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Kenya IV: Understanding the wealth gap and governmental dependence from external financing

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Joerg
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1 Introduction

The research concept to the Tax Justice & Poverty research project defined its goal in the subtitle, namely "Narrowing the wealth gap and reducing dependence from external financing" (Tax Justice & Poverty, 2013a). When the research project continued, the team also felt it necessary to include the topic of Illicit Financial Flows into its work.

This chapter gives an introduction and illustration of relevant and recent developments within the national context of Kenya.

Regarding the discussion surrounding definitions of concepts and their content we want to refer to the extensive discussion in the Introductory Part, chapter IV. In the following, only the most essential repetition will be entered to make the flow of reading easier.

2 Income inequality and Wealth Inequality

2.1 Introduction

Inequality is not the same as poverty and, under certain conditions; inequality can be acceptable while poverty is not. Under neo-liberal assumptions, even increasing inequality may eradicate poverty. Inequality may be high, and yet it may be possible for poverty to decrease. For example "due to the rising tide" income and opportunities, including that of the lowest end of society, poverty might decrease or, because inequality is a necessary interlude before poverty decrease as the Kuznets hypothesis[1] requires. And indeed: some still see growing inequality as one side effect of the more basic – positive – fact that the globalizing economy has contributed to a dramatic decrease of worldwide poverty on the whole; or that the creation of conditions favourable to the accumulation of wealth is better suited to overcome poverty than redistribution by the state via taxation.[2] The downside of globalization is most vividly epitomized by recent times of periodical global financial and economic crisis. In fact the costs of the crises associated with economic and financial globalization appeare to have been borne overwhelmingly by the developing world, and often disproportionately so by the poor who were the most vulnerable (Machiko Nissanke and Erik Thorbecke, 2004). On

[1] Kuznets hypothesis; the hypothesis holds that in the early development of an economy, new investment opportunities increase for those who already have the capital to invest. These new investment opportunities mean that those who already hold the wealth have the opportunity to increase that wealth.

[2] See, for example, authors from the Anglo Saxon tradition, e.g. authors presented in **Invalid source specified.**.

the other hand, benefits from globalization in booming times are not necessarily shared widely and equally in the global community.

Whether it is by coincidence or causation, the financial collapse of 2008 and 2009 has resulted in growing angst over income inequality (Cloninger, 2016). Millions of workers disappeared from the workforce and have yet to return. This has magnified the gap between households at one end of the income spectrum (Cloninger, 2016).While this growing concern over the existing income distribution has emerged as a debating point in the worlds of public policy and politics; it's been a challenge to pinpoint the optimal way to redistribute income to reduce inequality. Alas, as with beauty and issues of fairness, the optimal distribution lies in the eye of the beholder. Nevertheless, most would agree that reducing the inequality gap is a worthy goal. Understanding what is causing the growing gap between rich and poor is important to figuring out how to reduce it. Is it driven by natural causes such as age that can't be easily effected by policy? Or is inequality rooted in more malleable factors like education or tax policy? (Cloninger, 2016)

One has to distinguish between Income and Wealth Inequality. Income is whatever is earned and received via labour or assets like capital interest, share dividends, or rent from real property. Wealth is a more complex issue and there is no agreed upon definition about what characterizes it. In this paper, "total wealth" (nor "net wealth) refers to the private wealth held by all the individuals living in each country. It includes all their assets (property, cash, equities, business interests) less any liabilities.

"Wealth" consists in assets, that guarantees regular income without the need to work for it – not just in the present, but most likely also in future. But there is more to it: An easy example to illustrate this is share ownership: First, it generates regular income via dividends. It generates an income when it is sold (Capital Gain). But when holding, it also gives its owner power about the direction of a company and all its workforce and it gives power towards policy maker or the public. The true importance of "wealth", however, reflects that which Collins and Gates phrase as follows: 'wealth – including saving, investments and property ownership – tells us about enduring power, stability and security' (Collins, 2012, p. 22).

