



REVENUE OBLIGATIONS AND CIVICS IN EAST AFRICA

A Human Rights Based
Approach to Tax Justice





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*A Human Rights Based
Approach to Tax Justice*

Published by



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About EATGN

The East Africa Tax and Governance Network (EATGN) comprises civil society organisations (CSOs), academia and individuals with diverse interests in fiscal justice within the East African Community (EAC). EATGN recognises an increasing need for a concise understanding of taxation within public financial management (PFM) debates in each of the member states and comparatively across the region. This is because taxation is central to growth in relation to infrastructure development, service delivery and wealth creation.

About Human Rights and Tax Justice

This study is an initiative facilitating the conduct of human rights research in understanding tax injustice in East Africa. 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).

About the Author

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Special thanks go to TJNA staff and to the EATGN steering committee, namely Regina Navuga of Southern and Eastern Africa Trade Information and Negotiations Institute (SEATINI) Uganda, Cyrus Nkusi of Governance for Africa (GFA) Rwanda, Prime Nkezumukama of Dukingire Isi Yacu – Burundi, Nicholas Lekule of Policy Forum in Tanzania, and Celine Awour of International Institute for Legislative Affairs (ILA) in Kenya for their constant support. Also, full appreciation goes to the entire EATGN team comprising of the regional coordinator Leonard Wanyama plus interns Brenda Osoro, Everlyn Muendo and Kigen Kiplimo who made the logistics plus publication of this study possible.

Dedication

To the emerging social justice movement in East Africa. Viva!

Taxman

I pay my gardener
To clean up my garden
I pay my doctor
To check out da other ting
I pay my lawyer
To fight for my rights
And I pay my bodyguard
To guard my body
There’s only one man I pay
But I don’t know what I’m paying for
I’m talking about the taxman

What have you done for me lately
Mr taxman

You take from the rich
Take from the poor
You even take from me
Can’t understand it now
I pay for the police
To err... I don’t know why
‘Cause if my dollar was good enough
There wouldn’t be so much crime
In the streets
They tell me you’re a fat man
And you always take and
Never give

-Lucky Dube, *Taxman*.

1. Introduction

In 2014, the East African Tax and Governance Network (EATGN) and the Kenya National Commission on Human Rights (KNCHR) held a conference for county governments on the link between tax and human rights. The discussions focused on taxation as a means of generating resources for governments to meet human rights obligations in the context of finite resources.

During the 2016-2018 strategic plan period, EATGN conducted several studies including one titled *Taxing Rights Policies are Human Rights Policies*. The paper examined the state's obligation to use "maximum available resources" to realise economic, social, and cultural rights (ESCRs). It demonstrated how budgets were allocated to sectors promoting ESCRs in Kenya, Rwanda, Tanzania, and Uganda for FY2016/2017.

The paper proposed that governments should strengthen their capabilities in generating domestic revenue as the most meaningful strategy for delivering on their ESCR obligations. In the strategic plan 2019-2023, EATGN committed to focus on several cross-cutting issues including youth, gender, and human rights by expanding its research, communication, networking, training, and capacity building activities. This paper falls within this commitment to demystify the concept of human rights as it relates to taxation.

The objective of the paper is to demonstrate the systematic application of the human rights-based approach (HRBA) to tax justice to enable EATGN incorporate the methodology in its work. The paper's value proposition is that tax justice is reciprocal principle.

On the one hand, it addresses the expectations and needs of taxpayers hence does justice to the public. On the other, it requires compliance with taxation requirements, which is justice to the government. This duty is captured in Article 29 (5) of the African Charter on Human and Peoples' Rights, which states that the individual citizen has the duty "to work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society". EATGN (2017) reiterates this as follows:

...every citizen has the power to question their government because they pay taxes. This is because these monies are surrendered to authorities for citizens to acquire certain basic services.

Understanding the rights and obligations of either party is primary to cultivating an environment where tax administration is not a coercive process but a mutual undertaking in which citizens play their role as a moral obligation while governments diligently use revenue with probity and accountability. This understanding is useful for educating citizens on their taxation rights and obligations as well as creating a platform for dialogue with governments on a meaningful and fruitful relationship in which expectations are met on both sides. Educating the public about its rights should logically stimulate demand for tax justice while voluntary and complete payment of taxes would translate into higher revenues for the government, and presumably better services. This model puts the citizen at the centre of taxation not only as a source of revenue but also a campaigner for justice in line with EATGN's vision of "a fair, transparent, accountable and citizen-driven tax system" as part of economic justice.

1.1 Understanding Economic Justice

Economic justice refers to initiatives that pursue structural transformation by challenging dominant conventional development ideas on sustainable development. It seeks to address the manifestations and causes of inequality in the continuum of production, revenue collection, budgetary allocations, state expenditure and overall management of resources to reduce the gap between the rich and the poor. The structural transformation agenda is to enhance productivity as the first step towards increased incomes and higher economic growth.

In East Africa, structural transformation is conceptualised as freedom from the colonial models of economic development based on extraction to an inward-looking framework that fosters local value chains for equitable development.¹ Embedded in this is eradication of tax inequality, defined as the disparities within a regime of tax collection and how this affects allocation and/or expenditure of public finances leading to inefficient domestic revenue management (DRM).

