

# Rent-seeking and Taxation Pilfering in Kenya: Impact on Post-colonial Economy

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## ABSTRACT

Kenyans have witnessed taxation injustice since the colonial period. At the onset, colonial taxation in Kenya materialized as an instrument of submission, governance and of economic exploitation. It is through taxation that the peasantry and the working class was formed, fashioned and captured by the state. Within the post-colonial state, and in association with the *comprador bourgeoisie* and the political elite, their daily discourse and clichés, skulks around - 'Whose goat have I eaten?' Where is the place of the subaltern citizen? Who bears the burden of taxes and who benefits from public programmes? Do taxpayers have a role in the appropriation of revenue collected? How have taxation policies affected the everyday life of the subaltern citizen? The Gramscian model of the subaltern collective marginalization by the hegemonic ruling classes and Hirschman's representation of exit, voice and loyalty perspective guides the thinking behind this article. Do hegemonic taxpayers have exit or voice options? Retrospectively, independence did not certainly alter the parasitic nature of the colonial state. Subtle and opportunistic systems continue to be exploited by both central and county governments to project regressive taxes. This article examines the basics of taxation pilfering in Kenya and argues that the postcolonial state remains predatory, hence the urgency to deconstruct the tax regime.

**Key Words:** *Corruption, Rent-Seeking, Taxation, Post-Colonial Economy*

## INTRODUCTION

Raising revenue through taxation remains one of the major challenges that face the Kenyan State. Right from the time of the British East Africa Protectorate which lasted from 1895 to 1920 and Colony which covered the period 1920-1963 to the post-colonial period, direct taxation has been one of the most important characteristics of Kenya's political economy (Brett, 1973; Wolf, 1974 & Lonsdale and Berman, 1990). In 1973, direct taxation which had mutated to Graduated Personal Tax (GPT) in 1958 was abolished and replaced by an indirect Sales Tax. This amendment was an attempt by the Kenya government to make tax payment more equitable and just. GPT was an unfair form of tax since it was more burdensome for the poor than the rich. For instance, a millionaire would be paying the same tax as a poor person. Thus, it militated against the principle of least aggregate sacrifice. In addition, the tax was fixed without considering the fact that most peasants relied on subsistence farming and would not raise sufficient money to pay for their tax.

From 1990 onwards there was a major reorganization and strengthening of the fiscal and tax management. First, was the introduction of a Personal Identification Number (PIN) (Republic of Kenya, VAT Act 1989). All taxpayers had to have PINs which had to be produced in order to make transactions. Among these included vehicle registration, purchase of insurance policies and business registration. The system was aimed at bringing more people into the tax net and thereby spreading the tax portfolio. Second, in 1992 the government offered amnesty to all taxpayers who declared their true income or sources of income which they had hidden in the past. During the same period, the Road Toll Tax was abolished. This was a direct tax paid by all motorists irrespective of what roads they used. This was replaced by a fuel tax that was easy

to collect from the oil dealers than from road tolls. The turning point was the decision to establish the all-encompassing Kenya Revenue Authority (KRA) in 1995. All these measures were intended to harmonize and streamline tax collection to maximize revenue.

In retrospect, the present tax system in Kenya reflects the way the tax regime was introduced, administered and transformed. The overall picture of the payment of taxes has been undermined by failure of the government to collect taxes in full, hence the failure to provide basic services to the people (Tarus, 2005). Value for tax money in Kenya has rarely been achieved. This is because of the fact that while taxes are levied in order to pay for public services such as policing, education, health, security and other public amenities; citizens are sometimes forced to pay for some of these services. The *Harambee* movement was such a good example where through self-help groups; community projects like schools, hospitals and even cattle dips among others were established.

