TOWARDS AN AFRICAN AND KENYAN PHILOSOPHY OF FISCAL LEGITIMACY

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ABSTRACT

The water pot presses upon the small circular pad.
- African proverb

Key words: Fiscal philosophy, principles of taxation, fiscal legitimacy, Ibn Khaldun, Kenya.

1. INTRODUCTION

The importance of fiscal legitimacy and domestic resource mobilization (DRM) for revenue and expenditure has taken centre stage over the last few years as central to the world's structural transformation process, and Africa is no exception. Extensive research has highlighted the undeniable linkage between DRM capacity; development and economic growth, and more specifically financing of inputs for the industrialization process, sustainable development and poverty alleviation. In supporting this relationship, taxation has been given greater prominence in international policy formulation, more specifically: the global financing for development framework and the Addis Ababa Action Agenda, which provide an enabling measure for the 2030 Sustainable Development Goals Agenda and the African Union's Vision 2063 and Kenya's Vision 2030.

The vision and agenda should be identified for all countries including developing and African countries, to mobilize the entirety of their fiscal capacity and domestic resources through traditional and innovative methods. This refocuses the strategy of a state, region and continent as well as the globe by ensuring that that the mobilized resources are retained domestically for developmental investment which in turn should result in growth. Taxation also guarantees societal and national byin and ownership of a government's national and continental development agenda through better management of resources.[1] Spengin ono infrastructure to build communication and movement of goods and services African markets as a result it is intended will become more lucrative not only for global business but also for intra-African trade. However domestic resources consists of not only tax revenue but also loans, foreign aid (if a developing country), government business holdings as well as resources from natural resources (including but not limited to oil, minerals, fishery and forestry).

[1] ECA, N.D. *Public Financial Management: Domestic Resource Mobilization*. Addis Ababa: Economic Commission for Africa Economic Commission for Africa, (2014). *Domestic resource mobilization: Innovative financing for Africa's development* Ninth African Development Forum, Marrakech, Morocco 12-16 October 2014

Fiscal means relating to the budget or fisc. It consists of both parts of the budget. Its laws, policies and rules are found in all areas of treaties, constitutions, legislation, regulation and policy related to the fisc or budget. The revenue component includes tax, debt, aid, and government business while the expenditure component includes all government expenditure including exemptions and incentives. This area of fiscal law and policy includes issues around the global, continental, regional, national and sub-national perspectives. It is a multidisciplinary field including economy, politics, finance, law, society and business. However, the fisc is also further nuanced by the thinking of populations and their diverse leaders around and within each of these pillars of a fiscal system. These diverse approaches in the economy pillar could include capitalism, socialism, African communitarianism, human rights, even colonial, post-colonial and/or Chinese philosophy. Issues around the society pillar could include questions around race, ethnicity, religion, culture and traditions. However, these pillars and the diverse influences are not always well understood, documented or even clearly developed with the result that those trying to guide a state or even make decisions are not always clear whether they represent the majority and how they ought to nuance the majority position through a counter-majoritarian balance in a multidivergent and participating society. In the governance systems of states in Africa as well as other diverse countries around the world there are often no policy positions and therefore no clarity. This allows for the political pillar to rest on power-based and discretionary decisions that usually do not stand up to scrutiny which undermines the basis of the state to collect and spend revenue i.e. its fiscal legitimacy.

Fiscal legitimacy involves ensuring that any fiscal system follows the principles of: accountability, responsibility, transparency, effectiveness, efficiency, fairness and justice. A fiscal philosophy ought to be reflected in and codified in fiscal constitutions, laws, policies and regulations policy. This moves what are seen to be predominantly technical documents into fiscally legitimate ones. This means that it should include and absorb all the seven principles of fiscal legitimacy listed above in setting out both its revenue collection and its spending decisions. However when it comes to the philosophical pillars set out above there can be and should be variances which are based on a rational reflection of the societal thoughts.