For example, gender disparities in tax regimes marginalise certain groups from economic opportunities and benefits and exacerbate inefficiencies.² Economic justice requires a fair tax system whose ingredients are summarised below.

Tax Justice is simply defined as restoration of taxes to whom they are due, and superficially appears to mean that governments have a right to levy and collect taxes.³ At a second level, however, it also implies that taxpayers can and should demand services from the government, which is in office to manage the affairs of the state on behalf of citizens. This encapsulates a relationship in which the government and citizens both have certain **rights (also called claims)** and **obligations (also called duties)**.

How is this? The government has a valid claim on citizens to pay taxes diligently and faithfully as defined by law or fiscal measures. In this context, citizens are duty bearers. But the government also has a duty to provide goods and services such as security, health, schools, infrastructure, and water. In this context, citizens are the claim (rights) holders. The roles of duty bearers and claim (rights) holders are therefore not fixed but shift depending on context.

Ingredients of a Fair Tax System⁴

1. **Everyone pays an amount of tax according to their ability** - The more you earn and the more you own, the more you should pay. High tax rates that apply to everyone (such as consumption taxes) hurt the poor the most. Proportionately more tax should be collected from people and companies directly than from everyone indirectly.
2. **No revenue leakages** - A lot of potential revenue is lost due to unnecessary tax incentives and agreements that do not benefit the countries where profits are generated. Terminating unnecessary tax incentives and ensuring that tax agreements allow retention of as much of our taxing rights as possible, ensuring that we have more revenue.
3. **Taxes are spent on developing people** - Tax revenues should be spent on social sectors such as health, education, and social protection since it is these areas that promote equality. When people pay for their health and education, they have less money to live on, save and invest.
4. **Transparent, accountable, clear, and easy** - People should know what amount of tax to pay and how. If they do not, it will be difficult to comply. They also need to participate in how taxes are applied and spent. The notion of 'government money' is a misnomer. There is only 'taxpayer money' hence the need for citizen involvement in taxation issues.

1. Onyango CH, Promoting Equity Through Structural Transformation: Impact of Free Trade Agreements on East African Regional integration, Econews Africa: 2020 <https://econews-africa.org/wp-content/uploads/2020/06/Final-Trade-Summary-Report-2-1.pdf>

2. EATGN, Intersectionality, Marginalisation and Gender Tax Inequality in Kenya : A Working Paper, 2019, <https://www.eataxgovernance.net/wp-content/uploads/2020/03/r2-Intersectionality-Marginalisation-and-Gender-Tax-Inequality-in-Kenya-003-1.pdf>.

3. The total efforts or initiatives towards addressing the various manifestations of inequality within regimes of collection, allocation, expenditure, and management of taxes in order to bridge the gap between the rich and poor plus attaining effective domestic revenue mobilization for self sufficiency.

4. Katindi SN, Thinking for the Future East Africa Tax Strategic Planning Workshop Report, Nairobi: EATGN, 2019, <https://www.eataxgovernance.net/wp-content/uploads/2020/03/R-Thinking-for-the-Future-East-Africa-Tax-Strategic-Planning-Workshop-Report.pdf>.

The rights and duties can be further specified by gender in that certain factors affect females differently from males. For instance, menses affects only girls and women. As such, imposition of taxes on sanitary pads compromises the full enjoyment of menstrual hygiene rights. Women and girls, therefore, have a claim on the government to provide free pads, remove taxes on them or apply subsidies to make the items affordable.

1.2 Overview of Human Rights

The attempt to define human rights can be traced to the American jurist Wesley Newcomb Hohfeld who sought to remove ambiguity in how legal scholars used the word “rights”. He averred that “*rights are claim-rights, in that they entail correlative duties of other persons or groups to act or to refrain from acting in ways required for the right-holders*” (Hohfeld, 1913, 1917). This was re-stated by Joel Feinberg who observed that “*to have a right is to have a claim against someone whose recognition as valid is called for by some set of rules or moral principles*” (Feinberg, 1970). Common to these definitions are concepts of *claim* and *duty*.

Amnesty International (2010) defines human rights as “*basic standards without which people cannot live in dignity as human beings*”. Key in this definition are two concepts. The first is “standards” which refers to minimum norms. The second is “dignity” which refers to worth. Human rights therefore encode certain irreducible conditions below which life would be unacceptable and incompatible with human worth.

As stated by the former Secretary-General of the United Nations (UN), Koffi Annan, the central objective

What is the Aim of Tax Justice Work?