## FRAMEWORK OF ANALYSIS

'No taxation without representation' has been a fundamental principle for which the founders of today's democracies struggled to create and maintain. In other words, a decision to impose a tax rests on citizenship, benefits, accountability and political freedom. Franklin Roosevelt, the then President of the United States of America) in a speech given in 1936 profoundly stated that, 'Taxes after all, are the dues that we pay for the privileges of membership in an organized society' (James, 1984:177). Arguably, the issue of benefits is an incredibly complex one to quantify. It is very difficult in economic terms and in practical life to find out how much benefit different individuals or peoples derive or enjoy from the taxes paid. Few taxes in any state are levied on a *quid pro quo* principle or benefit principle. A standard view is that taxation throughout history has been a compulsory charge imposed by a government or public authority in respect of which no specific goods or services to the individual, group or institution is directly rendered in return. In sum, taxation is considered essential for state formation, economic growth, the shaping of state-citizens relations and for developing state capacity to deliver services (Moore, 1988; Gemel, 1988).

Though based on Southern African experience, Sharife (2015) has shown how government taxation policies impact on the people. In the article, taxation is viewed as a social contract that should set out the rights and responsibilities of citizens and the state. Political representation in parliament forms the basis of a tax justice. A sound argument made by Khadija is that; taxation as with all rights only exists in the letter unless defended and advocates for a central role to be played by civil society organizations (Khadija, 2015). The evidence is produced to show that tax advocacy is required to mitigate some of the negative consequences on a dominated and marginalized subaltern citizenry. Nasongo (2005:29) observes that the Kenyatta regime 'failed to deconstruct the colonial state and reconstruct one consistent with the aspirations of the majority of Kenyans'. Absence of this interventionist approach by government, led to the general belief by the citizenry that the hegemonic ruling classes within the post-colony remain predatory.

Mbembe (1992: 3) discusses what he terms as the 'banality of power' in contemporary Africa. Taxation, levies and rents, he posits, constitute important elements of power and subjectivity within the postcolony as processes of extraction on ordinary people (ibid: 9). Examples cited are from Cameroon and Busia, Kenya. Among them are a variety of taxes on various kinds that include a travel tax, patriotism tax, soil conservation tax and a hunting tax inflicted on African subaltern citizenry. Whatever the case, taxation is an essential cog in the wheel of a well-functioning society and of being a citizen. The emergence of a modern Kenyan state is partially attributable to colonial African taxation at about 37½% (Tarus, 2005: 9-18). Indeed there are few exceptions of societies which have been run without taxation. Basically, tax is a financial charge or other levy imposed upon a citizen to fund various public expenditures, for example, medical, education, security, infrastructure and distribution of natural resources. Failure to pay or evade taxes is usually punishable by law.

Hirschman (1970) provides a clear framework to analyse various processes in regard to the struggles engagement and disengagement within the various political arenas. The contention is that once citizens disapprove of a particular political authority, they may withdraw their production and revenue through

tax boycotts, sabotage and strikes. On the other hand, it is shown how civic pressure and civic society organizations influence public accountability. It is worth noting that these voice mechanisms have been instrumental in reforming taxation systems and accountability. For instance, according to KIPPRRA (2016), 2.5% of the annual budgetary appropriation of the government's ordinary revenues has been allocated to the Constituency Development Fund (CDF). But how these taxes impact on one of the most vulnerable categories; the peasantry and the working class, is the subject of this article. This reciprocity between the state and its citizens is an important aspect of the social contract, which transformed taxes after independence from forced impositions to voluntary contributions. After independence, the interplay between exit-voice become ineffective, citizens become loyal and comply with tax requirements. On the other hand, disgruntled taxpayers have the capacity to participate by voting a new set of political leadership during general elections. Also, citizens through their Members of Parliament have successfully obliged the government to assign part of its budget to the constituency level, through CDF. With the promulgation of a new constitutional dispensation in 2010, tax payers have been subjected to all types of nefarious tax platforms in particular from county governments (Murunga, 2015).

