EATGN

East Africa Tax
&
Governance Network

Taxing Rights Policies are Human Rights Policies

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List of Abbreviations

AU/ECA HLP	Africa Union / Economic Commission for Africa High Level Panel
EAC	East Africa Community
EATGN	East Africa Tax and Governance Network
ESC	Economic, Social and Cultural Rights
FY	Financial Year
GFA	Governance for Africa (Rwanda)
HDI	Human Development Index
IFF	Illicit Financial Flows
KENDREN	Kenya Debt Relief Network
KNHRC	Kenya National Human Rights Commission
MCA	Member of County Assembly
SEATINI	Southern and Eastern Africa Trade, Information and Negotiations Institute – SEATINI (Uganda)
TJN-A	Tax Justice Network Africa
YPC	Youth Partnership Countrywide

Acknowledgements

This report was compiled by the East Africa Tax and Governance Network (EATGN) Coordinator Robert M. Mwanyumba with support from – The Kenya Debt Relief Network-KENDREN (Kenya), Governance for Africa (Rwanda), ActionAid International (Tanzania) and, Southern and Eastern Africa Trade, Information and Negotiations Institute – SEATINI (Uganda).

The report also benefitted from comments from: Kiama Kaara, Alvin Mosioma, Andrew Chikowore, Nelly Busingye-Mugisha, Caroline Othim, Cyrus Munyaburanga, Regina Navuga, Catherine Mutava, Rodgers Kidiya, Wairu Kinyori-Gugu, John Kitui, Jason Braganza, Jared Maranga and Cephas Makunike.

Special appreciation goes to Tax Justice Network- Africa (TJN-A) who host the East Africa Tax and Governance Network (EATGN) within its premises.

This publication was made possible thanks to the generous support from the Embassy of Finland in Nairobi, Kenya.

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1 Kenya - www.treasury.go.ke, Rwanda - Official Gazette n°Special of 01/07/2016, Tanzania – http://www.mof.go.tz/mofdocs/msemaji/Bajeti201617.pdf, Uganda - http://www.finance.go.ug/

2 Ibid

Executive Summary

This publication is a synthesis of reports compiled from the East African region that sought to examine the concept of maximum available resources as espoused by the convention on Economic, Social and Cultural (ESC) Rights as a measure of progressive realisation. The threshold is measured against resources allocated by the state from its vantage point as custodian of the social contract and proponent for domestic resource mobilisation. In this regard, revenue collection and allocation is based on deliberate state action through policy orientation. This report shows the budgetary allocation trends in Kenya, Rwanda, Tanzania and Uganda for the FY2016/2017 to sectors that promote ESC Rights. It builds on the Tax Justice Network – Africa and ActionAid International Report that looked at the Tax Incentives Regime within the East Africa Community (EAC) showing tax incentives offered by each country.

The report demonstrates the opportunity cost of tax incentives through budgetary allocations and its effect of deepening the inequality gap.

Introduction

Why devote time and effort into the study of taxation and human rights? Is the very existence of one predicated on the other? Or are the fields such polar opposites with their individual deliberation requiring neither simultaneous interrogation nor concurrent postulation? Is it therefore, easily surmised as an effort in futility or a crucial conversation into the citizen's buy-in into state power and legitimacy?

The East Africa Tax and Governance Network (EATGN) in collaboration with the Kenya National Human Rights Commission (KNHRC) held a conference in 2014 bringing together members of county assemblies (MCA's), deputy governors and civil society to begin a conversation about the link between tax and human rights. This conversation was extended to the rest of the East African region given that the deliberations touched on the nature of tax collection and allocation of the same to key sectors. This was contextualized around adequate resourcing of essential services by states in respect to the social contract and in a bid to meet human rights obligations. The conference drew the conclusion that there was a need to elaborate through research the linkages between taxation and human rights, looking specifically at social, economic and cultural rights.

This conversation has never been more pertinent than in the wake of the Panama Leaks[3] that demonstrated the elaborate global financial architecture that undermines domestic resource mobilization capabilities of states.

This was further emphasized through a publication by the International Monetary Fund that detailed the perverse implications of the international financial architecture on developing countries (International Monetary Fund) at the expense of the majority and to the benefit of the few (Oxfam).

The rhetoric peddled by governments has been insufficient resources to fully rollout socio-economic rights as prescribed by the International Convention on Economic, Social and Cultural Rights. This has given credence to the argument on progressive realisation of these rights on the basis of finite resources and competing priorities. Perhaps the focus for governments could shift towards looking at the capability of domestic resource mobilization as a sustainable strategy to deliver on its commitment to its citizenry and realise ESC Rights.