1. **Changing Norms** - Through membership of Tax Justice Network Africa (TJNA), EATGN is at the forefront of fighting inequality in terms of the various manifestations of disparity related to the productivity of labour and the allocative efficiency of the economy by focusing on how taxation affects the rewards for work; human resources; access to capital; and control of other productive resources.
2. **Engaging Rules** - EATGN supports TJNA through coordination of advocacy activities surrounding public interest litigation (PIL). TJNA submitted a petition to the High Court of Kenya that resulted in finding the Double Taxation Avoidance Agreement (DTAA) between Kenya and Mauritius unconstitutional. This is a ground-breaking ruling in Africa requiring DTAA's be subject to constitutionally required ratification processes. It serves as a first step in ensuring proper and wider stakeholder consultations on matters of national interest.
3. **Knowledge Generation** – EATGN has published studies such as *Intersectionality, Marginalisation and Gender Tax Inequality in Kenya - A Working Paper; Nairobi International Financial Centre, or Nairobi Tax Haven?* and *THE NEXUS BETWEEN INTERNATIONAL TRADE AND TAX GOVERNANCE: An Assessment of Tax Regulations in The East African Community*. Meanwhile, TJNA has published studies such as *TRICK OR TREAT(Y)? Kenya's Tax Treaty Giveaways to Tax Heavens*, among others. The study compares provisions in the UAE, Netherlands and Mauritius, Double Taxation Agreement (DTA) with Kenya in relation to DTA provisions of key tax models namely Organisation for Economic Co-operation and Development (OECD), United Nations (UN) and Africa Tax Administration Forum (ATAF).
4. **Partnerships** - EATGN seeks to build a diverse membership base out of recognition that to achieve change at the East African level the strategy of coalition building, and partnership development is central. Entering partnerships with like-minded organizations in the region and around the world will allow its membership to grow and provide the network with strong allies to advance the cause of tax justice.

of human rights is to guarantee freedom from fear and want. In a nutshell, human rights define how we should treat and be treated by other entities and what we should expect in our interactions and co-existence.

For purposes of identification and codification, human rights are conventionally grouped into three categories;

1. **Civil and political rights (CPRs)** refer to entitlements related to our lives, individualities and freedoms that must be fulfilled immediately. They may also be called fundamentals that should not be interfered with. In this sense, they are also referred to as “negative rights” because they restrain the state and other entities from interfering with enjoyment of the rights. CPRs include the right to life, liberty, security, nationality, and participation in elections as a voter and/or candidate. They include freedom from slavery, servitude or forced labour and of thought, conscience, religion, movement, and peaceful association. They also encompass equality before the law. The French Revolution Declaration of the Rights of Man and Rights of Citizens (1789) summarized them as freedom, equality, and fraternity. Also referred to as “first generation rights”, CPRs are consolidated in the International Covenant on Civil and Political Rights (1966).
2. **Economic, social and cultural rights (ESCRs)** refer to entitlements related to material conditions of life such as food, health, housing, education, and social security. Commonly referred to as developmental rights, ESCRs are positivistic because they require the intervention of the state to ensure meaningful realisation. ESCRs are also referred to as “second generation rights” and consolidated in the International Covenant on Economic, Social and Cultural Rights (1966).
3. **Fraternal rights refer to collective entitlements.** They encompass rights to shared resources such as a clean and healthy bio-physical and atmospheric environment, self-determination, cultural heritage, and sustainable development. The concept was popularised by the Czech jurist Karel Vasak at the 1979 International Institute of Human Rights in Strasbourg. These rights are scattered in regional and international human rights instruments whether dealing with CPRs or ESCRs. They are also often referred to as “solidarity rights” or “third generation rights”.

The above codification and documentation of human rights gives them shape and defines the relationship between entities that can claim them (rights holders) and those that should ensure that they are fully enjoyed (duty bearers). The principal duty bearer is the state since it is the entity that ratifies human rights instruments. In reality, however, any entity on whom the enjoyment of a right depends on is a duty bearer.

States have three basic obligations on human rights namely to *respect*, *protect* and *fulfil* as follows:

1. The obligation to *respect* requires the state not to interfere with the enjoyment of a *right*. For example, the State should leave citizens alone to choose the religion they wish to belong to.
2. The obligation to *protect* bestows on the state the duty to prevent third parties from interfering with the enjoyment of a right. For example, it is the responsibility of the state to ensure that a member of a minority political party is not harassed by supporters of the majority party.
3. The obligation to *fulfil* can be divided into two more specific obligations namely *facilitate* and *provide*.
 - a. The obligation to *facilitate* requires the state to create conditions that enable rights holders to realise their rights. For example, by training, deploying, and paying teachers, the state is enabling children to realise their right to education.
 - b. To *provide* bestows on the state the duty to directly distribute goods or services to those who cannot generate, afford, or access them and whose humanity is consequently compromised. For example, relief food ensures that the rights of distressed populations are upheld. Similarly, cash

transfers to older persons and vulnerable children ensures that they can meet their basic needs and live with dignity.

Human rights are further elaborated on as having four characteristics.

1. One is that they are *inherent*. This means that they are innate and automatic to all human beings and are not externally acquired or conferred.
2. Two is *universality*. This means that human rights apply to everyone everywhere regardless of origin, race, colour, sex, age, religion, creed, political opinion, economic status, or other distinction.
3. Third is that human rights are *inalienable*. They cannot be taken away since they are not given by anyone. However, certain rights can be legally limited by the State.
4. Last is that human rights are *indivisible* and *interdependent*. This means that though classified and codified differently, human rights are inter-related and inseparable hence the enjoyment of one is inextricably linked to that of another.

Put another way, infringement of one right inevitably compromises another. For example, violation of the right to food is a compromise on the rights to health and life.

1.3 The Human Rights-Based Approach (HRBA)

Evolution of HRBA is related to debates on how development should be conceptualized. On the one hand is the theory that development is about *responding to deficiencies in the human condition*. This is commonly referred to as the needs-based approach. Needs are at the material level hence can be met through direct provisions such as of food and shelter. Agency is on the provider. On the other hand, is the rights-based approach, which *makes demands for the human condition*. Agency here is on the rights holder.

