



9TH PAN AFRICAN CONFERENCE ON ILLICIT FINANCIAL FLOWS AND TAXATION

KENYAN CONFERENCE ON FISCAL MANAGEMENT AND REVENUE COLLECTION 2021

THEME: COMBATTING IFFS TO BRIDGE AFRICA'S WIDENING INEQUALITY GAP



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List of Abbreviations/Acronyms

ACEPIS	Africa Center for People Institutions and SOCIETY
AFRODAD	Africa Forum for Debt and Development
APNAC-K	The African Parliamentarians' Network Against Corruption-Kenya
AU	African Union
DTA	Double Taxation Agreement
EACC	Ethics and Anti-Corruption Commission
EATGN	East African Tax Governance Network
GATJ	Global Alliance for Tax Justice
GDP	Gross Domestic Product
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
HRBA	Human Rights-Based Approach
ICPAK	Institute of Certified Public Accountants of Kenya
IEA	Institute of Economic Affairs
IFFs	Illicit Financial Flows
IILA	International Institute Of Legislative Affair
KRA	Kenya Revenue Authority
LSK	Law Society Of Kenya
MoH	Ministry of Health
NTA	National Taxpayers Association
TISA	The Institute for Social Accountability
TJNA	Tax Justice Network Africa
UoN	University of Nairobi

Executive Summary

The 9th Pan Africa conference on illicit financial flows and taxation took place in Nairobi on 25th and 26th October 2021. The conference aimed at bringing together the representatives from government, civil society organizations, legislature, academia, media, and the general public to discuss issues related to Illicit financial flows, taxation, and take stock of the current state of IFFs in Kenya and Africa in general.

IFFs should be addressed and curbed by African countries including Kenya as potential revenue streams. Illicit tax practices, illegal markets, and corruption are among the prevalent IFFs categories in Kenya. Every year, bad governance and corruption of public funds rob Kenya of KES 270 billion (US\$ 2.5 billion) amounting to 25% - 30% of the government's annual budget. It is important to note that in countries with high IFFs, governments spend 25% less than countries with low IFFs on health and 58% less on education, overdependence on loans and foreign aid. The conference acted as a platform to discuss issues related to IFFs, taxation, and the ballooning debt in Kenya. It also proposed solutions to the issues and how all the stakeholders can collaborate to resolve these issues. This report, therefore, represents a comprehensive summary of all activities during the conference.

The conference was divided into sessions including panel discussions on different topics, presentation of study reports, and plenary sessions. The following topics were presented during the first day of the conference; understanding the illicit financial flows in Kenya, current efforts made by Kenya in curbing IFF's and some of the emerging issues. The role of the legislatures on matters IFFs in the EAC region. GIZ represented Non- governmental organizations working on IFFs by presenting its work on illicit financial flows in Kenya. The impact of tax policies on fiscal space and the financing of public services in Kenya.

The above presentations were then followed up by panel discussions on the following topics; Illicit Financial Flows and their effects on revenue, profit shifting, tax avoidance, and what multinational elites do to avoid paying taxes. A study paper on revenue obligation civics in East Africa was presented after the two-panel discussions. The following topics were presented during the afternoon session; The impact of tax policies on fiscal space and the financing of public services in Kenya and Tobacco Tax Policies in Kenya.

Day 2 Presentations: Debt band sustainability and its effect on economic development, Free trade and double taxation agreement on revenue, Building knowledge for economic justice: Importance of quality research on inclusion and equity. Panel discussion on public debt, tax, and other economic issues. The two-day conference was brought to a close by the co-conveners (EATGN) committing to work on the IFFs action plan and hand it over to Kenya's caucus on IFFs. The closing remarks were made by NTA's National Coordinator

DAY 1

1.0 Introduction

The Pan Africa Conference on Illicit Financial flows and Taxation is an annual convening that brings together key stakeholders involved in curbing IFF and enhancing domestic resource mobilization in Africa. The platform draws together actors from governments, civil society, international organizations, legislators, media, academia, and national campaigners to take stock of the current state of play on the IFF agenda in Africa and progress made through global, regional, and country-level initiatives. The conference seeks to also act as a platform to articulate problem challenges, propose solutions and explore opportunities for collaboration and joint standard action.

The 2021 edition of the 9th Pan African Conference on Illicit Financial Flows (IFFs) and Taxation (PAC 2021) was co-hosted by National Taxpayers Association, the Tax Justice Network Africa, and organized in collaboration with 11 co-conveners namely, East African Tax and Governance Network(EATGN), Diakonia, Okoa Uchumi, Action Aid, the African Union (AU), the Africa Forum for Debt and Development (AFRODAD), Christian Aid, African Women's Development and Communication Network (FEMNET), the Global Alliance for Tax Justice (GATJ), NAWI Afrifem Economics Collective, OXFAM, Pan African Lawyers Union (PALU), United National Conference on Trade and Development (UNCTAD) and United Nations Economic Commission for Africa (UNECA).

1.1 Objectives

The main objective of this PAC conference was to position combatting IFFs as a strong post-Covid-19 strategy and to address the growing inequality on the continent.

Objectives

1. Track the status of the implementation of reforms such as the HLP report to combat IFFs IN-COUNTRY contexts
2. Identify transformative actions and solutions for actors such as African governments, parliamentarians, civil society organizations, the private sector, and other policy players that are key in combating IFFs across Africa
3. Create opportunities for growing partnerships and collaborations to combat IFFs between the different actors.
4. Showcase the emergence of innovative policies and tools that are effective in combating IFFs.

More specifically at the country level, we will focus on the following objectives;

1. To examine the impact of IFFs on taxation and how it contributes to the widening the inequality gap
2. To highlight the correlation between IFFs and debt accumulation in Kenya and how it affects service delivery
3. To spur a public discourse on the need to tame corruption; strengthen accountability and transparency in the public sector

Johnstone Mwakazi began by welcoming the participants to the conference and urging them to register online. He then assessed the participants' understanding of illicit financial flows and asked them if they believed enough was being done to stop them. He emphasized the significance of combating illicit financial flows in closing the gap in Africa's inequalities.

