EAST Africa Tax and Governance Network

Intersectionality, Marginalisation and Gender Tax Inequality in Kenya

A Working Paper

ABOUT EATGN

The East African Tax and Governance Network (EATGN) was founded in 2009 in Nairobi, Kenya, as a membership organisation of individuals and non-state actor institutions that share the understanding that taxation is fundamental in achieving social justice and development goals.

EATGN is therefore a network of more than 16 organisations across the East Africa Community (EAC) specialising in taxation, governance, public policy, research and capacity building specifically working to create links between its various constituencies in the region to improve tax policy while deepening democratic governance. Of interest is the importance EATGN attaches to understanding tax management and how these shape policy outcomes.
The network is working to establish strong and sustainable national tax justice platforms in the EAC by implementing a five-year strategic plan 2019-2023. This will be done through pursuit of substantial growth in research - to fill in the identified knowledge gaps, conduct evidence-based programming and facilitate policy dialogue. It also intendeds to achieve this through building its technical expertise and through the strengthening of its current partnerships while fostering new strategic linkages.

To implement its activities over the next five years, EATGN works through a steering committee and country focal point organisations to find clarity, build concise momentum, develop agenda and work towards a common East African tax strategy for its membership in relation to current regional tax debates and policy-making processes.

ABOUT TAXATION AND GENDER RESEARCH

This study is a preliminary initiative to facilitate the conduct of gender research to understand tax inequality in Kenya. It hopes to spur interest from academia, policy makers, faith-based groups, private sector and civil society organisations (CSO), to understand and advocate for better tax policies within their spheres of influence to achieve sustainable development goals (SDGs). EATGN gratefully acknowledges Christian Aid for generously supporting this initiative.

Coordinator: Leonard Wanyama, Email: lwanyama@taxjusticeafrica.net

ABSTRACT

This study is a desk-based review that serves as a preliminary examination of taxation in the marginalised areas of Kenya. It hopes to begin understanding the manifestation of tax disparities through gender lenses by identifying the factors enhancing marginalisation of women and minority groups due to unfair tax regimes or bad governance; and pinpointing the forces behind resource leakages, and how women and other minority groups or communities are excluded within mitigating measures. The study ultimately aims to recommend relevant actions that should be taken by Civil Society Organizations (CSOs), faith actors, government and other stakeholders. It also aims to develop an initial strategy and plan of action to ensure gender mainstreaming in tax governance is realised.

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Table of Contents

List of Tables

List of Acronyms

ASALs	Arid and Semi-Arid Lands
CEDAW	Convention on Elimination of all Discrimination Against Women
CSO	Civil Society Organisation
DRM	Domestic Resource Mobilisation
EATGN	East Africa Tax Governance network
KIHBS	Kenya Integrated Household Budget Survey
KNBS	Kenya National Bureau of Statistics
KRA	Kenya Revenue Authority
NGEC	National Gender and equality Commission
PEM	Public Expenditure Management
PwDs	People with Disabilities
SID	Society for International Development
VAT	Value Added Tax

1.0 INTRODUCTION

1.1. Background

The declining trends in flows of development assistance to developing countries has led to increased interest and currency on domestic revenue mobilisation as a reliable and sustainable mechanism through which countries, especially in the developing world, can finance their development. Recent trends show marked improvements in domestic resource mobilisation. In fact, tax revenues have grown considerably in many African countries rising with an average tax-to-GDP ratio increase of 5 percent since 2000, the average tax-to-GDP ratio for 21 African countries in a recent OECD study stood at 18,2% in 2016 (OECD, 2018).

Despite the visible positive trends, information on the mix of tax revenues to ensure that tax regimes and tax policies do not disadvantage taxpayers, especially the poor, and exacerbate already chronic inequalities in many contexts across Sub-Sahara is still inadequate. Such information, if made available, should enable a better understanding of prevailing tax structures in order to comprehend the tax burden and to increase awareness on who may be carrying the heaviest load and its implications on fiscal sustainability and economic development. While a more detailed breakdown is needed, the recent OECD report suggests that regressive taxation through VAT makes up the brunt of tax revenue at an average of 29,3% (OECD, 2018, p. 19).

A more detailed insight in the current way the tax burden is spread, can also aid advocacy and action towards ensuring a fair and progressive tax system which facilitates equitable redistribution of public resources and public goods/services, reduce inequality and promote inclusive development. Further, since women are considered more vulnerable – to poverty, inequality and other shocks resulting from the internal and external political economy - it is prudent to consider the implications of tax regimes and policies on women. Therefore, underscoring a gender perspective in tax justice is not only imperative but timely.

Given the interrelated nature of tax and governance policies, it is necessary that national policies are assessed to identify gaps that allow for the continued marginalization and exclusion of certain groups of citizens. Often, fiscal policies have a counterproductive impact on revenue generation by concentrating on one sector over another thereby undermining individual state's potential to maximise tax collection. This generates a ripple effect on service delivery and therefore on equitable distribution of state resources. Hence, it is important while considering the implications of existing tax regimes to pay attention to the effects of multiple injustices and insubordination that women that live in marginalised communities experience.

1.2. Objectives of this paper

Within the context of their society or economy, men and women are situated differently with regard to how they may experience different obligations or limitations that may result in varied responses to existing and emerging tax policies. Women as a particular group of concern often have multiple identities that have varying implications on their ability to pay taxes especially considering the disproportionate distribution of unpaid care work. As such, gender responsive taxation is essential because it acknowledges the distinctions between men and women.

This is to reduce the gaps between them due to the: different gender-related impacts[1]; unwarranted impositions; implicit discriminations and favouritism as a result of the current taxation designs, policies or implementation. For instance, gender implications of taxation can be exemplified as seen in the case of part time workers, who are mostly women, being taxed higher than full time workers. Another example can be marriage penalties where couples cumulatively pay higher taxes than when they initially filed returns as single individuals (Lahey, 2018; Gunnarsson et al. 2017; Gorwn and Valodia, 2010; Himmelweit, 2017).

Despite gender issues being downplayed, ignored, or continually addressed at the periphery of policy dialogue and decision-making, macroeconomic policy failures have a clear correlation to the degree of gender inequality. Inequalities therefore emerge from the gender hierarchies associated with different societal roles and division of labour that offer more advantages in the distribution of resources an opportunities to one group over the other. Bearing in mind that despite notable progress in terms of their status and rights, females in Kenya are still lagging behind males; it is therefore critical to work towards solving this problem by engendering tax, budgeting and public finance policy processes through mainstreaming strategies.

Gender tax inequality is the manifestation of tax disparity related to "the productivity of labour and the allocative efficiency of the economy". In this case, opportunities for specific groups shrink because of gender inequality thereby affecting: rewards for work; human resources; access to capital; and control of other productive resources. The same applies to the ability to influence and contribute to development processes. Gender tax inequality is therefore' the situation in which disparities that are founded on gender differences become apparent within the tax regime, thereby making specific groups lose out on the relevant opportunities or equal voice in decision making.

Such losses then disadvantage specific groups particularly if they are marginalized as is the case in Kenya with regards to women, girls, the elderly, people with disabilities (PWDs) and ethnic minorities. Tax justice campaigns must then look at the whole spectrum of revenue collection, allocation, expenditure and administration to advocate for addressing prevalent inequality. Yet, despite previous studies such as Wanjala et al (2006), the need to understand the revenue collection aspect of the tax continuum as opposed to the expenditure side -as represented by budget processes- is still very prevalent in the policy advocacy sphere.