As the East African Community trudges towards a political federation, economic and social arguments around the benefits of the regional bloc have patronized the conversation with individual states guarding national interests. These interests are rooted in the buy-in of the citizenry and their participation in the entire process. At the centre of the discussions is the realisation of human rights as articulated by the African Charter on Human and Peoples Rights and echoed by the East African Charter.

3 https://panamapapers.icij.org/

Taxation remains a crucial instrument for the realisation of human rights beyond the rhetoric of articulation to implementation through service provision. This is not only because of its importance as a source of income but also because tax policies and taxation itself play a pivotal role in remedying inequalities. For states to meet their human rights obligations such as education, housing, adequate living standards, equality in access of opportunities, access to justice, access to clean water and healthcare among others as stipulated by the Universal Declaration of Human Rights[4], it is essential to have a progressive tax system that can collect and utilise the revenue generated accountably and equitably.

Attiya Waris cites works by Brennan and Buchanan who hold the view that the power to tax is not necessarily a pre-condition to the use of the revenue, specifically for the benefit of those that are taxed[5]. On the other hand, there is an expectation of reciprocity for the buy-in on taxation especially in the pursuit of human rights through a value proposed by the institution of the state. This would speak to compliance as both an attitude of the population as well as a function requisite for the survival of any conglomeration that provides benefits to its members.

Philip Alston the special rapporteur on extreme poverty and human rights, argues that tax makes resources available whereas tax policy demonstrates tangible action towards priority setting (Alston). This is particularly relevant as the state invests in sectors that enhance human rights. On the other hand, human rights policies have an indispensable element of redistributing societal resources and remain central to political accountability. The nexus therefore of tax and human rights is in their very existence; mutually dependent and mutually reinforcing.

This synthesis report seeks to draw this nexus between taxation and human rights by establishing trends of budgetary allocation towards economic, social and cultural rights against losses from revenue from tax incentives. The report draws from experiences in Kenya, Rwanda, Tanzania and Uganda. EATGN through its national level platforms, identified lead organisations through purposive sampling to take charge of the research in-country; Kenya – Kenya Debt Relief Network (KENDREN), Governance for Africa (Rwanda), Youth Partnership Countrywide (Tanzania), Southern and Eastern African Trade, Information and Negotiations Institute (SEATINI-UGANDA).

Justification

The Africa Union High Level Panel on Illicit Financial Flows (IFFs) estimates that annually, USD 50 Billion leaves the African continent[6]. A case study in

4 Office of the United Nations High Commissioner for Human Rights (OHCHR), Universal Declarations of Human Rights: United Nations
5 **Invalid source specified.**
6 AU/ECA Conference of Ministers of Finance, Planning and Economic Development, Report of the High Level Panel on *Illicit Financial Flow from Africa*

the report cites that Kenya lost USD 1.51 Billion between 2002 and 2011 from trade mis-invoicing[7]. While the East Africa region lost about USD 2 Billion annually through tax incentives[8].

The porous revenue net means that economic, social and cultural rights suffer opportunity cost during budgetary allocations especially as compared to infrastructure projects which remain key development priorities for countries in East Africa.

All member states of the East African Community, have signed onto the relevant regional and international instruments, and mechanisms that seek to guarantee fundamental human rights including the international convention on civil and political rights, the international convention on economic, social and cultural rights, the African Charter on Human and Peoples' Rights[9] to name but a few.

However, this is not an end in itself, many EAC citizens still do not have access to basic social services including water, health services, social security, education and decent work. This is often argued as a function of limited resources while in some quarters as poor prioritisation of equitable and progressive tax systems. An indictment on the rich and powerful who explore tax regimes to shift the burden onto a small proportion of the citizenry and employ a complex, multi-layered global financial architecture to exploit every nook and cranny of domestic and international tax.

Objectives

The primary objective of this report is to synthesise the country reports into a single report that reflects on the situation of taxation and human rights in East Africa. The report will highlight the findings from the four country reports looking at budgetary allocation trends, losses from tax incentives and matching the same with human development indices that speak to economic, social and cultural rights.