2.0 Opening Remarks

Michael Otieno (representing Alvin Mosioma, Executive Director of Tax Justice Africa, and Jane Alunga, Chairperson)

He thanked the guests in attendance and named the conference supporters who included, the Ministry of Foreign Affairs England, the Ministry of Foreign Affairs in the United Kingdom, the Kenyan Parliament, represented by Hon Abisai, the Ministry of Finance Kenya, the Kenya Revenue Authority, and the participants.

He highlighted that despite receiving aid, Africa is the world's net largest creditor and that when revenue is lost, it is the youth who suffer.

He requested members of parliament present to make illicit financial flows a campaign agenda so that we can hold our political leaders accountable for their commitment to keeping Kenyan resources within the country's borders for the benefit of Kenyans. Participants were encouraged to design the anti-illicit financial flows campaign so that regular citizens might participate at various levels.

2.1 Board Chair NTA

Peter Kubebea

He emphasized that laws to combat IFFs are in place, still, they are ineffective, and he asked the public to take a position and be counted among those who are openly discussing and committing to ensuring that we have policies in place to address concerns of illicit financial flows. He extended a warm welcome to all attendees at the 9th Pan African Conference on Illicit Financial Flows.

He emphasized the conference's theme, which is to discover solutions to combat illicit financial flows and to close Africa's rising inequality gap. The Covid 19 pandemic has posed serious challenges to our economy, resulting in the layoff of many workers and the closure of many businesses, resulting in a significant impact on ordinary people, causing the inequality gap to widen due to the disproportionate share of covid 19 business opportunities held by "Covid 19 billionaires."

He emphasized that the laws exist but are weak, he challenged the people to take a stand and be counted among those who have candid discussions and have a strong action plan and commitment to ensuring that we have strategies to eliminate issues of Illicit Financial Flows. He called on Kenyans to be brave enough to make direct recommendations on illicit financial flows to the Kenya government.

2.2 Keynote address

Dr. Dunstan Oluodi- Assistant Director Debt Strategy Policy and Risk Management National Treasury

Dr. Dunstan acknowledged that the issue of illicit financial flows is serious and that it impacts the country on a micro and macro scale. The government plays a significant role at the macro level in addressing the issue of illicit financial flows, but it also requires citizen support to find solutions.

"We must examine ourselves in terms of the problems we face and understand our role in preventing illicit cash flows"

Money obtained through illegal financial flows not only devastates our country but also devastates us as individuals. Terrorism, for example, is on the rise, with various groups, and the question remains as to what we can do to eliminate the small upcoming cells.

Ways to address the problem of illicit financial transfers:

1. Generate awareness through forums like the ongoing 9th Pan African conference on IFFs.
2. Strengthening laws and policies as they exist but are yet to be enforced and made effective. Instead of focusing on how we overborrow, we should consider how effectively we use the money we borrow to address the problem of illicit financial flows.

3.0 Understanding the Illicit Financial flows in Kenya (Tax Justice Network Africa)

Presenter: Francis Kairu

To effectively tackle IFFs, the concept of IFFs must be clearly understood by stakeholders. Mr. Francis Kairu emphasized the potential of IFFs to contribute to recovery from the Covid 19 pandemic, as domestic resource mobilization has become more crucial. He asserted that when considering DRM, we should focus on issues raised by the East African Tax Governance Network (EATGN), such as tax evasion and tax avoidance.

He caught the audience's attention by mentioning that our current debt to GDP ratio is projected to be 61.2 percent, which means that for every 100 shillings spent in your family, 62 percent is borrowed money.

Mr. Kairu asserted that Kenya is currently benefiting from the DSSI (Debt Suspension Initiative), which has been extended until December 2021, but cautioned on the consequences when the suspension is lifted.

He mentioned that criminal operations had been interrupted recently, which is good news for Kenya. However, we must ask ourselves why the term “Kemikal” is so popular. It is because illegal gold traffickers are thriving, and smaller networks are forming. We, as Kenyans, need to determine how the comeback of these unlawful activities contributes to illicit cash flows. He emphasized that Kenya’s Double Taxation Agreement (DTA) must allow for genuine public participation, as pushed by the Tax Justice Network Africa (TJNA), which ensures that the contracts are drafted and enacted in parliament.

“Domestic resource mobilization has become more important in post-recovery of covid 19 pandemic. When looking at DRM we concentrate on matters highlighted in a study by East African Tax Governance Network (EATGN) on matters such as tax evasion. Our current debt to GDP ratio is estimated at 61.2% for each 100-shilling spent in your household 62 % of the money is borrowed money”.

Participants were reminded that Kenya has 15 double taxation treaties in place. Seven have been signed but are not yet in effect. Seven agreements have been reached but not signed, five are finalized, and another 15 are considered.

3.1 Mr. Kairu outlined the current status and efforts in addressing IFFs in Kenya. Current efforts of curbing IFFs

- Kenya is a member of the OECD’s Inclusive Framework, which examines strategies to combat base erosion and profit shifting.
- Kenya is a member of the worldwide forum on tax transparency and information exchange.
- Kenya is a signatory to the Multilateral Convention on Mutual Administrative Assistance (Mutual Administrative Assistance).

3.1.1 The Progress made by Kenya in combating illicit financial flows.

Despite the setbacks, Kenya has undoubtedly made strides forward. For instance, Kenya has released its first tax expenditure annual report, which shows that the cost of preferential tax offered to corporate organizations has been considerable, reaching approximately 77.1 billion. Consequently, the money we have been losing has decreased to 318 billion from 437 billion between 2017 and 2020.

In addition, companies are now obligated to provide information about their beneficial owners under beneficial ownership legislation and unaccounted assets or jurisprudence from our courts - explaining the disparity between one’s earnings over the last ten years and your total assets.