Due to the taxation of income, there are quite a number of statistical indicators about the size of income inequality. This is very different with wealth because of the lack of transparency regarding the ownership of wealth assets, either, because no data exists or because that data is inaccessible for reasons of banking, tax, privacy, statistical or other secrecy reasons. Insight via representative household surveys are scare because the top segment of private and corporate wealth holder is comparatively small, thus eluding representative sampling, and even if super-wealthy households are targeted due to statistical oversampling, information provided by interviewees is subject to voluntary disclosure and error.

A far more detailed discussion about concepts, content and measurement of income and wealth inequality is given at I/IV/2.1.

2.2 Income inequality

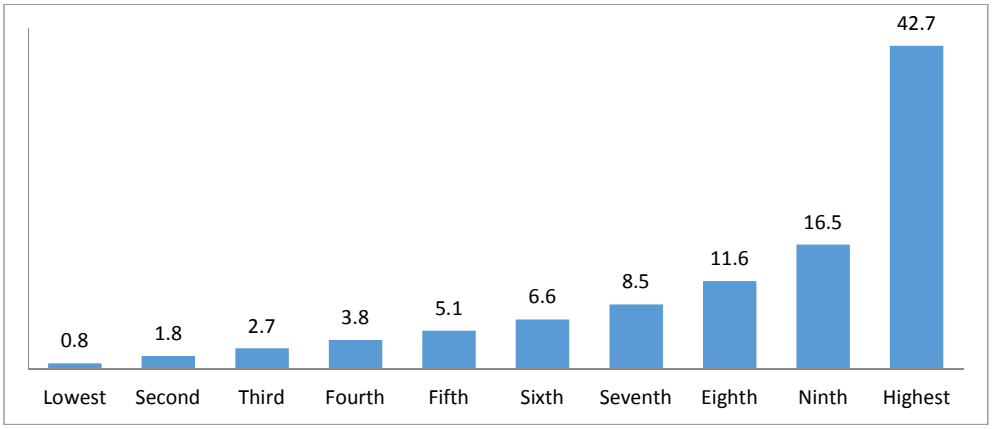
In Kenya, as in Germany, the income gap is characterized by a situation where "one segment of the population has a disproportionately large share of income compared to other segments of that population" (Society for International Development, 2004, p. 3). Similarly, evidence regarding inequalities is notable in available opportunities to earn income in terms of employment and access to income generating resources.

On per capita income basis, Kenya exhibits higher inequalities than Germany, but not as high as Zambia. Per capita income inequality stands at 0.625 as opposed to the Gini coefficient of 0.477, based on general household income. In fact, it has been noted that, "for every shilling earned by the poorest 10% households," for instance, "the richest 10% earn about Ksh. 56" (Society for International Development, 2004, p. 3f.).

In terms of population deciles, Kenya's three highest deciles account for 70% of the total income and expenditure (Society for International Development, 2004, p. 3). The country's top 10 households control 42% of the total income while the bottom 10% control less than 1%". In more detail, it looks as follows:

Graphic 1 Income share by population deciles in percent (1999)

Kommentar [J1]: There should be something more up-to-date?



Source 1 (Society for International Development, 2004, p. 6)

With a Gini coefficient, regarding income inequality, of 47.68 in 2005, Kenya ranks among the top ten most unequal countries in the world and the fifth in Africa.