Limitations of the Study

The report had four main limitations for purposes of focusing the discussion and to allow for ease in data collection. The first limitation was based on the broad nature of undermining domestic resource mobilisation capacity and necessitated a focus on Tax Incentives as an avenue of capital outflow and compared these with budgetary allocations as a measure of the opportunity cost from foregone revenue. The second limitation was on fixating on the national budgetary allocations rather than the expenditure. The allocations painted a clear picture of trends in sectors that enhance ESC

7 Ibid
8 ActionAid International and Tax Justice-Africa, *Still Racing to the Bottom? Corporate tax Incentives in East Africa* June 2016 (Johannesburg and Nairobi)
9 https://www1.umn.edu/humanrts/research/ratification-index.html

Rights devoid of the narrative around absorption capacity which is no less important but which would not serve the purpose of the interrogation. Thirdly, the research focused on economic, social and cultural rights with an incline towards access to healthcare, education, water and social security because of the incide¬nce of poverty within the region and the Sustainable Development Goals which have been adopted globally. The sectors speak to basic needs realisation and safeguard a decent level of existence for all, without prejudice or bias. The elemental aspects of ESC Rights in no way undermine the first generation rights but rather complement them. Last but not least, work was not carried out in Burundi because of the political impasse that was experienced during the period under review.

Literature Review

It is argued that the first constitution to address the issue of resources was the French Declaration of 1789 which recognised the transfer of the responsibility for security to the state in exchange for money (Waris). This articulated a reciprocal relationship that placed value on the functions of the state and the benefits derived by the citizenry. This required that the value be quantified and the costs borne by the citizenry in this exchange. Within the prescription of this provision was a two-fold segregation of responsibilities between state and citizenry. As pertains to the state, it was recognized that there needed to be an allocation for the maintenance of the public forces. This implied an administrative costs that operationalised relevant institutions and gave mandate for the same, to ensure the enjoyment of security by the citizenry. With regard to the citizenry, an equitable distribution of the costs among all citizens in respect to their means was pursued. The provisions also set out rights to the citizens or their representatives, to justify the contribution an aspect of voluntary compliance.

Secondly, it accorded the right to the citizenry and/or their representatives, the ability to interrogate the use of the contribution, to fix the proportion of remittance relative to means, assess the collection mode and set the duration in which the contribution was to be levied. The implication of which was that any levy imposed by the state needed to have stemmed from consensus by the citizenry. This consensus was derived from the value attached to the benefits derived from the state, and therefore the contribution necessary to sustain this value. In addition, the principles of equity were entrenched within the dispensation as a proportionate distribution of the contribution based on the means of the citizenry.

This understanding was extended in subsequent years to address provisions of social and economic conditions requisite for the citizenry to meet this obligation, invariably building the buy-in beyond security concerns. This thinking spoke also to the extension of the mandate of the state and the continued propulsion of the common goals and aspirations. Beyond security, the state needed to remain relevant as the best option for citizen's survival and prosperity. This understanding came at the cost of the original public financing arrangement built around buy-in (consensus), apportioned means and accountability of the administrative unit (state officials).

This historical perspective informs the current dispensation of the nation-state and fixes the discussions of this paper around the state obligation under the social contract. The conversation around the reciprocal relationship between taxation and human rights gets convoluted and undermined by the violation of ESC Rights by government which do not provide adequate social services which safeguard and promote the realisation of these rights.

Often, the rhetoric revolves around progressive realisation as a requirement for ensuring adequacy, quality and accessibility of these services. This focus takes away from the pertinent discussions around policy options that can be employed in conformity with prioritization of human rights rather than economic models that have failed to safeguard the interests of the poor and vulnerable who often draw the short end of the stick during austerity periods. The issue is however not solely on limited resources but rather the ability of states to maximize on revenue collection and its ability to safeguard revenue sources without ascribing to practices that undermine this ability (read tax holidays, tax exemptions etc.). In 2015, the Third International Conference on Financing for Development (United Nations) puts an emphasis on domestic resource mobilisation as one of the key sustainable financing options for states. This gained traction in the face of the adoption of the Sustainable Development Goals (SDGs) requiring that domestic resource mobilization be a key financing tool towards the realisation of the global goals. At the centre of the global goals are the ESC Rights with a pro-poor emphasis re-iterating state commitments to promote, protect and uphold these rights.

In East Africa, the growing revenue potential especially through the extractives sector becomes a key discussion for the realisation of ESC Rights by means of revenue collection, allocation and expenditure. Illicit Financial Flows (IFFs), as put forth by the AU/ECA HLP Report, identified three key areas undermining the continent's resource potential and which facilitate the loss of much needed resources from the continent; Corruption, Commercial and Criminal activities. Of the three, commercial activities account for more than corruption and criminal activities put together. A caveat to this statement is the role played by corruption in facilitating losses through criminal and commercial practices which may not necessarily be accounted for and which may play a bigger role than is credited in the loss of revenue. It is estimated that the African continent loses USD 50 Billion annually to Illicit Financial Flows.

