therefore, highlight the fact that Kenya needs more revenue that is properly utilized, to address these and other issues. However, Illicit Financial Flows, bribery and corruption exacerbate the problems in the country. Since 1970, Kenya has lost an estimated \$10.6 bn in accumulated Illicit Financial Flows through trade mis-invoicing, money laundering, unlicensed cash transfers, tax fraud, tax evasion, aggressive tax avoidance, tax exemption, and thin capitalization. Safe havens, shell companies and unregulated financial networks aid this process. The rich and powerful corporations and individuals in Kenya also influence government policies, including those of taxation, in their favour. The Kenya Revenue Authority pursues a tax policy to aid development and reduce poverty. However, taxes in Kenya, have increasingly failed to deliver effectively: the economic system and some citizens with knowledge and money, use the global market and legal infrastructure to go around the tax policies and laws to avoid paying their fair taxes. They then hide their excess profits out of reach of the tax authorities. This has led to poor revenue collection from taxation and losses of about \$1.1 bn of potential tax revenue, consequently leading to low tax quota contribution to Kenya’s Gross Domestic Product (GDP). There are, therefore, still questions as to how just and fair Kenya’s tax system is to the country and to the ordinary Kenyans. Additionally, the informal economy, known as the “Jua Kali” has an estimated revenue potential of KSh 55 bn, but knowledge about this sector is not easy to obtain so as to tax it, or improve it.

The Government of Kenya has also tried to borrow funds from businesses at home and countries abroad to bridge the deficits. This has, however, driven the country's debt portfolio to a record KSh 4.7 trillion, making it the fifth highest in Africa. The country's debt to GDP ratio rose to 60 per cent in 2016/2017 financial year, up from 52.1 per cent in 2015/2016 financial year. This makes it difficult for the country to service the old debts and borrow more. Worse still, what has been done with these borrowed funds seem not to benefit the poor ordinary Kenyans.

It is envisioned that if reforms could be carried out in Kenya's taxation system, more revenue could be raised. This increased revenue, if well spent, could help address the highlighted problems leading to poverty and inequality, as their overall impact affects both the rich and the poor alike. Besides, revenue raised through taxes can be used to finance infrastructure development, health, education, security, legislation, jurisdiction and executive representation, thus benefiting all citizens. It could also further help to address the growing challenges of using non-renewable resources like forests, minerals and water that are getting depleted at an alarming rate, with disastrous effects like flooding, drought and the sheer depletion of these resources.

This has called for rethinking the rights and obligations of the Kenyans as the country attempts to raise revenue from them. This situation is best reflected through the Catholic Social Teaching which focuses on the human person-the summit of creation, instead of a market system that places profits above all, resulting into unfair competition, inequality and resource over-use, including those resources that are supposed to be for the benefit of all. Emphasis on the rights and dignity of each individual person (personalist principle), the need to actively support the needy (solidarity) and for structures for individuals and groups to develop their capabilities (social justice), mean economic issues should be guided by a "social market economy". This seeks the Common Good of all, based on equity principles. This, therefore, reinforces the call for reviews and reforms in Kenya's tax laws, policies and administration to emphasize the important role of the citizens, minimize the deficits in the tax and economic systems and thus increase revenue collection.

Jesuit Hakimani Centre, in collaboration with the Jesuitenmission in Germany and the Jesuit Centre for Theological Reflection in Zambia became engaged in this research project so as to:

1. identify the common problems shared by rich and poor countries, regarding poverty and inequality.
2. explore opportunities for influencing the global fight for Tax Justice aiming for poverty reduction and development through Christian (especially Catholic Social Teaching) principles.
3. seek ways to actively engage with different actors in Kenya to create awareness on these problems, agree on solutions and contribute towards developing and implementing fairer policies on revenue mobilization and use.

It is envisioned that these can also contribute to the aspirations of the Government of Kenya through the Kenya Revenue Authority to improve: "Kulipa ushuru ni kulinda uhuru"- 'Paying your taxes and setting your country free'.

1 Introduction

The “Tax Justice and Poverty” research 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 urgency of the “Tax Justice and Poverty” project is derived from the reality that people live in and face every day. The goals expressed in the project’s subtitle, namely “narrowing the wealth gap and reducing public dependence on external financing” was chosen with the view to addressing the increasing poverty at personal and national levels (Tax Justice and Poverty, 2013a). The idea of the research project and choice of the topic started in 2012, however the focus resonates with the Sustainable Development Goals and the commitment of countries, including those engaged in the research, to attain them by 2030. In particular, the project hinges on SDG 17, Section 17.1; which proposes to “strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection”. The research therefore envisages that this approach can help eliminate poverty and inequality (the SDGs 1 and 10) and challenges associated with attaining all the remaining fourteen SDGs. The SDGs call for universality, integration and transformation. Each goal is important in itself and they are all interconnected.

The project is also in line with the commitments Kenya, among other African countries, made in the Addis Ababa Action Agenda (AAAA) July 2015 to: further strengthen the mobilization and effective use of domestic resources, which called for 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 legal processes at home and in cooperation among countries (AAAA, Nrs. 20-29). The Sixth Corporate Plan of the Kenya Revenue Authority (KRA) indicates in its objectives and strategic need for: enhancing revenue mobilization by broadening the tax-payer base, combating tax evasion; strengthening administrative capacity, enhancing transparency and fairness (Kenya Revenue Authority, 2015a).

The above links to the global, regional and national commitments for domestic revenue mobilization are the roots of the project. While the joint findings of our research are published in (Alt, 2018), this report presents the Kenyan context, and possible links to the global context in terms of the causal and policy aspects.

Brief Country Information

The Republic of Kenya, with an approximate area of 581,000 Km², has an estimated population of 48.5 million in 2016 (World Bank, 2018), increasing by an estimated one million a year, with about 73 per cent of this population below 30 years of age. The vast majority of the population, constituted by about 42 different ethnic communities, 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 (Trading Economics, 2018). This is largely supported by sectors like services, agriculture and manufacturing. The services industry accounts for about 60 per cent of GDP, and is mainly dominated by tourism. Agriculture contributes to over 20 per cent to the country’s GDP and manufacturing contributes to an estimated 14 per cent. Kenya’s Economic growth was projected by the World Bank to be at 6 per cent in 2017 (Trading Economics, 2018), though this has been oscillating with rises and falls indicating that the economy is vulnerable to risks such as inflation and global financial shocks. Kenya is famous for its exotic natural and

man-made tourist attractions and for world record accomplishments in athletics. The Central Bank of Kenya estimates that the country's diaspora remittances had reached about \$ 266.2 million, about 2.3 per cent of the country's GDP by June 2018 (Central Bank of Kenya, 2018).

Kenya is a member of the Eastern African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA) as well as the African Union (AU). These enable levels of regional and international cooperation that Kenya can use to its advantage when considering improving the country's taxation policy, legislation and administration, for greater economic progress.

Key Definitions

It is appropriate to introduce the concepts and terms that are of key interest to the project and subsequent research.

Poverty: For the purpose of this study, we adopt the definition of poverty that Amartya Sen (Sen, 1983) posits by considering it as the state of individuals and groups in society failing to achieve certain minimum capabilities to function within the society ("capability approach"). Poverty is defined here as a condition in which people still lack or cannot afford the basic human needs of food, safe drinking water, sanitation facilities, health, shelter, education and information. This makes it difficult for such people to fully participate as full human beings in their communities and societies, leading to them feeling as being excluded. This therefore goes beyond the understanding of poverty in monetary terms only.

Wealth: Wealth is what one owns (e.g. houses or businesses), after one has cleared debts and other liabilities. For instance, shares in a business are a form of wealth through the share value, dividends and capital gains when the shares are sold. The shares also give the owner power to decide on the direction of the company. Wealth can be self-made out of private work and saving, or it can also be inherited. It has both present and future value.

Wealth gap: This refers to the growing concentration of wealth in a country in the hands of a few who have the means. The majority of the population are thus not so privileged. Wealth and income are connected as more income is likely to lead to more accumulation of wealth. But over time, wealth inequality rises even as income inequality stays the same, and wealth inequality eventually becomes much more severe (Altman, 2012, p. 1).

Income: Income is whatever is earned and received via labour or assets like interest on capital, share dividends, or rent from real property. It is the total amount of money or financial assets which give liquidity. This may be market income, disposable/household income, or income after taxes and transfers.

Governmental Dependency on External Financing: Dependency refers to a situation where a country relies on other countries, or corporations for its (economic) development for a long time. This leads to political, economic, and cultural influences on the country's national development policies (Sunkel, 1969) (Ferraro, 1996). "External financing" refers to money acquired by states from outside, e.g. from banks, funds, donor institutions etc. as opposed to finance raised within the state by public institutions such as through taxes or levies.

Key Assumptions

Before starting, some key assumptions were considered for the Kenyan context. For humans and nations, some individual differences exist, leading to some form of inequality. A number of economists think that this is normal and with beneficial consequences for all. Overtime, they have consistently argued that such inequality would contribute to the combating of poverty as everybody within a given society may be better off despite inequality in incomes and wealth. While this may be true to some extent, any exaggeration harms. For example, this assumption was the idea behind the “trickle-down theory”, advocating for reducing taxes on businesses and the wealthy in society as a means to stimulate business investment in the short term, with the aim of benefiting society at large in the long term as “the rising tide lifts all boats”. It is not mistaken to say, this understanding influenced policy and practice in Kenya, and in other countries, for quite a long time but the results have not been so convincing in giving benefits to all. This research has observed that this hypothesis is not holding true. Though such a policy has led to increased incomes and wealth in the country giving rise to millionaires and billionaires at the top of society, the incomes and wealth levels of those at the bottom of society have remained stagnant, or even shrinks, with many becoming indebted and poorer. The same can also be observed in Kenya’s relationship with other countries, as the country is poorer, compared to others, even amidst the natural resources it is endowed with. All this makes us question the redistributive effect anticipated through this economic approach. How can the problems in the country be solved now without doing a lot of damage to the future generation?

2 Methodology

This research adopted a Mixed Methods Approach combining both quantitative and qualitative methods. As it attempts to find solutions to the problem of poverty and inequality, it was deemed fit by the researchers to survey existing literature dealing with some of these issues; carry out interviews with some experts and key informants. Occasional qualitative surveys were also done with average taxpayers to get their views.

Literature and media information in form of reports, books, online publications, pamphlets, brochures and research papers, by academics and NGOs from home and abroad were reviewed. Also government publications were accessed and used, e.g. publications by the Kenya Revenue Authority (KRA) and other statistical offices. Though the media in Kenya is diverse, some of the headlines did offer information that also proved useful for the research. These sources provided some of the needed observations and analysis about taxation in Kenya. However, the amount of literature that was available for the researcher, was judged to be little. This is partly because the topic of taxation is technical as compared to other topics such as education, politics or even democracy.

The researchers also sought the views of key informants interviewed, ranging from academics, NGO staff, KRA staff, tax consultants and the Church. Collaborating with academics and civil society groups, and other like-minded organisations working on similar topics to get additional information, was required and helped to address this gap as they gladly provided what was available.

The problem of tax secrecy and interests of powerful and influential groups were always present and felt by the researchers. The number of people willing to talk about Kenyan tax law, tax administration and/or provide documents, statistics or other material relevant for the study was generally very small. The greatest restraint could be observed regarding everything pertaining to the work of the Kenyan Revenue Authority. Information on Annual Reports, which contain the basic information about work, performance, efficiency, problems encountered by the tax administration could not be obtained from KRA. Some conversation partners explicitly asked “What is in there for me?” hinting their expectation of getting something in return for information. This in turn posed questions regarding the “truthfulness” of information provided. The experts who accepted to participate in the interviews also preferred to remain anonymous. Nonetheless, the few collaborating experts proved useful by referring the researchers to other materials that provided additional information on both the more general context and information that clarified issues from the interviews and other technical tax issues and laws. Encounters with other NGOs with similar interests proved that it was a more general problem.

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

3 Core Issues

This chapter highlights a number of issues within Kenya considered as a relevant foundation for the Tax Justice and Poverty research project. The following issues are isolated for the reader to appreciate the challenges facing the country and its people, and also attempts at some solutions:

- Poverty
- Income and Wealth Inequality
- Informal Economy
- Illicit Financial Flows
- Bribery and Corruption
- Education
- Social Protection
- Dependence on External Financing
- Damage to the Common Good

Poverty

It is estimated that 14.7 million Kenyans are living below the \$1.90 (Sh197) per day extreme poverty threshold, accounting for 29.4 per cent of the national population now estimated to stand at 49.9 million (World Poverty Clock, 2018). However, the World Bank estimates push this to a higher figure of about 17 million Kenyans and that makes it about 35.1 per cent of the population (The World Bank, 2018)

Kenya’s poor performance in poverty reduction despite impressive gross domestic product (GDP) growth points to poor wealth distribution among the population. With this performance 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 more inclusive growth rates coupled with sharper focus on poverty reduction policies (The World Bank, 2018).

Comparisons both within and across the counties in Kenya reflect poverty levels and disparities. There is also a rural-urban dimension in the poverty disparity. For instance, Nairobi County has 21.8 per cent people who are considered extremely poor. However, it is considered fairly better than Turkana that has 87.5 per cent of its population categorized as extremely poor (Society for International Development, 2004, pp. 13-15). This is explained by the: large income differences between people in urban and rural areas and the household population and dependence levels. In contrast, although the level of poverty in the rural areas is higher than that in the urban areas, there is more inequality in urban areas compared to rural areas in terms of both income and expenditure (Society for International Development, 2004, p. 28).

The Tax Justice Research adopts a wider concept of poverty, also including empowerment to participate in society and to be in charge of one's own life (capability approach, see above). This calls for access to non-material things such as the provision of, and access to health care or education (see below).

Inequality

Inequality in Kenya is a reality and Kenya was, at a time, ranked eighth globally and sixth among top ten Sub-Saharan countries with large populations living in extreme poverty, and its growth restricted to urban areas (Karanja, 2015). The country has been experiencing an average annual GDP growth at 5.6 per cent since 2008 but this growth has been oscillating and the benefits of this growth are not being shared equally. A minority of super-rich Kenyans are accumulating wealth and enjoying the benefits of this growth. An estimated 8900 Kenyans (George Ngigi and Anne Njanja, 2016) are believed to own more wealth than the rest of the population (Mwiti, 2018). About 19 million Kenyans (40 per cent by 2014 figures) were considered as poor by multidimensional standards. Of this number of the poor, 6 million (about 13 per cent) were regarded as destitute (Oxfam, 2017). In spite of progress made, the Kenya National Bureau of Statistics considers about 16.4 million Kenyans still live below the poverty line (Reuters, 2018).

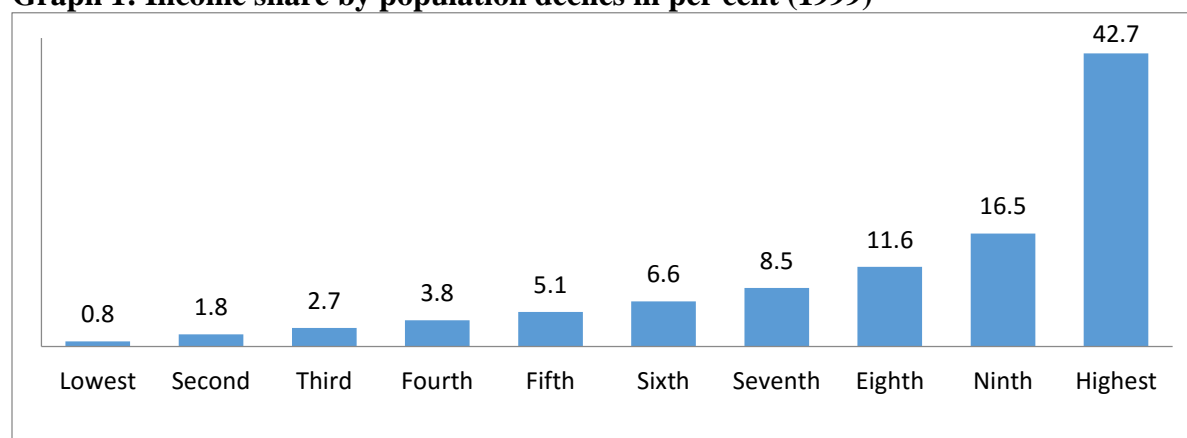
It is therefore important to assess whether the neo-liberal argument that under certain conditions inequality can help address the problem of poverty, is true. This argument purports that high inequality may provide opportunities and incentives for poverty reduction, thus benefiting all; presenting inequality as a necessary forerunner before poverty decreases, or gets eradicated. This implies that conditions should even be deliberately made favourable for some inequality to develop between people so as to overcome poverty. However, there are also dissenting views that 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. For instance, in Kenya unequal opportunities for healthcare and education is rife, with 1 million school age children still out of school (considered the ninth highest in the world), with spending on education steadily declining since the early 2000s. With only 6 per cent of the budget for health, a quarter of the population lack access to regular health care and 2.6 million people fall into poverty, or remain poor annually due to ill-health. There are connections between

poverty and inequality, though the two are not the same. Tackling inequality could help lift millions out of poverty and secure sustainable economic growth (Oxfam, 2017).