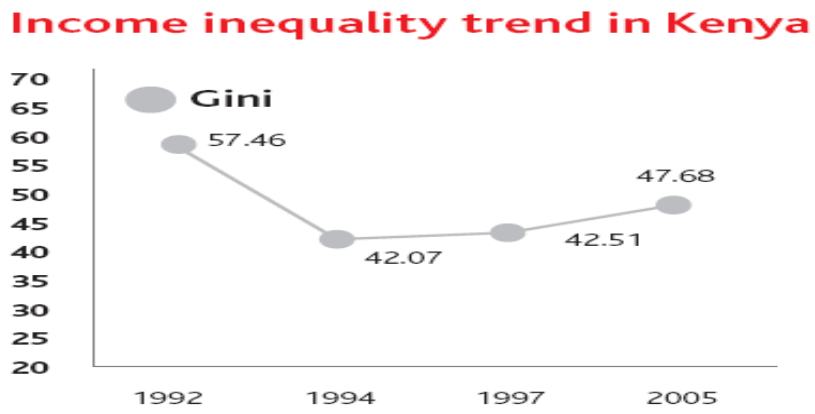
The situation is likely to have worsened: On 21 July 2017, NSE firms disclose CEOs' pay in transparency drive. Here, for example, David Ohana is listed with a monthly (!) income of 6.6 million KSh, Mugo Kibati with 3.3 million KSj monthly and Allan Walmsley with 2.1 million KSh monthly.[3]

[3] http://www.businessdailyafrica.com/news/7NSE-firms-reveal--details-CEO-pay/539546-4025660-rc3021z/index.html

Equally interesting is the publication of top civil servants remuneration, published ahead of the 2017 elections on 7 July 2017 (see VII/2.7.3#).

Comparative studies as those by Atkinson (2014) and Christian Aid/Tax Justice Network indicate that, in historical terms, there was a reduction in the level of inequalities between 1992 and 2005 compared to the period between 1960 and 1980:

Graphic 2 Income inequality in Kenya, Development



Source 2 (Christian Aid; Tax Justice Network, 2014, p. 15)

The graphic below shows an increase in income inequality since 1994. Nevertheless recent data of 2013 offer a reduction in income inequality, hinting that at least some progress has been made. And yet: The Christian Aid/Tax Justice Network study concludes in its 2014 report:

> 'Despite the steady growth the country has experienced in recent years, Kenya remains one of the most unequal societies in the world and hosts one of the world's biggest slums. An estimated 38% of total income remains in the hands of the top 10% of the population, while the bottom 10% control only 2% of income. (Christian Aid; Tax Justice Network, 2014, p. 13)

Particularly bad is the situation of the youth: Youth (15 – 34 year olds) form 35% of the Kenyan population. However, they have the highest unemployment rate of 67% (Kaane, 2014). The situation is worsened by the realization that "over one million young people enter into the labour market annually without any skills some having either dropped out of school or completed school and not enrolled in any college" (ibid). A further 155,000 join the labour market annually after completing training in TVET or at the university. Still, among those who have gone through post secondary educations, the skills acquired by the college and university graduates often do not meet the expectation of employers. The government's measure in creating new jobs is way below the required as indicated by the Economic Survey (2015) where 799.7 thousand new jobs were created both in the informal as well as the formal sectors (p.67), which is not enough to employ all those entering the labour market annually.

This leaves too many the choice either between unemployment, subsistence farming or the informal economy (see below#).

2.3 Wealth inequality

As in the case of Germany (see G/W/I), we draw a number of information from banks and wealth managing companies ("wealth reports") since it is our opinion that information provided to them by their customers is comparatively comprehensive, the reason being that those institutions otherwise would not be able to administrate or even increase the entrusted assets.

Due to the lack of a universally agree definition of what composes wealth and therefore needs to be measured and compared, and the lack of transparency regarding wealth assets some figures quoted in the following sub-section seem to contradict each other. The reason is that each publication has its own definition, statistical computation and/or data base.

2.3.1 The African context

Kommentar [J2]: I neglected the global aspects since we dealt with those in I/IV. If you want to keep it and put it before The African Context – fine with me.