A fiscal policy and philosophy should have a stock taking procedure using data to set out where the society and the constituent state is and then reflect upon the position into the future. This will allow the state to assess where it would like to see society and then detail in and include diverse questions. Such a philosophy can for example set out what will be collected as revenue; from whom or what revenue will be collected; on what will spending take place; what will the periodic goals be in a 5-year cycle of a government's regime; and who or what will be protected and for how long. There must be rational well thought out basis for these decisions.

In this context, there are several fundamental challenges to improving the scale of revenue and expenditure mobilization in Africa. Challenges such as inequality, low employment and high informality on the continent are systemic. These challenges are a direct result of: poor public investments, corruption, inappropriate and externally imposed economic policies that promote market-based systems which have failed to transform these countries. Then there are structural challenges that pertain to low fiscal literacy, underdeveloped tax rules, poor enforcement and general administrative weakness which are essentially the infrastructure of tax collection systems. Addressing these challenges tends to realize gains much quicker than waiting for systemic shifts to impact the level of public revenues.

These goals (the SDGs) and development agendas are the global consensus that could be reached, however they consist of the translation of these to the continental, regional and national level in more concrete terms contextualised with clear lines of implementation. First, the recent coming into force of the African Continental Free Trade Area (AfCFTA) is evidence of the preparations being made politically and legally at the continental level for African development and economic growth. Secondly, there is a well-established discourse that has created a continental political and economic awareness that the fast-approaching depletion of natural resources will affect the revenue and expenditure purse of at least 40% of African countries. Third the unstable and reducing foreign aid in the post 2009 and 2016 fiscal crises world is also highlighting the need for all states including African states to have clear fiscal sustainability alternatives. Fourth, these medium to long term policies globally and regionally require translation into country and sub-national level policies not only for the present but also for the future in 5, 10, 20, 50 and even 100 years or beyond. Finally, the high cost of loans and the instability of donor aid, places pressure on all countries including those in Africa to develop a clear strategy around their self-sustainability. The water pot in the opening Kenyan proverb is the state with all the needs and requirements of the people contained in it. The pot holds them together through rules regulations and policies and the pad is the government on which pressure is placed to hold it all together. This proverb is thus reflective of the needs of the people on the continent and the small circular pad is reflective of the resources at the disposal of the state. The needs are great and the pad with the changing fiscal climate is getting weaker with pieces falling away. Governments need to ensure that the circular pad (the fisc) no matter what pressure it is under should be able to stand up to the pressure being placed on it by the pot no matter how heavy and damaged it is or may be.

In interrogating the existence and nature of an African philosophy the questions that come to mind are: do African countries have a clear written philosophy and policy? What should it look like? If this policy exists is it a clear reflection of society and its future direction? Is it cognisant of global, continental, regional, national as well as sub-national commitments? Is it holistic and multidisciplinary? This article will attempt to piece together an African and Kenyan fiscal philosophy and strengthen fiscal policy by reflecting on the global and continental agreements African countries have committed to. This will be followed by a more granular analysis of the constitution of Kenya for a more concrete principled analysis of what philosophy and principles ought to guide all fiscally related decisions of a state and its constituent society. Part 1 introduced the issue. Part 2 unpacks fiscal philosophy and policy through the lens of African philosophers. Part 3 frames the African context to policy. Part 4 makes recommendations and Part 5 concludes.