Income Inequality

In a range of income gap between zero for perfect equality and 100 for absolute inequality, Kenya stands at 47.7 (Omondi, 2014), making it one of the most unequal countries in terms of incomes in the world and fifth in Africa. In Kenya, a very small “segment of the population (about 8,900 people – less than 0.1 per cent) own a disproportionately large share of income than the remaining 99.9 per cent. The graph below illustrates the percentages when the population is divided into ten groups (deciles) based on income categories.

Graph 1: Income share by population deciles in per cent (1999)



Source: (Society for International Development, 2004, p. 6)

The above trend is expected to continue: The estimated number of the super-rich in Kenya is expected to grow by over 80 per cent in the next 10 years (Oxfam, 2017).

On 21 July 2017 the *Business Daily* revealed the monthly pay of some of the high earning CEOs in Kenya:

Table 1: Chief Executive Officer (CEO) Pay in 2017

No	Name of CEO/MD	Company/Corporation	Monthly Pay (KShs)
1	David Ohana	Kenol Kobil Limited	6,600,000.00
2	Mugo Kibati	Sanlam Kenya	3,300,000.00
3	Allan Walmsley	Sameer Africa	2,100,000.00
4	Albert Mugo	Ken Gen	1,900,000.00
5	Muchiri Wahome	Deacons Kenya Limited	1,800,000.00
6	Geoffrey Odundo	Nairobi Securities Exchange	1,500,000.00

Source: (Juma, 2017)

The publication also shows that Kenya's 700,000 public servants, representing less than 2 per cent of the country's 48.5 million citizens, were paid 627bn Kenyan shillings (\$6bn) in 2015/16, according to the Salary and Remuneration Commission records. Salaries thus took 50 per cent of Kenya's tax revenue of KSh1.3trillion (\$12bn) for that year.

Youth (15 – 34 year olds) form 35 per cent of the Kenyan population and experience unemployment rate of 67 per cent (Kaane, 2014). Over one million of them enter into the labour market annually without any skills, while only 155,000 join the labour market annually after

completing training in TVET, or university. In 2015, the government managed to create only 799.7 thousand new jobs, according to the Kenya National Bureau of Statistics (2015).

Wealth inequality

Wealth inequality in Kenya is reflected by the ever increasing number of the country's super-rich, termed as the Ultra-High-Net-Worth-Individuals (UHNWIs); Kenyans with net-worth of \$30 million (KSh. 3 billion) or more. Kenya's population of the super-rich is estimated to have reached 115 in 2014, with 32 individuals valued above \$100 million worth. In 2015 the wealth of super-rich individuals (UHNWIs) in Kenya rose by 75 per cent, from \$24 billion in 2007 to \$42 billion in 2015 (Market Research and Wealth Intelligence, 2016). The population of UHNWIs in Kenya is forecast to grow by 82 per cent over the next decade to 209 in 2024 (Shawiza, 2017). Another report has indicated that the number grew by 11.7 per cent in 2017 alone, ahead of India, Hong Kong and the United States (Kimathi, 2018). 180 new Dollar millionaires were created in the same year (Ondieki, 2018). A presentation about super-rich Kenyans is further analyzed below:

Table 2: Kenya's Population of HNWI's as part of the Total Population

SNo	Category of the Super-rich Individuals (HNWIs)	Number of Persons	As Percentage of Total Population (46 Million 2015)
1	KShs. 100 million plus	8,500	0.01847826
2	KShs. 1 billion plus	340	0.00073913
3	KShs. 3 billion plus	105	0.00022826
4	KShs. 10 billion plus	16	0.00003478
5	KShs. 100 billion plus	1	0.00000217
	Grand total	8,962	0.01948260

Source: (George Ngigi and Anne Njanja, 2016)

There is little exact knowledge about the wealthy in Kenya, as is illustrated by the following example: By 2015, KRA recognized that real estate sector in Kenya has witnessed an annual average growth rate of 7.2 per cent over the last 6 years. This seems to have increased further, with more citizens and foreigners investing in that sector. Despite this significant growth, tax revenue from this sector has not been commensurate with growth. This implies there is a gap in the information available to the KRA, either due to its capacity levels in getting this data, or the deliberate attempts by the wealth owners to keep the information secret. A study by Christian Aid/Tax Justice Network on KRA data observed that only 100 people have registered with KRA with incomes exceeding KSh 44 million/\$ 528,021, qualifying them as super-rich, or High Net Worth Individuals (HNWIs) (Watoro, 2016). Yet, an estimated 40,000 people live in the top ten high end housing estates in Nairobi alone, where average housing prices range from KSH 35-65 million (\$ 420,017-780,031). This is quite telling about their incomes (Christian Aid, Tax Justice Network, 2014, p. 67).

Kenya ranks as the fourth richest country in Africa in terms of individual wealth held after South Africa, Nigeria and Egypt (Kairu, 2015), (Research and Markets, 2016). It is considered as one of the top performing countries in Africa in the recent times, in that regard. This is against the backdrop that the population of the super-rich is less than 1 per cent of the total population of the country. The country's super-rich persons like to invest their wealth in Kenya and overseas in residential property, land, education for children, personal security, safe havens for capital,

opportunity for increasing wealth (capital appreciation) and luxurious lifestyle. Kenya's super-rich own homes in Europe (74 per cent), North America (16 per cent) and the Middle East (5 per cent). Other preferred investments include offices, retail business, leisure, industrial production, equities, bond, cash, precious metals and collectables (art, wine, cars, etc.) (Shawiza, 2017).

The super-rich (HNWIs) from Tanzania, Uganda, Rwanda, UK, South Africa, Spain, Mauritius, USA, Switzerland, France, Canada, Lebanon, and other African countries also look to own homes in Kenya (Knightfrank, 2015) (Shawiza, 2017). They get attracted to Kenya because of the well-developed Kenyan banking (Research and Markets, 2016).

The fact that Kenya's wealth is concentrated in the hands of few (less than 1 per cent of the population), is a serious problem. This is a trend that grew from the country's independence (Himbara, 1994). It is seemingly influenced by the trend that those who have held state power, have hijacked and used the state machinery for selfish ends to accumulate wealth, instead of attending to national development concerns (Namasaka, 2017) that could benefit all.

Land as Wealth Inequality

Wealth inequality reveals its importance most clearly when it comes to the access to, and possession of, real property. Kenya's area of approximately 582,646 square kilometers, comprises 97.8 per cent land and about 2.2 per cent water surface. Only 20 per cent of the land area can be classified as medium to high potential (suitable for arable agricultural) and the rest of the land is mainly arid or semi-arid (suitable for extensive livestock production, wildlife and irrigated farming) (David N Siriba and Jasper N Mwenda, 2013).

Table 3: Land usage categories in Kenya

	Category	Area (Km2)	Total Land and Water Area (%)
1	Forest	7,084	1.2
2	Government Reserve	492	0.1
3	Townships	1,812	0.3
4	Alienated Land	33,397	5.7
4	Game reserves	13,691	2.3
5	National Parks	3,149	0.5
6	Trust land	457,449	78.5
7	Total area of water	11,230	1.9
	Total Land and Water	582,646	100.0

Source: Table adapted from Vision 2030 Medium Term Plan (2008-2012) Republic of Kenya, 2008, shows the land usage categories and their proportions.

From the British colonial times, land ownership in Kenya has been a contentious issue. With more than 75 per cent of the population of Kenya living in rural areas, land is the mainstay for majority of people (Kenya Land Alliance, 2013, p. 5). The creation of public land (formerly known as Crown land), community land and private land (freehold and leasehold) shaped part of the inequality of land ownership and thus wealth that has continued to affect the ordinary Kenyans to date. Elites benefited from the colonial practice of individual land ownership as opposed to communal ownership. The growing population, unemployment and limited access to land exacerbate the problem of inequality. This is even worse for women as 96 per cent of the rural women are farm workers but only 6 per cent have access to land (Oxfam, 2017).

The fact is that rich Kenyans have always held their wealth in secret, partly in form of big chunks of land and those super-rich among the politicians have been unwilling to declare this wealth (Gakero, 2017). Many linked to those in government have accumulated wealth from these connections and are unlikely to declare their wealth and the sources. A number of Kenya's super-rich have either acquired or inherited land as a source of wealth.

Though Article 40 of the Constitution provides everyone with the right to own property (including land) in any part of Kenya, this has not translated into practical possibilities for all Kenyans. Most of the people depend on inheritance of land that has undergone subdivisions across generations leading to more than 60 per cent of the households having less than 2.5ha (Salami, Kamara, & Brixiova, 2010). Kenya's rural population (about 75 per cent) resides on 5 per cent of its arable land and 3 per cent of the population (mostly political elite) controls 20 per cent of the land (Jayne & Muyanga, 2012). The skewed ownership of land by few rich people is dire in a country where only about 20 per cent of the land is arable, with the rest mostly arid and semi-arid. This is exacerbated by unclear land records, much to the interests of the political and business elite who prefer to be secretive about the land they own (Mazera & Merab, 2014).

In the urban areas land ownership is even worse for the average Kenyan. With business booming in real estate and home ownership, the few with wealth can afford to get land in the urban areas. A vast majority of the urban people do not own land and thus homes. More than 71 per cent of the urban households live in informal settlements with poor amenities and health dangers, resulting into urban poverty. The annual informal settlement growth rate is at 5 per cent and is projected to double in 30 years if not mitigated (United Nations Development Programme, 2007). This neglect has created a sense of deprivation with potential for crime, conflict and insecurity (2014, p. 13).

The analysis of drivers of poverty and inequality above underline their importance for economic growth. They call for attention towards the distribution of opportunities (The World Bank, 2008). Addressing the situation of poverty and inequality afflicting the country and the majority of its people could help lift them out of poverty and contribute to more balanced economic growth.

Informal Economy

A section of Kenya's people live or work under "informal" economy, locally known as "Jua Kali" ("Open air" in Kiswahili). According to the KRA, this sector is expanding as the modern economy shrinks, having grown to 82 per cent against only 18 per cent of the formal sector (Kenya Revenue Authority, 2015a, p. 37). More worrying is that some formal medium and large enterprises have sub-divided into smaller units which sometimes fall under the informal sector (The Kenya Institute of Policy Analysis and Research, 2007). 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 (Economic Outlook 2015, 2015).

Table 4: Growth of Kenyan employment and real average earnings (2000-2012)

	Real Average earnings growth (per cent)	Formal employment growth (per cent)	Informal employment growth (per cent)
2000	4.7	0.4	11.0
2001	8.7	-1.1	7.7
2002	12.7	1.3	10.0
2003	-2.7	1.5	8.6
2004	9.9	2.1	8.0
2005	2.4	2.9	6.7
2006	1.3	2.8	6.6
2007	4.5	2.6	6.1
2008	-10.2	1.8	5.3
2009	-4.7	2.8	7.9
2010	-0.4	2.9	7.6
2011	-8.1	3.4	6.3
2012	-4.8	3.1	6.0

Source: (Bigsten, Kulundu, Damiano, & al., 2014, p. 14)

Kenya's informal sector exhibits potentials to create jobs, raise productivity, and promote growth and fiscal revenues. For instance, Kenya's informal sector averaged 20 per cent of GDP in the 1990s and the potential tax accruable from this averaged 4 per cent of GDP. In 2005, tax collections of the informal sector could be about KSh 55 billion (Mpapale, 2014). However, there is a formidable knowledge gap on the informal economy since, by definition, some or all aspects of informal economic activity is off the formal record. This makes it a hard to tax the sector which is also growing more rapidly (Kenya Revenue Authority, 2015a, p. 37). Kenya's Finance Bill 2018 proposes a 15 per cent presumptive tax to be paid by the informal traders licensed by the county governments. This is based in single business permit fees. This is intended to replace the Turnover tax which was introduced by the Finance Act of 2006 and registered low levels of compliance by the informal sector traders. The presumptive tax, which is an upfront levy, is expected to be an effective way of taxing the informal sector. These only point to one fact: There should be a deliberate interest in understanding these developments in the informal sector.

Illicit Financial Flows

Illicit Financial Flows (IFFs), is a term that became popularly used in the 1990s due to a lot of money leaving developing countries. Illicit financial flows can be broken down into three main types:

- Proceeds from corrupt dealings: e.g. corporations and wealthy elites paying bribes to secure public contracts/permits or declaring false corporate profits, especially by mining or oil exploring companies in order to evade tax payment.
- Proceeds from criminal activities: concealing the origins of illegally obtained money (e.g. from human trafficking or sale of illegal arms), and taking advantage of bank confidentiality to transfer such money to foreign banks, or investing it in legitimate businesses – a process known as “money laundering”.
- Proceeds from commercial tax abuse: corporations and wealthy elites abusing tax by evading taxes (illegal) and/or avoiding (legal but morally wrong) taxes using, e.g. anonymous shell companies in secret places/countries that hide information from tax

authorities about the real owners/beneficiaries. Companies (MNC's) can also over quote imports or under quote exports, to hide the real value of products, and therefore profits – a process known as “trade mispricing” (Waris, 2017).

Globally, Kenya is among those states with the highest Offshore (private household) wealth compared to the total wealth produced in the country (GDP) (Alstadsæter, Johannesen, & Zucman, 2017, pp. 13-14). It is considered that over US\$10.6 billion accumulated illicit financial flows since 1970, have left Kenya, one of the worst cases in Africa. The growing number and activities of banks and financial sectors in Kenya, including mobile money transfer services, make the country a financial hub in the region. It has 43 licensed commercial banks, 12 deposit-taking microfinance institutions, 85 licensed foreign exchange bureaus, 1 mortgage finance company, and 15 licensed money remittance providers. There are also three licensed credit reference bureaus and seven representative offices of foreign banks in Kenya. In 2014, Kenya's \$58 billion in bank assets roughly equaled Kenya's nominal GDP. These regulated financial services also sit side by side with unregulated networks of *hawaladars* and other unlicensed cash-based *hawala* (old Arabian) transfer systems, mostly used by foreign nationals. They lack transparency and operate with minimal, or no Government control.

Legal and administrative loopholes in Kenya, either by omission or commission, have been known to aid IFFs through outright tax fraud, tax evasion, aggressive tax avoidance, tax exemption, and thin capitalisation. Individuals and corporations take advantage of even benevolent acts such as the government's aim of attracting foreign investment, including through arrangements like the Double Tax Agreements (DTAs) and tax holidays, to avoid and evade taxes. Aggressive Tax Planning is one prominent but subtle ways through which individuals and corporations take away capital and consequently Kenya's deserved revenue. Tax evasion and aggressive tax planning in Kenya are increasingly contributing to IFFs, facilitated by a range of opportunities in other countries to dodge Kenya's taxes with reduced or no risk of being detected. Companies and individuals in Kenya are taking advantage of differences in tax laws or rates between Kenya and other countries to transfer part of their wealth to such countries with low rates.

The leaked Panama Papers in 2016 traced business transactions to prominent 191 individuals and 25 companies in Kenya (Kahura, 2017). The Paradise Papers also mention Dr. Sally Kosgei, former minister and the Taita-Taveta University chancellor, in using a Mauritius-based company to buy apartment buildings worth more than KSh100 million in central London (Kanani, 2017). These point to the growing use of tax havens by individuals and corporations in the country to evade taxes and facilitate IFFs. The use of such offshore accounts is not illegal, but has serious moral questions about the motives, source of the funds and unwillingness to invest in Kenya.