These lost monies as an opportunity cost, mean that country budget deficits could have been shrunk and more services rendered to the citizenry especially in realising ESC Rights. The issue of lost revenue has nonetheless been stripped to its bare essentials and taken a legalistic approach that has emptied it of the implications of depriving states of much needed resources to a black and white issue around whether it is permissible within the law or otherwise.

In a 2016 report released by Action Aid International and Tax Justice Network-Africa, it was estimated that the EAC loses between USD 1.5 Billion and USD 2 Billion annually through tax incentives. Although tax incentives are not illegal, they serve the same purpose as illegal activities in undermining the revenue potential of states and by extension depriving citizens of services. Monies lost through negative tax incentives compound the losses by individual countries and set the basis for violation of human rights. These concessions are often offered before business entities employ aggressive tax planning measures which further undermine the potential revenue generation capacity of states, these are mainly instituted through tax avoidance measure and in some cases through evasion.

States on the other hand by acts of omission, fail to put in place and enforce requisite legislative and policy framework to curb these outflows. The race to the bottom typifies state on state competition that undermines domestic resource mobilization capacity by states beyond individual and corporate efforts to undermine revenue collection. Harmful tax incentive practices allow for corporate "shopping" which pits countries against each other to their own detriment and to the gain of corporate entities. In other words a declaration of an economic war, won by debilitating the other state through compromising one's own position, begging the question who is the real winner in this war?

Taxation and Human Rights

Core Analysis

Taxation is an important instrument for the realisation of human rights because it is necessary for ensuring sufficient and sustainable resources. Additionally, tax policy plays a fundamental role in redressing inequalities in society and in shaping accountability mechanisms of states to their citizens.

The country researches looked specifically at key sectors of the economy focusing on the realisation of ESC Rights. These were purposely chosen along the stipulations of the international convention on economic social and cultural rights. This enabled researchers identify specific budget lines that interrogated allocation trends with a keen interest to distinguish between the revenue base for financing the budget, the proportion of the budget that is raised through domestic resource mobilization efforts as compared to external financing and the allocation towards recurrent and development expenditure at the national level.

10 ActionAid International and Tax Justice Network - Africa, *Still Racing to the Bottom? Corporate tax Incentives in East Africa* June 2016 (Johannesburg and Nairobi)

i) Tax and Revenue

Across the region it was observed that projected total tax revenue for FY2016/2017 was still relatively low as a percentage of the total budget and had a skew towards Pay As You Earn (PAYE), Value Added Tax (VAT) followed by Corporate Tax. Although there are several categories of taxation the three accounted for the biggest contributions and gave an indication of the burden of taxation towards a small minority that is formally employed and a reliance on consumption taxes that were indiscriminate in their application for instance Value Added Tax (VAT) which is considered a regressive tax because of its indiscriminate application across different segments (socio-economic stratification) of the population.

The table below gives the country specific data and paints a picture of the total tax revenue to total budget. The computation of the percentage is based on a simple ratio of total budget against total revenue.

Table 1: Total Tax Revenue and Total Budgets FY2016/2017 [11]

Country	Total Tax Revenue FY2016/2017 (Projected)	Total Budget FY2016/2017	Total Tax revenue as % of Total Budget
Kenya	Ksh 1.50 trillion	Ksh 2.26 trillion	66.25%
Rwanda	Rwf 1.07 trillion	Rwf 1.95 trillion	54.97%
Tanzania	Tzs 15.11 trillion	Tzs 29.53 trillion	51.16%
Uganda	Ugx 13.0 trillion	Ugx 26.3 trillion	49.43%

ii) Budgetary Allocations and Economic, Social and Cultural Rights FY2016/2017

The budgetary allocation for the FY2016/2017 demonstrates state prioritisation with regard to allocation for four key sectors that enhance ESC Rights. The sectors chosen were education, health, social security and water[12]. The allocations have been computed as a percentage of national budgets to give an indication of their proportion to the whole.

11 **Kenya** - www.treasury.go.ke, **Rwanda** - Official Gazette n°Special of 01/07/2016, **Tanzania** – http://www.mof.go.tz/mofdocs/msemaji/Bajeti201617.pdf, **Uganda** - http://www.finance.go.ug/

12 Social Security was a difficult area to find data because social security would encompass a host of areas such as national social security funds, pension contributions etc. in which case social protection and social development were chosen as broader reflections of the sector and give an indication on the prioritisation of the sector. In addition, allocations for water also demonstrate the same difficulty in coming into information, water was generally a subset or lumped together with sanitation, environment and transport. Therefore the more direct allocation towards portable water or for domestic use was selected as an indicator.