2. UNDERSTANDING FISCAL PHILOSOPHY AND PRINCIPLES

Fiscal legitimacy rests on the basis that a fiscal system should respond to principles of good governance (transparency, accountability and responsibility) as well as being an effective, efficient, fair and just system.[2] The designers of budgets (usually economists) use principles and canons of taxation learned through training and practice. In drafting national and sub-national budgets and fiscal systems. However after the first draft is made then the political sphere and lobbying brings in compromises where principles are renegotiated to get to a sub-optimal compromised budget which is then presented to parliament or the assembly. At this stage, the principles and canons are further eroded through political compromises. Finally, the public may still weigh in to block certain positions where they find the burden too onerous. This process moves forward on the presumption that there are no leakages, the the compromise is fair and just and that the decisiosn makers within the process do so with a people centered approach. However the reality is a corrupt process often tainted by back door deals and lobbying which results in a process that if fiscally not legitimate. These principles and canons can also be used globally, at a continental level as well as regionally, at state level but also institutional level. The question however, is how to engage with these principles and what one can do with them as they work within the diverse parts of fiscal governance. This paper will take the approach that this theory of fiscal legitimacy should be extended to guide all fiscal philosophy, theory, laws and policies. The diverse theories currently in existence include: social welfare theories; human rights-based theories; capitalist theories; communist or socialist theories

[2] Latif and Waris (2015)’Towards establishing fiscal legitimacy through settled fiscal principles in global health financing’ *Health Care Analysis* 23(4):376-390

as well as liberal or conservative theories including African communitarianism and Chinese or Islamic philosophy. These philosophies however engage with each other in a lived reality where societies made up of different types of peoples with diverse ways of thinking and culture and understanding live a philosophy that makes up a patchwork of thinking without one clear way of life. As a result, extracting the principles makes it clearer and easier to follow a broad sweep of issues.

However, while the key elements to be considered begin with the 7 principles list above, whether one should give preference to one principle over another or whether they are all equal is debatable. This paper however will move forward on the premise that the African scholar Ibn Khaldun's understanding of fiscal justice prioritizing fairness and justice supersedes all other principles. Adam Smith had a slightly different argument where he set justice as economic justice as a separate pillar which could be compromised. By looking into fiscal principles through the approach of Ibn Khaldun's rather than Adam Smith's philosophy, one is able to draw into a basket of justice all fiscal principles which allows one to draw in issues of justice and fairness not only from the fiscal perspective but also ways of thinking including but not limited to sociological, political and even human rights philosophy and approaches. This will be discussed in more detail in sub-section 2.1. As a result, the first one to be set out below will be justice and fairness to form the basis or bedrock on which all other principles should operate.

2.1. Justice and Fairness

Ibn Khaldun in the 10th century argued that taxation should be linked to government expenditure. This philosophy he argued must clearly guide all that ought to make payments into a pooled resource in order to achieve spending needs that could not be achieved by individuals. Examples of pooled expenditure included concerns such as communal security. Fairness and Justice therefore in fiscal philosophy and its application in laws and policies ought to leave not more than a minimal discomfort and at best should not leave members of society with an unwillingness to pay taxes. Waris has previously argued around the need to extend the thinking of improving standards of living through Schumpeter's fiscal sociology to human rights principles with the economic principles to form a net of fairness and justice around the concerns of tax collection and its use.[3]

Although it is one thing to follow a scholar's thinking as a source of guidance and principle, it is not always purely reflected in codified law. However when understanding its interpretation and application

[3] Waris, Tax and Development (2013)

in the text of treaties and constitutions do provide a firmer footing. The codification of these principles however must of necessity be reflected within a constitution. The French Declaration on the Rights of Man 1789 is probably one of the clearer historical documents. In Articles 13 and 14 it states that:

> ***13.*** *A common contribution is essential for the maintenance of the public forces and for the cost of administration. This should be equitably distributed among all the citizens in proportion to their means.*
> ***14.*** *All the citizens have a right to decide, either personally or by their representatives, as to the necessity of the public contribution; to grant this freely; to know to what uses it is put; and to fix the proportion, the mode of assessment and of collection and the duration of the taxes.*

Ibn Khaldun argues for justice as an overarching principle but elaborates upon it by arguing to guidelines like: collection of all and any revenue must be based on a collective need or requirement. He also states that there must be a constant and consistent linking revenue to expenditure and that three a state must maintain willing and compliant taxpayers. Ibn Khaldun argued for low tax rate so that people's incentive to work was not killed and that taxes were paid happily.[4] This Constitution clearly echoes Ibn Khaldun's sentiments of willing taxpayers and minimal taxation as well as clear documentation using participation. Coupled with the principle of fiscal legitimacy and its seven constituent principles: transparency, accountability, responsibility, effectiveness, efficiency, fairness and justice; this then sets the stage for what a government ought to be guided by on the African continent.