Emerging issues

- The Nairobi International Financial Center (NIFC) is being promoted to attract investors, but such centers live on two things: secrecy and incentives.
- Kenya and Nigeria are the only two nations that have declined to sign the Organization for Economic Co-operation and Development (OECD) 20 accord out of 123 countries negotiating it. It contains two ideas: reallocating tax proposals among countries and enacting a worldwide minimum tax of around 15%.
- The Pandora papers

3.2 Role of legislators on IFFs in the East African community region

Presenter: Hon Nancy Abisai

Honorable Nancy Abisai expressed her strong commitment to social, economic, and cultural rights and concerns that affect regular citizens. She quoted JF Kennedy, saying, “Our goal is not to mend away for the past, but to fix the cause for the future.” Indeed, there is a need to address the problem of emerging continents with high levels of inequality and poverty.

Agenda 2063 establishes the notion of Africa's self-sufficiency in financing its development. Self-sufficiency and financing our development are vital pillars in learning how to manage our resources. The amount of money we make will influence how far we can go to combat illicit financial flows. We must ensure that we form treaties with our partners by developing practical negotiation abilities. She emphasized persuading parliament to develop programs and measures to help citizens grasp IFFs. In addition, we need to look at how we allocate and spend money in terms of revenue collection and how it is used, and how illicit financial flows enter the picture.

She concluded with the importance of demystifying huge phrases like illicit financial flows so that legislators and residents can comprehend and contribute. Admittedly, it is essential to raise awareness about the dangers of corruption and illegal activity and lobby for more involvement and participation in decision-making and tax affairs. You get your issues addressed when we get our politics correct. Illicit financial flows are a political issue that necessitates a political response. She stressed we should use our riches by devising domestic resource mobilization strategies because we are a resource-rich region.

3.3 GIZ work on illicit financial flows in Kenya

Presenter: Carola Frank -Advisor in GIZ global program combating illicit financial flows

She defined illicit financial flows as any flows that are illegally earned, transferred, or used. She expounded that anything that violates the law of illegal financial flows is considered tax evasion. The amount of money laundered internationally in a year is \$1.6 trillion, or 2.7 percent of global GDP in 2009. It is sad to note that only 1% of all illicit financial flows are confiscated or frozen globally.

Effects of Illicit Financial Flows

Illicit financial flows affect the state on 3 levels :

- Domestic Resource mobilization
- Stability; the rule of law, security
- Investment climate /inclusive growth

GIZ is leading a three-year global campaign to combat illicit financial flows. The campaign was commissioned by the federal ministry of economy and development in 2015. Its fundamental goal is to build international, regional, and national institutions to combat illicit financial flows in the development interests. This program works in several places and focuses on three areas: prevention, asset recovery, and financial investigation.

Illegal assets discovered in various bodies collaborate and share information. GIZ connects national, regional, and worldwide standards and evaluation methods, and global agendas, by localizing them. They also help to scale up creative ideas, share experiences, and introduce development sensitized approaches.

GIZ is primarily focused on promoting beneficial ownership transparency in Kenya. Kenya benefited from this program's assistance in creating legal groundwork, establishing valuable ownership records, and promoting awareness. In addition, the program aided in the institutionalization of a multi-agency inquiry strategy 9 (Multi-agency Team, MAT). This method clearly outlines requirements and allows for efficient information sharing amongst investigative bodies. The Kenyan anti-corruption body (EACC) was able to reclaim more than 12 billion Kenyan shillings.

During her presentation, the moderator, Johnstone Mwakazi, inquired about how young people can participate in IFFs, and she suggested the following:

- Increasing public awareness of pending legislation and increasing pressure on the government.
- Have a career in the sector.
- Engage in Investigative journalism that focuses on finding answers to questions.

4.0 Panel Discussion

4.1 Topic: Illicit Financial Flows and their effects on revenue

Participants: Hon Shakeel Shabir - APNAC-K, Sheila Masinde - TI Kenya, and Michael Otieno - NTA

Moderator: Jason Braganza - AFRODAD

The moderator began by assuring the audience that the focus will be on the national impact of illicit financial flows and their impact on income, stating that it is critical to realize domestic resources.

Michael Otieno - NTA

Michael Otieno gave his view on the subject by stating that we need to move beyond ivory towers. We need to figure out how to demystify the conversation about illegal financial flows and their effects on revenue realization for the general people. This can be accomplished by making taxes a citizen-driven process and inviting regular citizens to voice their thoughts on illicit financial flows and their impact on living costs.

The panel was tasked with contextualizing tax as a direct and indirect tax so that ordinary persons may comprehend how they pay taxes indirectly through the value-added tax on commodities. Living standards are high not because of large concepts like incentives but because we let certain multinational corporations avoid paying taxes, forcing us to do so on their behalf.

He concluded by stating that politics is omnipresent, it is our job to improve our political structures to address the illicit finance issue through representation, education, and repricing. (There will be no taxes without representation).

Sheila Masinde- TI Kenya

She added that we should strengthen the financial system by emphasizing the impact of Pandora box and rein in lawless offshore businesses to promote accountability and economic reform. Illicit financial flows relieve the poorer citizens of an unfair, regressive tax burden on their companies, education, and social protection. She also highlighted the importance of elevating the issue of illicit financial flows to the top of the next administration's agenda. Financial institutions are run by the executive, which means it's all about political goodwill regarding financial management, and they require space to function.

In conclusion, we should have measures to recover funds lost due to tax evasion and money laundering. She recommended that organizations such as EACC and KRA be strengthened by examining both technical and human resources. She emphasized that institutions should conduct client background checks to prevent the facilitation of illicit financial transfers.

Hon. Shakeel Shabir- African Parliamentary Network Against Corruption -Kenya (APNAC-K)

Taxation and death, he explained, are unavoidable. The discussion of illicit financial flows begins with the budgeting process. Citizens should be aware of their taxing capability by participating in the decision-making process about how the country uses the money raised.

He stated that corruption is a form of alternative economics that lacks conventional taxing instruments. He went on to say that there are two types of illicit financial flows: regular and irregular. Transfer price is the typical level that flows via the bank and is determined and organized by developmental partners.