Hence, the main purpose of this study is to satisfy this demand to understand the nature, composition, context, implications and impact of gender tax inequality in the present public financial management environment under the Constitution of Kenya 2010 (CoK, 2010). This study then seeks to ask the question, what is the nature of gender tax inequality for marginalized groups in Kenya? This is with the aim of:

1. Identifying the intersectionality of factors enhancing marginalisation of women and minority groups due to unfair tax regimes and bad governance;
2. Pinpointing the forces behind resource leakage, and how women and other minority groups or communities are excluded within mitigating measures;
3. Recommend relevant actions to be taken by Civil Society Organizations (CSOs), faith actors, government and other stakeholders.
4. Developing a Strategy and Plan of Action to ensure gender mainstreaming in tax governance is realised.

[1] Wanjala B., Mathenge N. and Kiringai J., Gender and Taxation in Kenya, pg. 4, https://www.researchgate.net/publication/253361453_GENDER_AND_TAXATION_IN_KENYA

[2] Taxation and Human Rights; Missed Opportunities to Invest in Economic Social and Cultural Rights in Kenya
[3] SID cites World Bank (2002) Integrating Gender into the World Bank's Work: A Strategy for Action. Washington D.C., World Bank
[4] This is based on a working definition that tax inequality is the manifestation of disparity within a regime of tax collection, allocation and expenditure of revenues.

It is believed that the information and data obtained from this paper will inform advocacy and policy and legislative reform (both at county and national government levels) that can be leveraged to promote gender tax justice especially for women living in marginalised areas in Kenya. Overcoming the impact of tax inequality on women in marginalised communities requires interventions that localise the understanding of gender tax justice. The findings from this paper can inform advocacy to ensure that equitable taxation, resource allocation, and proper budget expenditures can benefit vulnerable women, girls and other excluded diverse groups based on age, disability or any other variable in line with the *Leave No One Behind* agenda.

1.3. Methodology

This paper is a desk-based research whose purpose is to understand the general nature of gender tax

Table 1: Approaches to the study

Methodology	Rationale	Approach
Desk research	Served to review of relevant literature to enrich study design, tools and reporting	Review of relevant literature pertaining to the subject of the study. These included public domain documentation including government data, policies, legislation, data from International Finance Institutions, economic surveys and other relevant information/data:

It is therefore conducted using qualitative methodologies relying on secondary data concerning taxation policy, gender and marginalisation in Kenya. Specifically, the research will focus on two case studies of Arid and Semi-Arid Lands (ASALs), as represented by Turkana and Wajir counties, in which there is available data to exemplify where the most significant forms of marginalization are situated in Kenya.

The selection of Turkana and Wajir was based on current policy in addressing marginalised areas that looks at the issue from three main angles, namely: geographical, economic and other factors which could be historic and ecological. According to the Ministry of Devolution, Arid and Semi-Arid Lands (ASALs), marginalisation in the Kenyan context is captured by three distinct but interconnected terms which are: ASALs, pastoralism and Northern Kenya.

The arid counties are geographically synonymous with the concept of 'Northern Kenya'. Pastoralism is the dominant production system in the arid counties and in some semi-arid counties as well. However, there are also important differences between the three terms. Not everyone in the north is a pastoralist. Nor are the inequalities between the north and the rest of Kenya primarily a consequence of its ecology hence the use of the term 'Northern Kenya' as well as 'arid lands'. All the three terms are important because they raise different policy concerns.

The policy therefore goes on to classify Kenya's marginalised counties in relation to the categorisation provided listing 29 counties, which were further brought down to 14 following the criteria of the Commission for Revenue Allocation (CRA) to identify counties for allocation of the Equalisation Fund which is assigned one half percent of nationally raised revenue based on marginalisation. The CRA abided by the Constitution of Kenya, 2010 which defines marginalised communities as one or more of the following:

a. A community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole.

b. A traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole.

c. An indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or pastoral persons and communities, whether they are:
   i. nomadic or
   ii. a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole.

This meant a progressive change between the first and second policy for Equalisation Fund where currently, the unit of analysis shifted from the county to a smaller area of the sub-location within the county. [5]Nonetheless, Turkana and Wajir counties, were selected because of having easily available data beyond the Kenya National Bureau of Statistics (KNBS) and the Society for International Development (SID) disaggregated data to the county level. The availability of a political economy analysis of Turkana and Wajir, made them viable case studies especially in hoping to craft a strategic plan of action or interventions.

2.0. GENDER TAX JUSTICE IN KENYA – A REVIEW OF LITERATURE

2.1. A background to the tax system in Kenya

Taxation is the main source of revenue for the Kenyan government; out of this the government can provide various services to the public. Tax performance in Kenya has improved significantly from 963.8 billion in 2013/14 financial year to 1.2 trillion in 2016/ 17 financial year. [6]This accounts for about 60% of the Kenyan budget with a lot of bias on income tax and Value Added Tax (VAT) as the major contributors to the total amount of tax collected.

[5] CRA (Commission for Revenue Allocation), Second Policy and Criteria for Sharing Revenue Among Marginalised Areas, June 2018, https://www.crakenya.org/wp-content/uploads/2018/06/CRA-37-Second-Policy-on-Marginalised-Areas-June-16th-2018.pdf
[6] Kenya Revenue Authority. Annual Revenue Reports

Two tiers of the government are responsible for tax revenue collection. The first is the national government mandated to collect income tax, VAT, Excise Duty and Customs Duty. The second is the county government required to collect property, entertainment and other miscellaneous taxes[7] . The government imposes two types of taxes on its citizens: direct and indirect taxes. Direct taxes are those paid as tax payers or that employers are required by law to pay to the Kenya Revenue Authority (KRA). These taxes are usually calculated from the total income that an individual receives or their total assets. The taxes cannot be transferred to another individual; usually the person or entity to whom the tax is charged is the actual tax payer.

These taxes include income tax, corporate income tax and royalties. Corporate Income Taxes are levied on companies, but unlike income taxes, they do not have a rate structure. 30.0%[8] is levied on resident companies while 37.5%[9] is charged on non – resident companies. Indirect taxes, on the other hand, are those levied on goods and services rather than on income or profits. The taxes are usually collected by an intermediary, for example a retail store, from the person who bears the ultimate tax burden which, in this case, is the consumer. Examples of indirect taxes include VAT, excise duty tax and custom taxes. Excise taxes are charged on goods and services produced either domestically or imported while custom duty is charged on cost, insurance and freight value of imported goods. Of the total revenue collected by the government over the past decade, excise duty has represented a total of 15.0% with import duty and other taxes accounting for 17.0% [10] .

2.1.1. Personal Income taxes

Under personal income taxes various salaries are charged according to specified tax rates which differ according the amount of money an individual receives at the end of the month. The smallest rate is 10.0% charged on incomes ranging from KES. 0 – 147,580 while the highest rate is 30.0% for incomes higher than KES. 564,710 [11] . Insurance premiums, allowances and employment benefits all are charged under income tax. The main purpose for the collection of these taxes is usually to ensure income redistribution and revenue mobilization.

The government has over the years taken strides aimed at adjusting the tax brackets and ensuring provision of relief to counter inflation and ensure equity. In the past ten years', a sizeable amount of the country's total tax revenue has been from income taxes accounting for a total of 40.0%[12]. In the financial year 2016/17, personal income taxes recorded a 7.9%[13] growth a number being attributed to the lay –offs in the private sector and the tax relief granted in January 2017 through the widening of the tax brackets.