2.3.1.1 Statistical indicators

And according to the *Guardian*, Africa is now home to more than 160,000 people with personal fortunes worth in excess of $1m (£642,000), a twofold increase in the number of wealthy individuals since the turn of the century that highlights the problem of deepening inequality as some of the world's poorest nations register strong economic growth.[4]

Some statistical indicators for African wealth holder at the end of 2016, according to a report by New World Wealth, a South African market research firm:

- The average African individual had net assets of approximately US$2,000 (wealth per capita)
- Total individual wealth held on the continent amounted to US$2.2 trillion.
- There were approximately 145,000 HNWIs living in Africa, with combined wealth holdings of approximately US$800 billion.
- There were 7,010 multi-millionaires living in Africa

- African HNWI numbers have increased by 19% during the review period (2006-2016).
- 2016 was a bad year for African HNWIs. Their numbers decreased by 2% during the year.
- However, the HNWI numbers in Africa are expected to rise by 36% over next 10 years, reaching approximately 198,000 by 2026 (New World Wealth, 2017)

The total wealth ranking is as follows:

[4] Global development, Data blog : Global development is supported by Bill and Melinda Gates foundation. https://www.theguardian.com/global-development/datablog/2015/jul/31/africa-wealth-report-2015-rich-get-richer-poverty-grows-and-inequality-deepens-new-world-wealth

Africa: Total Wealth rankings, 2016	
Ranked by wealth	**Total Wealth, 2016 (US$ billion)**
South Africa	610
Egypt, Arab Rep.	313
Nigeria	270
Algeria	119
Morocco	109
Kenya	95
Angola	75
Tanzania	55
Ghana	55
Ethiopia	51
Cote d'Ivoire	46
Uganda	34
Mauritius	33
Dr Congo	29
Namibia	24
Mozambique	19
Zambia	16
Botswana	13
Zimbabwe	3

Source: (New World Wealth, 2017, pp. 8-9)

When looking, how total wealth is distributed, the following table is informative:

Number of people worth more than $1m (HNWIs)

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Country	Number of Millionare people*
South Africa	46,800
Egypt	20,200
Nigeria	15,400
Kenya	8,500
Angola	6,400
Morocco	4,800
Algeria	4,700
Mauritius	3,200
Namibia	3,100
Ethiopia	2,800
Ghana	2,700
Botswana	2,600
Ivory Coast	2,300
Tanzania	2,200

Uganda	1,300
Mozambique	1,000
Zambia	1,000

Source: New World Wealth

Top 5 African countries by dollar-millionaire population

Country	Millionaires **($1m+)** *			
	2005	2014	2015	2025
South Africa	25,500	48,900	46,500v	72100
Egypt	18,800	21,900	19,700v	23,600
Nigeria	5,500	16,400	15,400v	21,600
Kenya	3,900	8,300	8,500^	15,300
Angola	1,600	6,500	6,400v	9,800

Source: New World Wealth data

* Numbers are rounded to the closest hundred

As can be seen: In all three tables, Kenya ranks prominently among the top 5. The New World Wealth findings are supported by other regional wealth report, e.g. the one by Knight Frank (Chrispinus, 2017)[5] or (Market Research and Wealth Intelligence, 2016).

[5] The Wealth Report 2016: This is the 10th edition of the world's only report covering wealth and property trends. It takes a unique look at wealth creation, global distribution, movement of wealth and its impact on property markets – commercial and residential. The report contains some excellent insights and investment

2.3.1.2 Composition of the African wealth portfolios

Sector and Country breakdown of African individuals worth $1m or more

- Angola: 41% in oil and gas, 13% in financial services, 12% in real estate and construction, 8% in basic materials, 6% in transport.
- Ghana: 24% in financial services, 16% in real estate and construction, 13% in fast-moving consumer goods, 10% in basic materials, 7% in retail.
- Kenya: 19% in real estate and construction, 18% in financial services, 10% in manufacturing.
- South Africa: 20% in financial services, 16% in real estate and construction, 14% in basic materials, 8% retail.
- Nigeria: 24% oil & gas, 16% basic materials, 13% transport, 10% financial services.
- Zambia: 22% in basic materials, 16% real estate and construction, 12% financial services, 9% transport.[6]

Kommentar [J3]: Check reference in footnote!

However, the underlying challenge however is the informality of the economies that contributes to African tax administrations lacking information on which citizens are high-net-worth individuals.