Table 2: Total Budget against Budgetary Allocations for Sectors Enhancing Economic, Social and Cultural Rights [13]

Sector	Budgetary Allocation & % Total Budget			
	Kenya	Rwanda	Tanzania	Uganda
Education	Ksh 339.3 Billion (14%)	Rwf 219.99 Billion (11%)	Tsh 4.77 Trillion (16%)	Ugx 2.45 Trillion (9.3%)
Health	Ksh 60.3 Billion (2%)*[14]	Rwf 188.56 Billion (9%)	Tsh 1.99 Trillion (6.7%)	Ugx 1.83 Trillion (6.9%)
Social Security	Ksh 33.7 Billion (Social Protection) (1.5%)	Rwf 79.35 Billion (Social Protection) (4%)	▲ Data Limitations[15]	Ugx 193 Billion (0.7%) (Social Development)
Water	Ksh 92.9 Billion (Environment Protection, Water & Natural Resources) (4%)	Rwf 27.29 Billion (Water Supply) (1%)	Tsh 1.02 Trillion (3.4%)	Ugx 690 Billion (2.6%) (Water and Environment)

In the region, we see a steady trend of allocations above 10% for education as a reflection of government prioritisation for skills development, increasing opportunities for better living conditions in the long run (future earning potential). The 10% allocation for education in the advent of free primary education in the region has been dogged by questions of whether the goal is getting more children in school or ensuring quality education for students. On the other hand, the allocation for health is relatively low within the region, a direct correlation can be drawn between education and health. A healthy population is more likely to spend more time acquiring skills and at the work place therefore increasing overall productivity. This may have a positive impact on domestic revenue mobilisation and

13 **Kenya** - www.treasury.go.ke, **Rwanda** - *Official Gazette n°Special of 01/07/2016*, **Tanzania** – http://www.mof.go.tz/mofdocs/msemaji/Bajeti201617.pdf, **Uganda** - http://www.finance.go.ug/

14 A caveat has to be entered in the case of Kenya, whereas the official National allocation for Health in Kenya is 2%, the function has since been devolved to the County level which operates a separate budget for health that is included in the county disbursement from the national government. This explains the difference as compared to other member states.

15 Current data for Tanzania for social protection was difficult to come by because interventions are fragmented and run by different government ministries which include the Ministry of Health and Social Welfare, Ministry of Agriculture and Food Security, Ministry of Labour and Employment, Ministry of Education and Vocational Training, In addition, departments such as Disaster Management Department in the Office of the Prime Minister, Tanzania Social Action Fund (TASAF), Department for Social Welfare, National Food Security Department to name but a few; all involved in implementation of programmes. Although UNICEF estimates that social protection is allocated about 2.3% of GDP, it was decided that without clear data it would be doing Tanzania a disservice to venture estimates.

human rights as a whole. Water and social protection have continued to receive meagre allocations of well below 5%.

iii) Tax Incentives in the East Africa Community

A report by Tax Justice Network – Africa and ActionAid International (ActionAid International and Tax Justice Network-Africa) entitled *"Still Racing to the Bottom?"* had the two civil society organisation put out estimates based on losses incurred by governments in the East African Region from tax incentives. The rhetoric offered on tax incentives is often to attract foreign direct investment, in which case the tax incentives are considered to be the central determining factor devoid of considerations of both internal and external factors of doing business such as the political environment, availability of requisite infrastructure, skilled labour availability and ease of access to financial markets.

According to TJN-A and ActionAid International, tax incentives offered involve governments eliminating and reducing taxes such as corporate income tax, customs duties and VAT payments; ostensibly provided to remove the supposed deadweight loss. It has to be noted however that not all tax incentives are negative, take for instance incentives that encourage retirement savings tend to have a positive long term outlook (J. Ayuso). However, tax incentives in this case are offered specifically as a means of attracting FDI at an opportunity cost that undermines domestic resource mobilisation and the realisation of ESC Rights.

The report *"Still Racing to the Bottom"*, puts an estimated figure of between USD 1.5 Billion and 2.0 Billion lost annually through tax incentives. Although these figures remain estimates, they offer insight into a policy option embarked on by government that has a direct bearing on how much is raised as revenue. This brings to question the notion of maximum available resources. A deliberate undertaking by government that lowers revenues and presents an opportunity cost for investment in ESC Rights. This deliberate action would therefore have to meet a standard of best possible option available and at the same time ensure non-violation of rights as espouse by international and regional instruments as well as domestic legislation.