2.2. Transparency, Accountability and Responsibility

Goldscheid, stated that the pulse beat of a nation is heard in public finance and it highlights the source of all social misery.[5] The works of this scholar is key to developing an understanding of what one wants out of one's people when it comes to finances and also what one expects to give them back. Good governance (transparency, accountability and responsibility)principles require that the capacity of the society to understand the fisc, to access the information with ease followed by an ability to comprehend and then input into the process are all key elements within transparency. If one couples the understanding of society with the human right to access information, the right to development and society's right to participate it leads to a combination of human right discourse coupled with fiscal sociology to ensure a clear well informed and active society where all people and institutions are transparent, accountable and responsible. However one cannot look at good governance without keeping within the centre of focus: fairness and justice which is Ibn Khaldun's argument. Goldshied's argument of keeping social misery at

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[4] Islahi, AA (2006) 'Ibn Khaldun's theory of taxation and its relevance today' *UNED Conference Madrid*, 3-5 November 2006
[5] Goldscheid, R. (1958) 'A sociological approach to problems of public finance' in Musgrave, R.A., Peacock A.T. (eds) *Classics in the theory of public finance*. International Economic Association Series. Palgrave Macmillan, London

the focus of public finance further allows one to ensure the fairness and justice are kept central to finance decisions.

With this broader thinking in mind, one then needs to balance the thinking of different philosophies and principles of peoples who are citizens of many ethnic nations on the African continent and try to understand what the bottom-line basic premise they ought to take forward. However, no matter what theory or philosophy one uses fiscal legitimacy requires that all citizens and taxpayers ought to see not only how taxes are collected but also see how government revenue feeds into the budget. The people should also see how these collected resources are spent. As a result, the incentive to work must not be impeded but rather taxes and all other revenue should be clearly seen. Principles here include: one, that a cost benefit analysis must be done and available for all decisions; two that all documents should be available for viewing; and three, that all decisions should be made openly and through a clear participatory processes.

2.3.Efficiency and Effectiveness

Ibn Khaldun's argument that taxpayers ought to have more than a little discomfort and that revenue collected must be needs based is reflective of the need to ensure an efficient and effective system. This minimalism in the use of the money the carefulness required in using money that belongs to the people is what efficient and effective use is about. Ensuring participation reflects on the best choices on use of finances.

3. FRAMING THE GLOBAL AND AFRICAN FISCAL PHILOSOPHY AND POLICY

In 2012 Waris made the link between tax, human rights and development using the principle of fiscal legitimacy. Later the same year, at the African continental level the African Commission of Human and People's Rights passed a resolution stating that international financial flows and capital flight has a direct impact on the ability of the states in the continent to achieve human rights. In 2014, the Tana Forum discussed the impact IFF has on state security. Finally, in 2015 the African Union created the High-Level Panel and produced the report chaired by Thabo Mbeki that stated that IFF were an impediment to the achievement of development and the self-sufficiency of African states.

The broadest definition of IFF is money illegally earned, transferred or utilized.[6] This definition sets out the African and AU position, the only continental position globally and the one with the largest consensus thus far globally (55 African countries). IFF related funds typically originate from three sources: one, commercial tax evasion, trade mis-invoicing and abusive transfer pricing; two, criminal activities including the drug trade, human trafficking, illegal arms dealing, and smuggling of contraband; and three, bribery and theft by corrupt government officials.[7] IFFs are very difficult to accurately measure.[8] The implications of all the studies are that the trade mispricing component of IFFs globally amount to 1.9 trillion USD and from Africa alone for example range from at least $24.2 billion to $40.7 billion a year. If those amounts reflect two-third of all IFFs, which is the rough estimate of research results, then total IFFs from African is at least $36 billion, but may be as much as $60 billion per year at the moment, given that there is robust and fast-growing trend in the data.[9] One sees that some of these may follow formal financial transfer mechanisms like SWIFT and telegraphic transfers, those related to criminal activity including the informal economy look for methods of transfer that avoid state detection. Thus, due to their very character; they are mostly hidden and, if visible, they may appear in various forms and in various jurisdictions over the same short period of time.