Cooper (2003), in an erudite study, calls on historians to rethink the study of African taxation through the model developed by the Indian Subaltern Studies Group (SSG1982-1999). The SSG advocated for history from below, resistance and an examination of material and economic marginalization from mainstream society (Ludden, 2002). The term "subaltern" as used in Kenyan context has been well conceptualized by Ogude (1997:107) and Kamau (2008: 27-28). Ogude has stated in simple terms that the subaltern refers to the dominated and marginalized groups such as peasants, labourers and women in the post-colonial state. A more nuanced analysis of subalternity is from Spivak (1988) who argues that the subaltern classes are subject to the hegemony of the ruling classes. Subaltern citizens are detached from political organizations, chiefly by their own insecurities and their lived experiences and educational background. Within modern economies, subaltern citizens bear the brunt of taxation injustice. Subaltern, for our purposes refers to the so called, *wananchi* (owners of the land, but in reality apply to the common folk). The subaltern classes are those that have been overlooked, neglected, disregarded and treated with indifference (Sahoo, 2014). Subaltern studies appreciates that the common people are makers of their own destiny through communal peasant consciousness (Chakrabarty, 2000). Gramsci's (1999) notion of hegemony is relevant in understanding how subordinate classes do not internalize their exploitation since taxes are largely indirect and controlled by the ruling elite.

## METHODOLOGY

This article is premised on the fact that taxation is a compelling phenomenon because it is where politics meets economics. Because of its multidisciplinary nature, the study adopted a descriptive approach. Archival data, collective memory of individual tax-payers and histories of the various state agents: chiefs, hut counters, tax collectors, police, the peasants and working class who paid the bulk of the taxes were considered. Substantial qualitative data was generated from the Kenya National Archives (KNA). The KNA has invaluable documents on taxation. *The East African Standard* and the *Daily Nation* newspapers have documented the challenges of a tax regime in Kenya. Oral information has also been collected from various informants.

The analysis of primary data was enhanced by information obtained from books, journals, government publications, reports, papers, theses and dissertations. The data was organized and subjected to a historical analysis. In summary, the methodology applied involved theoretical reflections, documentary reviews and chronological analysis. The result is an attempt to interrogate the challenges Kenya faces in its public finance and labour policies.

## Whose Goat Have I eaten? Manifestation of Taxation Injustice in Kenya

A common thread in everyday, political, social and economic discourse is the apparent misuse of government resources. After all, 'It is our Turn to Eat' (Wrong, 2010) *mali ya umma* (public good and services). Others argue euphemistically that 'whose goat have they eaten' to depress scrutiny over misuse of public resources. Between 2013 and 2017, myriad cases have been observed of absolute squandering of public utilities.

Elected officials both at the National Assembly and the Members of County Governments Assemblies have been engaged in all kinds of misuse of public resources. This takes various forms, but basically involves determining their own salaries against the advice of the government mandated Salaries and Remuneration Commission (SRC).

Equally important, county governments have been accused of wastage of public funds. A wheelbarrow which in any hardware shop in Kenya would hardly cost ten thousand Kenyan shillings became priced at a hundred thousand Kenyan shillings. Members of County Assemblies gallivant the world over in the name of benchmarking, but in reality an opportunity to misuse public resources that in common parlance is referred to as *mali ya Umma* among the political elite, 'Whose Goat Did I Eat?' (*Sunday Nation*, 27th September, 2015). The 'eating' then gets sanitized by the political elite as 'hustling, resource mobilization and distribution of the national cake' (Tanui, *The Standard*, Thursday 19<sup>th</sup> February, 2016). As it were, these resources being squandered are as a result of citizen taxation; an aspect of taxation injustice. In fact few other subjects inspire so much bitterness and emotions as taxation (Groves 1950: 611-632). Sabine (1966:5), termed it as the 'scourge' of the twentieth century.

Himbara (1994: 115-155) describes post-independent Kenya as a period marked by profound contradictions. He argues that while local capital maintained its progress and steadily increased its capacity in almost all areas of industry, the state apparatus on the other hand regressed. The new institutions created after independence, he argues, were hopelessly ineffective. He shows that between 1963 and 1990, the amount of money lost amounted to 15,696,400,000 Kenya shillings. In fact according to him, these losses do not include failure by government departments to collect taxes. With independence, the central contradiction came from the state, which continued to levy taxes and the people who wanted a scaling down of the rate of taxation or its abolition altogether.