The table below shows the amounts lost per country juxtaposed against national budgets and the impact they would have on total tax revenue.

Table 3: Tax Incentives per Country in the EAC as a percentage of the Total Budget for FY2016/2017 and its contribution to the Total Tax Revenue

Country	Estimated Tax Incentives Offered (annually)	Total Budget Fy2016/2017[16]	Total Tax Revenue Fy2016/2017 (Projected)	Tax Incentive as a % of Total Budget	% Total Tax revenue to Total Budget FY 2016/2017	Increase in Tax Revenue as a % of Total Budget
Kenya	Kshs 100 Billion	Ksh 2.26 trillion	Ksh 1.50 trillion	4.42%	66.25%	70.7%
Rwanda	Rwf 123 Billion	Rwf 1.95 trillion	Rwf 1.07 trillion	6.31%	54.97%	61.2%
Tanzania	Tzs 1.3 Trillion	Tzs 29.53 trillion	Tzs 15.11 trillion	4.40%	51.16%	55.6%
Uganda	Ugx 850 Billion	Ugx 26.3 trillion	Ugs 13.0 trillion	3.23%	49.43%	52.6%

The table above shows the opportunity cost of tax incentives as an economic policy option. Tax incentives per country show potential revenue loss, for instance in Kenya Kshs. 100 Billion is lost which represents a 4.42% loss of the Total Budget. Had Kenya not offered this incentive, it would have been able to raise 70.7% of its total budget through tax revenue as opposed to the 66.25% that is projected, the same pattern applies to the other member states. What the data presents is the potential for revenue generation by individual states and the policy decisions that undermine the overall capability to mobilise resources domestically. Rwanda, shows the largest loss from tax incentives in the region as a percentage of total budgets, 6.31% followed by Kenya (4.42%), Tanzania (4.40%) and by Uganda (3.93%). After enacting the VAT Bill of 2015, Tanzania projects to significantly increase its tax revenue.

The table below examines the losses occasioned by tax incentives and the impact they would have had if reinvested in sectors that promote ESC Rights.

16 Budget estimates were obtained from:

- Kenya - www.treasury.go.ke
- Rwanda - *Official Gazette n°Special of 01/07/2016*
- Tanzania – http://www.mof.go.tz/mofdocs/msemaji/Bajeti201617.pdf
- Uganda - http://www.finance.go.ug/

Table 4: Tax Incentives if Invested in Sectors that enhance ESC Rights

Country / Sector	Kenya Budgetary Allocation & % Total Budget	Rwanda Budgetary Allocation & % Total Budget	Tanzania Budgetary Allocation & % Total Budget	Uganda Budgetary Allocation & % Total Budget
Education	14%	11%	16%	9.3%
Health	2%	9%	6.7%	6.9%
Social Security	1.5% Social Protection)	4% (Social Protection)		0.7% (Social Development)
Water	4% (Environment Protection, Water & Natural Resources)	1% (Water Supply)	3.4%	2.6% (Water and Environment)
Tax Incentive as a % of Total Budget	4.42% (If Invested in each sector)	6.31% (If Invested in each sector)	4.40% (If Invested in each sector)	3.23% (If Invested in each sector)
Education	18.42% (increased allocation)	17.31% (increased allocation)	20.4% (Increased allocation)	12.53% (increased allocation)
Health	6.42% (tripled the spending on health)	15.31(increased allocation)	11.1% (Increased allocation)	10.13% (increased allocation)
Social Security	5.92% (quadrupled the allocation)	10.31% (doubled allocation)		3.93% (quintupled allocation)
Water	8.42 (doubled allocation)	7.31% (septupled allocation)	7.8% (doubled allocation)	5.83% (doubled allocation)

It is interesting to note that had the tax revenue lost as a result of tax incentives being invested in each specific sectors there would have been an increase in provision of social services in each of the sectors and consequently in promoting ESC Rights, all factors held constant. In Uganda for instance, had the amount lost to tax incentives of about 3.23%

of the total budget, been invested in social security, the allocation would have increased from the current allocation of 0.7% to 3.93% indicating a quintupling of allocation. In Rwanda, the water sector would have been septupled, whereas the social security budget for Kenya would have been quadrupled. Tanzania shows a modest increase in the different sectors which also speaks to the prioritisation in allocation. Caution has to be ventured when assessing allocations especially if considered against expenditure, and therefore the realisation of ESC Rights, for example in the FY 2015/2016, 74%[17] of the total budget for Tanzania accounted for recurrent expenditure.