2.1.2. Value Added Tax

Value Added Tax differs in rates allocated under VAT Tax Act. The first is 16.0% which is applicable to generally all taxable goods and services. The second is 12.0% applicable to electrical energy and certain types of residual fuels and lastly 0.0% [14] applicable to exports, agricultural inputs, pharmaceutical products, educational materials and supplies to privileged persons. The purpose of VAT is major revenue collection which is underpinned by the fact that it has lower administrative and compliance cost.

[7] IEA-Kenya (Institute of Economic Affairs), A Citizens Hand book on Taxation in Kenya, 2012, https://www.ieakenya.or.ke/downloads.php?page=Tax-Handbook.pdf
[8] http://www.kra.go.ke/incometax/incometaxtypesoftaxes.html
[9] See note 8
[10] See note 7
[11] Kenya Revenue Authority
[12] See note 7
[13] KRA (Kenya Revenue Authority), Annual Revenue Performance Report (2016/17),
[14] Kenya Revenue Authority

Over the last decade, VAT has represented a total of 28.0%[15] of the total tax revenue. VAT has contributed heavily to the total annual revenues collected over the years. The financial year 2016/17 recorded a 13.8% growth which was partly due to growth in the consumption taxes (VAT) to 21.2%. VAT has exhibited steady growth averaging 21.5% over the last five years which could be attributed to enhanced compliance measures.

In the financial year ending June 2017, the government recorded an increase of 13.8% from 1.2 trillion in 2016 to 1.4 trillion in 2017.The increase was attributable to growth in the VAT which was due to greater compliance steps put in place by the revenue collection authority. Other taxes that improved in the 2016/17 FY include corporation tax which went up to 18.2% compared to its annual growth rate of 13.7% over the last four years; excise taxes also improved to 13.3% in comparison to 14.0% over the last half decade. Personal income taxes recorded a 7.9% growth which was lower compared to other taxes due to the numerous lay –offs especially in the banking sector and the widening of the various tax bands.

Table 2: Tax revenue performance FY2013/14 - FY2016/17

Financial Year	2013/14	2014/15	2015/16	2016/17
Tax revenue	963.8 billion	1.0 trillion	1.2 trillion	1.4 trillion
Tax revenue as % of GDP	16.9%	16.3%	15.8%	19.3%

Source: World Bank Statistics

Whilst there have been significant improvements in the amounts of tax collected, tax revenue as a percentage of the country's gross domestic product has hit an all-time low recording 15.8% in 2016 up from 16.9% in 2014[16] .This could be attributed to the fact that more goods and services are being transacted but very few of these transactions are taxed. Currently the tax to GDP ratio stands at 19.3% [17] being the highest in the region and the 2nd highest amongst non –oil economies in Africa.

2.2. Gender discontent: Unjust taxation and inequality

To understand the character of tax injustice and its marginalising effects we must examine the nature of inequality in Kenya together with its consequent manifestations within existing gender hierarchies. We therefore should examine Kenya's legacy of inequality; efforts towards mainstreaming gender equality; the question of gender injustice and the factors of gender tax injustice in Kenya.

2.2.1. The legacy of inequality in Kenya

Kenyan inequality is a colonial inheritance of divide and rule tactics that exacerbated urban-rural divides, plus the favouritism of "highly productive" agricultural areas along regional or ethnic lines.[18]

This reinforced or infused cultural, systemic and structural predispositions that furthered various forms of discrimination, like sexual prejudices among others, which entrenched inequality. With the attainment of independence subsequent administrations have struggled to address the issues appropriately because of mounting challenges due to a rapidly changing and increasing population (SID, 2012).

[15]Ibid, IEA-Kenya (2012)
[16]World Bank Statistics
[17]Kenya Revenue Authority
[18]Read Kenya Vision 2030- A Globally Competitive and Prosperous Kenya; also read Sessional Paper No. 10 of 1965 and Its Application to Planning in Kenya, and its critique, *Problems Facing Our Socialism.*

As a result, the economy has not been able to sufficiently provide adequate employment within its formal sector and its growth, overall, has not been wildly impressive over a period of five decades. This structure has resulted in inequality predominantly exhibiting itself in the form of greater incomes being distributed upwards towards the rich at the expense of the poor. This is due to the administrative preoccupation with allocated expenditures towards sectors instead of improving individual incomes because of productive participation within those sectors.

As more and more of the poor become disadvantaged by how the situation compels them into the precarious small holder or informal sectors of the economy women-among other social groups- have predominantly been affected by such prejudices at a regional or sectoral level. This is especially the case in relation to access and ownership of land, which remains one of the main factors of production in Kenya considering its significant agricultural base.

2.2.2. Impact of taxation on women

The tax system in Kenya has not been gender inclusive, thereby impacting on women negatively due to the underlying consumption patterns and the various trends in the labour market. [19]Gender bias in taxation occurs both explicitly and implicitly. Explicit bias here includes procedure for filling income taxes or the differences in income tax reliefs (Stotsky, 1996). Implicit gender biases on the other hand have been manifested heavily especially with regards to the consumption patterns of both men and women (Stotsky, 1996). Generally, women spend most of their income on consumption of food and other basic services, as opposed to men, hence they carry a greater VAT burden especially on food commodities such as milk, bread and wheat flour. [20] This effect has been compounded by the fact their incomes are generally lower than those of men. As a result of this the proportion of the taxes on their total incomes is generally higher than those of their male counterparts earning a slightly higher income.

Households headed by male individuals in urban areas spend 42.0% [21] of their income on food commodities as opposed to 43.0% [22] of households headed by their female counterparts [23] . This 1% difference is deceptively small as it looks at the total expenditure of households rather than disaggregated expenditure differences between men and women within the household. Rural areas present even graver disparities in terms of consumption between the men and the women. According the Kenya Socio – Economic Atlas 2014, 33.0% of households in the rural areas and 32.0% nationally are headed by females with most of their incomes going into food and other basic services. From this we realize that the burden of VAT is generally higher on women since most of their incomes are generally spent on those goods and services that are taxable by the Value Added Tax.

The same bias exists with regards to the personal income taxes. In the early 1960s and 1970s both male and female incomes were combined therefore allowing joint taxations with the rationale that a married woman's income was deemed as equal to the husband's income [24] . This joint filling of personal taxes affected women more than men.

[19] OECD, *Why care about Taxation and Gender Equality?*, http://www.oecd.org/social/gender-development/44896295.pdf
[20] Stotsky J.G., *How Tax Systems Treat Men and Women Differently, Finance and Development*,1997, International Monetary Fund (IMF), https://www.imf.org/external/pubs/ft/fandd/1997/03/pdf/stotsky.pdf
[21] See Wanjala, Mathenge and Kiringai, 2006
[22] See note 21
[23] It is important to note here that female-headed household refers to any household where women are the main income earners. This does not disaggregate between households where a male is entirely absent and households where a female earns more than a male. Disaggregating this category would provide valuable additional insights with respect to tax injustice affecting females.
[24] TJNA (Tax justice Network Africa). *Africa Tax Spotlight*, Vol. 2, 2011

Women inherently earned less income from employment than men therefore when their incomes were lumped together with their male counterparts it meant that the total income moved to a higher tax bracket resulting into higher rates. This shifted the tax burden on to the women allowing for higher taxation. Though this was to change later on in 1978 through the introduction of legislation allowing women to write authorization letters enabling deduction by their employers to avoid tax arrears at the income tax filling time, it further shifted the tax burden to the women representing bias on the married women. In addition, these women generally receive lower incomes occasioned by the different inherent factors that exist in the labour market. The Kenyan income tax rates dictate the different rates that are to be paid according to the various tax brackets.