Money laundering impacts the economy, and also illicit financial flows are a waste of time. We can address the problem by improving economic systems and institutions. By strengthening the processes, ministries' ability to waive taxes on contracts in the mining industry, for example, is reduced. Before being signed, these contracts must be presented to parliament and then gazetted, followed by public engagement.

5.0 Panel discussion

5.1 Topic - Profit shifting, tax avoidance, and what multinational elite do to avoid paying taxes

Moderator - Caroline Othim- Global Alliance for Tax Justice

Participants: Nickson Omondi- KRA, Alvin Mosioma - TJNA, Kivindio Munyao - LSK Nairobi, Imani Countess - US Africa Bridge Building Project

The importance of redistribution and its role in reducing inequality and poverty was highlighted by the session moderator. The panel concluded that multinationals hide their wealth in secrecy jurisdictions, which will look at the global stakes of tax evasion before narrowing it down to the Kenyan and African levels. She also urged on the need to examine how Covid has exacerbated inequality.

Nickson Omondi - KRA

Profit shifting is actual and involves multinational corporations and the wealthy elite shifting their business profits in an unethical manner to jurisdictions where the gains will be taxed at a lower rate or not taxed at all. He urged the government to investigate tax evasion and avoid loopholes, citing that tax evasion accounts for more than 60% of illegal financial flows.

To combat erosion, we need to bring firms that engage in aggressive tax avoidance to court. We also need to conduct more studies, collaborate during transfer pricing examinations, and assist Kenyan revenue officials in dealing with illicit money flows, tax evasion, and profit shifting.

According to Nickson, the net tax profit per Country is 76 percent due to significant tax perks that cause the taxman to lose a lot of money. We should embrace the worldwide practice of Kenya being a member of the OECD, which is an inclusive structure that examines multinational corporations' tax-evasion attempts.

He stressed the significance of exercising caution before signing international agreements emphasizing the importance of first noting the benefits of such agreements to Kenyans. He also urged participants to take advantage of the asset recovery arrangement, including a 100% waiver from June 2015 to July 2020.

Imani Countess - US Africa Bridge Building Project

She touched on the necessity of decolonization, recent legislative changes, and the state of the tax justice system. She narrated her life experiences as a foreign resident, stating that it is a polarized environment against racial gender and must follow regulations such as equality laws and civil acts to have a liberal economy and convert social change through people mobilizing for collective power.

She has observed that we are at a turning point in the tax justice system and that their institutional goal is to establish a critical mass by focusing on coalitions of the impacted black and white people. The debate on tax equity should continue. The slogan "Black Lives Matter" arose as a result of a more organized social movement. She encouraged the audience to be a pooled resource in addressing crucial social and economic issues and mobilizing more activist leaders to develop more collective power to accomplish the justice we so much need.

Her interests lay in learning how various movements and techniques might help reduce illegal financial flows and identify ways to close the present gaps.

Alvin Mosioma - TJNA

In his view, international taxes are difficult to understand because the people in the village don't grasp phrases like taxation and need to be broken down.

There is a crisis of inequality in Kenya, with a lack of job opportunities for the youth, making them an easy target for the political class. The government should strike a balance between ordinary citizens and corporations in terms of taxation. He cautioned that we should use taxes to redistribute wealth and ensure that public services are delivered correctly.

Conversations on tax policy should be ongoing in line with who is paying taxes and how the revenues are spent to be part of the decision-making process.

To curb the issue of illicit financial flows, he gave the following recommendations:

1. The OECD agreement is a deal for the rich in that it provides excellent opportunities, but the revenue gathered does not benefit the average citizen. As a result, we should have consistent regulations in place to close any loopholes in such agreements.
2. Taxation should be done on a concessionary basis, with public engagement as a core principle.
3. By aligning with the Kenya Revenue Authority's "Kulipa Ushuru ni Kujitegemea" motto, collecting taxes should be developed, including property and capital gains tax.

Kivindio Munyao - LSK Nairobi

Mr. Kivindio, in turn, discussed the connections between tax and human rights. To understand how human rights are infringed, we must examine transnational corporations' jurisdiction and political will to open accounts in other countries. The term "minimum tax" refers to any levy imposed under Article 209 required to be legislative. Kenya would have avoided certain specific laws if it had signed an inclusivity agreement.

Aggrey Omboki, a freelance journalist, reminded us of a report released in 2019 called "ashes to ashes" that explained how British American Tobacco shifted 768.2 billion out of some countries, specifically 2.62 billion from Kenya, and asked if the KRA had launched an investigation into this issue of shifting profits. In response, Nickson assured the participants that their conclusion would necessitate extensive research, considering the legislative provisions.

Another Freelance reporter questioned why KRA is raking in more money as most businesses are closing. Nickson addressed the issue by stating that to register a firm with the registrar of companies, one must submit a tax return.

6.0 Presentation: Topic - Human rights practitioner (Revenue obligation civics in East Africa)

Presenter: Dr. Okumba Miruka

He presented a written paper whose goal is to demystify the concept of human rights by linking it to succession and exhibiting a systematic approach to tax justice. The paper asserts that the codification of rights gives them structure and establishes linkages between them. Those who have rights and those who have responsibilities. He also outlined the three fundamental state obligations of respect, protection, and fulfillment.

He explained in detail about the HRBA (Human Rights-Based Approach) and how it relates to the debate over how development should be conceptualized, explaining that it is about responding to deficiencies in human conditions, with the agency as the provider, and responding to demands for human conditions, with the agency as the holder. The HRBA emphasizes the need to focus on the consequences of human needs and the legitimate process utilized to achieve human rights.

