

A call to action:

Lawyers to stand up for tax justice in strengthening domestic resource mobilization

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15<sup>th</sup> June 2018

As per Aspiration 7 of the Agenda 2063,<sup>1</sup> clearly states as follows ‘Africa as a strong, united and influential global player and partner’ it is under this that one of the goals to be achieved come 2063 is that Africa should be fully capable and have means to finance her development. Is this possible? What can Lawyers support with?

This is the basis of my paper to try figure what the lawyers across the continent can assist with to ensure this is realized.

Lawyers should appreciate and take pride in the fact that they are taught to interpret and adjudicate the law in the best way possible. Being in a common law based country where making laws is the reserve of the legislature, lawyers find themselves interpreting the laws made in which they later construct arguments for and against. For instance in Kenya, we have seen a gradual rise in the number of elective seats within the National Assembly occupied by lawyers therefore counting ourselves lucky in terms of law-making henceforth.

For Africa we want agenda 2063 to suffice, Lawyers across Africa should come together to strengthen domestic resource mobilization and to elevate own dependency, turn the page and work for tax justice in Africa. A sober fact to note is that, the financing agenda is quite an issue which will require discipline among all stakeholders both in governments and among the citizens as a whole so as to strengthen continents financial dependency. African countries should not deceive themselves that the next 45 years will not be difficult as challenges by imperialists and neo-colonial operations seeking to advance their interests as they have always done will continue and therefore it’s upto the continent as a whole to come together and work to build a prosperous and united Africa based on shared common values and a common destiny. We have to note that most developing countries do not generate enough revenue from both tax and non-tax resources which contributes to budget deficit on an annual basis and impacts negatively on development

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<sup>1</sup> Agenda 2063 Africa We want

and economic growth therefore creating a culture of aid dependency. Further, resource revenue in Africa is low because of institutional weaknesses such as corruption, poor enforcement of laws and rules, inadequate regulations which have resulted in tax avoidance and tax evasion and other revenue leakages that undermine tax revenue collection<sup>2</sup>.

Africa beyond aid has to be confronted so as to attain the financial dependency come 2063 and for this to succeed strong policies need to be put in place. For many years the roles of donors have been thought to be that of assisting countries build institutions, systems and infrastructure, foster trust and engage with the citizens. Through this, countries have been able to raise substantial amounts of aid from the international community leading to aid dependency. Most are times where donors give aid with conditional ties that are difficult to meet therefore resulting to ownership of projects being with the donors other than citizens and their governments. One will find that international funding has hidden and extra costs which results to governments paying back more. It's about time Africa countries moved away from this norm and this will be through domestic resource mobilization. Domestic resource Mobilization (DRM) is important for economic growth, human welfare and sustainable development of African countries.<sup>3</sup>It's through DRM that economic stability will be felt and help with adverse aid flow volatility. The need for public participation in political and development process for more accountability, better governance, and improved efficiency in government spending is important for African countries. In order to increase awareness of the importance of DRM in economic development and social welfare and also increase the tax amount to the tax ratio, it is important to involve various stakeholders in economic development and social welfare.

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<sup>2</sup> Tax Justice Network-Africa paragraph 1.3.3

<sup>3</sup> Ibid Paragraph 4

Governments have the sole responsibility of providing services to their citizens and develop the countries both economically and socially. This will require well-structured government policies as well as wider stakeholder engagements in its engagements to the citizens. As of fact, governments have a responsibility of ensuring that tax bases for the various taxes are as broad as possible by bringing the informal sector into the tax net and that the tax rate structure is simple. For instance the government should introduce tax incentives aimed at assisting those in the informal sector to account for their taxes in the simplest way possible and farming is one of examples of the sectors that should be looked upon. In that, farming is the biggest economic activities yet most farmers are out of the tax radar, and being the biggest consumers of public good and services in governments. Most income derived from the sector in most cases escapes government regulation and taxation hence a number of people who earn decent income from such do not contribute to the tax kitty.

To make it easy for the informal sector to account for taxes, there is need to review tax administration procedures to enable taxpayers in this space to pay for taxes in a simplified manner. There is also need to involve engagements with stakeholders such as lawyers, civil society organizations and media organizations.

The agenda under this is to reach the people at grass-roots level as a way of raising awareness. Lawyers interprets the law, media organizations have a voice in the society whereas civil society organizations play an important role in reaching out where governments cannot, thus they will all support in raising awareness to the general public about DRM and work together. For instance in Kenya, the government through the Ministry of Justice and Legal Affairs which is the reserve of the Attorney General should work with professional lawyers who understand tax issues and mount tax education programs jointly with civil society to educate the public on their tax responsibilities therefore enhancing in revenue mobilization programs. On the

other hand, the civil society organizations may through the help of the government develop staff capacity to understand tax issues and their relationship to development, human rights, inequality, poverty reduction and eradication. The Civil Societies that are faith based should also raise awareness of faith leaders to pay taxes on incomes they and their followers derive. Similarly, the media organizations having a wider reach should also work hand in hand with other stakeholders and create public awareness by developing capacity of journalists to understand and report on the contribution of tax to development, poverty reduction and human rights as well as domestic revenue mobilization. This may lead to government awarding journalists whose raising awareness is highlighted through the electronic, print and new media as well as where their investigative reports results in recovery of tax losses who expose tax evasion or avoidance practices. The civil societies may also work with governments in which they help strengthen the capacity of tax authorities by providing funding and technical advice and help raise awareness of tax authorities' revenue leakage and provide solutions to fight these revenue leakages.<sup>4</sup>

Raising awareness to the public and at grass-root level will be one major breakthrough of African governments and starting point for citizens to be well educated and understand their role, obligations and responsibilities as citizens towards payment of taxes and what benefits they render to individual governments. Indeed each stakeholder should be aware of the Sumerian Proverb “you can have a Lord, you can have a King, but the man to fear is the tax collector”<sup>5</sup> and note that this will require joint and strong mechanisms so to succeed with this indicative strategy. It is through this that domestic revenue mobilization will enhance and widen scope. Governments on the other hand will embrace itself for greater accountability.