Studies[25] have shown that these rates generally work against women in the lower tax bracket by shifting the tax burden on to these women who are again subjected to the value added tax in the household goods and services they buy. Today, the gender bias related to personal income tax has been eliminated through various legislations allowing separate treatment of incomes of married couples. Married women are also allowed to declare incomes from other sources like interest and rents which was previously done by their husbands. The biases in taxation have been addressed with constant reforms in the taxation process, noteworthy strides have been made in order to address these issues in the tax system by creating tax relief through the unification of the single, special single and married relief however there is still a lot to be done to address this issue given the biases that exist in filling tax returns jointly as couples.

The tax relief and benefits in employment are more likely to have positive impact on males than on their female counterparts even though women spend most of their incomes to pay for household goods and services and general care of the family. For instance, firms that benefit from tax incentives are large in size especially MNCs, yet the majority of businesses owned by women are SMEs. As such they miss out on such tax reliefs and end up shouldering the entire burden. Also, the Turnover Tax which was applicable at a flat rate 3% on all businesses >500,000KES but less than 5 Million KES, from 2008 until FY 2018-19 was regressive in nature, since the majority of the businesses in that turnover category are owned by women as already highlighted above. In light of the inequalities described above, analysis of the whole tax system should be undertaken. The goal of this analysis should be to identify recommendations to help create equality and abolish gender biases in the tax system.

3.0. INTERSECTIONALITY – A CONCEPTUAL FRAMEWORK

3.1. A background to intersectionality

The concept of intersectionality is a recent one. The term was coined in a discussion on how social movements tend to not recognise the conditions for people who fall between the categories employed by such movements. It considers different systems of oppression, and specifically how they overlap and are compounded.As a sociological construct, it describes multiple layers of discrimination when an individual's identities overlap with a number of minority classes — such as race, gender, age, ethnicity, health and other characteristics (Bowleg, 2012). It is a theoretical framework that posits that multiple social categories, like race, ethnicity, gender, sexual orientation, and socioeconomic status, normally intersect at the micro level of individual experience to reflect multiple interlocking systems of privilege and oppression at the macro, social-structural level (Bowleg, 2012). [26]Intersectionality relates to the observation that power structures based on categories such as gender, race, sexuality, functionality and class interact with each other in various ways and create inequalities, discrimination and oppression (Swedish Secretariat for gender Research, 2018)[27]

[25]Such studies include: Lahey, K (2018), Gunnarsson, A., Schratzenstaller, M., and Spangenberg, U. (2017), Maina, A.M (2017), Gorwn, C. and Valodia, I (2010), Himmelweit, S (2017) and Joint Economic Committee (2016)

[26]Bowleg L., 'The Problem With the Phrase Women and Minorities: Intersectionality—an Important Theoretical Framework for Public Health', American Journal Of Public Health, 2012 July; 102(7): 1267–1273, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3477987/

[27]Swedish Secretariat for gender Research, https://www.genus.se/en/wordpost/intersectionality/

The arguments around intersectionality hinge on the recognition that failure to address the diverse characteristics of the problems that different groups of women face, often limit the ability of policy, laws and or interventions to cater for the needs of all women. It acknowledges that whilst all women are in some way subject to gender-discrimination, there exist other factors, linked to their social identities (like class, caste, race, colour, ethnicity, religion, national origin) that play a significant part in actualising substantive divergence in how women from diverse groups experience discrimination. Essentially, such factors manifest in problems and vulnerabilities that may be unique to particular groups of women or that disproportionately affect some women relative to others. And because interventions designed to address gender discrimination have proven not to effectively address problems to women subjected to multiple forms of discrimination, "intersectionality" seeks to capture both the structural and dynamic consequences of the interaction between two or more forms of discrimination or systems of subordination. It specifically addresses the way racism, patriarchy, economic disadvantages and other discriminatory systems contribute to create layers of inequality that structure the relative positions of women and men, races and other groups. Moreover, it addresses the way that specific acts and policies create burdens that flow along these intersecting axes contributing actively to create a dynamic of disempowerment[28].

3.2. Strands of intersectionality

1. **Targeted Discrimination:** This aspect of intersectionality relates to insubordination of women that results from abuses that are specifically targeted at women of a particular group – race, ethnicity, religion etc.

2. **Compound Discrimination:** This relates to discrimination women are subjected to as a result of their gender roles and belonging to particular ethnic groups. For example, women may be excluded on the basis of race from jobs designated for women; at the same time, they may be excluded from jobs reserved for men. In effect, these women are specifically excluded as minority or ethnic women because there is no role for applicants with their particular ethno-racial and gendered profile.

3. **Structural Discrimination:** Structural intersectional subordination occurs where policies intersect with underlying structures of inequality to create a compounded burden for particularly vulnerable women. Gender discrimination may occur within a setting in which some women are vulnerable because of their race and/or class backgrounds. In other circumstances, a particular policy, practice or individual act driven by racial, ethnic or some other form of bias may operate in the context of a gendered structure and affect women (and sometimes men) in a unique way.

[28] Report of the Expert Group Meeting on Gender and racial discrimination, 21-24 November 2000, Zagreb, Croatia http://www.un.org/womenwatch/daw/csw/genrac/report.htm

3.3. Utility of intersectionality in gender tax justice analysis

Today intersectionality is used as a theoretical point of departure and methodological aid within research, activism and practical work of change. [29] Its broad embrace of multiple intersecting identities and multiple interlocking privilege and oppression and its position that no social category or form of social inequality is more salient than another provides analysts with a framework for considering unique circumstances of women (Bowleg, 2012). Also, intersectionality prompts researchers to conceptualize and analyse disparities and social inequalities in multidimensional ways that mirror the experiences of targeted populations who are disproportionally affected by policy outcomes. From intersectionality's perspective, single or dual analytical categories such as gender offer limited explanatory power and as such, there is a need to broaden the analytical categories. Its focus on the importance of macro-level social-structural factors aligns well with contemporary advocacy to consider the substantial effect of factors beyond the level of the individual (Bowleg, 2012). Lastly, since intersectionality takes the experiences of historically oppressed or marginalized populations as its vantage point, it can facilitate and inform the development of effective policies and interventions.

3.4. The nexus of intersectionality and marginalization in Kenya

Marginalisation is caused by various factors that can be both common to, and unique from, one place to another. Marginalisation is a consequence of a skewed process of the distribution of scarce resources; it has been interpreted as a process of social exclusion from the dominant socio-economic, cultural and political structure. For instance, Kanyinga (2006) points to the existence of a relationship between ethnicity and resource distribution arguing that there is ethno-regional disparity in development in Kenya meaning that some regions and ethnic groups are collectively poorer than others in that they have fewer opportunities to improve their wellbeing and enjoy fewer services while others are generally better off and have more opportunities (Kanyinga, 2006). The Constitution of Kenya (2010) defines marginalised communities as one or more of the following:

1. A community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole.
2. A traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole.
3. An indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or pastoral persons and communities, whether they are: (i.) nomadic or (ii.) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole.

As already established, structural intersectional subordination occurs where policies intersect with underlying structures of inequality to create a compounded burden for particularly vulnerable women.As such, whilst in general, there are communities that, going by the CRA and constitution of Kenya definition, experience substantive inequalities remitted by unjust or skewed policy and government interventions, women living amongst such communities face even more profound inequalities that compound their subordination. The implication thus is that the marginalisation combined with the typical injustices that women contend with make their circumstances grimmer. This is the essence of intersectionality. In the context of this study, there are already concerns that the existing tax regime in Kenya is unjust to women. However, the circumstances of women in Kenya are not homogenous.