This data shows that it is even more important than before that countries globally must utilise clear and socially acceptable principles at all levels of governance. There is already a legal framework in place to guide this process and this will be set out in this section.

3.1. The Global Guidance Available

Guidance around the issues of state revenue collection and spending can be found in many global, continental and regional documents such as treaties, constitutions, financial legislation, regulation and fiscal policies. Wherever states are members of an institution it is presumed that they are supportive of the principles they espouse. Globally, all states are members of the UN. African nations and other across the world are all members of the United Nations and the African Union as well as regional blocs like COMESA, ECOWAS, Magreb Union, CGL, EAC and SADC. Signing onto international treaties

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[6] UN Economic Commission for Africa, 'A Study on the Global Governance Architecture for Combating Illicit Financial Flows' (2018) 2 <https://www.uneca.org/sites/default/files/PublicationFiles/global-governance_eng_rev.pdf> accessed 18 August 2018.

[7] AU/ECA, 'Illicit Financial Flows: Report of the High Level Panel on Illicit Financial Flows from Africa' (2015) 9 <https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf> accessed 14 April 2018.

[8] The World Bank, 'Illicit Financial Flows (IFFs)' (2017) <http://www.worldbank.org/en/topic/financialsector/brief/illicit-financial-flows-iffs> accessed 18 August 2018.

[9] AU/ECA (n 5).

has led to a commitment. The United Nations Charter at Article 55 states that globally the UN will look towards the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples. The United Nations are therefore required to promote **higher standards of living**. This position is further elaborated in both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESR). This position on living standards is a reflection of Goldshied;s argument on understanding social misery in public finance as well as Ibn Khaldun's argument of keeping fairness and justice a central focus of all regulation around taxation.

The development of fiscal treaties, laws, regulations and policies that traditionally have neither made reference to re-distribution and social welfare nor to have they made reference to any kind of rights-based language.[10] Arguments on this lacuna or absence usually circle around issues of state sovereignty and allow states to bypass any attempts to limit their collection and spending powers. This goes against the theory set out in fiscal legitimacy as justice and fairness are not of central concern if social welfare is not of paramount concern in the development of a budget or fiscal laws and regulations. Human rights scholars will similarly not find any references to human rights within any fiscally related treaties such as the model double taxation agreements or even the resulting actual bilateral Double Taxation Agreements (DTAs), Bilateral Investment Agreements (BIAs), Bilateral Investment Treaties (BITs) or Information Exchange Agreement (TIEAs). There are similarly several reasons for this. One, whereas there was actually a requirement for resources and its recognition within taxation, the fiscal industry was able to ignore the entire body of human rights by arguing that there is no fiscal value placed and therefore no clear line of responsibility placed on them at any level of governance based on the outcomes in the ICCPR and ICESCR. Two, this was further augmented by the international institutions of the International Monetary Fund (IMF) and the World Bank (WB) who have historically consistently avoided use of the human rights treaty framework when making fiscal based decisions that impacted the laws, policies and regulation of the states to whom they lend money. Three, although the United Nations (UN) and the Organisation for Economic Development (OECD) tax treaty models developed at the same time as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR),

[3] See (Brennan and Buchanan, 1980; Sustein, 2000) for discussions on the power v the right to tax debate that protects governments collection and spending power but which is coming under increasing attack from citizens as they see the extent of corruption within their stets and thus take more power away from government and control more decisions through participatory democracy

the decision by the UN at the time to cede discussions and developments to the OECD meant that any possibility of keeping the fields together was lost leaving a much weakened UN Tax Committee.