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<sup>4</sup> Ibid Paragraph 4(iii) and (iv)

<sup>5</sup> <http://oaks.nvg.org/sumer-proverbs.html>

Tax is defined as a compulsory contribution to state revenue, levied by the government on workers' income and business profits, or added to the cost of some goods, services, and transactions.<sup>6</sup> Governments derive two types of taxes, direct taxes and indirect taxes. For direct taxes, this is levied from business and personal income while indirect taxes are levied on corporations. Every government lays down specific criteria for persons and activities subject to the various tax systems that the government operates. This is found under Section 2 (1) Income Tax Act CAP 470, Laws of Kenya. It's through payment of tax by taxpayers that revenue is generated for government projects.

As said earlier, tax laws are made in parliaments and a good number of parliamentary seats in for instance Kenya are taken up by lawyers thus we are privileged to ensure rational laws are enacted. Having most lawyers in the legislature informs us we have leaders who have the capacity to influence policy design in government and spread the government policies to the people at all levels of the society. All laws in Kenya including Tax laws are made in parliament. This will also include the laws establishing the various organs within government tasked with law monitoring and enforcement for instance the Kenya Revenue Authority (KRA) was established through an Act of Parliament and mandated with the responsibility of collecting revenue on behalf of the Government of Kenya through the administration and enforcement of the tax laws relating to the defined revenue source, and provide taxpayer services to taxpayers. Efficient tax systems combined with sustainable economic growth can form an exit strategy from aid dependency in developing countries, promote economic development and improve the lives of its citizens. Therefore to make the agenda 2063 happen, African governments have to put in place an effective, efficient and transparent national Revenue Authority. Apart from this there is

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<sup>6</sup><https://www.google.com/search?q=what+is+the+definition+of+tax&og=what+is+the+definition+of+tax&ags=chrome..69i57j0i5.9711j1j7&sourceid=chrome&ie=UTF-8>

also need to put in place simplified policies, revise and refine policies and administrative arrangements governing the taxation both for corporate and individual taxpayers. There should be laws passed requiring all tax information in the public interest to be made publicly available and free of charge.

The legislators who are lawyers for instance in Kenya should make sure the laws passed in Parliament are well structured so as to seal loopholes which tax evaders use and take advantage in revenue leakages for example through tax evasion as well as tax avoidance. There should be policies put in place to step up in prosecution of illegal activities on domestic shores by multinational firms. More support and investment should be held in training of experts in illicit financial flows such as lawyers, accountants, tax officers, law enforcement officers, custom officials and financial experts. Additionally, lawyers should ensure that in course of interpreting the laws and when encountered with a case before Court involving tax matters, they should have well researched and elaborate arguments which are fair enough to create solid precedents that favor the way of tax justice.

With regard to Double taxation Agreements (DTAs), it is worthy to note that most DTAs invariably benefit the developed partners because rates negotiated are always lower than the prevailing tax rates. It's about time governments come together and engage with international organizations such as the OECD (Organization of Economic Corporation and Development) and the UN Tax Committee which are involved in bilateral tax reforms that largely benefit the member states at the expense of developing countries. Governments should check the costs and benefits of individual new and revised treaties in terms of revenues forgone and likely investment attracted; the same should be clearly assessed and published prior to treaty negotiations. Likewise treaties should be regularly reviewed with the possibility of renegotiating harmful and outdated treaties.

The African Bar Association may come up with a way in which Law Societies of individual African Countries get memberships of a distinct formed group of the African Bar Association. Through this it may be easier in benchmarking societies which are more productive and educative and those that have achieved tremendous impact in championing or protecting the different aspects of social justice including taxation which are recognized and feted in AFBA galas and forums as we see for other business and social events for example fire awards, business awards and many other forums.

The Africa agenda 2063 looks far though so near if these actions are to be implemented. Of importance to consider and agree is that governments must close loopholes in national tax codes and tax treaties that allow the kind of tax haven transactions. Governments have to ensure that their tax regimes and tax treaties do not make it easier for corporate profits to be siphoned out of developing countries. There is no doubt that Africa can sustainably mobilize domestic resources and fund its developments programs but the capacity challenges to domestic resource mobilization and curbing of illicit flows remain notable drawbacks to achieving development agendas on the continent. Notwithstanding the role development partners do, there will be need to support this agenda but this will require a dynamic political leadership and change oriented democratic governance that engages development partners as true partners for inclusive and sustainable development. Further, governments will require, responsible companies, stronger tax authorities, better tax law and critically public action and scrutiny. With all these, Africa as a whole will resource their futures.

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