The establishment of the Nairobi International Financial Centre (NIFC) and signing it into law on July 21, 2017 creates an avenue for tax dodging (Oxfam, 2017) thus aiding IFFs and undermining domestic resource mobilisation capabilities (Waris, 2014). Such then contradict Kenya's commitment to the Addis Ababa Action Agenda of financing development through domestic resource mobilisation (Mwanyumba, Maranga, & al, 2017). Kenya ranks in a top position in terms of financial secrecy, a further enabler for IFFs (Elhiraika, 2014). This is further exacerbated by poor governance, weak regulatory structures, tax incentives, weak capacities of authorities and Double Taxation Agreements (DTAs) that tend to favour other countries which are parties to the DTAs with Kenya.

Different Categories of Illicit Financial Flows from Kenya

Money Laundering is another form of IFF gaining ground in Kenya at an alarming rate. A 2009 report showed that drug traffickers launder approximately \$100 million per year through the Kenyan financial system. Despite a decree from the Central Bank of Kenya (CBK) regulating the amount of funds to be transferred, information about the clients and monitoring of any suspicious activities by the clients (The Central Bank of Kenya, 2018), banks in the country are still susceptible to money laundering by criminals. The drug barons and other economic criminals like human traffickers and terrorists have perfected the art of circumventing the 2012 Central Bank of Kenya (CBK) laws on money laundering. This is partly because bankers, just like any other human beings, are vulnerable to bribery and corruption. This frustrates the efforts to curb the crime and subsequently the trouble of IFFs in Kenya. For instance, whistle-blowers inside Nairobi-based Charterhouse Bank and the forensic audits commissioned by the Kenya Anti-Corruption Commission (KACC), unveiled suspicious inflows from the Cook Islands through Kenya to New York and other destinations with one account transferring a total of \$2,110,000 between March 2005 and February 2006 to the Wall Street Banking Corporation in New York. Another transfer of \$500,000 broken to 36 transactions, was made to a temple in India, tactfully circumventing the CBK regulation below the \$10,000 daily ceiling (Wikileaks, 2006).

Second-hand car bazaars, real estate construction businesses, supermarket chains, the running of *matatu* commuter transport, running a pub business and buying stocks are easy targets for cleaning illegal money as customers pay in cash. It is easy to create fake transactions and receipts, which are reported as business sales when depositing cash on a daily basis (ibid). The high volume and diversity of cash based transactions, lack of an adequate legal framework to regulate it and the existence of alternative remittance avenues also make it hard to curb money laundering in Kenya.

Ponzi Schemes or pyramid companies offering quick returns for investments also possibly circumvent tax and other related regulations to take money out of the country. Additionally, the crime of poaching in Kenya is steadily increasing with evidence suggesting the collusion of Kenyan security and political officials in the ivory poaching trade. The port of Mombasa is considered an active ivory trafficking hub (Health Poverty Action and Global Justice Now, 2017, p. 2).

Bribery and Corruption

Bribery and corruption are issues we want to single out in treatment even though they are normally summarized as being one category among others with IFFs. The reasons for this focus is that corruption is both part of the IFFs, it enables IFFs and it makes combating of IFFs difficult.

In the Transparency International Perception of Corruption Index Kenya ranks as 143rd out of 180 countries and territories surveyed. Kenya's score of 28 points out of 100 on the 2018 survey means the country lies in the more corrupt half of the scale (Transparency International, 2018). Bribes, extortion, and political considerations are known to influence the outcomes in large numbers of civil cases in the country (US State Department, 2015, pp. 23-24). Little progress has been made in prosecuting past corruption cases, and the slow pace of reform in key sectors seem to be indications of lack of political will to combat the vice. This has also tended to negatively affect revenue collection and spending in Kenya.

Corruption, like the illicit capital outflows from Kenya, deprives the country of the much needed revenue. It is also a part of the IFFs because annually officials, individuals, and corporations stash illegally acquired funds, now totaling about \$8.4 billion, more than the country's stock of debt, in highly secretive foreign banks abroad (Ndikumana & Boyce, 2012b). This has depleted the already meager public resources and led to suboptimal investment and rising debt levels. This also undermined tax moral accountability between citizens and the State (Letete & Sarr, 2017). A number of clear corruption cases such as: the Goldenberg Scandal in the 1990s, the National Youth Service-Scandal in the 2017-2018, the Anglo Leasing Scandal, the Kenya Power and Lightning Company fraud (1999-2002) and the Land Deal Scandal, are some of the prominent cases to cite.

To avoid confiscation of the illegally acquired assets, or due to fear of political instability, the perpetrators transfer the funds to places that are out of reach to the government. Ways of 'cleaning' the money include using the cash to buy real estate abroad, or investing it in legitimate businesses through buying shares in multinational companies. The 2004 Kroll Commission identified over KSh130 billion (\$1.3 billion) hidden by Kenyans in nearly 30 countries using a web of shell companies, secret trusts and front men (Kahura, 2017). Such money is taken away from the country's revenue base and becomes unavailable for investment to address Kenya's development needs for minimizing poverty and reducing inequality.

Education

An unequal system affects an individual's or social group's life chances (Ololube, Onyekwere, & Agbor, 2015). What becomes of a child in society is highly likely to be determined the family into which the child is born; given that well-positioned parents tend to ascribe more influence in the society and vice versa (OECD, 2005). Education is one tool that enables social mobility (Abrantes, 2012) 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 work, increased participation and autonomy (Oxfam, 2017). Through education, young people try to improve their financial situation and that of their families. Many educated young people emigrate domestically, or abroad in search of opportunities. 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 (Republic of Kenya, 2012).

However, this advantage cannot be accorded to many youths in the country in the current circumstances. 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 World Bank, 2018). The expenditure gap in education in Kenya, resulting in loss of quality, has been filled by the rise of private schools that have made education another costly service for the ordinary Kenyans. In a bid to obtain quality education, the rich spend a fortune educating their children. For instance, at Brook House School in Nairobi, children in early years pay \$2,240 a term and boarders between years 12 and 13 cough up \$9,300. Many Kenyans, who can afford, send their children overseas or better schools within the country (Stanbic Bank, 2017). The impressive increment in enrolment in primary education has not also translated in similar secondary education enrolment because just over 14 per cent adults aged 25 years and above have completed secondary

education. This makes Kenya fall below other countries with comparable poverty rates (The World Bank, 2018).

The introduction of free primary education has seen a trade-off in quality that children from the poor households face. One-third of children fall below the learning threshold, reflecting the large number of failing schools in areas servicing predominantly low-income children. Children from the poorest households are seven times more likely than those from the richest households to rank in the lowest 10 per cent of students. Almost half of the children sitting in Grade 5 classrooms are unable to perform basic literacy and numeracy tasks. More alarming still is that half of the children who entered primary school have dropped out by this stage (Watkins, 2013). Disparities in learning achievement mirror wider inequalities in education and society. That reflects the deficit in learning prospects as far as the education system in Kenya is concerned. Added to these, nearly a million primary-school-aged children are still out of school-making Kenya the ninth highest country in the world (Oxfam, 2017).

As a key for redistribution, this kind of education system cannot contribute to build Kenya's economic success. It will not generate additional jobs needed for young people joining the labour force over the next decade if systems are not fixed. Furthermore, education planners have to look beyond counting the number of children sitting in classrooms and start focusing on the quality of learning, if the education system is to produce more meaningful change in terms of upward social mobility. This also calls for an overhaul of the system through allocation of financial resources and teachers to schools to improve standards and equalize learning outcomes, in order to break education deficiencies that perpetuate inequality and poverty.

Social Protection

Social protection is a powerful tool in fighting poverty and promoting inclusive growth. Kenya shares in the United Nations' Social Protection Floor Initiative and the African Union's Social Policy Framework (SPF 2009) which advocate for social and income security measures. These commit the government to progressively realise a minimum of: essential healthcare and benefits for children, informal workers, the unemployed, the elderly and people with disabilities (Republic of Kenya, 2012). Kenya has one of the worst public services in Sub-Saharan Africa as investment in social security provisions for the poor are still low and in some cases non-existent (United Nations Development Programme, 2013). What is available is hardly adequate and sufficient when considered in relation to the demographic structure of the population and their needs. The first reason for this is that systems of social protection depend on social security contributions, i.e. social security contributions are the commonest type of social security. On that base, in Kenya only those with income from the formal sector can benefit because they are funded by members and legally protected through Acts of Parliament that set the regulation for administering and supervising these schemes.

At the same time, Kenya is faced with problems of demographic transition in which there is a growing number of young people, unable to get a good education and later jobs. This makes them unable to meet their own basic needs and those of very young and elderly, as in the early times with traditional systems. The changing socio-economic trends have also led to rural-urban migration and a break-up of the traditional forms of intergenerational solidarity that offered support for the vulnerable (Andebo, 2014a). To further compound the grim reality, there is low

proportion of government social spending and the benefits still go to high income groups rather than the poor (International Monetary Fund, 2014a, p. 20).

The government attempts to make up for those deficits: According to the “Vision 2030”, the country has now set policies and actions to create opportunities to improve and sustain people’s lives, livelihoods, and welfare, providing income through decent work. Access to affordable health care, social security, and social assistance (Kenya Vision 2030, 2012) are key agenda in this strategy. The 2010 Constitution of Kenya (Article 43) provides for every person’s right to social security catered for by the State to persons who are unable to support themselves and their dependents. National policies on children, the elderly, youth, gender and persons with disability have been developed to address the needs of the vulnerable sections of society. These aim at reducing poverty and combatting inequality.

The Government of Kenya has further been engaged in offering humanitarian relief (in the form of food aid and or cash), in response to crises, such as drought and floods. These are considered as non-contributory schemes of social protection for the vulnerable. These provisions notwithstanding, the non-contributory support for the orphans and vulnerable children, older persons and persons with disabilities does not adequately address all their basic needs. It is also limited in terms of the numbers of these vulnerable persons it serves. For that reason, there is need for more revenue and enhanced administrative and policy measures, in order to solve this challenge of social protection in the country.

Dependence on External Financing

In order to cover state expenditure, also in the areas of education and social protection, Kenya’s government needs to make up for the lack of funds by raising money at financial markets. This leads to an important sub theme of this research, namely the issue of dependence. Because of the obligation to repay debt or to pay interest, dependence on external financing is a further key driver of poverty in Kenya. The table below is a 15-year analysis of the total public debt Kenya owes (The World Fact Book, 2016). Despite minor variations, it generally reflects a growing trend.

Table 5: Kenya’s External Debt 2000-2014

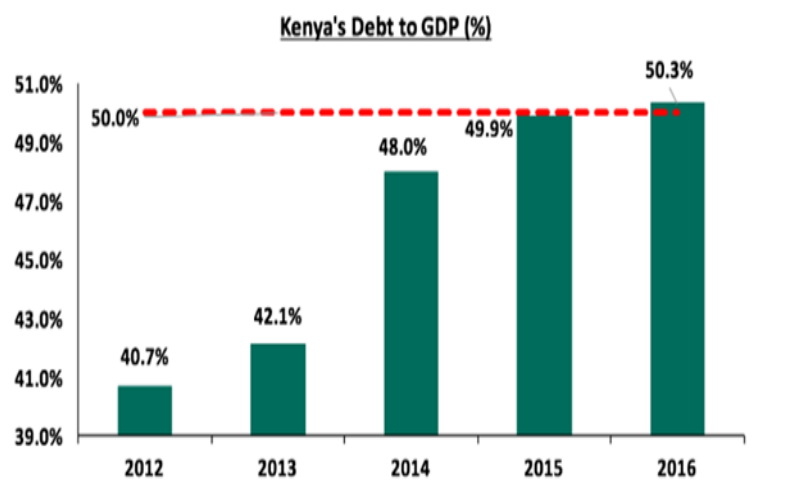
Country	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Kenya/Debt	6.5	6.2	8	5.7	5.92	6.79	7.39	6.68	6.71	7.08	7.8	7.94	8.95	11.01	11.96

Source: CIA World Fact Book - Unless otherwise noted, information in this page is accurate as of June 30, 2016

The Institute of Chartered Accountants in England and Wales (ICAEW) estimates Kenya’s debt portfolio at KSh 4.7 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 (Faki, 2017). This is believed to have doubled in the past five years, with some 20 per cent increase recorded in one year alone. Foreign investors hold a good portion of this debt, and this gives them leverage in influencing policy trends to avert risks to their investments (Sunday, 2018). Part of this influence is to direct investments to priorities that can enable them get back their money, but not necessarily to programmes of poverty eradication. The debt burden owed to lenders is expected to increase (Otiato Guguyu and Domnic Omondi, 2018). This trend threatens

the country's economic recovery and growth. There is also the fact that borrowing is shifting the loyalty of the government towards lenders, making it neglect its responsibility to account to the citizens. This is also affecting the country's credit worthiness and debt sustainability (Sanghi & Johnson, 2016).

Graph 2: Kenya's Debt to GDP (per cent)



Source: Trading Economics: Central Bank of Kenya.

With Kenya borrowing from both domestic and foreign sources, it is difficult to establish a specific link between national debt and private and corporate wealth. This also raises the question of: who profits from the debt and interest payments made by Kenya? The accumulation of these debts is also a symptom of the country's dependence external funding with adverse effects ranging from misallocation, misuse and the tendency of the donors to pursue their own agenda. In such circumstances, one would wish that Kenya devises ways to disengage from such unhealthy relations. This implies that the country should have another steady flow of income to be able to do that. The question is: how can the country be able to raise that kind of revenue for its development agenda?

Damage to the Common Good

This chapter has highlighted the problems of poverty and inequality in Kenya. It has identified that inherent in these problems are also the issues that lead to reduced tax revenue due to the informal economy, IFFs, bribery and corruption. In spite of the possible solutions through education and social protection policies, it has also highlighted that these need to be funded. With limited opportunities for the mandatory social security contributions and tax money, the state is incapacitated, thus forcing it to borrow unlimitedly with unintended consequences.

One might wonder why these issues are a matter of concern in this research dealing with limited revenue and taxation, when some of these are legitimate and acceptable ways and others are already providing solutions to some of the problems highlighted. However, a deeper analysis in regard to taxation and improved revenue collection reveals that the even the solutions indicated in form of education, social security and borrowing are wrought with concerns that demand attention to improve them for better functionality. The IFFs, corruption, bribery deprive the country of the benefit of adequate revenue collection. Education and health service provision,

among other public services, are already faced with poor quality which in turn worsen the condition of the poor by exacerbating inequality. Borrowing sinks the country into dependence, making it lose sovereignty and the freedom to attend to its actual challenges of national interest. It benefits the interests of few, especially private and corporate wealth holder and also foreign countries. An overview of the above issues shows that if they are not properly attended to, there is an imminent and increasing danger and damage to the Common Good in several intricate ways. A more sustainable solution is required for Kenya to come out poverty without creating unnecessary inequality.

4 Taxation Legislation and Policy in Kenya

History of Taxation in Kenya and Later Developments

The Kenyan society before colonialism shared wealth in the form of contributions from household production, like the crop harvests or trade benefits, remitted to the house of the chief of the tribe or community. Foreign traders of ivory, slaves and other commodities passing through the territory paid tithes, or tributes for the right of passage and protection. These taxes acted as a form of redistribution. The chief and the tax payers easily compromised as the taxes were affordable and reflected the principles of efficiency, simplicity and equity, despite some form of imperfections (Waris, 2007).

The Omani Arabs, the first prominent group of people from outside to settle on the coast of East Africa, then introduced the *zakat*, *jizya*, *sadaka*, *khums* (all based on Islamic traditions), customs levy, capitation tax on each individual, as well as harbour fees, paid by the local coastal communities and the in-coming traders. The Portuguese who later took over from the Omani Arabs continued taxation but collected these in more harsh and violent ways (Waris, 2007).

The British colonial administration in Kenya in the early 20th century, imposed the hut tax, poll tax, land tax, graduated personal tax and income tax on the people of Kenya. These taxes had the objective to facilitate the exploitation of indigenous labour and natural resources through trade and land appropriation (Frankema, 2011).

At independence Kenya inherited income tax and also introduced corporation tax, trade taxes like the excise tax and later value-added tax (VAT). The country's tax system and laws have been evolving with the expansion of the tax base and introduction of various forms of taxes (Tax Justice Network, 2009) (Tarus & Njoroge, 2015). It has to be argued that some of the colonial and independence taxes had no consideration for the principle of equity as the motive was to use African cheap labour to produce on settler farms and penalties for tax offenders were harsh (Waris, 2007).