2.3.1.3 Asset ownership

Index of UHNWIs from each region who own a luxury asset class*

	Global Average	Africa	Asia	Europe	Latin America	Middle East	North America	Pacific
Yachts	100	84	42	216	113	96	74	342
Private jets	100	200	28	73	159	48	133	111
Collectables	100	66	88	187	59	110	75	142
Luxury car	100	155	128	178	108	113	60	168
Overall Index	100	126	72	163	110	92	85	191

Source: Knight Frank Luxury Investment Index

*Based on the proportion of UHNWIs who own each asset per region

It is here, at the ostentatious display of wealth in residences or luxury assets, that even tax authorities have to conclude that something has to be wrong with the declaration of income

selections and some interesting forecasts, besides reviewing and benchmarking the world's prime property markets against luxury goods and assets.

[6] Refer to footnote one.

and wealth, because, especially in Kenya, there is an apparent gap between registered high-income and high-wealth holder on the one side, and the display of wealth on the other.

2.3.2 Kenya

2.3.2.1 Statistical Indicators

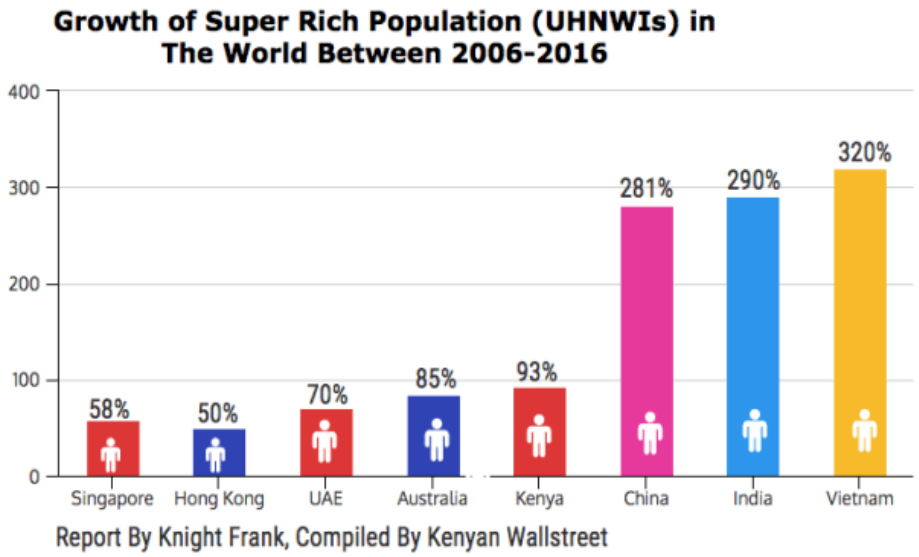
Kenya's million-dollar wealth band grows as succession, tax matters gain stature among Africa's ultra-rich.

According to data provided by New World Wealth exclusively for the Knight Frank Wealth Report, at least 200 Kenyans crossed the million-dollar net-worth mark in 2015, growing the country's dollar-millionaire population to 8,500, from 8,300 in 2014. Out of these, the country's tally of UHNWIs stood at 105. The wealth distribution data forecasts that Kenya's million-dollar wealth band will expand by 80% to 15,300 over the next 10 years (Knight Frank, 2016).[7]

Kenya is the 4th richest country in Africa (in terms of individual wealth held) after South Africa, Nigeria and Egypt (Kairu, 2015) or (Research and Markets, 2016).

- During the review period, Kenyan HNWI volumes increased by 60% from approximately 5,300 HNWIs in 2007 to 8,500 HNWIs in 2015. This made Kenya one of the top performing countries in Africa during this period.
- Residential property constitutes around 35% of the net assets of an average Kenyan HNWI. This is a relativity high percentage when compared to other African countries. Popular properties for Kenyan HNWIs include beachfront villas and homes in residential estates. Many wealthy Kenyans are also large landowners.
- We expect the number of Kenyan HNWIs to grow by 80%, to reach approximately 15,300 by 2025. This will make it one of the top 20 performing countries in the world over this period.
- The Kenyan wealth management sector is set to benefit from strong growth in HNWI wealth in other East African countries (Tanzania, Uganda, and Rwanda) which have less-developed banking systems – HNWIs in these countries may choose to use Kenyan banks (Research and Markets, 2016).