In order to achieve the principle of raising living standards, the UN took an additional step through the United Nations Department of Economic and Social Rights (UNDESA) and set up and continues to build upon the Financing for Development (FfD) process. Most recently the 2015 Addis Tax Initiative also set out that assistance was needed in finance to help develop fiscal systems globally. In 2015 the Sustainable Development Goals developed in the same year as the FfD process delineated finance issues in goals 16 and 17. They elaborated upon partnerships between governments, private sector and civil society, urgent action to mobilize, redirect and unlock the transformative power of trillions of dollars of private resources to deliver on sustainable development objectives. It also looked into a need to focus on financing and strengthening domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection.

The Sustainable Development Goals (SDGs) include two relevant targets (16.4):

> *By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime;*

and (17.1)

> *Strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection."*

The Declaration also states:

> *We recognize that the full implementation of the Addis Ababa Action Agenda is critical for the realization of the Sustainable Development Goals and targets*

These diverse global documents are slowly but steadily bridging links between these previously siloed fields and bringing Ibn Khaldun's philosophy to the fore. Fiscal resources must be taken based on needs. Here one could argue that the needs and rights set out through the SDGs ensure the principles of fiscal legitimacy which are maintained and preserved using these global commitments as long as they are not in contradiction with the principles of fiscal legitimacy.

3.2 African Guidance

At the African level we find a similar reflection set out in the African Charter on Human and People's Right and the Charter of the African Union (AU). In 2015 the African Commission set out in Resolution 268 that illicit financial flows (IFF) were destroying the ability of African states to realise rights. The

AU also was a key player in the High Level Panel (HLP) on IFF of the AU and now more recently the African Continental Free Trade Agreement (AfCFTA) which leads us to the move to regionalism and removal of domestic revenue through continental level transactions. Thus, the global documents on FfD and the SDGs came in the wake of an Africa position which explained,

> *reduced tax earnings resulting from hiding taxable funds has a direct effect on the provision of public services such as schools, clinics, sanitation, security, water and social protection.*

The Commission established by the Norwegian Government to investigate capital flight from developing countries has argued in response to this argument that

> *States do not have an unlimited license to pursue their own self-interest at any cost; indeed, the primary constraint on state sovereignty is that domestic policies should not undermine the sovereignty of another state. Legislation that exclusively or primarily will have effects in other states, such as the financial regulations common to secrecy jurisdictions, is therefore not the exercise of sovereignty, but an encroachment on the sovereignty of others.*

This series of continental and national policy statements show that there is an awareness that the limited resources are impeding the development of states and by extension their human rights realisation. Developing countries have been battling the international community for many decades on this issue however the countries that hold the largest amount of capital continue to wield it to maintain the status quo.

What has become clear from the global and African position is that the global understanding of a fiscal policy while still very much considered an issue of state sovereignty is now breaking the barriers and requiring that a possible do no harm policy be made part of global and continental discourse. Resource constraints, DRM and any other form of fiscal rules that oppose the tax principles of just and fair society are now in center focus and need to follow the principles of fiscal legitimay while doing no harm to neighbours. The same principles ought to be used at the level of continental and regional organisations.

However, while this now sets the context for every African country, the next section will focus specifically on Kenya in order to see how the global, continental and regional comitments ought to be located in the context of an African country and the direction it takes at national and sub-national level from a philosophical and policy basis. If one were to illustrate this with the opening proverb, the clay of the pot is made up of the global, continental and regional commitments as tempered by the fire of the principles of fiscal legitimacy.

4. TRANSITIONING INTO A KENYAN FISCAL PHILOSOPHY

Just after independence the government developed Sessional Paper no 10 of 1964 commonly referred to as the paper on African socialism. This paper argued for collection of revenue but continued support by local society of the needy members within their communities. While the purpose may have been debated thoroughly the result was an abrogation by government of their responsibility to use tax revenue to build society. The result was the lifting of checks and balances on the government and increase in corruption in government leading to a complete loss of fiscal legitimacy. This led to the era of poor development and grand corruption scandals.