Taxation Policy and Deficits

One of Kenya's best tools for improved tax revenue is the country's tax policy. It therefore becomes important to consider how Kenya's tax policies are positioned to achieve greater revenue collection. Given the complex economic and political environment, the country's tax policy becomes a focus of scrutiny. This sub-section takes a look at the laws regulating taxes,

levies and tax-like contributions. It also assesses the need for reforms, or effectiveness of such reforms that have been done.

Kenya's long-term development strategy, "Vision 2030", true to its underlying neoliberal inspiration (see above, Key Assumptions) emphasises competitiveness in every footer of its pages in the entire document. As an important policy document, this becomes the goal of the country; in getting a competitive edge in terms of developing the country and also leading among others in terms of development in the region. Going by its own logic, this of course, includes tax competition, which is why there is (not surprisingly!) little treatment of taxation and related issues in this document: The "Vision 2030" does not mention "tax" or "fiscal" as part of the strategy while "revenue" appears only in a discussion to develop the informal sector, to be eventually taxed (p.10) and revenue sharing through devolved governance system (p.22). The Second Medium Term Plan 2013-2017 in the document also highlights "tax reforms", but this does not change the impression that, overall, the tone of the document indicates that the priorities of the Kenyan government regarding the country's development are elsewhere other than through domestic revenue mobilisation.

The "Vision 2030" guides budget statements, with the most current (2017/2018 Budget) setting a goal of: "Creating jobs, delivering a better life for all Kenyans." (Rotich, 2017). But again true to its underlying assumptions, the "Vision 2030" strategy places Foreign Direct Investment at the heart of the development model, by adopting the export-led and private sector-driven strategy. This promotes private sector development which requires macroeconomic stability, achieved by a mix of factors ranging from inflation, interest and exchange rates, monetary policy as well as fiscal policy." (Waris, Kohonen, Ranguma, & Mosioma, 2009, p. 22f.). In consequence, the orientation towards private sector business implies that Kenya's tax policies continue to support the status quo that favours the rich against the poor.

The Corporate Plan of KRA, the tax body, places "paying taxes" within the strategy of creating an inductive business climate (Kenya Revenue Authority, 2015c, p. 18). This again implies that the KRA revenue collection targets are guided by how well they contribute to supporting the business climate.

From the above, one clearly sees that there is limited, or no deliberate policy and strategic effort being made in the country to promote taxes as a key source of raising domestic revenue to achieve Kenya's immediate and long term development goals. This happens against a backdrop in which the country urgently needs to invest in services for the majority of its population and the challenges overdependence on external financing have imposed upon it. Raising revenue from own source would be the best way to go, in this scenario, with limited negative impact on the current generation while also accommodating the needs of the future through proactive policies and plans.

Tax Legislation and its Deficits in Kenya

National Legislation

The basis of Kenya's tax legislation is the Constitution of 2010, especially Article 209 which provides two the levels of government (national and county), each with the relevant powers to impose taxes and charges:

1. According to 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. A county government (according to Article 209; Section 3 a-c) may impose property rates on property or estates, entertainment taxes and any other tax within its territory, as authorised by an Act of Parliament.

There are a number of relevant legal instruments for taxation in Kenya. Such include the: Tax Procedures Act, 2015 (Mutegi, 2015), Capital Market (Amendment) Bill (2016), Finance Bill, Prevention of Terrorism Act, the Proceeds of Crime and Anti-Money Laundering (Amendment) Act (POCAMLA) and the Public Finance Management Act. Due to the process of devolution, the counties are also entitled to raise local revenue, without negatively impacting on national economic policies and activities across county boundaries. With this freedom comes the challenge of double taxation between the nation and counties which may raise the cost of doing business (Rotich, 2017, p. 10).

The Kenyan tax system relies heavily on two sources of taxation: Income Tax and Value Added Tax. The various types of income tax include the pay-as-you-earn (PAYE) on wages and salaries, Personal Income Tax (PIT- taxes on rent, profits, dividends, interest, pensions, royalties, or professional fees) and Corporate Income Tax (CIT). The second main source of tax revenue in Kenya is taxes on Turnover, Consumption, Goods and Services, called the valued added tax (VAT), introduced in 1990 and charged to the sale of goods and services at each stage of production and distribution chain. This tax is on the difference between what a producer pays for raw materials and services, and what the producer charges for finished/final goods and services (Institute of Economic Affairs, 2012a, p. 27).

Apart from these two main sources, 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.

The Kenyan Government reformed the laws and processes for the Customs & Excise duties to simplify them. For instance, the rate for the corporate income tax (CIT) was also lowered from 45 per cent to 30 per cent (30 per cent). The businesses make self-assessments and declare to the KRA their incomes to be taxed (Institute of Economic Affairs, 2012a, p. 26). However, lowering the rate made the CIT to become less progressive and almost a flat tax, as businesses with lower income pay relatively more than those with higher income. The self-assessment and self-declarations for PIT and CIT to Kenya Revenue Authority (KRA) 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 since the auditor is only checking the tax assessments.

Legislation on Wealth Relevant Taxation

On the background of what has been said above to the importance of wealth as a source of inequality, it is, therefore, important for the government and KRA to target the wealthy as a source of increased revenues for a number of reasons: their affairs like aggressive tax planning are complex, they have high potential for revenue contribution, and when they comply with taxes the impact of their behaviour on the integrity of the tax system is great (Ernst & Young, 2009).

However, increasing tax compliance among the wealthy is challenging because economic elites have great political influence as some are members of the political elite. For example, in Kenya they successfully resisted the government's attempts to implement a capital gains tax on the sale of property and shares (Gachiri, 2015) before reinstating it again shortly afterwards in a weakened manner. Some Kenyan politicians also successfully lobbied for the introduction of VAT exemptions for lighter aircrafts in 2013, leading to VAT exemptions for heavy aircraft as well with the argument of making travels less costly (Oxfam, 2017). Such indicate the intricate circumstances that the KRA operates in for tax legislation, that need to be unchallenged. President Uhuru pointed to the need for the rich to pay taxes commensurate to their lifestyles (Kimathi, 2018) and KRA has been making efforts to tax the rich. However, these efforts have sometimes been thwarted by some loopholes and administrative loopholes such as the efficiency of managing appointments to the Tax Appeals Tribunals (Kamau, 2018).

Given the importance of land for wealth in Kenya, now some explicit considerations on this are given: The property tax rates in Kenya are currently levied only on land (real estate) while improvements (e.g., buildings and structures) are not taxed (World Bank Group, 2003) (Mugendi, 2012, p. 25). The Rating Act (cap 267) revised in 2012[1986], and the Valuation for Rating Act (cap 268) allows local authorities to tax either land or land and improvements (e.g., buildings). Similarly, Article 209 (3) (a) of the 2010 Constitution of Kenya gives County governments the power to impose property taxes. The main argument against taxing improvements on land is that this will discourage investment and lead to underutilization of land. Consequently, property tax in Kenya has been restricted to land and rent. The rating is done using either area rating, or agricultural rental value rate, or site value rate, or a site value rate (Olima, 2013).

Furthermore incomplete land registration and exemptions of various categories of land affect implementation of property tax in Kenya. Some of the Public land (government land and council trust land) is not yet "registered" and excluded from valuation roll although technically this land should be listed on the public valuation roll and be liable tax. Freehold and agricultural land less than 12 acres is exempted. Property 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 also exempted as they are not for profit (Olima, 2013, p. 18). The question is, what if these institutions use the property for rental income or profit? (Republic of Kenya, Law of Kenya, 2015). These say a lot of things about the regulations and strategies for land registration and related tax policies, calling for a reform of the laws governing property tax.

Taxation of real property is justifiable as, the owners do not have to work to get the income and the taxes on such 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 (Iara, 2015). Besides, taxing property becomes a democratizing instrument with the potential to transform infrastructure financing in the country. It is also empowering in self determination to raise domestic revenue and drive local development agenda.

Legislation on Illicit Financial Flows in Kenya

An important question to address at this point is: 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? Kenya has following laws to guard against individuals and corporations that seek defraud the country by taking capital elsewhere:

- 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

These legal provisions are reinforced by the creation of institutions like the: Financial Reporting Centre (FRC) (Government Printers, 2016), Asset Recovery Agency (Mokaya, 2017) and the Africa Academy for Tax and Financial Crime Investigation, sponsored by the OECD, Germany, Italy and Kenya.

For a more relevant discussion, we assess the Proceeds of Crime and Anti-Money Laundering Act POCAMLA 2009 Revised 2016 [2012]. This is the principal legislation to combat money laundering and provide for measures for recovery of proceeds of crime. Its amendment was signed into law on March 3, 2017. Through it, financial institutions are supposed to submit suspicious transactions and cash threshold reports to the Financial Reporting Centre (FRC), which uses the reports to gather financial intelligence and aiding the authority of the FRC to penalize offenders.

However, the initial version of the POCAMLA did not indicate tax evasion as a “major profit generating crimes” and did not prohibit anonymous or numbered accounts explicitly. It did not adopt the definition of ‘beneficial owner’ as stipulated by the Financial Action Task Force (FATF). There are no clear provisions of how to deal with professionals (lawyers, notaries and other independent legal professionals) who sometimes facilitate Illicit Financial Flows (ESAAMLG, 2011). These weaknesses impacted the effectiveness of the POCAMLA in dealing with money laundering and other related crimes, until it was amended in 2017 (Cheramboss, 2017). This means it did not effectively deal cases due to these loopholes. Even in its amended form of 2017, it still has a number of loopholes, making the combating IFFs in Kenya difficult. Such loopholes give a leeway to private, corporate and criminal wealth holders and their lawyers and tax consultants to exploit.

International Legal Norms and Taxation in Kenya

Kenya, as a member of global community, has many of her laws and actions guided by what goes on around the world. Such include her tax laws. This is right because the country interacts with others in matters of trade and other economic activities like the IFFs. Kenya also needs to establish links and safeguard her interests, all the more need for international engagements and legal regimes. Thus, the country is a member of regional and global groupings that can also

support in matters of taxation and tax offences. At home, its laws have provisions that can accommodate such cross-border dealings.

According to Article 2 (6) of the Constitution of Kenya, any treaty or convention ratified by Kenya forms part of the Kenya law. Kenya is a member of the Financial Action Task Force (FATF), the global standard setting body on AML/CFT and 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 (Kimani, 2016).

Kenya is a signatory to the East African Community's Protocol on Preventing and Combating Corruption (US State Department, 2015) and the African Union (AU) Convention on Preventing and Combating Corruption (2003) (ESAAMLG, 2011). For instance, Kenya has also engaged with Switzerland (2016) in combatting IFFs through Memoranda of Understanding (MoU) for mutual legal assistance. This is aimed at an improved and enhanced co-operation between the two countries in fighting corruption and to facilitating the repatriation of stolen funds (Muga, 2017). This MoU moved a step further in 2018 when representatives from the two countries signed a deal in which Switzerland agreed to give back to Kenya KShs72 billion hidden by corrupt Kenya officials in Swiss banks. Each country benefits from such deals and for the case of Kenya, this contributes positively to combatting IFFs which has plagued the country for many years. Kenya needs to have a comprehensive domestic law on mutual legal assistance to be able to benefit better from such MoUs (ESAAMLG, 2011).

Kenya is also a member of the East African Community (EAC) and the Common Market for Eastern and Southern Africa (COMESA). These two regional bodies have, as one of their priorities, the interest to promote trade among member countries. Amidst the economic advantages these offer, there are concessions that have implications for revenue collection for Kenya. For instance, the EAC members proposed the Single Customs Territory (SCT) system will to facilitate trade between member states by electronically connecting the member countries' custom clearance systems. Among the COMESA members, an action plan has been developed and agreed between stakeholders. As a result, the preparation of the implementation of the COMESA Regional Customs Transit Guarantee Scheme is at a satisfactory level (Kabuga, Alluy, Mukama, Sirengo, & al, 2017, p. 15).

Regarding Customs, Kenya's policies are part of the East Africa Community Customs Management which requires that national customs interventions are preceded by consultations with the other EAC member states. It also has to take into account the Common Market Protocol, aiming at a reduction of tariffs between EAC member states in order to facilitate intra-regional trade (ICPAK, 2016, p. 24+26). Last not least, there are preferential rates on import duties for members of the EAC and COMESA (Oxford Business Group, 2016a). These have implications of reducing the country's revenue, amidst the benefits they offer, which may not be comparable to what would have been the rightful individual gains without such commitments.

Kenya has also engaged in international treaties and Tax Information Exchange Agreements (TIEAs). For example, Kenya is a member of the African Tax Administration Forum (ATAF), signed by 34 African states. Since 2012, Kenya initiated TIEAs with Guernsey, Seychelles, Singapore, Bermuda, Jersey, Cayman Islands, Isle of Man, Malta, Liberia, Liechtenstein and others but had not concluded and signed these by 2014. These Tax Information Exchange

Agreements (TIEAs) designed to enable the exchange of information between or among states for purposes of enhancing tax compliance (Hearson, 2015, p. 25). Kenya has also signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which includes the mentioned countries, providing for the equivalent exchange of information on request. The TIEA encourages joint tax audits as a tool in fighting tax fraud, tax evasion and aggressive tax planning (PwC, 2012). This helps to attract and facilitate investment and advance tax compliance. However, some of these agreements with partners from developed (capital-sending) countries are based on unequal terms and interfere with Kenya's fiscal policy since they tend to take precedence over domestic law (Hearson, 2015, p. 9ff.+17).

The OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, mentioned earlier, provides for all forms of administrative assistance in tax matters: exchange of information on request, spontaneous exchange, automatic exchange, tax examinations abroad, simultaneous tax examinations and assistance in tax collection. This Convention allows for Automatic Exchange of Financial Account Information and country reports in Tax Matters. Kenya has signed it convention but has not yet ratified it (Oguttu, 2017) but can consequently participate in the Global Forum on Transparency and Exchange of Information for Tax Purposes, which it joined in 2010. Kenya now follows the OECDs rules on transfer pricing and documentation (Oxford Business Group, 2016a).

5 Administrative issues

For the Kenyan government to maximise its revenue collection from taxes and tax-like contributions, it should make the necessary reforms in tax administration in the ever changing times and circumstances. To effectively deal with this, it is important to consider the global and local environment in tax administration that determines how to modernise tax agencies and reform the system and the rules (Kabinga, Alt, & al., 2016). 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. Most attention is often paid to the resource problem, i.e. the need to have sufficient trained officials, adequate information technology and so on. It is noteworthy that without a sound implementation strategy, even adequate resources will not ensure success, and without sufficient political support, even the best strategy cannot be effectively implemented.

Administering the tax laws of the country should serve the public interest, i.e. it should meet the needs of the government and the people of the country served by the government. Tax administration also takes care of: assessing, collecting and auditing government-imposed taxes, as well as preventing fraud; – surveillance of goods imported and exported by customs (in order to assess, collect and monitor the various duties linked with import and export, but also to protect the society through quality, i.e. the quality of food, health, cultural inheritance, protection against falsity, etc.); – assessing and collecting social security contributions (Alink & Van Kommer, 2016). With the enormity of issues to tackle, it is important to assess the situation of tax administration in Kenya.

Staff Levels

One of the three ingredients mentioned for effective tax administration is the adequacy of resources. That includes the human resource (staff) needed for effective management and influencing the other 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 (Kabugo, Alluy, Mukama, Sirengo, & al, 2017). The Sixth Corporate Plan publishes the following as staff status (approved and current) within KRA.

Table 6: KRA Staff Levels as of 24 June 2015

DEPARTMENT	APPROVED ESTABLISHMENT	CURRENT STAFF IN POST
Commissioner General's Office	20	21
Customs and Border Control Department	1,905	1,457
Domestic Taxes Department	2,203	1,509
Investigations and Enforcement	207	179
Corporate Support Services Department	1,532	1,046
Strategy Innovation and Risk Management	536	293
Ethics and Integrity	26	7
Legal Services and Board Coordination	77	36
Kenya School of Revenue Administration	76	47
Internal Audit Department	36	34
TOTAL	6,618	4,629

Source: (Kenya Revenue Authority, 2015a, p. 74)

The table illustrates that the largest operative departments are Customs and Border Control and Domestic Taxes while Strategy, Innovation & Risk Management and Investigation & Compliance are among the smallest. Plans to fill positions and increase staff numbers is yet to come. Hiring short-term staff on a “hire and fire” basis is rather tricky, considering the rising levels of corruption and also questions about confidentiality regarding clients.