Attempts at redressing the abuses of colonial taxation were conducted through an economic policy labelled as African Socialism and its application to Planning in Kenya. Its main objective was to bring about progressive taxation and to bridge the gap between the haves and have-nots. Conversely, between 1963 and 1973, there was no dramatic change in Kenya's taxation policy. The Kenya African National Union (KANU), the party that formed the government on 12 December 1963, proceeded with the same colonial policies and introduced no fundamental changes as far as taxation was concerned. Ironically, in spite of the high hopes and expectations of the peasantry and the working class, taxation as was the case in the KANU regime, continues to symbolize the exploitation and submission to authority (Tarus, 2005).

Kaldor, the eminent economist, was aware that after independence, most African countries would suffer from tax evasion, lack of political accountability and corruption (Kaldor, 1963:1). He had argued that:

In many underdeveloped countries, the revenue yield of taxation can only be attributed to the fact that the tax provisions are not properly enforced either on account of the inability of the administration to cope with them, or on account of straightforward corruption. No system of tax laws, however, carefully conceived, is proof of collusion between the tax administrators and the taxpayers; an efficient administration consisting of persons of high integrity is usually the most important requirement for obtaining the maximum revenue and exploiting the full potential of a country. (Kaldor, 1963:1)

Income tax in Kenya from among the working class has been capped at 30% which is considered one of the highest in the world. Consequently, a majority of taxpayers find this quite high and therefore a form of tax injustice. Kaldor's argument is still relevant. Independence in 1963 did not alter the parasitic nature of the colonial state. Subtle and opportunistic ways continued to be used to extract taxes from the peasants and the working class. The Constitution of Kenya, 2010 states that all taxes belong to the citizenry. The constitution further explicitly specifies that equity is an expected outcome. Specifically, Clause 201 states that the public finance system is to promote an equitable society in that revenue raised nationally shall be shared equally between national and county governments. This should promote equitable development and be oriented to address the needs of marginalized groups. Parliament has the final authority in the appropriation of all collected revenue. Taxation creates a contractual relationship between the citizens and the state. In retrospect, Value Added Tax (VAT) creates the greatest level of a tax injustice to the subaltern class. The poorest in society pays VAT, as much the wealthier members of society. The low-income households expend

a larger part of their disposable income in consumables, travelling and mobile phone airtime. Richer families spent their money on holidays abroad and conspicuous consumption. Tax injustice occurs when the wealthy practice tax evasion, tax avoidance and illicit financial flows and corruption and money laundering. While the poor are burdened with various indirect and direct forms of taxes, the rich and powerful are able to get away with ingenious ways of tax evasions and avoidance or huge deductions (Githongo, 2015) .

An apparent success of the Kibaki administration during 2003 to 2013 period was the seriousness taxation was given. Since 2003, tax collection has taken a deeper seriousness in Kenya's political economy. President Kibaki's government managed to collect up to 93% of the total revenue needed to run the annual budgets (Githongo, 2015). Kibaki gave tax collection one of the most determined public discourses. In addition, the Kibaki administration ended the *Harambee* movement which had mutated from a people-centred movement for self-improvement to a conduit for embezzlement of public finances and rent-seeking from the subaltern. The ostentatious gifts and particularly the guaranteed press coverage on the next day with donors listed in order of value, helped reduce the *Harambee* vision of community development to an exercise in patronage and competitive status-seeking through forceful extraction.

### Devolved Pilfering of County Capital

On 27<sup>th</sup> August 2010, Kenya promulgated a new Constitution. The local authorities would mount barrier on roads to collect this tax. Cess collection is an example of a tax injustice. Cess collection barriers have been placed along major road works to enable Counties to collect cess from all kinds of transporters. At the beginning of the implementation, the new county governors imposed all kinds of taxes and particularly on the peasantry. Taxes were levied on chicken, *omena* (small fish), dogs, cows and on all sorts of commodities. 'County governments fomenting trouble by imposing tax on everyday items' is a title of an essay penned by Godwin Murunga that captures daily tax injustice on ordinary rural folk (*Saturday Nation*, 18<sup>th</sup> January, 2014). Murunga opines that, one indicator of the legitimacy of any government is the willingness with which citizens' part with their taxes beyond those deducted at source. And that if counties were going to start imposing taxes indiscriminately and on items whose value is largely social than economic, then the time for rebellion against unjust and unfair government is an ever present possibility. During the 1990s, coffee farmers in Central Province of Kenya revolted against what they considered unjust taxation policies at the marketing point (Matheka, 1990).