[29] See Swedish Secretariat for Gender Research
[30] GATJ (Global Alliance for Tax Justice), Promoting Gender Concerns through the Kenyan Tax System, March 2017, https://www.globaltaxjustice.org/en/latest/promoting-gender-concerns-through-kenyan-tax-system

There are those that live among communities categorised as marginalised – in terms of access to opportunity, public goods and services, and in terms of historical injustices related to colonialism and the legacy of bad governance.

4.0. INTERSECTIONALITY AND GENDER TAX JUSTICE IN KENYA

There is evidence to show that the existing tax regime in Kenya, in terms of its structure and its unresponsiveness to the differential circumstances of women could be substantively unfair and unjust to women. [30] However, even among women, there exist marked inequalities that mean that for some, the tax injustices could be more pronounced and profoundly unfair. This is especially the case for women that live in largely marginalised areas in the country and have been neglected and bypassed by government policy and programmes for decades. This is the essence of intersectionality. In order to contextualise and give a perspective to the pronounced tax injustices that women in marginalised areas in Kenya could be experiencing, we consider intersectionality in two of Kenya's largely marginalised counties – Turkana and Wajir. as follows:

4.1. Turkana – Colonial neglect and Post-Colonial Marginalisation

The County was marginalised and bypassed by most policy and government programmes for decades. Both colonial and postcolonial governments have marginalised Turkana County in terms of access to public goods and services, participation in the economy, and contribution to the making of policy regarding the mobilisation, distribution and administration of resources. There remain marked inequalities, chronic and extreme poverty in the county that have been exacerbated by continued marginalisation despite substantive effort in terms of the country's constitutional framework and government policy in the recent past that have improved engagement and resource allocation to the county. According to the Kenya National Bureau of Statistics (KNBS), Turkana remains one of the poorest counties in Kenya. The County has the highest poverty rate (headcount index) in Kenya at 79.4% compared to the national average of 36.1% (KNBS, 2018).

Table 3: Overall Poverty Estimates (individual) by residence and County, 2015/16

County	Headcount rate (%)	Poverty Gap (%)	Severity of poverty (%)	Population ('000)	Number of poor ('000)
National	36.1	10.4	4.5	45,371	16,401
Rural	40.1	11.5	5	29,127	11,687
Peri-urban	27.5	6.9	2.6	3,340	920
Core-urban	29.4	8.9	3.9	12,905	3,795
Turkana	79.4	46	30.8	1,084	860

Source: Calculations based on KNBS (2018)

The county also reports some of the lowest indices in terms of access to crucial public goods like water, education, energy and housing. For instance, it ranks 46th in immunization coverage for children under 1 year (Save the Children, 2012). In terms of education, only 3.3% and 14.5% has access to secondary and primary education respectively. A shockingly low number compared to Nairobi County and the national average at 52.0% and 22.8% respectively. The county has 48.0% of people above 3 years of age who have never attended school. Again deviating negatively from 10.4% at the national level (KNBS, 2018; Mwangi, 2013).

In terms of employment, the proportion of the population in Turkana with no work stands at about 14.9% compared to Nyamira (lowest in the country) with only 2.6%; and the proportion with wage employment is 5.6% compared to Nairobi with 47.1% (Mwangi, 2013). The county has inadequate water for domestic use, livestock and crop irrigation. Whilst the national average for access to improved sources of water is 52.6%, in Turkana the access rate is 39.4%. According to the KIHBS 2015/2016, 36.6% of the population in Turkana County depend on unimproved sources of water. Also, Turkana has very low access to sanitation – 8.5% compared to the national average of 38.9% and 87.5% highest rate in Nairobi County. 62.8% of the population in the county have no toilet facility (KNBS, 2018). This is compared to a national average of 8.4%. Further, only 2.2% of the population in Turkana has access to electricity compared to the national average of 22.9% and 72.3% in Nairobi County (Mwangi, 2013).

According to the KIHBS 2015/2016, only 6.5% of the population in the county use electricity as the main source of lighting (compared to a national average of 41.4%) and only 2.5% use an improved source of cooking fuel (compared to a national average of 14.6%). It returned one of the lowest indicators on health in the KIHBS 2015/2016. Only 32.6% of births in the county are assisted by a skilled birth attendant (compared to a national average of 74.9%). There remains poor infrastructure in the county. The condition of the road network is deplorable and access to mobile telephony coverage remains limited to major urban centres/towns. This has greatly affected communications, investment and security.

4.2. Wajir – A Portrait of Poverty

Since independence, Wajir County, formally a district of in the North Eastern Province has been marginalized by both the colonial government and subsequent governments of the day. The residents of the county have been unable to meaningfully participate in gainful economic activities; they have been denied access to crucial and critical public goods and services such as water, health care, roads and education; and they have been denied their fair share of the national cake. This has led to high incidences of poverty. According to the KNBS Basic report (2018), 62.6% of the population in Wajir County are in poverty. Significantly higher than the national average of 36.1% living below the national poverty line (KNBS, 2018). Table 4 below further illustrates various poverty indicators for Wajir county compared to the national rate and that of urban and rural areas in Kenya.

Two of the sub-counties in Wajir county also feature in the top ten list of sub-counties with the highest poverty rate (headcount index). Eldas sub-county has a poverty rate (headcount index) of 88.4% while Wajir North sub-county has a poverty rate (headcount index) of 86.9%.

Table 4: Overall Poverty Estimates (individual) by residence and County, 2015/16

County	Headcount rate (%)	Poverty Gap (%)	Severity of poverty (%)	Population ('000)	Number of poor ('000)
National	*36.1*	*10.4*	*4.5*	*45,371*	*16,401*
Rural	*40.1*	*11.5*	*5*	*29,127*	*11,687*
Peri-urban	*27.5*	*6.9*	*2.6*	*3,340*	*920*
Core-urban	*29.4*	*8.9*	*3.9*	*12,905*	*3,795*
Wajir	*62.6*	*16.3*	*6.7*	*459*	*287*

Source: Calculations based on KNBS (2018)

Table 5: Selected human development indicators for Turkana and Wajir counties compared to the national average

	Mean Habitable rooms	No of persons per habitable room	30 minutes or longer fetching water	% using unimproved water sources	% without toilet facility	% with electricity as main source of lighting	% with improved source of cooking fuel	% 3 yrs and above never attended school	Primary school net attendance rate	% illiterate (15 yrs and above)	% births assisted by skilled attendant
Turkana	1.0	4.2	43.5	36.6	62.8	6.5	2.5	48.0	47.5	59.1	32.6
Wajir	1.4	5.4	31.6	55.2	50.8	8.7	0.3	50.6	53.1	57.5	30.1
National	2.1	2.3	11.6	27.3	8.4	41.4	14.6	10.4	82.4	14.1	74.9
Rural	2.4	2.4	17.5	38.4	13.9	17.1	2.8	13.1	80.7	19.5	66.9
Urban	1.8	2.1	4.1	13.2	1.4	73.0	29.8	5.4	86.9	5.8	90.1

Source: Calculations based on KNBS (2018)

Table 6: Mean Monthly Food and Non-Food Expenditure Per Adult Equivalent by County

Residence / County	Expenditure			Percentage share	
	Food	Non - Food	Total	Food	Non Food
National	4,239	3,572	7,811	54.3	45.7
Rural	3,447	1,879	5,326	64.7	35.3
Peri -Urban	3,792	2,749	6,540	58	42
Core Urban	5,550	6,349	11,900	46.6	53.4
Wajir	2,686	1,097	3,784	71	29
Turkana	3,704	1,158	4,862	76.2	23.8

Source: Calculations based on KNBS (2018)

With regards to access to crucial public goods; Wajir County is the 2nd worst performing county in terms of both male and female headed households with no education at 73.8% for male headed households and 79.7% for female headed households and an overall of 76.4%. With regards to employment, the same report found out that Wajir County had the highest percentage of individuals with no work at 23.1% which was three times higher than the national average of 7.7%. Whilst the national average for access to improved sources of water is 52.6%, in Wajir County, the access rate is 46.6%. Also, Wajir has the lowest access to improved sanitation at 6.7% compared to the national average of 38.9% and the country's highest rate of 87.5% in Nairobi County. Notably, 50.8% of the population in the county have no toilet facilities (KNBS, 2018). Furthermore, only 3.4% of the population in Wajir has access to electricity compared to the 22.9% national average and 72.3% in Nairobi County. Only 8.7% of the population use electricity as their main source of lighting and just about 0.3% used improved sources of cooking fuel (KNBS, 2018).