One of the KRA staff interviewed laments that understaffing and high turn-over is affecting efficiency, since most newly trained staff move to organizations “for greener pastures” after orientation (Kenya Revenue Authority, 2009, pp. 37-22). This has a link to staff satisfaction with remuneration and motivation. As for the tax body, it is connected with the amount of revenue collected.

Appropriate staff motivation and remuneration strategies would attract and retain competent recruits on the job. Proper plans for remuneration, promotion, welfare packages, pension, etc. would motivate staff and minimize staff dissatisfaction which seems to be high and possibly on the rise (Kenya Revenue Authority, 2015a, p. 60f.).

Information and Communications Technology (ICT) in Tax Administration

In the modern times, it is not only enough to say knowledge or information is power. How that information is obtained, processed, stored and used, has a great bearing on how useful this

information becomes. This means, the appropriate use of the modern technology in information and communication is of paramount importance.

One of the deficiencies in Kenya's tax system is proper information management for better assessment and revenue collection. Gathering data and managing the information about all the potential and actual tax payers in the country is very essential, if the country's tax body is to succeed in generating more revenues. Kenya's "Vision 2030" planned to coordinate government levels and agencies by the national ICT Authority, created in 2013. KRA aims to benefit from the "integration and interoperability" through "digital government" to enhance revenue collection (Kenya Revenue Authority, 2015b, p. 21). Through the Strategy, Innovation and Risk Management Reforms and Modernisation Programme, the KRA has been introducing new technology in data management. The various departments of the KRA like the: Customs and Excise department, registration, Risk Management Systems, Enterprise Risk Management Framework, among others, were listed to benefit from new technology (Kabugo, Alluy, Mukama, Sirengo, & al, 2017), (Kenya Revenue Authority, 2015a, p. 47.). The ICT has the advantages of making tax administration cheaper, easier, transparent and more accountable. This in turn improves equity, fairness, honesty, uprightness, integrity and impartial application of the law (Kenya Revenue Authority, 2015a, p. 53).

The use of ICT and other investigative means helps in generating useful data and managing it (Kenya Revenue Authority, 2015a, p. 46). To modernize and integrate tax administration would rely on ICT greatly. This has certain benefits in terms of effectiveness, efficiency and serviceability for a high level of client's satisfaction, increased tax compliance and consequently better revenue collection (Alink & Van Kommer, 2016). The goal of tax integration is to gain strategic, tactical or operational advantages, including even across geographical boundaries.

The Kenya Revenue Authority acquired computer software that is supposed to help process, generate and store information about the tax payers. The new software established a database which stores information on taxpayers and can be used to generate, or access the information as required through its uniquely assigned personal identification numbers. At the moment, the country has information on 1.6 million taxpayers in this data base and they use this to pay taxes and file tax returns (especially for PIT and CIT).

The improvements mentioned notwithstanding, the new technology for ICT needs to be manned properly in order to achieve its intended results. At the moment, information on an estimated 8.1 million potential tax payers is not contained in the Personal Identification Number (PIN) data base. Data on a number of taxpayer categories like Boda bodas, farmers, SME owners, landlords, etc. is not properly filed in the database. Information on land registration, the HNWI's and their taxable assets is scanty. The tax regime has come under criticism for concentrating on taxing only salaried people and consumption and not expanding businesses in a more appropriate way, giving the impression that the tax system burdens the poor more. Small enterprises are accused of reporting nil returns when they continue operating, a sign that they make profits. All these are attributable to "filing tax returns". This makes it difficult for the country to appropriately reach all tax payers and collect the revenue that is due. It also affects the sharing of information which Kenya has committed to do with some countries as per the Tax Information Exchange Agreements (TIEAs) the country has signed.

Caution would be necessary in operating the ICT systems, as none seems to be fraud proof. Documents showed that Kilifi County in Kenya lost KSh 43 million to a cartel involving

unscrupulous county government officials who manipulated the integrated financial management system (IFMIS) (Leftie, 2016). The Treasury Single Account introduced in 2017, still had a number of control weakness that could be misused for fraud. ICT use has a myriad of issues ranging from data access, data protection and privacy concerns, synchronizing data (Kenya Revenue Authority, 2015a, p. 46f), internal and external data security, data privacy versus transparency issues. The government and KRA established an improved system of data management, storage, and dealing with huge amounts of data (Office of the Auditor General, 2015, p. 19). However, it would be more efficient if the information could be controlled and accessed from one source. This would serve the country in improved revenue collection, information management and administration while serving other government departments with information as well. It would increase the confidence of people and restore their trust in the workings of a more efficient government system. The system KRA wants to use for data management should also have a way of punishing taxpayers who want to avoid paying taxes in an upright and fair manner (Kenya Revenue Authority, 2015a, p. 53).

It is noteworthy that part of the challenges of the ICT use in tax administration is in the use of the iTax system that KRA has introduced. According to one of the key informants in the research, many Kenyans are not conversant with the use of the computer- and internet-based platform, leading to delays in filing their tax information and attracting penalties which they could avoid, had the system been friendlier to use. This calls for a deliberate effort by the government to establish ways for making the public know, not only the benefits of such an improvement but also how to use it to provide the required information.

Issues linked to the Taxation of Wealth and Real Property

As in tax legislation, there are problems in collecting taxes from real property. To address this problem, KRA initiated a Real Estate Revenue Enhancement Initiative (Kenya Revenue Authority, 2015c, p. 50). KRA's effort involves amendments to the Income Act, e.g. for a monthly simplified flat rate tax regime on gross rental income amongst individuals as well as administrative and enforcement strategies.

Unlike for pay-as-you-earn (PAYE) based on available information from employers and VAT, determined by consumption patterns, the KRA has limited or no access to income and information on wealth ownership in Kenya and thus income accruing to the wealthy. Some provisions exist in Kenya's tax legislation to tax wealth. Such include duties and lease rates charged on wealth relevant assets, withholding taxes made to overseas companies before the money leaves the country (Deloitte, 2017), capital gains tax charged on profit realised from the sale of an asset like stocks, bonds, precious metals and property. However, transfer of securities traded on any securities exchange licensed by the Capital Markets Authority is not chargeable to tax. Capital Gains Tax (CGT), is complex since it is done when an asset sells for a higher value than it deserves and becomes more complicated when there is high inflation rate (Hearson, 2015, p. 22). As indicated above already, the situation is worse when it comes to land ownership. But in all cases, moves towards a higher ownership transparency have been resisted by those in the private sector who view this tax as punishing investors or violating ownership rights (Tax Justice Network Africa; Christian Aid, 2014, p. 65). In consequence: even if there are legal provisions to tax high income and wealth, implementation and collection has been contested (Rotich, 2017, p. 39).

Transparency

The KRA has published the names of the largest private and corporate taxpayers in Kenya from time to time, giving the impression that the country has a lot of transparency in its tax system. This then raises the question of how much data KRA has about these rich tax payers for taxation purposes. As a matter of fact, the tax administration (KRA) can only administer, investigate and enforce what it has access to – and this is in most cases what private and corporate wealth holder and their tax lawyers choose to reveal.

The Charterhouse Bank case for involvement in money laundering activities and successfully refusing to share required information with the KRA, even when required by law, shows that there is lack of transparency which is intended. This happened even though there were substantial grounds to suspect that a transaction was part of a laundering operation. This argument is confirmed by another case involving the Standard Chartered Bank, found at fault by a Nairobi High Court in 2002 and sued for KSh 600 million, for breach of confidentiality when it reported to the authorities a large cheque deposit from one of its customers from the Customs. Although the bank proceeded to win the case at the Court of Appeal in November 2004, it proves that the law sometimes favours criminals and thus promotes lack of transparency in regard to issues of wealth. 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 (Kenya Laws, Revised 2009, pp. 112-114). It allows access to information about such a company's activities with the subsidiary companies. However, due to legal loopholes such as the separate personhood, it is difficult to pierce the veil of secrecy, or lift the corporate veil, separating the companies and their owners. This is a challenge to the KRA in monitoring and establishing a comprehensive system of oversight to obtain, process, utilize and share the required information (OECD, 2016). Information on beneficial ownership is crucial ahead of all taxation efforts. The legislative deficits, ambiguities backed by lack of transparency and lack of resources constitutes a severe problem for the Kenyan taxman while they facilitate the illicit, illegal and criminal wealth holder's activities.

To make any headways in fair taxation and curbing tax related fraud, the KRA has to find appropriate ways of dealing with the issues of secrecy that surround businesses. For example, increasing the number of tax audits on the spot, ideally, if international interests are concerned, in cooperation with other tax administrations from the destination of money outflows from Kenya.

Corruption in the Kenya Revenue Authority

The Kenya Revenue Authority (KRA) was established by an act of parliament and became operational on 1 July 1995. Being semi-autonomous, KRA was designed to be less vulnerable to political interventions and to have the leverage to recruit, retain, dismiss and promote quality staff by paying salaries above civil service terms. This was intended to motivate staff and reduce corruption. However, it has emerged that the KRA is no stranger to fraud. Bribery is so common that it is considered a regular part of the compensation of tax officials (Kenya Revenue Authority, 2015a, p. 13). Surprisingly, the KRA partners with the Ethics and Anti-Corruption

Commission (EACC) to assess corruption status among state bodies (Kenya Revenue Authority, 2015a, p. 66). It also aims at recruiting, engaging, retooling and motivating staff to perform better. Such corruption undermines confidence in the tax system, negatively affects willingness to pay taxes, and reduces the country's capacity to finance government expenditures.

As a solution, attractive payment and welfare provisions suggested to attract competent recruits and keep them in the jobs. The fear of losing attractive remuneration due to misconduct is expected to act as a strong insurance against corruption and bribery. Incentives like promotion are supposed to be based on merit and the strictest standards of legality and morality. Tax officials should have relatively little direct contact with taxpayers and even less discretion in deciding how to treat them. .

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. At the same time, staff satisfaction is a composite of remuneration, training and adequate staff for the workload at hand. It would therefore be very important for the KRA and the government to consider these issues as part of the plan. These require deliberate planning and financing.

The Need for Whistleblowers

In the effort to combat tax related crimes, the role of the whistleblower is paramount, due to the secrecy involved. The Kenya Revenue Authority (KRA) has opted to establish and use an anonymous web-based platform to enable anyone to secretly report tax cheats and get rewarded for it, to salvage an estimated Kenya Sh137 billion loss in uncollected tax revenues annually. This is aimed to replace the voluntary walk-ins, e-mails and telephone calls made through the KRA Complaints and Information Centre (CIC) about tax evasion tips, which has had limited success partly due to requirements of personal details such as name, postal address, telephone contacts and PIN numbers (Mutegi, 2015).

According to its website, KRA offers an "Informer reward scheme" in the Directory "Investigations and Enforcement", listing issues like:

- a. Manifest Fraud in shipment of goods
- b. Colluding to use fake security bonds to clear transit goods
- c. Diversion/Dumping of transit goods
- d. Customs Mis-declarations
- e. Smuggling, or secretly importing goods in violation of the law
- f. Fraudulent cancellation of export entries with intend to reclaim VAT refunds
- g. Import/Export of prohibited or restricted goods
- h. Fake payments of import taxes to avoid tax payments
- i. Dealing with excisable goods without a valid licence
- j. Nil/non-filing income tax returns
- k. Invoice fraud for no goods, or less goods delivered
- l. Under-declaration of income

Section 5A(b) of the KRA Act Cap 469 provides for payment of rewards to informers in the case of information leading to the recovery of un-assessed duties or taxes, 5 per cent of the taxes or duties so recovered or KES 2 million, whichever is the less. The idea of using anonymous

methods and reward incentives shows that these are crimes the KRA attaches importance to and has been finding ways of resolving them for quite some time.

Note should be taken of the fact that information on 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 that requires the intervention of whistleblowers. Though it may be argued that these are the areas which KRA considers to cause the greatest damage, tax evasion, money laundering, etc. also merit equal effort and rewards. It is also important that the whistleblowers be duly protected while ensuring that they provide authentic information.

6 Results

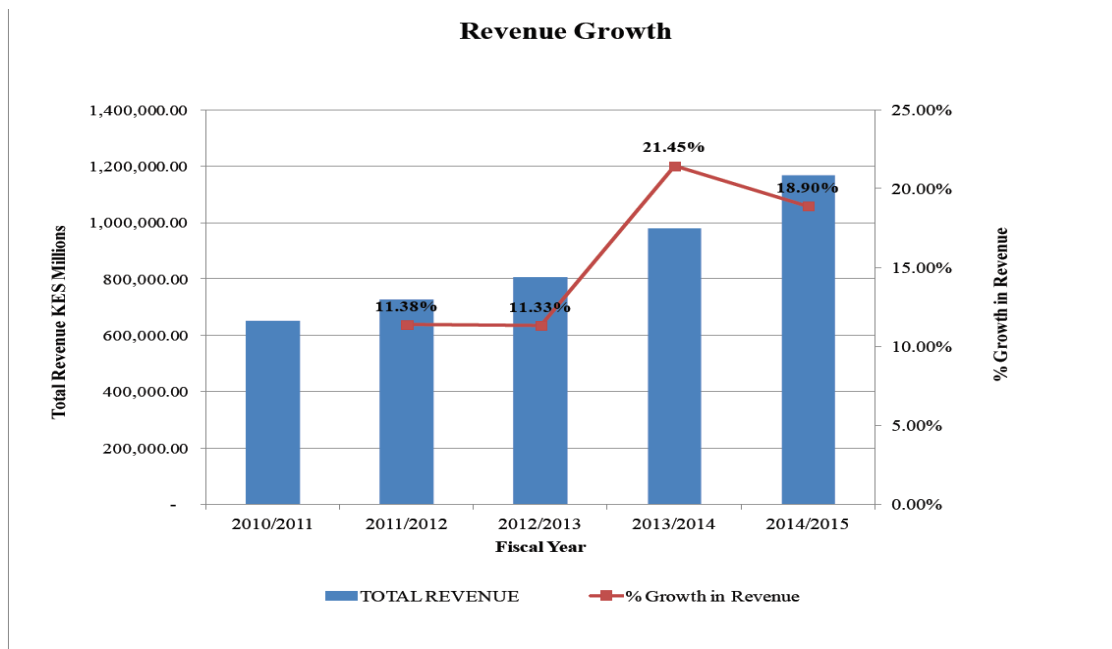
The Kenyan study has a number of interesting revelations on the country's tax system, the policies and regulations that impact on the administration. Here is a presentation of the issues that lead to an in-depth analysis of their legislative and policy implications in the successive chapters (Chapter 6 and 7).

Revenue Collection; Actual and Potential

The prime goal of the Tax Justice and Poverty research project is the question of whether and, inasmuch a more just taxation is suitable to reduce inequality and poverty (Tax Justice & Poverty, 2013). To assess whether taxation can be a suitable solution to address the complex issue of reducing poverty and dependence, the judgement has to be made against these four yardsticks of: providing revenue which pays for public services; redistributing wealth and income; regulating/stimulating economic activities and advance jobs; and putting a price on harmful activities e.g. related to public health, or the exploitation of resources and the global commons.

As explained above, Kenya's main revenue sources include the: individual income (Personal Income Tax-PIT), profits (Corporate Income Tax-CIT), and tax on goods and services (value added tax (VAT), excise duties). Overall, there is inadequate domestic revenue collection, despite a growth of 44 per cent in period from 2010 and 2015, as represented in the graph below. The increases were during a period of tax reforms, leading to increasing compliance (ICPAK, 2016, p. 18). 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; some "super-rich", "small-fish" and "big-fish" do not pay taxes (Kimathi, 2018). This also reveals the potentials for raising revenue through taxes.