Needs are not universal but vary with place, context, and individual status. For example, when some citizens are going hungry in one part of the country for lack of food, others in another part are having plenty. So, food aid distribution will only target the former. But rights are universal. For instance, regardless of status in life, every human being needs a certain minimum amount of food to live. Needs are met while rights are realized. This means that while needs relate to material life, rights extend to the abstract conditions of humanity.

Food as a need simply means it is available to maintain life. But food as a right means that it is also of a certain quantity and quality to ensure a healthy life. Thus, needs are largely quantitative while rights are also qualitative. As well, needs do not imply duties, but rights do. For instance, being hungry (needing food) does not bestow a responsibility on the government to provide for you. But when your ability to provide food for yourself is compromised to the extent that hunger is endangering your life, then the government has an obligation to intervene. Failure to do so constitutes a violation of your right. In essence, the human rights-based approach centres on the principle that provision of goods and services by the state is not an act of benevolence but duty. The concepts of rights holders and duty bearers imply a social contract with expectations and responsibilities. HRBA is therefore a systematic process of conceptualizing the relationship between legitimate claims of rights holders and the valid responsibilities of duty bearers.

Adoption of the HRBA was accelerated after 1997 when Kofi Annan launched his reform programme at the UN and, two years later, proclaimed that *“the promotion and defence of human rights is at the heart of every aspect of our work and every article of our Charter”*. This statement was translated into programmatic principles at a UN meeting in May 2003 which agreed that all programmes of development cooperation, policies and technical assistance should further the realisation of human rights, be guided by principles outlined in the Universal Declaration of Human Rights and other international human rights instruments.

Therefore, contributing to development of the capacities of ‘duty-bearers’ to meet their obligations and of ‘rights-holders’ to claim their rights. Based on this, the UN meeting outlined the following as basic characteristics of the approach, which inform the HRBA methodology explained in later parts of this paper:

- a. Assessment and analysis of the claims, corresponding obligations, and hierarchy of causes of the human condition.
- b. Assessment of the capacity of rights holders to claim their rights, and of duty bearers to fulfil their obligations followed by strategies to build them.
- c. Monitoring and evaluation of processes and outcomes of actions guided by human rights standards and principles.
- d. Foundation of programmes on recommendations of international human rights bodies and mechanisms.

1.4 Principles of Human Rights and Taxation

The HRBA approach emphasises that development must not only focus on outcomes but also the legitimacy of processes used to realise them. The minimum desirable outcomes are referred to as *human rights standards* (e.g., that every human being has a right to a certain minimum amount of food and nutrients per day). The legitimate processes are called *human rights principles* (e.g., that those providing food aid must not discriminate against anyone in need).

The standards are specified in international human rights instruments while the principles are configured differently but rotate around the five elements below, summarised in the anagram PANEL- Participation, Accountability, Non-discrimination, Empowerment, and rule of Law.

- a. **Participation** requires the inclusion and involvement of rights holders in articulating their ideas and influencing decision making processes. As captured by Bagenda (2011), *“a tax code that is conceptualized and designed in a manner that only involves policymakers while excluding civil society and the wider public...cannot be said to be compliant with the HRBA”*.
- b. **Accountability** refers to the imperative on duty bearers to use resources with probity, produce reports and be open to monitoring and sanction. Citizens have a right to demand the same.
- c. **Non-discrimination** means that duty bearers exercise impartiality in provision of services.
- d. **Empowerment** requires that rights holders are not demeaned but enlightened and their capacities built to challenge power.
- e. **Rule of Law** implies that there is no impunity, corruption, or circumvention of due process.

If any of the above principles is sacrificed, the whole process is defective. The table below illustrates the application of each principle to taxation and implications for the government and taxpayer.

HRBA Principle	Implications for the Government	Implications for Taxpayer
1. Participation	<ul style="list-style-type: none"> • Allow citizens to state their priorities for preparation of annual budgets • Subject proposed taxation measures to public debate 	<ul style="list-style-type: none"> • Attend budget discussion forums • Present budget priorities • Scrutinize budgets for inclusion of proposed priorities and potential burden on taxpayers
2. Accountability	<ul style="list-style-type: none"> • Break down how revenue has been allocated and used • Prosecute corrupt government officials 	<ul style="list-style-type: none"> • Critique government accounts • Demand explanations on uncompleted projects • Provide information on corruption • Demand prosecution of corrupt government officials
3. Non-discrimination	<ul style="list-style-type: none"> • Apply taxation impartially • Close loopholes used to evade tax • Allocate revenue equitably to all regions 	<ul style="list-style-type: none"> • Demand impartial treatment from tax authorities • Question biased allocation of resources and development projects
4. Empowerment	<ul style="list-style-type: none"> • Educate taxpayers on their rights and duties • Train taxpayers on computation of tax and filing returns • List licenced tax agents • Enlighten citizens on tax dispute resolution mechanisms • Publish tax laws 	<ul style="list-style-type: none"> • Familiarise with tax laws. • Attend taxpayer education forums. • Use tax dispute resolution mechanisms. • Provide feedback to tax authorities
5. Law	<ul style="list-style-type: none"> • Levy only legal taxes • Refrain from arbitrary harassment of taxpayers • Respect rulings by courts of law on tax disputes 	<ul style="list-style-type: none"> • Challenge illegal and unfair taxation measures in courts of law • Obey judicial decisions on tax disputes or lodge appeals

Table 3: Application of Taxation Principles, Implications for Government and Taxpayers

2. Steps in the Human Rights-Based Approach for Tax Justice Programming⁵

There are several logical steps followed in using HRBA. Each is described below with examples based on taxation.