[7] According to Andrew Shirley, Editor of *The Wealth Report*, the last decade has been eventful despite the global financial crisis, the world has seen a huge amount of new wealth created and property – both residential and commercial – has grown in stature as an asset class. *For more insights, download The Wealth Report 2016 in full: http://www.knightfrank.com/wealthreport*



From the graph above, between 2006 and 2016, Kenya's number of UHNWIs (Ultra High Net Worth Individuals) grew by 93 per cent to reach 120 and is predicted to reach 216 by the end of the next decade; this would be a growth of 80 percent – the fourth largest increase in all the countries assessed[8].

The Kenya's HNWIs defies 2015's economic gloom to enter class of the super-rich even as wealth gap widens. Knight Frank's annual Wealth Report says the number of dollar millionaires in the country rose to 8,962 up from 8,760 reported the previous year when the economy is estimated to have grown at a moderate pace of 5.5 per cent.

Christian Aid/Tax Justice Network adds that Nairobi is in fifth place among African cities regarding the number of dollar (!) millionaires, namely 5000 (behind Johannesburg with 23,400 and Lagos with 9,800 dollar millionaires) (Christian Aid; Tax Justice Network, 2014, p. 13).

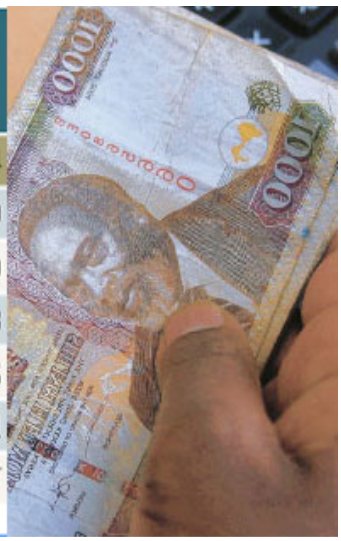
[8] Read further on Kenyan Wall street "Kenya Has the Fourth Fastest-Growing Ultra-Rich Population in the World" March 2017. http://kenyanwallstreet.com/kenya-has-the-fourth-fastest-growing-ultra-rich-population-in-the-world Accessed 1 June 2017

WEALTH REPORT FOR KENYA

The number of Kenyans with assets valued over Sh100 million rose last year despite companies reporting lower earnings.

Wealth distribution	2015	2014
Sh100 million +	8500	8300
Sh1 billion +	340	330
Sh3 billion +	105	103
Sh10 billion +	16	16
Sh100 billion +	1	1

SOURCE; KNIGHT FRANK WEALTH REPORT



Source: (George Ngigi and Anne Njanja, 2016)

The New World Wealth report on Kenya indicates that, Nairobi is home to the largest portion of Kenya's HNWIs (6,200 individuals), i.e. nearly three-quarters of the Kenyas overall 8,500 individuals reside in affluent estates like Runda, Lavington, Riverside, Kitisuru, Karen, Muthaiga, Kileleshwa, Langata, Spring Valley, Bahati Ridge, Thigiri Ridge and Westlands (Mutegi, 2016). There are also sizable Kenyan HNWI populations in Mombasa and Kisumu. Additionally 59 per cent of HNWIs in Kenya are looking to invest in commercial properties locally, while 44 per cent are looking to buy abroad." (Chrispinus, 2017).

As reflected, Nairobi is home to the largest portion of Kenya's HNWIs (6,200 individuals). There are also sizable Kenyan HNWI populations in Mombasa and Kisumu. Below are some of the cities hosting some of the HNWs.