The principle rotates around the elements of:

- Participation
- Accountability
- Non_discrimination
- Empowerment
- Law

Dr. Okumba elaborated on the Steps for Human Rights-Based Approach (HRBA) for tax justice programming that has the following steps:

- Casualty analysis
- Pattern analysis
- Identification of priorities for Africa

- Program design

He also underscored the importance of respecting, fulfilling, and protecting citizens in the event of a pandemic, such as the Coronavirus, which impedes citizens' ability to engage in economic activities and pay taxes, noting that they heighten the need to respect, fulfill, and protect them. In Kenya, for example, the value-added tax was decreased from 16 percent to 14 percent, the highest personal income tax rate was cut by 5%, and offered tax relief on monthly salaries up to Ksh 24000. (USD 240). The same thing happened in Uganda, where there were deferred taxes until you earned money, and VAT refunds were hastened.

He stated that tax officials must better understand taxes as a human rights issue is required to carry out their duties. More studies, training, capacity building, enhanced communication, and dissemination of knowledge on taxation and human rights issues are a must.

7.0 Presentation- Topic: The impact of tax policies on fiscal space and the financing of public services in Kenya.

Presenter: Evans Juma -Institute of Certified Public Accountants of Kenya (ICPAK)

He emphasized the effects of tax policies on budgetary space and the funding of public services in Kenya. Public finance is critical for tracking our resources back to their source. Kenya has a social contract between the government and its citizens, enforced by the taxation system.

The available funds are channeled into projects that benefit the community via several procedures. An example is tax policies the government uses to manage resources to distribute various services throughout the society. The amount of debt and responsibilities owed is increasing; borrowing is not a terrible thing, but how we use the money we borrow is vital. Spending without a plan overburdens the taxpayer.

We have revenue predictions, but our resources cannot meet them because we're in debt. After all, projects require a lot of money.

His recommendations include:

- Help government raise revenue by sealing loops in existence by reclaiming what was lost back to the public
- Expand tax spaces by ensuring all citizens be registered as Taxpayers
- Integrate our processes to track our resources
- Have an administration body that protects our resources.

8.0 Breakout session

8.1 Topic: The impact of tax policies on fiscal space and the financing of public services in Kenya

Presenter: John Kinuthia - International Budget Partnership

John discussed taxation, revenue, and tax implications. He stressed the importance of discussing where the government receives its money, which should reflect in the services provided to citizens. He went on to discuss in detail the budget and spending, which are heavily influenced by the budget cycle.

According to John, national and county governments should establish a cash and disbursement timetable to avoid inaccurate estimates that could disrupt the flow of funds to various ministries. He underlined the importance of public participation in the budgeting process.

9.0 Presentation- Topic- Tobacco Tax Policy in Kenya

Presenter: Celine Awuor - CEO of Internal Institute of International Affairs.

She introduced the topic of tobacco taxation and the importance of reforming cigarette tax policies to generate revenue and thus improve decentralized health services.

She mentioned that tobacco taxing is a human rights problem and should consider human economic measures in the health sector. Tobacco taxes are a win-win tactic for both the government and the population, resulting in improved health results and contributing to government revenue. It is not about mobilizing resources but about how they're used. Sin taxes collected from tobacco and sugary products should support health programs, such as treating non-communicable diseases.

The general public bears the burden of such tax increases, but it is also a technique to encourage people to quit smoking.

Day 2

The conference began with a recap from the day 1 sessions by Stephen Osedo

9.1 Presentation: Topic - Debt and Sustainability and its Effect on Economic Development

Kwame Owino - Chief Executive Officer- Institute of Economic Affairs (IEA)

He defined debt as a result of public spending above public revenues. The deficit is the difference between how much revenue is collected and how much is spent. Public debt, on the other hand, is a pile of all public deficits.

Government should spend as much as it collects in taxes because of the following reasons:

1. It is a moral question- future generations should not pay for previous debts.
2. It is a legal question -the constitution states that we should not transfer the debt.

There are two types of debts

1. Domestic debt- generally owed to Kenyans. It has a more significant burden on its citizens because the foreign debt is only affected by currency.
2. Foreign Debt- owed to foreigners. It is paid in foreign currency, whereby exports need to be accrued.

Tenure of Debt -this is the amount of time one has to pay back the debts. The average is less than five years. This year Kenya will be paying 7.7 trillion shillings in debt, of which 700 billion will be paid to domestic debt and 400 billion paid to foreign debt. Domestic debt is worse than foreign debt because its tenure is shortened. Tenure is important for debt sustainability.

He informed the participants that 7.6 trillion shillings are reported in the debt deficit. Today's estimated debt value is not less than 8.6 trillion shillings, of which 54% is owed to Foreign debt and 46% owed to domestic debt.

Effects of debt

Kenya has to borrow 20 billion shillings to cover its debts and its effect is that in 2014 the government of Kenya took 24% of the amount of money lent by the banks. Commercial lending by treasury bills is an instrument of debt available to pay in a year and pay bonds in more than one year.

In 2020, of every 100 shillings of commercial lending in Kenya, 34% is going to the government. Suppose money is unavailable for businesses to expand, capital formation surfaces and reduces job formation. This leads to the crowding-out effect. He stated the effects of a sustained deficit, the deficit represents future taxation. Borrowing redistributes income away from labor to income.

Public debt management is the most critical question in Kenya. This includes pensions, salaries, and subscriptions to international contracts.

Foreign debt components have lower interest rates and are long-term debts. Domestic debt is dangerous and has a political impact of introducing political options and requires people in the accountability space to have the right messaging and ensure the public debt is brought forward as a question of social justice.

He contributed to the discussion on how a gross domestic product affects debt and said comparing debt to a gross domestic product does not affect debt tenure. He gave an example of Japan. Yen dominates its debt, so its domestic debt has a bond of 51 years, having an interest rate of 1.67%, unlike Kenya, whose interest rate is about 6% to 7%. For this reason, Kenya will take five more years than Japan to pay for its debt. In 2018 members of parliaments were getting their mortgages queued which is a sign of a cash crunch. In 2020 we had a supplementary budget showing that the financing state of Kenya is not in a good state.

The government needs to explore retail borrowing. M-Akiba should have been explored back then when it was introduced.