The Controller of Budget provides annual expose on how governors circumvent laid down financial procedures to fleece the public. Secondly, the Auditor General's audit reports have shown reports of 'massive scandals and fraud involving millions of Kenyan shillings in public funds' which have been unearthed in various counties (*Saturday Nation*, 26<sup>th</sup> November, 2016). Audit reports show *rampant* pilferage and misuse of public funds running into billions of Kenyan shillings and paid off irregularly to workers, contractors and service providers. The Governor of Kisumu Prof Peter Anyang' Nyong'o, accuses county governors of practicing rent-seeking (*Daily Nation*, 16<sup>th</sup> March, 2017).

Transparency International's survey has shown how corruption in counties remains the biggest threat to the success of the devolution project. Similarly, the Ethics and Anti-Corruption Commission have detailed reports of how county officials loot county coffers through irregular deals and shady procurement contracts, misplaced priorities, For example a wheelbarrow which in normal circumstances could cost about ten thousand Kenyan shillings was inflated to cost a hundred thousand Kenyan shillings. A pipette for artificial insemination that costs 30 Kenyan shillings was inflated to 875 Kenyan shillings per piece (*The Standard Digital*, 17<sup>th</sup> July, 2016). A Member of Parliament, Billow Kerrow, has provided a chilling analysis of how devolution affects the tax payers:

The Council of Governors, an outfit mandated by law to build capacity and efficacy of the county governments, spends time and huge resources rubbishing every report by independent institutions and commissions, and the public, on corruption frenzy and mismanagement by their members.

All these impact on the ability of the devolved entities to provide services to taxpayers. The political class sanitizes graft among themselves.

The Constituencies Development Fund (CDF) came into being in 2003 through an Act of parliament. Described as the panacea for regional inequality, the CDF programme has become a very popular development initiative. The initiative has enabled Kenyans to participate directly in development (Kenya Law Reform Commission, 25<sup>th</sup> August, 2007: 21). In theory, the decentralized fund gives the local community the opportunity to participate directly in their own development. The CDF has empowered citizens to actively become involved in making choices on their development destiny. The projects initiated, however, are not without technical hitches. Concerns have been voiced by the people on the efficacy, the efficiency and transparency of the CDF. These are as a result of weak legal, institutional and implementation structures. A major policy weakness is that Members of Parliament (MPs) have used the fund to entrench their interests. Despite these weaknesses, the CDF is an important aspect of responding to people's voices. The Fiscal decentralization is an important part of devolution as money becomes available at the grassroots. A major goal of the fund has been to control imbalances in regional development brought about by partisan politics. Various projects that ranged from education, medical infrastructure, bursaries have benefited the people at the grassroots.

### **Civil Society Organizations: Fighting Global Tax Injustice**

Nasongo (2005) has conceptualized the contribution of civil society organizations (CSOs) in Kenya in the empowerment of citizens and support of the democratization process. Civil society have played a critical role as voluntary associations that struggle against various forms of tax misuse, foster democratic practices and promote tax justice. CSOs nudge governments to practice good governance.

The growth of CSOs in Kenya has been phenomenal. A number of CSOs have engaged themselves in fighting against tax injustices, inequalities and marginalization. Among these are Oxfam, Taxation Justice Network, Action Aid, Inuka Kenya, Ni Sisi Limited and Initiative Team Courage. These CSOs have focused on poverty reduction, welfare, political action and advocacy.

Boniface Mwangi personifies the spirit of CSOs in Kenya. He acts as the watchdog of accountability, transparency and inequalities especially in the appropriation of citizen taxes. In 2013 he organized and led a demonstration of 'Occupy Parliament March' to protest against MPs increasing their salaries (Daily Nation, 12<sup>th</sup> June, 2013). He referred to MPs as 'Mpigs' against Kenya's MP's unprincipled greed for money. Mwangi stated, 'we have spilled the blood on the pigs to show that the MPs are greedy'. The protest was a success as the MPs accepted a lower pay from Ksh 1,000,000 to about Kshs 670,000. Even the President Uhuru Kenyatta directed the Salaries Commission to slash his salary. Studies show that Kenya's MPs pay was 76 times that of the country's per capita. Despite these achievements, CSOs in Kenya operate under very difficult and hostile environments. The Kenya government is particularly hostile to the activities of NGOs. Exposures on corruption, malfeasance and abuses on human rights puts the government in very poor light. But most of their concerns have to do with good governance and human rights.