2.1 Step One: Causality Analysis

This is a process through which a problem is dissected by identifying its hierarchy of causes from the manifest to the proximate and finally the remote. The idea is to isolate the fundamental or root causes which need to be eliminated rather than dealing with symptoms. For example, a manifestation could be that the tax authority is routinely failing to meet its revenue collection targets. This means that the government does not get enough resources to finance its development programmes.

What are the immediate causes of this? One could be that potential taxpayers are not registered hence are not paying their share of taxes. This could be attributed to a negative attitude towards taxation due to a belief that it is a punitive drain on incomes, concern that governments do not provide services anyway and experience of discrimination in distribution of development projects.

The analysis goes down to systemic causes of the problem such as: a hostile relationship between tax authorities and taxpayers; corruption to abet tax evasion; absence of an effective legal regime; and political interference in tax administration and resource allocation. Each level of causality can be addressed through short term measures. But the ultimate solution is to tackle the root or systemic causes.

2.2 Step Two: Pattern Analysis

A pattern analysis involves delineating the relationship between claim holders and duty bearers in relation to their rights and responsibilities. This draws a direct link regarding the problems and their causes. For example, failure to meet revenue targets may require widening the tax bracket. This means that the tax authority has a valid claim on potential taxpayers to register and pay taxes. Taxpayers also have an obligation to register so they can duly pay their taxes. But they also have a claim on the tax authority to establish efficient, convenient, and effective registration mechanisms and processes. In this dynamic, the claim of the taxpayer is equivalent to the responsibility of the duty bearer.

The rights-duties relationship between the tax authority and taxpayer is articulated in the service charters of the various revenue authorities in East Africa. An analysis of the charters from Kenya, Uganda and Rwanda shows that they recognise the taxpayers' rights to information; privacy and confidentiality; representation by a tax agent and/or legal counsel; dispute decisions made by the tax authority; be presumed honest; and respectful and courteous treatment by tax officials.⁶ The Tanzanian charter has all the above but is silent on the rights to representation and respectful and courteous treatment. Below is an elaboration of the rights and the correlated duties of the revenue authorities.

- **Right to Information:** Taxpayers are entitled to complete and accurate information on their taxation rights, obligations, and processes to follow in meeting them. This includes the right to be educated by the revenue authority, seek clarifications about tax administration, get justification for decisions made, receive advance notices for routine inspection and audits and get feedback on enquiries and complaints lodged. They also have a right to know the amount of tax payable on every unit of income. The correlated duty of the revenue authority is to make the information available and accessible in multiple platforms. It also has a duty to keep accurate and updated accounts of all taxpayers and make it accessible to them.

5. The methodology is detailed in Jonsson, 2003. See also Christian Aid & SOMO, *Tax Justice Advocacy: A Toolkit for Civil Society*, 2011, <https://www.christianaid.ie/sites/default/files/2016-03/tax-justice-advocacy-toolkit-jan-2011.pdf>

6. Information from Burundi and South Sudan was not readily available

- **Right to Privacy and Confidentiality:** The tax authority collects and keeps detailed information about taxpayers. The latter have a right to have this information kept securely and not disclosed to unauthorised parties. The correlated duty of the tax authority is to establish systems for protecting taxpayer information and to train and bind its staff to maintain this confidentiality. Poor handling of such information can damage the reputations of both the taxpayers and revenue authority, therefore, resulting in costly legal suits.
- **Right to Representation:** The ordinary citizen is not an expert on taxation and may not know the full obligations, rights, and mechanisms for resolving tax disputes or even how to calculate tax liability, file returns or claim refunds. In this case, taxpayers have a right to secure the services of tax agents and legal experts. The correlated duty of the tax authority is to create a register of authorized/licensed agents, establish channels of communication with them and provide adequate information on taxation measures, policies, and regulations.
- **Right to Due Process:** Disputes do arise between taxpayers and the tax authority on matters such as declaration of taxes, defaulting in payment, delay in refunds, excessive taxation, and audits of taxpayers' accounts. Taxpayers have a right to challenge decisions made by the revenue authority, lodge disputes and require to be heard towards amicable resolutions. If this fails, they have a right to pursue justice through dispute resolution mechanisms such as tax appeal tribunals and courts of law. The correlated duty of the tax authority is to accord taxpayers the space to pursue these avenues and refrain from taking any adverse action against them before the matter is resolved.
- **Right of Presumption of Honesty:** The tax authority relies on taxpayers to declare incomes, calculate their liabilities, pay due taxes, and file returns. Taxpayers are deemed honest in doing this unless the tax authority has evidence to the contrary. It is the right of taxpayers to be treated with that presumption. The correlated duty of the tax authority is to provide reasons for doubting the tax declared and convene a discussion to resolve the dispute.
- **Right to Impartial, Fair and Just Treatment:** The taxpayer has a right not to be discriminated against by the revenue authority and to be treated in line with the law. The revenue authority thus has an obligation to interpret taxation law accurately, apply it consistently on all taxpayers and develop legally sound standards for tax administration. This includes demanding only the right amount of tax and doing so in a way that is not unduly injurious to the taxpayer.
- **Right to Respect and Courtesy:** The taxpayer has a right to be accorded respect by tax officials and to be handled courteously. The duty of the revenue authority is to train its staff on professional handling of taxpayers.