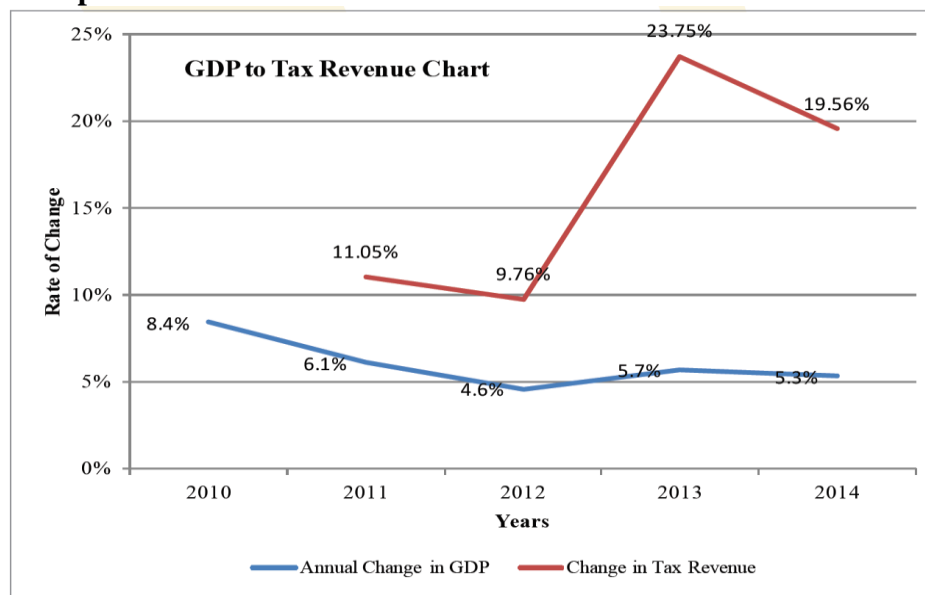
Graph 3: Revenue Trend 2010-2015



Source: (ICPAK, 2016, p. 18)

A widely acknowledged indicator of a good taxation system is its revenue contribution in relation to the country's GDP. The ICPAK graph below presents the following comparison of the tax revenue and GDP of Kenya from 2010-2014:

Graph 4: Development of the GDP to Revenue Indicator 2010-2014



Source: (ICPAK, 2016, p. 16)

Despite signs of growth in tax revenue as a contribution to the country's GDP in the period 2012-2013, the general trend indicates a decline while there is still a low tax quota contribution to the GDP. The Financial Year of 2017/2018 had a budget deficit of KSh 524.6 billion, equivalent to 6.0 per cent of GDP. To close the deficit, Kenya planned to borrow from both

domestic and foreign sources (Rotich, 2017, p. 36), aggravating in turn the country's dependency. On the other hand, 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 (Musioma, 2015). With the right effort to collect the rightful taxes, such budget deficits could be closed.

The Complexity of Taxation and the Kenyan Tax System

The fact that taxes can generate increased domestic revenue cannot be overstated. That this is not the case in Kenya is also due to the fact that Kenya's Laws do not live up to established taxation principles. For good reasons, simplicity is one of the important taxation principles recommended throughout history and not the least by Adam Smith. Simplicity and transparency are, not surprisingly, key for enforcement and compliance. The Kenyan tax system is everything but simple and transparent. Rather, it is a complex matter to deal with, more so in a general populace. From our research, we note the following five aspects being important when analysing any tax system:

- First, the need for the tax system to be considered side by side with other forms of government revenues like charges, fees, court fines, licenses and government business holdings. To analyse it in isolation from these other items of public revenue or expenditure is an incomplete and unrealistic attempt.
- Secondly, a tax system has many dimensions comprising volume, composition, rates, coverage, and collection (timing and mode). All these and many more need to be considered in order to grasp the effects in totality.
- Thirdly, a tax system cannot be chosen theoretically but should be conceptualized by the government based on the various problems and conflicting issues that should be compromised to get the best possible tax system, leading to a sub-optimum tax system.
- Fourthly, taxpayers do not actually want to pay taxes and think this should be done by the others. This calls for equitable taxes which reflect fairness in order to achieve higher degree of compliance.
- Finally, changes in the tax system should be brought about only slowly and in stages and based on certain principles. A sudden overhaul in a tax system can result in collapse of an economy (Waris, 2007).

In establishing policies, laws and administrative systems, the “Principle of Enforceability” is key. The best laws are worth nothing if they cannot be implemented, or lead to positive results, due to lack of resources or complexities. This, therefore brings us to re-connect to considerations undertaken above (Key Assumptions) regarding the environment within which tax policy, legislation and administration takes place in Kenya.

The Impact of Capitalism on Kenya

A careful re-examination on the background of our Key Assumptions outlined above indicates that Kenya is caught in a systemic crisis, due to being pegged to the competitive capitalist system. Capitalism, resulting into neoliberalism, privatisation and deregulation has led to a new economic order in Kenya where state involvement in public institutions to provide goods and services has been reduced. As the country adopted policies to liberalise the economy, it surrendered power to private capitalists deceptively or falsely promised better growth, leading to

an improved society where all benefit. Though some of this growth has been reflected in impressive figures of GDP growth, 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. And these few whose target is to make profits are not willing to pay their fair share of taxes as they see these tax contributions as loss of capital.

As a country, Kenya is finding itself with continued budget deficits to provide essential services of healthcare, education, social insurance, among others. The debts of the country keep piling and are soon reaching levels that cannot be easily repaid.

Over time, some of the politicians have accumulated wealth and consolidated this through the practice of inheritance and gifts. This trend has resulted in a number of Kenyans inheriting wealth from their relatives and accessing better education, highly valuable social networks, and other opportunities. Yet the wealthy are not interested in paying taxes that the government can use for development and social welfare services. Therefore, can the country establish a Wealth Transfer Tax of such inheritances and gifts?

In Kenya, a large number of people are now offering their labour cheaply, and getting low pay and benefits. The minority wealth owners, are the ones enjoying the benefits. Due to focus on profits, the wealth owners do not easily recognize the contribution of the persons, who through offering labour and managerial skills, help to make the profits and general growth in wealth. With limited ways for these workers to negotiate for better conditions of work and improved services, what better ways can the government use to acquire part of the resources from the rich and share the benefits with these workers and the general population who directly, or indirectly contribute to this wealth? How, can the government also ensure this wealth ethically serves the human person?

The Power of the 1 per cent in Kenya

This research shows that rich people, who form a minority less than 1 per cent, and politicians who have power and influence, easily connive against the majority of the Kenyans to make policies (including taxation policies) that favour this small club. The current system operates in such a way that either, the politicians are also holders of a lot of wealth, or they are aligned to and ready to protect other private wealth holders for some favours. Consequently, the two groups form a clique whose activities can best be described as “the Power of the 1 per cent in Kenya”. The rich have influence in decision making and public policy as they lobby through media or directly through greater political engagement as the dominant group.

Multinational corporations in Kenya feature as one of the culprits in this clique, 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 (Musioma, 2015). The multinational corporations also “steal” from the country – legally – by dodging taxes through hiding wealth in tax havens (Dearden, 2017). These powerful corporations and individuals influence and manipulate the country’s policies to create favourable conditions for themselves to operate to raise capital and profits which they readily shift elsewhere or hide from the taxman.

From the look of things, it is clear that such a group of individuals and corporations, though a minority, have a class of their own and are ready to take advantage of the loopholes in the laws to pursue their own interests of accumulating, securing and multiplying their wealth. They, therefore, resist reforms because such reforms are seen as a threat to their possessions. This

becomes even worse when the rich also become power holders, or have alliances with the power holders and take advantage to shift their burdens onto the poor and ignorant. Their acts may include technically guiding the process of policy making, even if this means bribing their way into it.

There is increasing evidence to show that if the masses know and have a say in how tax policies are formulated and revenue is raised and spent, this would lead to improved revenue collection. That in effect refers to effective representation of the people. Much as the KRA would like to levy taxes based on the ability to pay and equity principles, the government needs to provide avenues for these people to democratically influence how these taxes are levied and the proceeds in form of revenue also gets spent. However, the way things are at the moment, the majority of the people Kenya are unable to determine the course of what is good for all, including in the area of taxation and the economic goods which are highly competitive and contentious.

Attempts to Address Poverty and Inequality in Kenya.

Attempts continue to be made by the government in Kenya to address the problems of poverty and inequality. Two approaches have been identified here as being important in the effort to reduce the gap.

Education

The citizens and the government of Kenya have invested heavily in improving both the access and quality of education, in an effort to realize the promise of education as well as to achieve the education-related Millennium Development Goals and Vision 2030. The introduction of free primary education has resulted into increased access. But other monetary and non-monetary costs inform of scholastic materials, feeding, school uniforms, among others, have continued to hinder access and education attainment of many children and the quality is also compromised. Private schools, with better funding, have continuously and consistently performed better in the national examinations than public schools. This, in turn, has also become a barrier for children from poor families to access secondary education, yet demand for secondary education has also risen due to the increasing numbers of learners completing primary schools (Glennerster, Kremer, Mbiti, & Takavarash, 2011).

The rates of transition from primary to secondary and vocational education have been low due, partly, to the school fees that remain an obstacle for many poor households, despite the reductions government made. In regard to the growing levels of poverty and unemployment among the youth, vocational education would be viewed as an avenue for these youth to acquire marketable skills. On the other hand, opportunities for vouchers, bursaries and scholarships have been known to increase enrollment and access among children and youth from poor households. Deliberate programs of remedial learning, improved teaching and learning aids (technology), improved monitoring and evaluation through inspection, early childhood development, teacher incentives, career information campaigns and school-based health initiatives, have been known to improve quality and learning achievements among learners, including those from poor households (Glennerster, Kremer, Mbiti, & Takavarash, 2011).

Social Protection and Social Security Schemes

Recent developments have seen the Kenyan Cabinet Secretary mention cash transfers to the vulnerable, children, persons with disabilities and elderly through the National Safety Net Programs and National Development Programs (Rotich, 2017). Kenya is among those countries which, by now, experiment with the Unconditional Basic Income Grant, even though this experiment largely relies on external funding. The government has also established the Equalisation Fund for the marginalised areas to bring them to par with the rest of the country and this fund is to be used in consultation with the Commission on Revenue Allocation.

Overall spending on social protection as a percentage of GDP has been largely steady over the past five years, although there have been notable annual fluctuations. These fluctuations have been driven by different spending patterns between safety nets, contributory programmes, and the civil service pension. Levels of spending on social protection increased between 2005 and 2010, although this general trend masks significant variations among the sub-sectors (Kenya Vision 2030, 2012, pp. 14-15).

Contributory schemes for social protection also exist. These include the National Hospital Insurance Fund (NHIF) and the National Social Security Fund, which are regulated by the laws of the country.

The Challenges

It is clear from the foregoing that some of these social protection schemes are funded from taxes while others are contributed by benefiting members and only regulated by government policy. But important here is the fact that funding is required for them to operate and for sustainability. Sustainable financing for the social protection sector and its expansion remains a challenge, particularly in the context of high poverty incidence and fiscal constraints. As existing social protection programs are extended, the question of how to finance these initiatives over the long run becomes increasingly important. Regarding tax funded Social Protection Programmes: A valid point remains how those cash transfer programs are being financed. Notwithstanding attempts to bring the informal economy into the formal economy and, in consequence, the tax net and enable people to contribute Social Security Contributions, a considerable period of transition cannot be ignored. There are those who argue that transfer programs for social protection should be financed via tax funded redistribution from those who benefitted most from the economic development, e.g. by raising the income tax rate for top earner up to 40% (Waris & al., 2009, p. 32).

Mandatory social security contributions like NSSF make labour expensive although the contributors will get something after paying. As for the NHIF, the poorest sections of society and the informal sector are unable to access it, as they cannot afford the full cost of insurance, which is also being implemented for salaried employees only and the government has insufficient resources to subsidize the cost.

7 Ethical Reflection

Tax Justice Issues

This research considers taxation in the context of justice. This essentially calls for a definition and discourse on justice, which this report tries to minimise. Since it adopts the Catholic Social Teaching (CST) perspective, it is worth adopting the interpretation of “justice” according to the CST. According to the CST, justice signifies the constant and firm will to give God and neighbour their dues. Or simply put, the will to recognise the other as a person (Pontifical Council for Justice and Peace, 2004). This has a lot of significance as a criteria for characterizing a fair and just taxation policy. Pope John XXIII affirmed the “See, Judge, Act” method of Cardinal Cardijn in illustrating how the principles of the Catholic Social Teaching can be put into practice (John XXIII, 1961). He asserted that the “See, Judge, Act” approach offers a basis for ethical reflection and empirical problem analysis in order to derive solutions. This research adopts the approach, right from the beginning. Having concluded now the empirical analysis (“See”), we now enter the ethical reflection (“Judge”)

Basic Assumptions and Implications

Kenya has been influenced by the current global economic system of liberalism to adopt an economic system with policies of increased private ownership, reduced government spending, free trade and reduced government involvement in economic issues. This system advocates for a market system which is not controlled by government regulation and increased involvement of the private sector, leading to increased economic growth that can benefit all people. The way things are, the rich tend to influence and dominate everything, including the use of natural resources and human resources to earn more profits. Resources of the common wealth in the country – such as the people, relationships among people, natural resources and financial resources are now being controlled by those with money, making money become that master instead of being a means to serve people.

A value system that places the human beings at the centre of the policies, decisions and actions of the government is urgently required to improve things in the country. Pope John Paul II raised this concern for an ethics attuned to the needs of man, to guide the decisions about the market, instead of the free market system that was promoted through globalization. His call becomes more relevant at such a time when the liberal economy, is making the market to become a new culture, making the people view everything in terms of the material usefulness. This is worsened by the technological innovations and engineering that have given rise to a sense of efficiency. As people consume the products of the free market economy, the interests of few powerful people, with the means of production, are the ones being protected against the majority citizens in the country. The actions of these powerful few wealth holders are determined by “the markets” built on business competition. As such, these systems based on the market fail to meet the needs of man, who is the lead, according to God’s plan of creation. It has resulted into selfish and shortsighted economic decisions based on the market, resulting into “structural sin” (John Paul II, in *Sollicitudo Rei Socialis* Nr. 36).

A number of Kenya’s wealth owners pay employees according to “market income” that does not provide the employees with a decent living. As many able-bodied persons have moved to urban areas to look for employment, the traditional practice of the younger generation taking care of the old is disappearing. This is increasingly being replaced by relationship between those with

the means and those who work for them, even so, with little pay. The roles of women and men have changed too, as women also seek paid jobs instead of being solely at home as housewives. With this, the system of extended family and the community that used to offer support for the children and elderly is weakening (Andebo, 2014a). How, then, can the Kenyan society establish a truly human support system to take care of its people?

As people with the money strive to make more money and generate wealth, they are using a lot of resources from the environment at a very high rate. This is leading to the destruction or disappearance of some of the natural resources called the Common Goods such as land, forests, water and air. In this way, it comprises the availability and quality of these resources for people now and those who come after us as the future. Such a greedy and destructive use of these resources is also the outcome of the free market-based thinking, only aiming at using these resources for their own gains. The damage done through over-using these common goods goes beyond boundaries, as it does not only affect the poor, though the poor may bear a greater burden. Kenya has recently experienced humanitarian catastrophes like droughts and floods, linked to the adverse effects of climate change, partly resulting from overusing the resources in the environment. Therefore the government needs to make deliberate policies prevent and mitigate the foreseeable future impacts of such resource use. These efforts require revenue and policies guided by ethics to implement them.

There is a possibility to get out of this system. It should be replaced with a better system that benefits all. This can happen if an increasing number of actors join a movement towards thinking of and working for an alternative economic order. That attitude should be able to generate answers to address the need for making immediate and long term changes to the system.