### **Challenging Corruption Kenya**

Corruption has become the personification of Kenya's current political economy. Politicians, Judiciary, mass media, the clergy and ordinary citizens have all been enmeshed on corruption discourses. Between November 2008 and April 2009, one of the most extensive studies on tax justice in Kenya was undertaken through the auspice of Taxation Justice Network Africa (TJNA). The Kenya Report is entitled, "Taxation and State Building in Kenya: Enhancing Revenue Capacity to Advance Human Welfare". This is one of the extensive researches and captures the tax injustice on subalternity. TJNA advocates for tax policies with pro-poor outcomes and tax systems that curb public resources leakages and enhance domestic resources mobilization. It is the argument of this article that the elimination of corruption is thorny in a society marred by ethnic warlords, elite patrimonialism, tenderpreneurship and 'casino economy' as articulated by David Ndiu where the 'biggest Casino in Kenya is public procurement' (Omondi, 2018). This 'tenderpreneurship' is added to the impotence of anticorruption bodies, a challenged judiciary and absence of good governance policies that have stymied the fight against corruption. What then are the most probable solutions?

In 1981, a Ghanaian Junior Air Force Officer, Jerry Rawlings, led a military coup and started a vigorous anti-corruption drive. He led Ghana through difficult years of economic recovery and helped address the

problems of incompetence, injustice and corruption. During this stage of national catharsis, Rawlings gathered together six of Ghana's former leaders and had them shot publicly by firing squad (Adedeji, 2001). Acemoglu and Robinson (2013) proffer a simple solution: institutions. They argue that rich nations are rich because they have inclusive economic and political institutions, while poor countries are poor because they have extractive economic and political institutions.

Kivutha Kibwana, the Governor of Makueni (Sunday Nation, December 16, 2018) in an erudite 'opinion', proposes a number of possibilities 'to slay the corruption dragon'. First, he concurs with President Uhuru Kenyatta on the need to enlist citizens and civil society; and to move beyond rhetoric by confronting the corrupt through public shaming. Second, he calls for committed application of the country's laws, constitutional provisions and international instruments to confront the vice. Third, is to emulate successful stories of how other countries have tamed the scourge of corruption in Rwanda, Botswana and Singapore. For these countries, the Governor seems to echo, Chinua Achebe's argument in *Trouble with Nigeria* that Africa's salvation lies with its leadership (Achebe, 2000). The leaders of these countries demonstrated unwavering political will to stem out the vice of corruption. Finally, as happened in Singapore, Kenya should establish a strong anti-corruption agency to check-bank accounts and property of officials and their families and friends and those found palpable should be imprisoned and made to surrender stolen assets to the state.

## CONCLUSION AND RECOMMENDATIONS

The article has demonstrated how corruption leads to taxation injustice. Tax policies have had a large impact on every aspect of ordinary people's daily lives. Even up to March 2017, during the latest national budget reading proposals; the collective memory of taxation in Kenya still evoke memories of fear, extortion and taxation injustice. While the law allows governments to levy any kind of taxes, within its jurisdiction, they must be guided by an equitable taxation regime. Taxes should equally burden all individuals or entities in similar economic circumstances and predictable. For instance, a millionaire would be paying the same tax as a poor person. This militates against the principle of least aggregate sacrifice.

A large majority of the peasant and working class citizens live from hand to mouth. The success of a country's tax regime is charged by how it would uplift people's living standards and transform subalternity. Resources should be used prudently to achieve the objective of citizenship. This would only be possible with increased public participation, enhancement of inclusivity and national unity and accountability. Civil society organizations have a role to play. On the other hand, the national government should facilitate county governments through provision of adequate finance, human and technical resources and more importantly, county auditing and policing. Conversely, taxation remains a tool of control and domination that affects the daily lives of the Kenyan populace.

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