The service charters of the revenue authorities in East Africa also outline the following common taxpayers' obligations.

- **Registration:** Taxpayers have an obligation to voluntarily register with the revenue authority where such includes provision of name, identity number, contacts, and type of economic activity. The correlated duty of the tax authority is to issue the taxpayer with a registration certificate. In Rwanda, the taxpayer is required to carry out such registration within seven days of commencing a business and have one tax identification number.
- **Filing of Tax Returns:** Taxpayers have an obligation to pay correct taxes within the stipulated time and file the documentation with the tax authority for records. The correlated claim of the tax authority is that the taxpayer complies with the set dates and formats for payment of taxes and filing of returns.
- **Accuracy and Disclosure:** The taxpayer has an obligation to declare all incomes for computation of taxes and make correct claims for refunds. The correlated claim of the tax authority is that the taxpayer makes full and honest disclosure of all incomes and provide documentation to support the declarations where there is doubt.

Other obligations stated in some service charters but also implied are co-operation with and courteous treatment of tax officials; reporting of tax evasion and other malpractices; declaration of goods in

possession during arrival at ports; demand for fiscal receipts; and retention and remission of withholding tax for those required to do so.

The correlated duty of the revenue authority is to establish systems and facilities to enable taxpayers to do the above. These include printing of declaration forms; establishment of channels for reporting malpractices; erection of goods declaration and inspection bays at ports; and creation of online platforms for communication. The pattern analysis can be captured graphically as illustrated below.

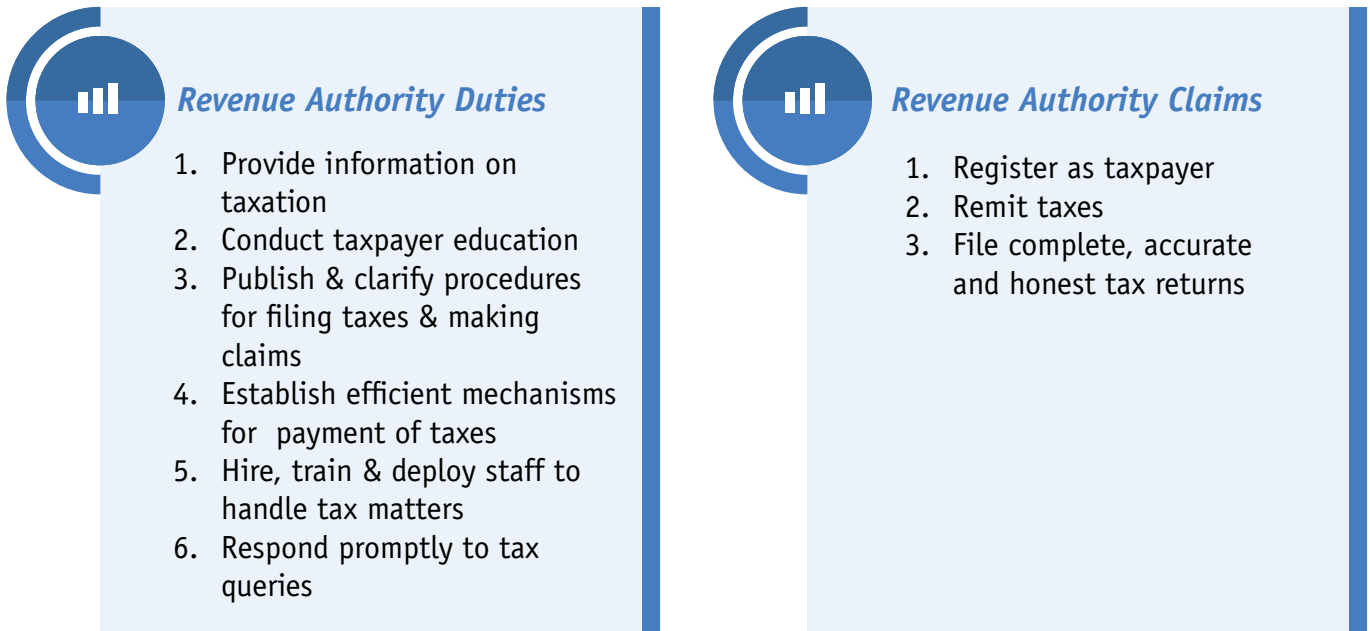


Table 4: Revenue Authority Duties (Claims of Taxpayer) vs Revenue Authority Claims (Claims of Revenue Authority)

The duties of the revenue authority are the claims of the taxpayer while the obligations of the latter are the claims of the former. Below is an additional pattern analysis, this time for traders and municipal authorities.