Allocations should not be misconstrued with the realisation of rights, a comprehensive picture can only be drawn from examining allocation and expenditure and how it relates to access to services enhancing the realisation of rights.

The figures in themselves only paint a limited economic picture that does not necessarily tell the story from a human development perspective. The human development index (HDI) speak to the prioritisation and investment into the specific sectors promoting ESC Rights. The synthesis report tries to make a case for the investments in key sectors that have a direct impact on life expectancy (health and water), years of schooling (education) and risk mitigation against life's shocks and stresses (social security and in some cases social protection).

The table below looks at the four EAC country rankings against the HDI Report for 2015.

Table 5: HDI Index against Key ESC Rights Indicators

Country	HDI Value	Life Expectancy at Birth	Years of Schooling	Population Living Below income poverty line (%)	
				National Poverty Line	PPP $1.25
Kenya	0.548	61.6 (F - 63.4 M - 59.9)	11.0 (F - 10.7 M -11.3)	45.9	43.4
Rwanda	0.483	64.2 (F - 67.0 M - 61.1)	10.3 (F - 10.4 M - 10.2)	44.9	63.0
Tanzania	0.521	65.0 (F - 66.4 M - 63.5)	9.2 (F - 9.0 M - 9.3)	28.2	43.5
Uganda	0.483	58.5 (F - 60.3 M - 56.7)	9.8 (F - 9.7 M -9.9)	19.5	37.8

17 http://www.mof.go.tz/mofdocs/budget/Citizens%20Budget/CITIZENS%20BUDGET%202015_2016%20_ENGLISH.pdf

According to the report all the EAC countries rank in the group of Low Human Development. The relatively high poverty rates especially using the below $1.25 rate (national poverty rates tend to be incredibly subjective and for the sake of comparison the $1.25 is used) speak to an inability to enjoy ESC Rights given that poverty both undermines the realisation of human rights and in most cases exacerbates violations of the same. The combined average years of schooling for the four countries is barely enough to see students past secondary school.

This is particularly important especially when one considers the disaggregated data between men and women. For starters women in all the four countries are expected to live longer than men, in Rwanda for instance, the difference is a staggering 6.9 years, 67.0 years for women compared to 61.1 years for men. This is particularly important because poor investment in social security for all the states means that more women than men will be vulnerable in their sunset years. Unfortunately, the deck seems stacked against women in the sense that except for Rwanda all the other states have boys spending more time in school than girls. This has a direct correlation for instance on how much men and women will earn in the future and it is no coincidence that the report goes ahead to estimate the gross national income per capita in Kenya for males is USD 3,270 compared to USD 2,255 for females. So women who are expected to live longer than men, end up spending fewer years in school and eventually earning less in the long run.

Investment in education, health, social security and water is therefore not just an issue of putting up the numbers but also an issue that looks at the impact of these investments on particularly segments of the population. Foregone revenue that could have been invested in education could literally mean denying more girls education and consequently reducing their earning potential. The gender dimension of investment decisions can therefore not be overlooked.

The taxation discussion on gender is not only about figuring out where women fall within the debate because of the gendered environment in which people exist but rather about breaking down gender biases that are perpetuated by existing fiscal regimes and structures. Secondly, there is a need to redress the inequalities that are perpetuated by existing tax structures and address key issues such as unpaid work, increasing access to productive labour markets and boosting access to social services.

What Are We Learning from the EAC?

Even as Kenya, Rwanda, Tanzania and Uganda heavily rely on tax revenue as the highest contributor to total revenue; all the countries have failed to resource entire budgets from domestic sources. This deficit has occasioned increased borrowing by the states and relative dependence on official development assistance. In Kenya for instance, the debt ceiling was raised in a bid to meet budgetary deficits. In Rwanda for example, 37.6% of the budget for FY2016/2017 is being resourced externally and shows the greatest loss in terms of budgetary proportion to tax incentives.

Findings from the country indicate that a heavier burden falls on PAYE and VAT as compared to Corporate Tax. Incidentally, the gaps exposed in the national budgets show the vital role that could be played if tax revenue had been collected from Corporates. The current dispensation places the tax burden squarely on the citizens who bear the brunt of financing the state at the respite of corporate entities who continue to enjoy social services and infrastructure without a commensurate proportion in the contribution towards tax revenue. This means that only scarce resources are disposable to attend to the competing priorities of any government which often comes at a high opportunity cost for ESC Rights.