In terms of health indicators, the county also has one of the worst rates of births attended by skilled personnel. According to KNBS, only 30.1% of total live births are attended to by skilled attendants thus causing high rates of child, infant and maternal mortality. The county is additionally blighted by poor infrastructure despite the county government constructing the first tarmac road with Wajir town since independence. Mobile network connection is at 20% which is mostly limited to main settlement areas . this has affected communication within the county.

5.0. DETERMINANTS OF INTERSECTIONALITY IN TAXATION AMONG MARGINALISED WOMEN IN KENYA

5.1. Unpaid care work by women

Taxes are based on income, however there are different income types that might not derive from paid employment, such as household production. Most countries do not include non-market production in income subject to tax. All over the world, the people doing most of the unpaid work are women. Women do the vast majority of unpaid care work – such as caring for children, fetching water and performing household chores – in all countries (Sharpe, 2016). This includes housework, cooking, caring for children, the sick and the elderly, and assisting other families and the community at large. Other forms of unpaid work include subsistence agriculture and producing clothes and other goods for home use, and unpaid work in a family business.

Although not paid, this work enables society and the market to function. Unpaid care work limits women's opportunity to do paid work, participate in community or public life, or even to rest, relax and enjoy leisure. All aspects of unpaid care work – caring for children, fetching water, household chores – provide essential support, enabling society and the economy to thrive. However, three-quarters of the world's unpaid care work is performed by women. Action Aid has found that the average woman spends 23 more years of her life doing unpaid care work than men. In most developing countries the time and effort that unpaid care demands of women often mean the type of work they can fit around their care duties is informal, precarious, poorly-paid and takes place in poor conditions. Women are also frequently not paid equally for work of equal value.

In Kenya, there have been multiple studies and various streams of evidence to show that the burden of care work shouldered by women contributes to substantive inequalities and perhaps increases unfairness of the existing tax regime to women. Oxfam (2017) conducted a Rapid Care Work Analysis in Nairobi City's informal settlements. It established that care work (domestic work) remained the duty of women with most respondents (89.9%) in the study indicating that men performed a very minimal proportion of household care work and as such continued to impair ability of women to engage in productive work (both employment and informal trade) that could improve their livelihoods and income. Also, Action Aid developed a tool to measure time spent on unpaid care work in Kenya. It established that women spent less time sleeping and 1.4 hours on unpaid care compared to every hour spent by men (IDS, 2018).

Action Aid (2013) conducted a multi-country study on unpaid care work in Kenya, Nepal, Nigeria, Uganda. It established that in poor rural and urban areas women work longer hours than men, spend more time on unpaid care work and subsistence agriculture, and have less time to engage in paid work and social and cultural activities (Action Aid, 2013). Morangi (2014) notes that it is estimated that care labour, though not effectively measured, could be contributing between 10 – 50% of GDP if assigned monetary value yet it remains unrecognised in Kenya's national accounts and not considered in fiscal policy.

As such whilst the indirect taxes (like VAT) target and affect the whole population, they do not consider the implications of the specific circumstances of women (especially those in single parent households) on their ability to produce and increase their incomes. Essentially, unpaid care work also results in the systematic transfer of hidden subsidies to the economy which goes unrecognized thus imposing a time-tax on women (Morangi, 2014).

5.2. Inequitable Distribution Of Resources, Public Goods And Services Especially Those Impacting Women

Good-quality public services are important to women for two reasons: to reduce and redistribute unpaid care and to ensure their rights are fulfilled (Sharpe, 2016). Governments need to provide good quality public services such as healthcare, education, electricity, and water and sanitation in order to reduce and redistribute women's unpaid care burden. Also, governments have the responsibility to help end gender inequality and ensure that women realise their rights. One of the keys to ending gender inequality is to provide more and better-quality public services. These services will reduce women's unpaid care burden, for example providing piped water eliminates trips to the well and providing safe refuges will prevent and respond to violence against women (Sharpe, 2016).

However, in Kenya, there is evidence of marked inequalities (across regions) in distribution and access to basic services and public goods (KNBS, 2009; SID, 2012; KNBS, 2018). Such inequalities are even more pronounced when gender perspectives are considered. SID data on inequalities in Kenya indicate that there are significant disparities between access to certain basic services between many of the counties considered marginalised in Kenya, and the rest. For instance, in terms of access to improved sources of water, it is notable that whilst the national average for use of unimproved sources of water is 49.7% it is 52.5% and 59.3% in Wajir and Turkana counties respectively (SID, 2012). Also, in terms of use of unimproved human waste disposal, whilst the national average is 40.5%, it is 91.0% and 91.9% for female headed households in Wajir and Turkana counties respectively (SID, 2012). For instance, Turkana county ranks 46th in immunization coverage for children under 1 year (Save the Children, 2012).

In terms of education, only 3.3% and 14.5% has access to secondary and primary education respectively, compared to Nairobi County and the national average at 52.0% and 22.8% respectively. Turkana county has 82.1% with no education at all (Mwangi, 2013). With regards to access to crucial public goods; Wajir County is the 2nd worst performing county in terms of both male and female headed households with no education at 73.8% for male headed households and 79.7% for female headed households and an overall of 76.4%.

Whilst the national average for access to improved sources of water is 52.6%, in Wajir County, the access rate is 46.6%. Also, Wajir has the lowest access to improved sanitation at 6.7% compared to the national average of 38.9% and 87.5% highest rate in Nairobi County. Further, only 3.4% of the population in Wajir has access to electricity compared to 22.9% national average and 72.3% in Nairobi County. The table below illustrates inequalities in access to services that have the greatest implications for women, these include access to water, waste disposal, energy and housing.

Table 7: Assorted statistics / indicators evidencing consumption inequalities

Female Headed Households	Unimproved water source	Unimproved human waste disposal	Primitive cooking fuels	Earthen floor
Wajir	52.5	91.0	93.9% prevalence of primitive fuels use	88.4%
Turkana	59.3	91.9	0.5% prevalence of high-level fuels use	92.7%
Kenya	49.7	40.5	-	54.2%

Source: Calculations based on KNBS (2018)

Essentially, these inequalities imply that the government is perhaps not maximising public resources, (including tax revenues) to invest in gender responsive public services that can reduce gender inequality and foster fairness in the existing tax regime. These inequalities also point to the absence of gender- responsive budgeting to ensure tax revenue promotes gender equality and upholds the right of all women to have a say in how public money is spent. As such, women bear a greater burden in areas where health facilities are poorly staffed or inadequately equipped, water services are inadequate or schools too expensive. The net effect is that they are given less opportunity and allowed less time compared to men with respect to the pursued of non-household productive activities that could improve their income and livelihoods.