Municipal Authority Duties (Trader Claims)

Construct & maintain access roads to market centres	Provide information on rates & rents & where to pay them	Provide public utilities e.g. security lights, sewerage systems & garbage collection bins	Treat traders with respect & courtesy	Establish and maintain public hygiene & sanitation facilities e.g. toilets & waste bins in trading centres
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Trader Duties (Municipal Authority Claims)

Pay for relevant business licenses	Comply with registration, inspection, health & safety regulations	Pay rents, rates & fees within the prescribed period	Accord municipal staff access to business premises for inspection	Dispose of garbage in designated facilities
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Table 5: The Duties of Municipal Authorities and Traders

2.3 Step Three: Capacity Gaps Analysis

Capacity refers to the ability of rights holders to claim their rights and that of duty bearers to fulfil correlated responsibilities. In the example regarding non-registration, there is need to unveil what is preventing potential taxpayers from registering as well as what is constraining the tax authority from identifying and recruiting them. The findings are used to identify how these constraints can be dealt with, principally by developing the missing capacities under the following five conditions, namely:

- **Responsibility** - Acceptance and internalisation of a duty or role.
- **Authority** - Having the power, permission, and space to act.
- **Resources** - Having the means with which to act e.g., staff, skills, knowledge, time, technology, equipment, structures, systems, and rules.
- **Decision-making** - Selecting how to proceed.
- **Communication** - Having access to information and channels for interaction.

Let us explicate this using taxation as an obligation.

Dimension of Capacity	Tax Authority Perspective	Taxpayer Perspective
Responsibility	<ul style="list-style-type: none"> • Acknowledge responsibility to recruit more taxpayers 	<ul style="list-style-type: none"> • Accept that paying taxes is a civic duty
Authority	<ul style="list-style-type: none"> • Apply law requiring taxpayer registration 	<ul style="list-style-type: none"> • Accept that payment of tax begins with being registered
Resources	<ul style="list-style-type: none"> • Establish sources of information on potential taxpayers e.g., registers of businesses, property, identification cards, social security contributors & mobile phone users • Have staff, offices & equipment. 	<ul style="list-style-type: none"> • Access and read taxation laws, policies, and guidelines • Seek advice from tax agents & officials
Decision making	<ul style="list-style-type: none"> • Select approaches for registering taxpayers e.g., public, or personal notification; or periodic mass registration 	<ul style="list-style-type: none"> • Disclose self to tax authority • Attend taxpayer education forums
Communication capability	<ul style="list-style-type: none"> • Disseminate information on how, where, and when to register 	<ul style="list-style-type: none"> • Seek clarification on details required for registration

Table 6: Taxation as an Obligation

2.4 Step Four: Identification of Priorities for Action

The possible solutions identified from the capacity gaps analysis are assessed for importance, feasibility, and urgency. They are then prioritized and thematically organized. For example, the tax authority can research on unregistered potential taxpayers, launch a mobilization campaign, and set up registration centres.

2.5 Step Five: Programme Design

This concerns casting the actions into a cogent programme around strategies such as: Mobilization; Information and Communication; Training; and Systems and Infrastructure. The programme is then implemented and evaluated based on the problems identified from the causality analysis.



3. Human Rights Based Approaches to Taxation in Emergency Contexts

Countries often face unusual circumstances such as man-made disasters, natural catastrophes, disease outbreaks and warfare. Such circumstances depress the ability of citizens to engage in economic activity and pay taxes as well as that of governments to collect revenue and provide services. As noted in Development Initiatives (2019),

Losses resulting from disasters can be economic, environmental, and social. Human and economic losses due to disaster reduce overall economic productivity and disrupt overall wellbeing of residents sinking them deeper into poverty.

Important to note is that disasters do not obliterate human rights. In fact, they heighten the need to respect, protect and fulfil them. Based on a study of disaster risk reduction measures in four counties of Kenya, the study established that all prioritized expenditure on water, education and health, all elements of ESCRs “boost the capacity of residents to withstand shocks” by improving coping mechanisms.

However, the extent to which human rights are upheld changes based on the doctrine of derogation - that the government can suspend or limit certain rights to protect human life, ensure safety and security and maintain law and order for a defined period based on existing laws. But certain rights are non-derogable, the fundamental one being the right to life. A good example of an emergency that led to limitation of rights is the virulent Corona Virus (COVID-19) pandemic that surfaced in China in December 2019. To contain the spread of the disease, governments took various measures to limit travel and human contact. By doing so, they limited the rights of movement and association. Such measures were within the duty bearing realm with regard to safeguarding the lives of citizens. Not taking them would amount to negligence and abdication of responsibility. The context also brings to the fore two other issues: taxation and provision of services.

The pandemic did not invalidate responsibility to pay taxes. However, governments had to recognize that many citizens lost their sources of income and the respective capacity to pay usual taxes. In fact, many needed assistance in meeting their basic needs. In response, various governments put in place emergency taxation measures to cushion citizens as well as sustain life.

Globally, these measures included: economic stimulus packages to support small and medium enterprises (SMEs); deferment of certain tax obligations; wage subsidies or income support for workers; and cash transfers to households. OECD (2020) notes, for example, that the United States of America provided “*direct cash transfers to low and middle-income households*”. East African countries instituted various fiscal measures in response to the impacts of the disease.