9.2 Panel discussion on Public debt, tax, and other economic issues

Moderator - Jason Braganza

Panelist - Livingstone Bumbe - Senior Economist, Public Debt Management Office, National Treasury, Wanjiru Gikonyo - Executive Director TISA, Leonard Wanyama - EATGN, Kwame Owino - Chief Executive officer- Institute of Economic Affairs (IEA)

Livingstone Bumbe - Senior Economist, Public Debt Management Office, National Treasury

He defined public debt by residency, foreign debt by external residency, and domestic debt as internal. He elaborated that domestic debt is an average rate of maturity of domestic debt shifted from 4 years to 8.5 years and reduced the treasury bills stock.

He defined treasury bills as a cash management instrument that matures in a year. They are recommending 81% on bonds and the rest 19 % on treasury bills.

Areas of financing that can impact service delivery positively.

Bumbe highlighted that the biggest question is, do we treat symptoms of the disease itself? He stated from PDMO's perspective that the credit side is the main problem. The more deficits widen, the more the borrowing. He recommended we focus on fiscal consolidation to ensure the deficit does not affect borrowing.

He also stated that the main issue was the debt service suspension Initiative when we got the debt relief. The relief obtained moved to other essential services like procurement of medicine.

He recommended we develop a policy with the world bank that majorly entails performance-based disbursement.

Bumbe talked about components that Kenya needs to take into account while negotiating international debts. He stated an existing external debt stock and looked at its comparison by conducting a sensitivity analysis to see its effect on Kenyan currency.

He highlighted that they look at export earnings in US dollars and euro bonds, but plans are underway to change that.

He advised the department of mobilizing resources in terms of use, tenure, and debts to pick. He informed us in this fiscal year there will be borrowing for debt management operations. Borrowing in Kenya is advised by a medium-term debt management strategy.

9.2.1 Topic: Fiscal consolidation (How do we reconcile government borrowing?)

Wanjiru Gikonyo - Executive Director TISA

She mentioned the focus area for TISA, which is championing social accountability, highlighting that we need to support service delivery at a devolved level for it to grow.

She explained that borrowing is not a negative thing if it's done prudently. Investment of money borrowed will eventually have positive impacts.

Some of the issues she pointed out include:

- She further stated that public state officials lack the autonomy to make proper decisions and recommendations.
- Debt problems have led to an economic crisis as a result of poor priorities.
- Fixing the exchange rate resulted in the loss of competitiveness in the regional area, while industrialized investments are falling, leading to high taxation.
- There are structural problems in our economic systems that impact different sectors negatively. For example, the agricultural sector.
- The Treasury has too much power and parliament, on the other hand, is pocketed by the executive.

She recommended the following as a way of dealing with public debt:

- Stakeholders should come together to address the root cause of issues on Financial illicit flows.
- Fiscal consolidation conversation should be made public.
- She advised that the only way to prevent the government from hijacking the agenda is to use the evidence generated to fight illicit financial flows because political culture is still the problem
- She advised we need a multi-sectoral approach to handle issues of government overspending on irrelevant projects.

9.2.2 Topic: Free trade and double taxation agreement on revenue

Presenter: Leonard Wanyama-EATGN

East African Tax Justice Network (EATGN's) mandate is to champion tax justice at the regional level. Through the instrument of double tax agreement funds are legally and illegally channeled out of the country. IMF study shows investments do not come as a result of tax incentives. In collaboration with Tax Justice Network Africa (TJNA) they have filed a petition to look at the processes of acquiring double tax agreements and are seeking arguments to challenge them.

Issues Tackled in Double Tax Agreement

- Where taxation happens, do you tax at a place of source or residency?
- What is termed round-tripping? Do you tax on ownership or place of residency?
- How the principle of tax mentality is undermined.
- Double tax agreements create discrepancies in tax structures and disadvantage the local community.
- Regulating benefits given to companies registered out of the country, how does one trace ownership?
- Accountability- Who are the decision-makers?
- What is the impact of a double tax agreement on health? How much are we losing as a country?
- Rule of Law- Decision-makers should follow the law.

He explained as a civil society, they challenge the finance bill and want the value-added tax reviewed. He encouraged the audience to actively participate by raising their grievances on different taxation issues once the finance bill is announced. we should challenge different policies that are formulated without our participation.

9.2.3 Topic - Issues of free trade agreements and how to relate to them

Presenter: Livingstone Bumbe - Senior Economist, Public Debt Management Office, National Treasury

He defined Free trade agreements as agreements between two or more countries that allow free movement of people, goods, and capital. Movement is dependent on the nature of the agreement. Agreements have different scopes and rules based on standards set by local agencies.

He highlighted that free trade agreements eliminate custom duty, thus lowering or having no taxes at all. This, in turn, results in some funds disappearing. Kenya is negotiating a free trade agreement with the USA. Its impact is that the beef and poultry sector in agriculture will greatly lose and leading to an influx of imports affecting Kenya's local market.

He elaborated that free trade agreements benefit from an improved market, but it is required that we research before signing such agreements to see what its impact would be.

He referred to Dr. Miruka's presentation on rights human rights in the context of affected agreements and highlighted it can be elaborated in two ways as follows:

- Not addressed side of things- this mainly focuses on accessibility to information being a big challenge and hinders assessments of agreements signed by Kenya
- Substance side of things - looks at our production capability. There is a touting to have Kenya legalize the issue of plastics, but fortunately, Kenya declined.

Challenges being faced:

- Lack of a functioning agency to follow up on agreements made by Kenya
- Limiting scopes of agreements
- Lack of proper assessment of free trade agreements

10.0 Building Knowledge for Economic Justice: Importance of Quality Research Data on Inclusion and equity.

Moderator - Dr. Tom Odhiambo, Uon

Kagure Gacheche - Kenya Editors Guild

She highlighted that the media fraternity is trying to make business news accessible to the public by talking and discussing more. They have entrepreneurial segments like 'Hustle' where young people can talk and make business news accessible. She explained it has been difficult to talk about public finance management and illicit financial flows due to the technical language used. The panel proposed that this can be countered by ensuring language is available and understandable by everyone. She hopes the media will make business news, finance, and money information available to the public.