The key issues that emerge from the data are:

- States need to strengthen and safeguard domestic resource mobilisation capacity
- Budgetary deficits call to question sustainability of programmes that enhance the realisation of ESC Rights
- Poor prioritization of ESC Rights means that little is allocated and many rights go violated or unrealised
- Tax incentives need be offered at a cost benefit analysis that weighs not only economic benefit but the human rights implications of such policy options.

Kenya

As much as a high proportion of total revenue is resourced domestically, 66.25%, little (as a proportion of the whole) is invested in sectors that promote the realisation of ESC Rights.

Rwanda

Budgetary deficits and insufficient capacity to generate resources domestically calls to question the sustainability and viability of programmes and projects that enhance ESC Rights.

Tanzania

Tax revenue collection is just above the halfway mark standing at 51.16% of the total budget. This is worrying especially because infrastructure development has been prioritised for the FY2016/2017; reflected in the relatively low allocations to sectors that enhance ESC sectors.

Uganda

This is the country that raises the least tax revenue as a percentage of its total budget standing at 49.43% (of the countries that were considered in the study).

Challenges

1. Obtaining data that was comparable across the countries of study proved to be a challenge. Inference was made on different sectors to provide a semblance of comparison.
2. Differences in administrative structures also proved to be a hindrance to obtaining data, devolved functions such as health in Kenya meant that data was not comparable with other countries within the region which retain health as a national government function.
3. Gender disaggregated data especially with regards to budgetary allocations and expenditure is lacking and would be a key reference point for assessing the inequality gap.

Recommendations

1. States have to strengthen domestic resource mobilization capacity; this is crucial as a key resource for investing in ESC Rights. This means that states need to review any policies, laws or agreements that undermine domestic resource mobilization capacity including and not limited to tax incentive regimes, double taxation agreement, production sharing contracts etc.
2. The EAC needs to adopt harmonised Tax Incentives Guidelines for the region to forestall negative tax competition among EAC member countries and an accelerated race to the bottom. In addition, the EAC of necessity should adopt and come up with a Plan of Action on how to implement recommendations of the AU HLP on IFFs.
3. In a bid to ensure that states increase their domestic resource mobilisation capacity to expend on ESC Rights, states have to broaden the tax mix and ensure that various sectors of the economy contribute their fair share of tax without lumping the burden on a select few or instituting regressive tax regimes.
4. Governments need to increase budgetary allocations to sectors that enhance the realisation of ESC Rights in the region, there is glaringly low prioritization of ESC Rights. The rhetoric around progressive realisation of these rights is emasculated especially when challenging the principle of maximum available resources. Governments in the region are losing millions of dollars annually through tax incentives and therefore failing to secure vital resources. This can be interpreted as an act of commission by the state to wilfully undermine its own domestic resource mobilization capacity especially in instances where these powers are vested in individual state officers. Furthermore, tax incentives as a policy option need to be scrutinized against a cost benefit analysis which should stand up to scrutiny of the best possible policy option, value for money and that these do not violate ESC Rights or hinder their realisation.

5. Civil society has a fundamental role to play in holding government to account with regards to; advocating for progressive tax regimes that safeguard ESC rights, and, monitoring the progress of realisation of ESC Rights especially by creating awareness around tax justice and human rights.
6. Further research is required to break down the concepts of taxation and human rights looking at linkages with gender, illicit and licit financial flows, looking at expenditure trails on ESC Rights as well as monitoring and evaluating the realisation of ESC Rights against country reports.

Conclusion

Taxes are the backbone of ESC Rights because they provide the necessary resources to invest in the realisation of rights. States are at the heart of their realisation. State policy action has a direct implication on the realisation of human rights. The symbiotic relationship between economic policy and human rights policy can be exemplified by surmising that economic policies are human rights policies and human rights policies have a bearing on economic policy. The discussions therefore on taxation and human rights cannot be held in silos by groups of experts who fail to recognize the symbiotic relationship of the two fields which are quintessentially mutually reinforcing. Borrowing from the precedence of the French Declaration, we can surmise that a tax regime that is not responsive to the needs of its citizenry is defunct not merely in its constitution but rather in its very conception and therefore its existence. A reciprocal relationship is expected of a state that collects funds to run its affairs at the heart of which are its citizens. The value proposition of a state is articulated by the tax regime, realized through service delivery and occasions the realisation of human rights.

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