In Kenya, the government: reduced value added tax (VAT) from 14% to 16%; corporate tax from 25% to 30%; turnover tax for SMEs from 3% to 1%; and the highest personal income rate by 5%. It granted 100% tax relief on monthly incomes up to Kshs 24,000 (USD 240) and instructed the Kenya Revenue Authority (KRA) to refund verified VAT claims to businesses within three weeks from March 25, 2020 to maintain cash flow. It further established credit schemes for SMEs and appealed to private sector companies to take measures responsive to the situation. In this regard, the telecommunications giant Safaricom removed levies on mobile money transfers of Kshs 1,000 (USD 100) and below. The government also initiated a cash transfer programme of Kshs 1,000 (USD 100) weekly to vulnerable households.

Furthermore, management of the pandemic required constant hand washing and sanitization. This would not be realized without access to reliable supply of clean water. In human rights theory, access to water implies not only its availability but also the adequacy and quality. Recognising that large urban populations, especially those in informal settlements, would not be able to realise this right if still required to pay for it, the government ordered water service providers to place a moratorium on disconnections during the pandemic. Otherwise, it would be self-defeating to require hand washing without water. Additionally, county governments set up public hand washing facilities and ferried water for free distribution to underserved populations. By so doing, they forfeited revenue that would have been collected under normal circumstances and met the obligation to fulfil (provide) the right to water and by extension food, health, and life.

Rwanda responded by: creating the Economic Recovery Plan amounting to about 3.3 percent of its Gross Domestic Product; door-to-door food distribution twice a week; cash transfers to casual workers; subsidies on agricultural inputs; measures to sustain access to basic health and education for poor households; subsidized loans from financial institutions; concessionary collection of tax arrears; extension of the deadline for filing tax returns; acceleration of VAT refunds to businesses; and tax exemptions for private school teachers and employees in the hospitality industry earning a certain level of income. It also removed the 30-day maturity period for premiums paid to the public health insurance scheme to ensure access to medical services.

The Government of Tanzania expedited payments of verified expenditure arrears to SMEs to the tune of US\$376 million in March 2020 and expanded social security schemes by US\$32.1 million to enable seamless withdrawals by those rendered unemployed by the pandemic. It also exempted medical equipment and supplies from VAT and customs duties. Uganda increased two supplementary budgets by about US\$370 million to fund critical sectors and vulnerable groups, enhanced funding for agricultural inputs, advanced extra funding to SMEs to boost household incomes, deferred payment of SME and of pay as you earn taxes, offered waivers on interest levied on tax arrears, expedited VAT refunds, increased funding for health, food to vulnerable urban populations and social protection schemes. For Burundi, measure included tax amnesties for hotels and industries unable to pay and salary subsidies for workers who lost employment.



4. Conclusion

Tax justice stakeholders such as EATGN, its members, other civil society organisations, the media, educational institutions, and activists can promote understanding of taxation as a human rights issue and enable tax authorities to exercise their mandates based on relevant human rights standards and principles. This should include transforming the language of tax administration from a demand- and enforcement-orientation to a responsibility-driven one. In this regard, tax justice stakeholders should not only see their responsibility as beginning with the adult but with the child who will grow into the taxpayer.

Educating the child to understand what taxation is, why it is necessary, the moral obligation it carries and the rights that come with it would transform the relationship between citizens and governments from being adversarial to collaborative where the two work together for the better of the society. In this context, tax authorities will not see themselves as merely agents of the government in place, but facilitators of citizens to develop their country. As part of entrenching this culture, tax authorities would not only report on meeting revenue targets, but also explain the processes used and how they promote human rights.

This will require reporting on the numbers and nature of disputes received and resolved, number of taxpayers satisfied with the resolutions, improvements in levels of tax compliance, changes in the behaviour and attitudes of tax staff to taxpayers (and vice versa) and the content, language, and images of public information communication materials. This could even include establishment of human rights offices by tax authorities. In the long run, entrenchment of a human rights perspective to taxation would culminate in national and international laws on human rights and taxation.



5. Recommendations

As a point of departure, EATGN will work to build its internal capacity on HRBA among its members and follow up with operationalization of its strategic approaches through concrete activities that promote the approach. For instance, it will pursue the following under three approaches in its 2019 – 2023 strategic plan.

5. Research

1. Study the extent to which tax authorities in the East Africa region understand, embed, and practise human rights-based approaches in tax administration.
2. Partner with tax authorities in East Africa to identify and conduct specific studies to enhance application of human rights-based approaches in tax administration.
3. Conduct studies on tax justice from a gender perspective.
4. Study approaches to enhancing tax morale through human rights-based approaches.

5.2 Communication and Dissemination

1. Create a repository of discourse on human rights and taxation.
2. Disseminate research on taxation and human rights.
3. Hold policy dialogues on taxation and human rights towards new policies and laws.

5.3 Training and Capacity Building

1. Train member organisations on HRBA and its application to tax justice.
2. Conduct public education on taxation as a human rights issue.
3. Collaborate with educational institutions to create the future generation of taxpayers through human rights education.

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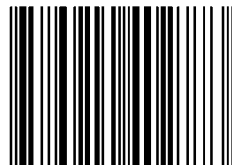
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