Long term Transformation of the Socio-economic Order

The need for restructuring of the socio-economic order in Kenya is urgent, for both immediate changes that are required and those aimed at long term transformation in the country. The approach of this research to adopt the Principles of Catholic Social Teaching to review taxation and justice, to address the country's challenges is something rather new. It requires some in-depth assessment of ways in which this can be possible. The CST Principles were developed in the mid-19th Century to address the problems of inequality and other forms of social injustice in that time, arising from the dominance of the masses by those with wealth. Faced with similar challenges today in Kenya, it is right to argue that the Catholic Social Teaching is still relevant in the current circumstances in Kenya, and the world. The country deliberately needs to re-establish a balance between conflicting principles and guidelines:

- Personalism, i.e. the rights and dignity of each individual of the 11 million of the country's population, who live in abject poverty and the rest whose conditions are not any better, while the country's resources for implementing the Common Good of All are controlled by about 8,500 – 10,000 wealth holders (less than 1 per cent), who continue to exploit the people they employ and other natural resources to make profits and create more wealth for themselves. Worse still, they can transfer this wealth with minimum restrictions from the government to keep the greatest benefits for themselves and their immediate relatives. The majority Kenyans also need to participate in the decisions about the use of these resources. As such, there should be deliberate efforts to protect the poor and vulnerable persons (Pontifical Council for Justice and Peace , 2004) who are also important;

- Solidarity (i.e. active support of those in need, or fellow human beings because they are human), and subsidiarity (i.e. identifying adequate structures in the country to secure the involvement and participation of all, as citizens of the country) (Pontifical Council for Justice and Peace , 2004). In Kenya, few people influence policies, decisions and practices in government to favour them, leaving the majority with limited opportunities and options. As such, many are ‘left out’ in sharing benefits from the country’s progress;
- 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. This also has the potential to reduce corruption. Social justice ensures that people have work to do and get their fair share of the benefits of their work and the resources of Common Good, thus a more equitable economic order (Minani, 2014, pp. 104-105). At the same time we notice that social justice, inclusive growth and other programs designed to diminish poverty and inequality come to their limits due to the overexploitation of natural resources. This is why issues of environmental and ecological justice and sustainability need to be included as well.

The negative effects of the free market economy in Kenya, should be replaced with a system based on the Common Good or “social market economy” (strongly influenced by CST), that seeks to address the needs of the people rather than making profits. This can contribute to reducing poverty. The Catholic Social Teaching considers this change not to be the “*equality* of opportunity”, which would only retain the status quo, but based on *equity* of starting conditions where all individuals benefit from the available opportunities due to a level playing field for all, and freely make progress to change their lives for the better.

This kind of change in Kenya will require a lot of time and effort in making the transformation. However, how can the country establish more social justice and ecological sustainability now? As the country subscribed to the Addis Ababa Action Agenda and the Sustainable Development Goals, it should start by addressing the challenges of the poor and the needy in the present, to fulfill its commitments. This also rhymes with the CST Principle of “Option for the Poor” which aims to establish minimal rights for each and everybody. That means, the country should purposively facilitate development programmes to enable the disadvantaged and marginalized citizens to benefit from the economic progress the country is making. It also obliges those with the means to support such programmes and plans, as the church advocates for in the Encyclical *Pacem in Terris* and *Populorum Progressio*.

Short Term Moves towards less Injustice

The issue of “social justice” is viewed differently by different people. For example, also neoliberals have a notion of social justice which most likely diverges from that of CST: For this reason, our research considers the concept of social justice by focusing upon ways and means to reduce unjust conditions and situations, just as Amartya Sen and others propose.

Considering the grievances of poverty, inequality and their consequences for the human person, all should be able to find some points of agreement to commit to. The Church considers these as

some of the issues challenging the human and Christian consciences. They are part of the problem of justice, making it impossible for the human persons to realise their full potentials and be able to contribute fully in their societies. This more or less rhymes with Amartya Sen's capabilities approach, in which he argues that poverty should be seen in terms of the means and ends for each and every one. The lack of sufficient income and productive resources for sustainable livelihoods, resulting into: hunger and malnutrition; ill health; limited or lack of access to education and other basic services; increased morbidity and mortality; homelessness and inadequate housing; unsafe environments; and social discrimination and exclusion characterized by lack of participation in decision making in civil, social and cultural issues are forms of injustice resulting from poverty. To eradicate all that is also firmly enshrined in the Sustainable Development Goals, adopted by the global community in 2015.

The effects identified above make it easy to come up with practical issues and strategies for improvement. Though achieving a "just society" is not possible in the perfect sense, efforts to identify concrete issues affecting people and to take a common stand to address them, can result in a "more just" or at least "less unjust" society. Seen this way, it becomes easy to see possible opportunities for immediate reforms to improve the lives of the ordinary citizens of the country.

Catholic Social Teaching and Taxation

Admittedly, taxation is a relatively new topic within CST and also for the Church in Kenya. In earlier times, the mother church advocated other means of redistribution to bring about a more equal and just spread of wealth, e.g. the (re-)distribution of land, or shares, or the insistence upon the payment of fair wages.

The question of taxation fits, however, with the general preoccupation of the Church with institutional and structural injustice which grew after the Second Vatican Council. Paul VI was probably the first pontiff to criticize tax evasion in his encyclical letter *Populorum Progressio* as he considered it "not permissible" for citizens who have obtained a sizeable income from the resources and activities of their own nation to deposit a large portion of their income in foreign countries for the sake of their own private gain alone, taking no account of their country's interests. To him, they clearly wrong their country by doing this (Nr. 23).

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. The tax revenues and public spending are economically crucial to aid development and solidarity, from which all or the majority benefit. Just, efficient and effective funding of public/government projects through taxation is expected to have very positive effects of employment growth, supporting business and non-profit activities and guarantee systems of social support and protection for all, including the weakest members of society. Payment of taxes by the citizens is also viewed as part of the duty of solidarity shown by the able citizens towards the less able ones. This is especially true if 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 (Pontifical Council for Justice and Peace , 2004, pp. 192-193).

In the same way of thinking, Pope Benedict XVI considered taxes as one way the political 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. According to the Compendium on Catholic Social Doctrine, the economic wellbeing of a country is not seen exclusively in the quantity of goods it produces only. The manner in which these goods are produced and how the income from the sale of these goods is distributed also determine issues of wellbeing in the country. This is because, the process should allow everyone to access what is necessary for their personal development and perfection. A system allowing fair income distribution should be the basis measuring wellbeing. In this case, it not only considers commutative justice but also social justice that sees beyond the objective value of the work someone has done, by valuing the human dignity of the persons who perform it. 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 (Pontifical Council for Justice and Peace , 2004).

These perspectives of the CST on taxation and suitable ways of resource redistribution serve to highlight the growing importance the Church attaches to a socially acceptable way of sharing benefits of wealth, and addressing some of the wealth related social injustices. This offers a ground for the Catholic Church in Kenya to effectively adopt these to participate in discussing the challenges affecting the Kenyan society and influence, through policy and action, some of the pragmatic approaches to addressing these challenges through the use of just taxation.

Obligation and Opportunities for Church in Kenya

It is therefore imperative that Christians and the Catholic Church in Kenya have both obligations and opportunities in partaking in the tax debates aimed at formulating policies and strategies that can address some forms of social injustice in the country. First of all nationally, the Catholic Church is part of the institutions that has the freedom to make itself heard more clearly, by opposing those who still adhere to neoliberal ideas that benefit only the minority. The Catholic Bishops' Conference in Kenya can borrow a leaf from the US Catholic Bishops' Conference which opposed the Republican Tax Reform as “un-acceptable” and some provisions as “unconscionable”. From this research there is even more potential in Kenya for raising concerns about the need for fairer and just tax policies to support development and poverty reduction.

Here are three examples of potential activities for poverty reduction:

First, the free market idea which benefits the individual needs to be challenged. The Catholic Church in Kenya should emphasize the fact that every form of property in the country is a social mortgage, intended to benefit all the citizens. Kenya has wealth regarded as the common good that can be harnessed to address the problems of inequality and poverty, if the benefits accruing to these forms of wealth of are shared more fairly.

Second, the influence of money in the hands powerful businesses in the country which the government is unable to regulate, must be curtailed through appropriate laws and policies. The Principle of Subsidiarity obliges the State to exercise its powers of government to set fair rules and means to guide the operations of such business entities and persons. In this case, 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 described above, the Church in Kenya could play a role of mediating between the government and such business entities, individuals and even foreign countries to urge for improvements in laws, policies and agreements for fairer tax governance.

Third: 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 spending the revenue and seeking for accountability. On the other hand, the Church structures like the Catholic Bishops' Conference and Catholic Secretariat can also influence national policy development through engaging with the parliament, the legal fraternity and civil society organisations to discuss and influence tax policies and legislation in Kenya. Church structures like AMECEA and SECAM are also another alternative for the Church in Kenya to influence regional and global action towards fairer and just taxation in the region through, e.g. EAC and the AU to advance reforms based on the "ubuntu" ideology or the Common Good of All. This requires the church to build the necessary capacity and lobby for representation at such fora.

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

- The Church in Kenya should develop a renewed interest in the CST which has been the Catholic Church's "best kept secret". It should renew efforts to use the CST to highlight the importance of taxation in reducing forms of structural injustice via redistribution of resources and their potential contribution to peoples' development and freedoms.
- The Church in Kenya should employ its resources like: the universities and other institutions of education, parishes, social centres, movements, groups and federations to deepen and spread knowledge about tax justice and the need to address the increasing inequality and poverty.
- The Church in Kenya should be exemplary with its wealth and possessions e.g. by paying taxes upon profit making assets, or paying social security obligations for its own staff.
- Apart from the provision of social services like health and education. The church should make effort to understand the root causes of social injustices like poverty, inequality, corruption and collaborating with other stakeholders in finding lasting solutions, for better justice and peace.

Armed with the Catholic Social Teaching, the Catholic Church in Kenya has a moral ground to get more actively involved in discussing tax justice and other issues of social justice. It only needs to identify its potential and take advantage of its privileges. The Government in Kenya recognizes the Catholic Church and its hierarchy with considerable levels of trust. The Church can use this good will of the government to genuinely influence decisions on taxation regarding policy, legislation and administration. It can also share its observations on the annual budgetary allocations and priorities, and government strategies and proposals for Kenya's development. This requires the church to build the capacity that can enable it to stand on podium to address these themes of development, peace and 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.

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. Money (wealth) should be taken as a means, serving the end in an economic order orientated towards increasing the Common Good of All. This means, taxes on wages and salaries should be fairer as opposed to providing tax privileges for few wealthy people with the means for big investments and businesses. Where need be, tax incentives should be provided for businesses that promptly pay social security for employees, pay for natural resource exploitation, etc. other than those that aim at making quick profits and eventually take the money elsewhere.
- 2) Business owners should fully account by paying: fair wages, for use of natural resources, and services provided to them by the government (Corporate Social Accountability (CSA) before they make their voluntary contributions of Corporate Social Responsibility, Social Impact Investment and activities of charitable, or non-profit foundations, etc.).
- 3) The Government of Kenya should take taxation for raising revenue, as an alternative to income generation after privatizing government owned enterprises. It should then make reforms that enable the private wealth holders owning these businesses to provide towards the Common Good of All based on the Principle of Ability to Pay.
- 4) The country should enable all the stakeholders in government, civil society and commercial business to frankly and freely discuss about their roles responsibilities for a just Kenya in a good compromise on taxation policies and laws, among other issues.
- 5) Taxes control the negative social and ecological effects of market activities, like protection of local industries and businesses from competition from outside. They also control people and companies doing businesses in the country and consequently protect the people and natural resources.
- 6) The government should intervene by imposing taxes as acceptable ways of reducing the concentration of wealth in the hands of a few and consequently reducing their influence.
- 7) The Government of Kenya should set minimum standards for all, based on the Human and Basic Social Rights, SDGs, "Happiness Economics", or a more realistic review of the country's *Vision 2030*.
- 8) Kenya should actively engage in bilateral and multilateral cooperation with other countries and institutions to establish, implement and monitor taxation policies and regulations that guide business across its national boundaries and address the related problems. For instance, engaging with the developed countries through international tax systems and agreements and collaborating on policies and administrative issues e.g. between relevant ministries. Through these, the country can also politely demand collaboration with some of the colonial masters to fight Illicit Financial Flows from Kenya and exchange tax information.

- 9) 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.

Specific Guidelines and Criteria

- 10) Kenya should review and enforce policies on issues like:
- Concealing wealth and assets in tax havens, aggressive tax avoidance, tax evasion and tax fraud that are illicit, immoral and illegal.
 - Unequal distribution of the total tax and mandatory statutory contributions burden.
 - Lack of transparency, checks and auditing aimed at equality and fairness in tax policy, laws and tax administration.
 - Use of income, wealth, social and political power to unduly influence decisions against the Principle of the Ability to Pay.
 - Promoting unequal living conditions and consequently inequality in social and income mobility.
- 11) The country should establish just and fair tax laws that recognise the common good and everybody's ability to pay (impact assessment). This calls for full citizens' participation in deriving these laws via hearings and periodical elections. The language of these laws should be easy to grasp, with adequate controls to minimize misuse.
- 12) The country should aim for simplification of its tax procedures for easy understanding and administration.
- 13) The country's laws should be reformed to increase transparency of wealth holders, with the aim of a fair burden-sharing. Such individual wealth holders should take up their genuine obligations towards society through paying their fair share of taxes.
- 14) The government should ensure that taxation should not endanger jobs. In case machines replace some of the existing jobs, a machine tax should be established fund the support for the unemployed.
- 15) Blanket tax privileges private and corporate wealth holders should be removed. When necessary, direct subsidies should be applied to those businesses deserving it.
- 16) The Principles of Horizontal and Vertical Equity in combination with the Principle of Ability to Pay require that the equal is taxed equally and the unequal is taxed unequally. Wealth is accumulated through contributions from society (infrastructure, public education, institutional safeguards) and social groups (especially labour), and these should be acknowledged through fair taxes, wages and mandatory contributions.
- 17) The Government of Kenya should institute taxes on wealth that reduce the inequality gap and undue socio-political influence few wealthy citizens may wield in the country.
- 18) The Government of Kenya should consider granting tax allowances to support low income households. This is because the lack of tax relief burdens low income households more unfairly.
- 19) Progressive direct taxation on income and mandatory Social Security Contributions seem, to be more adequate and just than alternatives (flat taxes and indirect taxes like VAT).
- 20) Kenya should design tax policies and regulations that motivate wealth holders to invest in the real economy, paying better wages, or supporting the environment through sustainable production.

- 21) Kenya needs to establish a higher number of checks and audits towards those who submit their own tax declaration (self-employed, wealth holders, businesses) for better honesty; to check those likely to reduce their tax base with the help of professional advisors.
- 22) The country should make a deliberate effort to fight against corruption in the taxation system. The revenue secured can help in paying attractive remuneration packages, establishing a transparent system, and a system of checks and balances. It also boosts citizens' confidence and subsequently their tax compliance.
- 23) Kenya should protect Whistleblowers who provide information for uncovering aggressive tax avoidance and evasions and other forms of tax related crimes and not punish them. Their deeds may be illegal or immoral, but the preceding tax related crimes are even more illegal and immoral deeds with greater impact upon the many.

9 Policy Recommendations

Summarizing Areas of Concern

The following summarizes the main findings in the study which we propose to address as a matter of priority:

1. Kenya should strive to end tax competition. Instead, it should cooperate with other states, to close legal loopholes through legal cooperation/treaties to combat aggressive tax avoidance, tax evasion and other tax related crimes and IFFs.
2. The country should also aim at removing poverty through an improved Social Welfare System, or a Guaranteed Minimum (Basic) Income and insurance based on the traditional system of relations and support between the old and young.
3. The Government of Kenya should reduce inequality by enforcing existing tax laws, emphasizing direct taxation and (re-)introducing forms of Wealth Taxation based on the Principle of Ability to Pay. The tax revenue can be used for fund programmes that provide equality of opportunities for all, as in the Sustainable Development Goals.
4. The country should assess the relationship between direct and indirect taxation and the impact of these two different forms of taxes upon poor and low-income households.
5. The Government of Kenya should reduce the influence of private individuals and companies in providing goods and services that the government is supposed to provide, under the guise of CSR, foundations, donations, sponsoring of education, or PPPs. This will enable the government to assertively demand for due taxes and corporate social accountability (CSA) from those businesses.
6. The Government of Kenya should deliberately reduce the influence of wealth holders in political decisions through lobbying, aiding corruption and other attempts that may control the state and limit the participation of all the citizens.
7. The Kenyan Government should collaborate with other governments and bodies to tackle the relatively new global challenges of IFFs, global migration, climate change, or transnational crime. Kenya should seek to offer what it can do best, in relation to its abilities, to address such global problems.

All in all:

8. There should be respect for private property and enterprise where they positively increase the Common Good of All. However, voluntary ways to support the poor on private

initiative seem to generate considerably less for the Common Good than state imposed alternatives. In that regard fairer and more equitable taxes and mandatory contributions are better suited for this.