She responded to Aggrey Omboki on the "ashes to ashes" report that never got to see the light. The main concern was ways to prevent the marketing department from content going out. She stated it's difficult to prevent the two and push for other ways to get revenue so that publishing content is not affected. She stated they mainly get their information from whistleblowers.

Waridah Latif Makena - Center for Fiscal Studies, UoN

Their main focus is on how revenue is collected and spent to raise living standards and ensure there is inclusivity and equitable resources in the country. Their main role is to look at our social rights and be actively involved.

Research is important as it helps to promote and disseminate information to help economic and development growth. Regarding a book by Dr. Attiyah titled "Financing for Africa" which highlights the following:

1. The book gives a sense of taxation in Africa and describes challenges in disseminating information.
2. It analyzes how and why government revenues are generated to have an equitable tax system and inclusivity in terms of strategies and policies available.

3. The book also elaborates on how the government can link its activities with qualities such as fairness and equitable legitimacy to move away from old-new policies.

Having a multi-disciplinary team to understand decisions made in planning, strategy in collecting revenue, and social and economic empowerment is key. She concluded by saying, "Efforts in the socio-economic system and building justice will be in vain if we don't continue to promote research, sharing information, developing knowledge and understanding of how policies made affect us."

Tom Odhiambo- University of Nairobi (UoN)

He emphasized that Africa needs to rethink funding its public projects and social goods, stating that 68% of meals in restaurants are taxed. Kenyans should understand the mechanisms through which taxes work.

Shitemi Khamadi-African Censored

He commented on understanding mechanisms through which taxes work. They have launched their platform to generate evidence and citizens are required to pay a small fee to enable them to carry out in-depth investigative journalism. Data-based and investigative journalism brings out the watchdog role that journalists play. The constitution requires that you have declared with EACC any foreign accounts you have.

Framing of content in your story is critical and requires the following:

1. Having an interest in investigative journalism
2. Access to data
3. Sourcing and experience to interpret data
4. Media ownership

He explained we should be aware that the Pandora papers created a space to discuss IFF's and corruption. In addition, he highlighted the need to have more entities coming up and being bold to do investigative journalism. Tom further elaborated that one pays tax the moment you are born, and we need to think of ways we can relate to investigative journalism.

11.0 Presentation: Topic - Linking public debt and fiscal justice

Kenneth Okwaro - Africa Centre for People Institutions and Society (Acepis)

He stated it's important to interrogate things politicians say and we need to change our attitude towards information. He highlighted the importance of accessing information that is useful for informing analysis that will be useful. For example, we still don't have access to the SGR contract.

There is a need to improve how we communicate to the youth to easily access information considering they comprise most of the population. We need to think about archives that have the data you need broadly. He further stated that for them to cover research on a mainstream level, they look for partnerships and have dissemination workshops for the journalists.

12.0 - Conclusion and handing over of IFFs action plan to Kenya's caucus on IFFs.

Leonard Wanyama - EATGN

He committed to drafting a document from the meeting and sharing it with other stakeholders. Thereafter, the action plan will be used to engage with parliamentarians and the Kenya caucus on IFFs.

He encouraged the participants to participate in comparative information, an online platform by TJNA, to be updated on movement development on tax justice.

TJNA is happy to share the research they have done. NTA and IILA have information on tobacco taxation on their website. EATGN and TJNA have research on double tax agreements. They are trying to map out regional double tax agreements and the stages and figure out the question of regional tax organisations.

We should put tax and debt questions forward for consideration. We are getting to the point of convergence from the collection of revenue to how it's spent is becoming an important question. He encouraged the participants to make their voices heard and actively participate when given an opportunity.

13.0 Closing remarks

Irene Otieno -National Coordinator National Taxpayers Association

She thanked all the partners: Okoa uchumi, Diakonia, Ministry of Foreign Affairs, Finland EATGN, and TJNA. She highlighted this year's theme of bridging inequality gaps caused by IFFs is a topic that affects everyone. She encouraged participants to be actively involved in the decision-making process because the government is foregoing revenue in the form of tax expenditures while increasing taxes at the country level.

She highlighted the vision of NTA and how the conversation around IFFs and if addressed can contribute to lower taxation at the household level. She stated the government wants the support of its citizens, yet they put so much burden on the taxpayers. We want to see finance act conversations dominate and are as critical as conversations around the election period.

This conference has helped contextualize information on illicit financial flows. We have the challenge to widen the scope of what we focus on and have an opportunity to ask the government critical questions, like what amount are we losing on illicit financial flows. She noted the government is quick to address revenue drop issues but does not respond as fast to concerns that affect revenue dip.

We should all benefit from the revenue collected because we all contribute. Matters on fiscal consolidation, the government is yet to reduce expenditure on key areas such as allowances and travels where there is so much wastage.

She encouraged the participants to support institutions that stand with the citizens, like the office of the controller of budget, who pushed back from government pressure to withdraw the use of public funds that don't align with the constitution and the office of the auditor general, which has highlighted wastages at the National and County level.

She recognized members of parliament spearheading the IFF's caucus, Hon. Abisai, h Shakeel Shabbir, Hon. Mishi Mbogo, Hon. Eve Obara and Hon. Power. She gave special thanks to the youth and NTA chairman for opening the conference. She concluded by thanking all panelists, online participants, and friends from the media who took their time to engage in the conversation. She thanked TJNA for the technical input in looking at IFFs matters.