In the 1990s government began a long process of constitutional change which culminated in 2010 with Kenyans went to the polls to vote in a new constitution by a referendum. This constitution received national support and was almost immediately celebrated as being one of the most socialist constitutions in the world. This is not the first time Kenyan thinking has gone in the direction of socialism since sessional paper no 10 had echoes of socialism. Thus if one were to delineate the thinking of Kenyan society, the majority are in favour of a more socialist leaning state. The question this section will attempt to unpack is whether one can clearly delineate a Kenyan fiscal philosophy and how concrete the philosophical underpinnings are through an understanding of what the people of Kenya voted.

The 2010 constitution was developed over a 20-year period of debate, lobbying and compromise. During this period there were over 5 draft constitutions debated, there were 2 referendums one draft was rejected while the second in 2010 was accepted. Despite the back and forth and discussions over contentious issues, the fiscal and fiscally related provisions remained stable throughout the process and are expounded on below. It is however debatable whether the lack of discussion on these provisions was a sign of acquiescence or a lack of clear understanding of these provisions. This paper will move forward on the premise that there was a minimum basic understating around the principles intended to guide the process of finance and as a result even if the issues themselves remained unclear the guiding principles under article 201 of the Constitution was well within the understanding of the Kenyan people.

> *Article 201. The following principles shall guide all aspects of public finance in the Republic—*
> *(a) there shall be openness and accountability, including public participation in financial matters;*
> *(b) the public finance system shall promote an equitable society, and in particular—*
> *(i) the burden of taxation shall be shared fairly;*
> *(ii) revenue raised nationally shall be shared equitably among national and county governments; and*
> *(iii) expenditure shall promote the equitable development of the country, including by making special provision for marginalised groups and areas;*

(c) the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations;
(d) public money shall be used in a prudent and responsible way; and
(e) financial management shall be responsible, and fiscal reporting shall be clear.

The Vision 2030 is the development blueprint of Kenya. It has three key pillars: economic pillar, social pillar and political pillar. The pillars' foundation is **macroeconomic stability;** continuity in governance reforms; enhanced equity and **wealth creation opportunities for the poor;** infrastructure; energy; science, technology and innovation (STI); land reform; human resources development; security; and public sector reforms. This in turn ties into the current government's Big 4 agenda. Despite this clear direction, the implementation of fiscal legitimacy the position remains a theory at best and an aspiration at least. In reality, the building blocks to making it a lived reality seem elusive. In 2018 taxpayer data from the KRA showed that only 2.9 million of the registered 7.6 million had filled annual returns. Since 18 million voted in the 2017 elections where those remaining 10-12 million voters are working and earning and contributing to the national income tax pot remains unclear. It does however mean that taxpayers are simply those working in government and those in the formal private sector.

What remains also unclear is where other government revenue is: the accountability for aid, debate and other sources of government revenue remains unclear.

5. RECOMMENDATIONS AND CONCLUSION: THE UNDETERMINED POSITION WITHIN FISCAL PHILOSOPHY

While countries like Kenya and continents like Africa are attempting to build a coherent approach in regards to cross border taxes, the domestic position remains unclear. Ensuring all people pay tax, developing a policy on how much tax one can pay, having clear objectives for the country to ensure they align with tax collections, knowing taxpayer and tax collector rights, understanding what the position on criminal charges for evasion is and whether the nation or continent is aligned to progressive or regressive taxes and determining how redistribution ought to take place are all questions that remain unclear. This is of concern given the fact that governments are making continental and national level demands for taxes while taxpayers and societies on the continent remain fiscally in the dark.

What is clear is that development and poverty alleviation all require fiscal and other resources. It is also clear that states in Africa like Kenya have committed to the realization of rights. While the Constitutions empower the state to administer and collect taxes, the question that still remains unanswered is what should be the underlying philosophical principles guiding it. However if we recall the African proverb that the water pot is pressuring the head rest ensuring the pad is robust is a crucial element.

The water pot presses upon the small circular pad.

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