From these concerns the following policy and legislative recommendations, have been suggested for Kenya.

General Policy Suggestions for Kenya

This subsection addresses wider policy preferences that could be relevant for Kenya.

- Kenya should collaborate with other countries through available regimes like the OECD, UN and the AU initiatives for improved global tax governance, reduction of IFFs and opportunities for recovery of stolen assets. The country should also get involved in developing strategies and influence the initiation of new treaty bodies, or an International Tax Office that provides equal rights and privileges for all members. Such could be more beneficial for Kenya, e.g. by exchanging information on companies operating in the country and elsewhere on equal terms. Kenya should find ways to close down the Nairobi International Financial Centre which could be facilitating IFFs and thus making the country act as a tax haven and or a conduit to tax havens elsewhere.
- The Government of Kenya and the KRA should establish an Inheritance Tax that enables the citizens to benefit from wealth that is simply transferred but not earned.
- Given the importance of land, we suggest an improved and/or explicit taxation on real property. A tax on land has been developed (Ronge, Eliud Moyi & Eric, 2006) but requires improvements into a more effective wealth tax for the country by establishing the right structures and policies to implement it, e.g. by empowering the County governments to collect it (Bahl & Martinez-Vazquez, 2007).
- The Government of Kenya should establish policies that guide individuals and companies that want to engage in offering extra community support through altruistic and philanthropic initiatives. The policy should ensure that they pay their employees fair wages, pay adequately for the use of natural resources and public services and pay their due taxes before engaging in the additional support activities and programmes in the communities through donations, fundraisings, forming charities, foundations.
- The Government of Kenya regulate commercial activities of the different private businesses in the country through appropriate tax policies. This ensures a state-imposed limits to excessive wealth accumulation and is also a way of making the private businesses pay for using assets of Common Good of all.
- The government should establish Financial Transaction Tax and other related fiscal policies to control IFFs, trade mispricing, hiding behind shell companies, trusts or foundations and virtual investments that only deal in money transfer without tangible businesses in the country.
- The Government of Kenya should levy an environment tax as the price for managing the waste of non-renewable energy such as fossil fuels and depleting resources during for production. Such taxes should be made more progressive to help reduce inequality based on consumption patterns that change with income.
- The government should reform the existing systems of Social Security and protection to enable all citizens of the country to have an opportunity contribute in accordance to their ability to pay. The present system that favours those in paid employment should be

replaced with private options that encourage any incomes and should incorporate the traditional system of relations and support between the old and young. This will ensure that the benefits of growth in the country are shared equitably. This would also facilitate peoples' participation in education, health, public security. This in turn would reduce poverty caused by rural-urban migration, brain drain and the informal economy.

- Kenya should intensify the fight on corruption while investing in social sectors in accordance with the Sustainable Development Goals. The Government should make direct investments poverty reduction ventures, infrastructure development and capacity-building programmes. These also increase the trust and confidence of the citizens and their tax compliance.
- The government should increase knowledge and interest of the public in tax matters, through tax education in the formal school curriculum and community dialogues and sensitization through the *barazas* and other community structures. This should be targeted to create awareness about the citizens' obligations to pay taxes and their rights in seeking accountability of their taxes and demand for services.
- The Government of Kenya should exercise transparency while concluding and implementing agreements and treaties on behalf of the citizens.
- Related to the above, the government should open the space for dialogue and participation of CSOs, religious groups and other stakeholders in the formulation of tax policies and tax laws.

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 that affect its smooth implementation. Such gaps promote tax evasion and tax avoidance by exploiting these loopholes. On the other hand, they make it difficult for legal and tax authorities to take appropriate steps against those suspected or found to be offenders.
- Kenya should review and revise the Double Tax Agreements (DTAs) with a number of countries. Some of the DTAs, especially with the more developed countries, or those more economically advanced, grant more tax concessions to those countries and are not good for Kenya. Others contravene certain articles in Kenya's constitution. Worse still, others make Kenya lose revenue due to variations in tax rates.
- The Government should review policies that enable the KRA to improve transparency by establishing beneficial asset ownership of wealth holders. A data-base for business ownership and shares, financial assets or real estate should be developed, with details of income and asset ownership of all natural and legal persons. This can help reduce and eventually curb illegal and criminal cases arising from wealth secrecy that leads to tax evasion.
- The Government should review its policies on tax privileges like tax exemptions or other tax incentives to those who own the means of production as opposed to employees. The government should ensure employers pay employees well and encourage them (employers and employees) to relate as partners. Better remuneration for employees also means better revenue for the government through PAYE and other social security contributions. It has been proved that investors in the region of East Africa (Kenya included) would have still invested without tax incentives, and their investments also

require government to invest to improve conditions like skills levels in the economy, infrastructure, microeconomic stability, all of which need resources (Oxfam, 2017).

- The Kenya Government should establish laws that allow the wealthy to be taxed progressively (according to the amount of their wealth). Hence, there should be Inheritance, or Gift Taxes and taxes on property, especially real estate, with the goal of reducing wealth inequality. A Wealth Transfer Tax can be possible and beneficial for Kenya in increasing the tax base (Mutuma).
- 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) that currently account for a little percentage of revenue contribution and enforcement measures should be put in place and followed. Besides, a direct tax like the personal income tax (PIT) has been observed to have a high redistributive advantage in terms of bridging the gap between the wealthy and poor.
- There should be a review of the impact of indirect taxation upon poor households, including the impact of levies on gas, electricity and other household relevant fuels and basic nutrition items and consider these for exemption as this would benefit the poor households. Items that benefit the majority Kenyans should be exempted from VAT and instead a Luxury VAT should be introduced to achieve more justice and reduce inequality.
- The courts should be legally empowered to address corruption by “lifting the corporate veil” to expose the real fraudsters. Companies and their owners in civil service and politics should be exposed for any corruption and fraudulent actions that deprive the country of tax revenue. The Ethics and Anti-Corruption Service should take its mandate to combat and prevent corruption and mainstream integrity and ethics in the country. An integrated national policy should harmonize the activities of the various agencies that deal with forms of corruption and fraud (Attorney-General-Department of Justice, 2015).
- In general, the Government of Kenya should ensure that the tax laws are robust and complex to cope with various tax related issues in-country and abroad. On the other hand, the tax procedures and laws should be easily understood by taxpayers. This can aid tax compliance in many ways.

Suggestions towards Administration

- The Kenyan Government should take initiative to facilitate better national, regional and transcontinental cooperation between its tax administration staff (KRA staff) and other bodies to investigate and combat tax dodging, or other IFF related illegal and criminal acts. The KRA should also be empowered to cooperate internationally, e.g. by participating in Joint Audits with administrative authorities from other countries or regional bodies.
- The Government should facilitate the KRA in training experts on international tax enforcement issues. This may involve sending staff abroad, or out-sourcing facilitators to conduct in-country training activities. Such training can encompass but not limited to capacity building in the use of state-of-the-art ICT equipment, legal issues, cross-border tax crime investigation, etc.
- 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.

For example, the Government of Kenya can use Ghana's example of engaging a private sector business to collect taxes from the informal sector on behalf of the government, or providing ways for government to deal with the unrecorded economy (Joshi & Ayee, 2002). The KRA would only provide administrative oversight.

- The KRA's administrative focus should be expanded to analyzing tax policy and assessing effects of taxation on efficiency, fairness, equity, and competitiveness as well as on compliance and administrative costs. It should also make comparisons with other countries, to assess factors influencing the national, regional, and international tax arena. This would engage the KRA in learning, evaluating, introducing changes and communicating with the public.

Suggestions for the Kenyan Tax Payers

The Kenyan taxpayer is an important stakeholder in matters of taxation as the levying of taxes and the expenditure of tax revenue affects them. It becomes necessary that they deliberately get involved in decisions on taxation.

- The tax payers should show interest in learning the basic information on the particular taxes that are levied on them and how they can seek accountability for the taxes they pay. Many tax payers are reluctant to learn about the taxes they pay and the accountability they can seek, leaving loop holes for corruption and IFFs.
- Citizens should take advantage of some of the mechanisms like discussions with their representatives to influence tax policy formulation and demand for more mechanisms that can enable them to contribute more in the tax policy debate.
- Tax payers should also understand their commitment to pay taxes and need to be compliant. This also implies the need to keep up-to-date with the changes in taxation policy, legislation and administration, especially in aspects that affect them directly and require their personal commitment.

It has to be noted that the best tax policies and laws are those that can be readily implemented effectively. Therefore, as Kenya makes effort to design tax policy and legal reforms, these must consider if such policies can be easily implemented using the existing administrative capacity, process and strategies and what corresponding administrative changes may be required. Similarly, qualified personnel with requisite skills to operate, manage and maintain the system should be recruited. Equipment like computers and the relevant software should be available to aid the reforms.

Possible Issues for Policy Dialogue

The following issues have therefore been identified for policy dialogue:

- I. Reducing revenue loss through tax incentives and sometimes blanket privileges granted to unscrupulous multinational corporations (MNCs) that lead to a lot of tax revenue loss of about KShs. 100 billion (about \$1 billion) annually for Kenya. This calls for review of the policy and laws for granting tax incentives to the MNCs and companies. There is need to standardize incentives towards investors and also peg these to "good behaviour" such as tax compliance in other sectors, labour practices, etc. of such investors.

II. Reducing:

a) Illicit Financial Flows from Kenya that are causing the country revenue losses of up to \$ 1 billion annually.

b) Bribery and corruption that lead to revenue leakages from Kenya in form of both actual and potential revenue losses. Review the POCAMLA (Amendment 2017) and enforce it to reduce corruption and recover stolen assets.

These call for review of the international cooperation agreements on tax matters that Kenya is engaged in with other countries and regional bodies like the OECD, AU, etc.

III. Taxing progressively, proportionally or equitably according to the Principle of “Ability to Pay” so that appropriate wealth taxes, such as taxes on consumption of luxury items, property, land, inheritance and wealth transfer can be levied for greater fairness, redistribution, ecological restoration and foot-print reduction, shared benefits of growth, justice. Again, it would also require proper review of direct taxes like Corporate Income Tax, Personal Income Tax and Capital Gains Tax. The reviews and reforms are necessary to capture adequate revenue from the wealthy as wealth is also accumulated through contributions from society in form of infrastructure, public education, institutional safeguards, labour, etc.

IV. Improving transparency in taxation policy and legislation in terms of review, reforms and implementation. These come in form of several aspects of levying and collecting taxes, granting incentives, spending tax revenue, joint audits and empowering the courts to lift the corporate veil that companies seem to enjoy.

V. Reviewing taxation policy to grant tax allowances to support low income households in lieu of social protection gaps. One recommendation is in form of VAT exemptions for most basic needs that the lower income households need. It also calls for allocating adequate resources for the social protection programmes that enable more Kenyans of lower income status to access social security services.

Action by Jesuit Hakimani Centre

The foregoing recommendations boil down to two issues: Kenya needs to raise domestic revenue from eligible citizens and entities to address the ever increasing problems of poverty and inequality, and the country should use the revenue raised properly and transparently. To participate in this process, the Jesuit Hakimani Centre will join in the policy debate about just taxation with the goal to eradicate poverty and inequality in the country.

- a. The Jesuit Hakimani Centre will engage with the Catholic Church and other religious groups in raising awareness in their followers, who also double as tax payers. Using the basis of the CST, the JHC and other Jesuit structures will work with the Kenya Conference of Catholic Bishops (KCCB) to raise awareness about the social injustices arising from unfair tax policies and laws that in turn affect the revenue raising potentials and the subsequent increasing poverty and inequality in the country. This collaboration with the KCCB becomes a platform to raise awareness on these matters at higher levels like the AMECEA and SECAM. Through the KCCB, the Jesuit Hakimani Centre and other Jesuit structures hope to access the resources and institutions of the Catholic Church and its partners to continue to generate more awareness through knowledge development and sharing about tax justice and other related social justice issues. This

means the church has to be exemplary in its dealings by paying taxes and social security for employees in the effort to obtain social justice for the people.

- b. The Jesuit Hakimani Centre will also engage with politicians, academics and technocrats in advocating for developing tax laws and policies that reflect fairness based on the ‘Ability to Pay’ as they also seek to promote equity, efficiency and effectiveness in tax administration and revenue collection. Related laws and policies on wages and social protection should also ensure minimum wages and benefits in form of social services and infrastructure benefit all the Kenyans. This engagement with the leaders also aims to discuss issues and progress with ecological benefits of taxation, its redistributive aspect, impact on the common people, and transparency in Kenya’s tax and trade dealings at international level and wealth ownership at home, for better revenue collection and redistribution of economic benefits. Policy discussions on capacity building of the KRA and other agencies like police and also reviewing Corporate Social Accountability (CSA) and streamlining of Corporate Social Responsibility (CSR) are also envisaged. Such laws and policies should also be made easy and less cumbersome (simplicity) for the ordinary tax payers to understand through deliberate efforts to sensitize them.
- c. Working with the local churches (Dioceses and Parishes), the Kenya Revenue Authority, people’s representatives and like-minded Civil Society Organisations, the Jesuit Hakimani Centre will seek to engage the local community *barazas* to sensitise the masses on their obligations to pay taxes, their participation in shaping the taxes, tax laws and policies and deriving civil ways to hold their government (both local and central) accountable for revenue raised and used (Transparency). This is intended to enable the masses to understand their responsibilities towards supporting the government and keep up-to-date with the changes. It also provides an opportunity for the people to contribute in checking the government and minimize corruption and IFFs. Through such a platform, Jesuit Hakimani Centre will also initiate discussions to assess and review good aspects of the traditional social protection through the ‘Ubuntu’ system and the modern system to blend them for a sustainable social welfare system that guarantees a basic income and support for the vulnerable.

10 Conclusion

The Project Concept of the project of Tax Justice and Poverty, was based on the thinking that there is enough money out there for public tasks, but it is increasingly difficult for the governments like the one of Kenya to get their hands on it. In the study of Kenya, we found that one of the main reasons for this is the fact that 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. This need was summed up concisely by KRA Commissioner General Waweru, some years ago: “Kulipa ushuru ni

kulinda uhuru”- ‘Pay your taxes and set your country free”, and adopted as the Motto of the Kenya Revenue Authority.

To do this, the country needs to reform the unfair structures and systems (including that of taxation). The free trade encouraged by the IMF has led to Kenya’s economy being taken over and dominated by companies from outside that can easily take away wealth, leaving Kenya with limited revenue. As such, the developed states, from where these companies originate, should give active support to Kenya in her efforts to recapture a fairer share of the “revenue pie”. This will enable the country to the revenue it deserves to address its various current development and poverty reduction challenges. It will also enable it to correct some of the negative impacts of natural resource use due to over consumption of these resources.

As we in Kenya make these demands on those who are outside the country, we should also: raise awareness about the dangers, limits and damaging side-effects of the economic system that seeks to make profits at the expense of the people; resulting into increasing poverty and inequality. The country should seek to derive and enforce policies, laws and administrative strategies that enable it to regain some sort of control over the economic decisions and activities that affect the citizens.

The Kenyan citizens, CSOs and churches should also get involved in finding solutions to the problem by engaging with political leaders to discuss about the way forward. Ideas about how to manage taxes across national have been developed. Kenya should join these efforts in order to save the tax revenue the country is losing due to unscrupulous actions of companies and individuals in the country with possibilities of taking their wealth away. The country and its stakeholders can also learn from the idea of the Financial Trans-action Tax/Robin Hood Tax, which was developed by citizens, CSOs and churches with the goal of reducing poverty and inequalities arising from the markets, and generating revenue to support the fight against poverty and climate change. It gained support of parliaments and governments and eventually the EU-Commission. This demonstrates the power of the masses in causing change in policy and systems that affect them.

The country also needs a system of values and norms to bind all the different actors for action. Here the Catholic Church in Kenya, could provide such a value system using the Principles of the Catholic Social Teaching. Its emphasis on the human person gives it a common stand with other movements for Human Rights, Ecology and Happiness or Common Good Economics. Using the values from the CST does not intend to overtake policy and legal reforms and make them Catholic but seeks to contribute to the common idea that each and every one should benefit from the economic progress in the country. This will make all the citizens realize their human dignity and wellbeing. Through that, they can develop their capabilities and participate to build the nation for those present and the generations to come.

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