5.3. Gender differences in consumption

Not only do women and men spend their time in different ways, there are also different ways in which they spend money and take decisions on how to allocate assets and savings. These decisions depend on the bargaining power of different members of the household and are crucial to understand the impact of tax regimes (VAT, excise taxes and other indirect taxes such as fuel tax). Studies across different cultures have found that women tend to spend more of the money under their control on goods such as food, medicines, children's clothes and school supplies – items that enhance the education, wellbeing and capabilities of children (Wanjala and Muthenge, 2006). Wolley (2011) established such gendered differences in consumption and lend credence to the need to interrogate and understand the different impacts of commodities prices, occasioned by tax regimes, on expenditure patterns of man and women and how this impacts their livelihoods and productivity.

5.4. Gender differences in property rights and asset ownership

In many countries, women are denied property rights on land and other assets, although they provide unpaid labour to them. The gender aspect of property owning vis-à-vis tax is in need of more systematic research. For example, Nepal introduced a tax exemption to incentivise transfer of property assets to women. As a result, women's land ownership increased threefold between 2001 and 2009. However, questions of power imbalances in the real control of assets remain and it cannot be expected that favourable tax laws and incentives alone change gender relations.

In his analysis, Wolley (2011) concentrates on the equity dimension of gender relations vis-à-vis taxation. As he points out, there are gender considerations to be had in all aspects of a fiscal system, including efficiency and ease of administration. The framework they use to assess equity builds on the work of feminist scholars Janet Stotsky and Diane Elson. Stotsky distinguishes between implicit and explicit gender biases in tax policy. Explicit biases take place when men and women are treated differently by tax law. Implicit biases instead take place because of gendered social norms and economic arrangements that result in a different effect on men and women.

Joint filing is an example whereby the fact that women's income is taxed at a higher marginal rate affects decisions around female participation in the labour market. Likewise, there can be an implicit bias in rules for indirect tax that do not provide for gendered differences in expenditure patterns. Elson argues that 'a gender analysis of taxation must go beyond the principle of sameness to recognise that discrimination and bias take different forms, and that, in order to achieve substantive equality, different groups in society may require different treatments.

Different treatment is, therefore, not necessarily biased treatment. Elson refers to substantive equality, rather than formal, which echoes the language of CEDAW. In fact, CEDAW recognises that treating men and women differently might be necessary in order to overcome discrimination. Fiscal policy has a role to play in shaping more equitable gender relations and discouraging those behaviours that perpetuate inequality between women and men. As Wolley (2011) concludes, this is quite a different perspective from that of traditional welfare economics, which takes individual utility as the basis to assess whether a policy improves social welfare and considers negatively those policies that result in an improvement in the welfare of one group at the expense of others.

5.5. Structure of the tax regime

Most states around the world raise revenue from the same mix of sources, including direct taxes on personal and corporate income, assets and property tax and indirect taxes such as VAT. States also rely on various non-tax revenues such as licence fees and natural resource royalties and commercial income from state-owned companies. The mix of taxes adopted by a country, and the individual effects of these taxes, can have major implications for gender equality and women's rights (Sharpe, 2016). Low-income countries raise about two thirds of their tax revenue through indirect taxes such as VAT and trade taxes, whereas high- income countries rely on indirect tax to raise only one third of their tax revenue.

This reliance on indirect taxes can have implications for women (Sharpe, 2016). Indirect taxes are generally in the form of a consumption tax, usually a value added tax (VAT). VAT without exemptions is a regressive tax because all people pay the same rate of VAT regardless of their total income and poor people by necessity spend a greater proportion of their income on consumable goods. Whilst it is very difficult to determine the effects of VAT and the overall tax burden on women separately from men. It is commonly thought that women are disproportionately burdened by VAT because women make up the majority of the poor and are more likely to spend their income on the daily necessities for the household including for children (Sharpe, 2016). Without careful consideration of the design of these tax instruments, it is likely that they will hurt poor and female households disproportionately (Okyeye, 2011).

5.6. Exclusion of women and minorities in fiscal decision-making processes

Public participation has been touted as a mechanism through which governments can increase the understanding of the public on the intricacies and complexities that characterise the nexus between taxation and service delivery. For instance, by engaging robustly with citizens, government officials can ensure support for their programs and build confidence in the competence of the administration. This in turn can encourage citizens to pay taxes, investors to commit funds, and donors to top up existing sources of revenue (Tanaka, 2007; Larkin, 2013; Beuermann & Amelina, 2014).

However, public participation varies across different contexts. It is determined by diverse power configurations that sometimes can create and/or reinforce inequalities that have proven to sometimes exclude some parties. For instance, decision making processes exclude women or those in the informal sector as well as many living in rural areas. This maybe be because of lack of access to information, unfair modalities for engagement or active closure of policy making spaces. A political economy analysis on domestic resource mobilisation conducted by Oxfam in 2017 in Turkana and Wajir counties for instance indicated that often, women miss out on opportunities to engage government and participate meaningfully in decision making regarding topics that have a bearing on the quality of their livelihoods (Oxfam, 2017).

In Kenya, there are prevailing cultural beliefs and practices that continue to contribute to the marginalisation of women and impinge on their ability to organise themselves and engage duty bearers on pertinent issues regarding their welfare and livelihoods including on resource mobilisation, planning and budgeting by the county government. Such practices include nomadic pastoralism, female genital mutilation (FGM) and early marriages. These continue to contribute to disempowerment of women limiting their contribution in the economy and their voice and inclusion in debates and negotiations around the affairs of the county. Culture also has significant implications on such issues as land tenure inheritance and ownership of assets by women.

Turkana is almost all communal land held in trust by the county for pastoralist communities although a substantive chunk is now allocated as oil blocks in agreements with investors to investors in petroleum extraction (Mkutu & Wandera, 2016). There is a customary land tenure system in which access is mainly through inheritance, with no formal documentation. Insecure tenure exists due to a lack of title documents. Those who want to access community land for investment or any other business have to negotiate with the elders, in consultation with the chief and relevant government officials; women are not allowed to participate in the decision-making forums.

Wajir County has a predominantly patriarchal society which has led to marginalization of women in almost all aspects of life (Oxfam, 2017b). This coupled with religion have made it difficult for women to engage directly with duty bearers on issues to do with resource mobilization, allocation and expenditure monitoring. As such, exclusion of women in public policy processes reinforced by culture and enduring male attitudes stifles effective public participation and involvement of women. Men occupy most of elective positions and avenues for public representation (Oxfam, 2017b). This means women have very limited space in terms of inserting into and engaging meaningfully in public policy processes.

This is reinforced by Turkana culture which does not allow women to share seating with men. Women are also often associated with care work and other forms of domestic chores that are removed from political debate and bargaining forums where their input into such issues as resource mobilisation, distribution and application could be included. Also, other cultural and traditional practices and beliefs like FGM, early marriages further inculcate an environment where despite formal institutional provisions by law and regulations, women participation remains rudimentary.

6.0. STRATEGY AND PLAN OF ACTION

6.1. Key issues emerging from the analysis regarding drivers of taxation intersectionality experienced by women in Kenya

It has been established from the forgoing review of literature and analysis of secondary data that whilst the tax regime in Kenya, as in many other developing countries applies uniformly to all categories of citizens, there are critical elements and intricacies in its implementation/enforcement that profoundly disenfranchise women and proffer unbalanced merits and/challenges when the impacts are compared between men and women. The study has also established how even among women, there exist marked inequalities that mean that for some, the tax injustices could be more pronounced and profoundly unfair.