Conference Program

PROGRAMME- 25TH & 26TH OCTOBER 2021

Day 1

Time	Activity	Session Facilitators
8:00 - 9:00	Arrival and Registration	NTA's secretariat team
9:00 – 9:20	Welcome and Opening remarks	Mr. Peter Kubebea-Board Chair-NTA Alvin Mosioma- CEO- TJNA
9:20-9:30	Keynote Address	Hon. FCPA Edward Ouko-Former Auditor General
9:30-9:40	Keynote Remarks and Official Opening	Dr. Githii Mburu-Commissioner General Kenya Revenue Authority
9:40-9:55	Presentation: Understanding the Illicit Financial Flows Environment in Kenya	Francis Kairu-TJNA Michael Otieno-NTA
9:55-10:00	Remarks-Role of the Legislatures on IFFs in the EAC region	Hon Nancy Abisai, EALA MP
9:55-10:05	GIZ work on IFFs in Kenya	Ms. Juliet Mule-Regional Coordinator, GIZ
10:05-10:20	Tea Break & Entertainment	ALL
10:20-10:50	Presentation: Tax perception survey -	Twaweza East Africa
10:50-11:40	Topic: IFFs and its effects on revenue realization in Kenya Panelists: 1. FCPA Nancy Gathungu- Auditor General 2. Hon. Shakeel Shabir-APNAC 3. Hon. Gladys Wanga-Finance Committee 4. Sheila Masinde-TI-Kenya	Moderator: Jah Wellington, TJNA
11:40-12:00	Plenary	Moderator

12:00-12:45	<p>Topic: Profit shifting and tax avoidance; the impact of multinationals tax practices on inequality in Kenya</p> <p>Panelists</p> <ol style="list-style-type: none"> 1. Mrs Rispah Simiyu- Commissioner-DTD 2. Alvin Mosioma-TJNA 3. Ms Phylis Wakiaga-CEO 4. Imani Countess-US Africa Bridge Building Project 5. Easther Oketch-Executive Director, KEFEADO 	Moderator: Caroline Othim-GATJ
12:45-:00	Plenary	Moderator
1:00-2:00	Lunch Break	All
2:00-3:00	<p><u>Break Out Sessions</u></p> <p>Group A: The impact of tax policies on fiscal space and the financing of public services in Kenya</p> <p>Panelists</p> <ol style="list-style-type: none"> 1. John Kinuthia-IBP 2. ICPAK 3. KARA <p>Group B: Tobacco tax policies for strengthened devolved health services</p> <p>Panelists</p> <ol style="list-style-type: none"> 1. Council of Governors Health Committee 2. Ministry of Health-(MOH) 3. Dr Mercy Onsando-HENNET 4. Ministry of Finance <p>Group C: Free Trade Agreements and Double Taxation Agreements and their effects on revenue realization efforts</p> <ol style="list-style-type: none"> 1. Leonard Wanyama, Coordinator EAGTN 2. Davis Nyachienga/Edgar Odari-Econews 3. Ministry of Finance. 	<p>Moderator: James Muraguri,- CEO IPFK</p> <p>Moderator: IILA</p> <p>Moderator: Francis Kairu-TJ-NA</p>
3:00-3:30	Reports from the break-out sessions and Plenary	

3:30-3:50	Revenue Obligations and Civics in East Africa:A Human Rights Based Approach to Tax Justice	Dr. Okumba Miruka
3:50-4:00	Closing Remarks and Closing Ceremony	

Day 2

Time	Activity	Session Facilitators
8:00 – 9:00	Arrival and Registration	Secretariat
9:00 – 9.15	Recap from the first day	Stephen Osedo
9.15-9.30	Debt Sustainability and its effects of economic Development-A case study of Kenya’s Debt Situation	Kwame Owino/Dr. David Ndi-Economist
9.30-9.40	Oxfam support to CSOs on debt advocacy in Kenya	Mr. John Kitui, Country Director, Oxfam
9.40-950	Diakonia support towards debt advocacy in Kenya	Ms Lucy Githaiga-Country Manager Diakonia, Kenya Office
9.50-10.30	<p>Topic: How increasing debt levels affects service delivery</p> <p>Panelists</p> <ol style="list-style-type: none"> Hon Opiyo Wandayi-PAC Chairman Public Debt Management Office, National Treasury Wanjiru Gikonyo-Executive Director-TISA OCOB Wangari Muikia-CEO, Expertise Global Consulting Firm 	Moderator: Stephanie, ILP
10.30-10.45	Plenary	Moderator
10.45-11.05	Tea break/ Entertainment	
11.05-12.00	<p>Topic: Kenya’s Efforts Towards Eradicating Corruption; Corruption reporting, investigations, and prosecution</p> <p>Panelists</p> <ol style="list-style-type: none"> International Budget Partnerships EACC Judiciary ODPP 	Moderator: Ms. Sheila Masinde-Executive Director, Transparency International
12.00-12.15	Plenary	Moderator

12.15-12.45	Corruption Perception Survey Report/Study report	T.I EACC
12.45-1.00	Plenary	Moderator
1.00-2.00	Lunch Break	All
2.00-3.00	<p><u>Breakout Sessions</u></p> <p>Group A: Comparative lessons that stem IFFs in the Extractive Industry</p> <p>Panelists</p> <ol style="list-style-type: none"> 1. Ministry of Mining 2. KCSPOG 3. Davies Nyachienga/Edgar Odari (Econews) 4. TJNA <p>Group B: Building Knowledge for Economic Justice: Importance of Quality Research Data on inclusion and equity</p> <p>Panelists</p> <ol style="list-style-type: none"> 1. Global Partnership for Sustainable Data 2. Maggie Ileri-Trends and Insights for Africa Research 3. Kenneth Okwaro-Africa Center for People Institutions and Society 4. NCPWD 5. KPO <p>Group C: Investigative Journalism</p> <p>Panelists</p> <ol style="list-style-type: none"> 1. Media Council of Kenya 2. Editors Guild 3. Africa Voices 	<p>Moderator: Riva Jalipa-Oxfam</p> <p>Moderator: Dr. Tom Odhiambo (UON)</p> <p>Moderator: Shitemi Khamadi</p>
3.00-3.30	Reports from the break-out sessions and Plenary	Session Chairs
3.30-3.45	Handing over of IFFs Action plan to Kenya's caucus on IFFs	Leonard Wanyama- EATGN

3.45-4.00	Closing Remarks	Irene Otieno- National Coordinator, NTA
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Moderator: Johnson Mwakazi

Co-host: Stephen Osedo