This goes especially for women that live in largely marginalised areas in the country, neglected and bypassed by government policy and programmes. Some of the issues that drive the unfairness and injustices of the existing tax regime to women stem from typical experiences of women that arise from gender roles and also from the external environment determined by government policy, law and institutions but also from informal institutions, perceptions and practices of society. These can be summed up into four main issues:

1. Exclusion of women from public participation and decision-making spaces and processes on mobilisation, distribution and accountability for domestic resources (largely tax),
2. Burden of unpaid care work and its implications on taxation for women,
3. Gender differences in consumption and property rights that remit biases especially of indirect taxes to women, and
4. Inadequate, inequitable distribution of resources and public goods and services especially those impacting the circumstances of women.

Table 8: Determinants/drivers of tax injustices and avenues for gender tax justice intervention

Determinants/drivers of tax injustices	Avenues for gender tax justice intervention
1. Exclusion of women from public participation and decision-making spaces and processes on mobilisation, distribution and accountability for domestic resources (largely tax)	1. Civic engagement for more participation in Public Expenditure Management (PEM) 2. Tax education targeting women 3. Lobbying county governments for better public engagement modalities
2. Burden of unpaid care work and its implicationson taxation for women	1. Lobbying for tax breaks/incentives for women that factor in implications of unpaid care work 2. Public education on implications of unpaid care work borne by women 3. Lobbying for more transparency on tax exemptions
3. Gender differences in consumption and property rights that remit biases especially of indirect taxes to women	1. Lobbying for tax breaks/incentives for women recognizing biases on indirect taxes to women remitted by gender differences in consumption and property ownership 2. Public education on implications of gender differences in consumption and property rights on taxation 3. Lobbying for more transparency on tax exemptions 4. Capacity development targeting tax policy officials on gender tax injustices and how to address them
4. Inadequate, inequitable distribution of resources and public goods and services especially those impacting the circumstances of women	1. Advocacy, in partnership with National Gender and equality Commission (NGEC) and Gender directorate, for mainstreaming of gender in tax policy and tax policy institutions Civic engagement for improvement of resource allocation/distribution especially to services impacting women

Source: Calculations based on KNBS (2018)

6.2. Avenues for gender tax justice interventions

Tackling the unfairness of the tax regime to women and fostering a more just framework of tax policy and laws requires attention to the four issues elucidated in the section above. This may involve reform of policy and institutions but also capacity development and education on the implications of the gender roles of women and government policy and laws on the fairness of the tax regime for women. As an interested party to fostering tax justice, equity and sustainable development, the tax justice advocates can pursue a range of actions to identify, contextualise and address some of these issues that drive or contribute to gender tax injustice in Kenya and the East African Region. Because of the character of the problem – contributed to or driven by lapses in multiple areas of policy, law and institutions (both formal and informal), tackling it also requires a multifaceted approach. This could involve working with various partners (in civil society, government, academia and private sector) and pursuing multiple strategies that address each of the key areas. The table below, illustrates proposals from this study (aligned to each of the issues) for avenues for intervention by tax justice advocates to address gender tax injustices.

6.3. Approaches to intervention

Since the avenues for action/proposals for intervention suggested in the previous section are multiple, it means that the approaches to pursuing these avenues to fostering tax justice must also be multiple and diverse. They are focused around: i) institutional review or strengthening, ii) capacity development, and iii) public education on tax and PEM. This is discussed in detail as follows.

A. Civic engagement and Public education on the tax regime and PEM:

Tax justice stakeholders and partners can consider designing and implementing a project with a strong public education component targeting the general public and key stakeholders in domestic resource mobilisation (DRM) with messages on the essence of adopting a differentiated approach to taxation that pays attention to the different circumstances of women and how they proffer profound unfairness and injustices. This could focus on:

1. Mass sensitisation of the public on the structure of the existing tax regime and the differentiated experiences of women. This could be implemented in partnership with Kenya Revenue Authority (KRA), CSOs, County government and local media,
2. Targeted public engagement forums to explore and debate the structure of the existing tax regime and the differentiated experiences of women and its (un)fairness,
3. Messaging targeting the county government (executive and assembly) on the merits of prudent DRM and PEM and the need for more inclusion of women in these processes,
4. Civic engagement for improvement of resource allocation/distribution especially to services impacting women, and
5. Public education on implications of gender differences in consumption and property rights on taxation.

B. Lobbying for policy and institutional reform for a more prudent tax and PEM regime:

Tax justice stakeholders and partners can consider engaging in targeted advocacy work involving, the county government, national government, civil society and other major stakeholders in review, reform and development of a suitable institutional framework for supporting a DRM that pays attention to the different circumstances of women and how they proffer profound unfairness and injustices.

Institutional framework in this case implies legislation, policies and regulations developed/enacted at both the national and county levels that have profound implications on the conduct of mobilisation (taxation), distribution and application of resources to the different functions for effective service delivery. This could focus on:

1.Advocacy, in partnership with NGEC and Gender directorate, for mainstreaming of gender in tax policy and tax policy institutionsLobbying for tax breaks/incentives for women recognizing biases on indirect taxes to women remitted by gender differences in consumption and property ownership.
2. Lobbying for more transparency on tax exemptions.
3. Advocacy and lobbying for meaningful public participation (especially of women) in DRM processes. This would include effective enforcement, review and alignment of county level Public Participation Acts with the National Public Participation Act.

C. Capacity development:

Tax justice stakeholders and partners can consider designing and implementing a project with a strong capacity development component targeting government officers in charge of tax policy making, legislature and CSOs. This could assist in improving knowledge and awareness of the structure of the existing tax regime (especially at county levels) amongst key stakeholders to facilitate effective policy dialogue that pays attention to the circumstances of women and how they proffer profound unfairness and injustices. This could focus on among other activities:

1. Capacity development targeting tax policy officials on gender tax injustices and how to address them,
2. Capacity development targeting legislature to increase understanding of the implications of such issues as unpaid care work and gender differences in consumption and property ownership that increased the burden of taxation on women that are rarely considered in tax policy, and
3. Capacity development targeting the media (especially journalists covering economic and gender issues) to improve their understanding, analysis and reporting on gender and taxation.

7.0. CONCLUSION

Taxation has occupied a prominent place in domestic resource mobilisation across many developing countries. In fact, recent trends indicate that domestic resources, largely obtained from taxation, have markedly improved in many sub-Saharan African countries. However, it is often argued that as a result of their placement in society and associated gender roles and endowments (and/or lack of them) women are in many instances disadvantaged by prevailing regimes in terms of domestic resource mobilisation (that is terms policy, laws and institutions).

This is because often the gender roles that society assigns women limit their capabilities to produce and their entitlements to particular endowments that are traditionally applied, by men, to generate and accumulate capital that is usually the subject of taxation. As such, gender responsive taxation is essential because it acknowledges the distinctions between men and women and allows for assessment, identification and remedying of key components of an existing tax regime in order to ameliorate weakness and gaps that further the overburdening of certain groups.

Through the forgoing review of literature and analysis of secondary data, the study has established that whilst the tax regime in Kenya, as in many other developing countries, applies uniformly to all categories of citizens, there are critical elements and intricacies in its implementation/enforcement that profoundly disenfranchise women and proffer unbalanced merits and/challenges when the impacts are compared between men and women. Some of the issues that drive the unfairness and injustices of the existing tax regime to women represent typical experiences of women that stem from gender roles as well as from the external environment determined not only by government policy, law and institutions but also by informal institutions, perceptions and practices of society.

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