Kenya: Top cities for HNWIs, 2015[9]

Ranked by HNWIs	**Number of HNWIs, 2015**
Nairobi	6 200
Mombasa	800
Kisumu	200
Malindi	100
Kilifi	100
Nakuru	100
Rounded to nearest 100. Figures for end of Dec 2015.	
Source: New World Wealth	

[9] Business of African Luxury : https://maryannenjeri.wordpress.com/2016/06/21/kenya-2016-wealth-report-top-kenyan-suburbs-for-the-wealthy/ See also : *Kenya 2016 Wealth Report: Top Kenyan suburbs for the wealthy*.July 2, 2016 .https://www.luxurialifestylesouthafrica.com/kenya-2016-wealth-report-top-kenyan-suburbs-for-the-wealthy/ **Accessed 4 July 2017.**

According to Shirly one of the editors, data from New World Wealth, (Shirley, 2016) Kenya added 900 individuals to the elite class of dollar millionaires in 2016, raising the tally of HNWIs – those worth US$1 million (Sh102 million) or more in assets excluding primary residences – to 9,400 people from 8,500 in 2015. Of these, 30 individuals joined the ranks of those worth US$10m+ (Sh1.02bn+), 10 joined the ultra-high-net-worth pool of those worth US$30m+ (Sh3.06bn+), while two individuals became centa-dollar-millionaires worth US$100m+ (Sh10.2bn+). According to Andrew Shirley, editor of the Wealth Report "Kenya's diversified economy means it is consistently one of Africa's top performers in terms of wealth creation (ibid.).

2.3.2.2 Growth

Positive impact:

- Strong growth in the local construction and financial services sectors.
- The migration of wealthy people from other East African countries – it is estimated that over 500 HNWIs from other African countries moved to Kenya during the review period.
- Solid economic growth.
- Kenya is less dependent on commodities than other African countries. Most major commodity prices declined during the review period (Market Research and Wealth Intelligence, 2016).

Negative impact:

- 39% depreciation of the local currency against the US$ from approximately 63.0/US$ at the end of 2007 to 103.0/US$ at the end of 2015.
- A 6% drop in the local stock market index (in US$ terms) between 2007 and 2015 (Market Research and Wealth Intelligence, 2016).

According to the survey, 2015 was a good year for Kenyan millionaires as HNWI volumes rose by two per cent. This growth was impressive compared to other major African countries – HNWI numbers in South Africa and Nigeria were down 18% and 28% respectively in 2015. Growth in the Kenyan HNWI wealth and volumes is expected to be strong over the next 10 years. It is expected the number of Kenyan HNWIs to grow by 80%, to reach approximately 15,300 by 2025. This will make Kenya one of the top five performing HNWI markets in Africa over this period (in terms of HNWI % growth), along with Ivory Coast, Ethiopia, Mauritius and Tanzania. It will also make Kenya one of the top 20 performing HNWI markets in the world over this period, stated New World Wealth (Market Research and Wealth Intelligence, 2016).

According to the findings by the wealth intelligence, Nairobi is the economic hub of Kenya with major industries in the city including financial services, real estate and construction, clothing, textiles, building materials, processed foods, beverages, and cigarettes. During the review period, December 2015, Kenyan HNWI volumes increased by 60 per cent from approximately 5,300 HNWIs in 2007 to 8,500 HNWIs in 2015. It states that "HNWI wealth rose by 75 per cent, from 24 billion US dollars in 2007 to 42 billion US dollars in 2015. This made Kenya one of the top performing countries in Africa during this period." (Market Research and Wealth Intelligence, 2016) The report provides a comprehensive review of the wealth sector in Kenya, including HNWI trends, wealth management trends and luxury trends in the country.

2.3.2.3 Attitudes and concerns of the wealthy

The current economic downturn has had a dramatic impact on the population of ultra-high net worth individuals and their wealth. But while those numbers can be measured, changes in behaviour are more difficult to predict and understand, not least because there is no historical data on which to draw. Wealth has never been as democratised and veiled as it is today, so the response of this wealthy group to unprecedented economic conditions has never been observed (Rob Mitchell, The Economist Intelligence Unit, 2010, p. 19). In the case of spending on luxury goods and services by the wealthy, the key is not how much is spent, but the quality and durability of the product or experience. Nonetheless "many newly wealthy also lack the confidence that this wealth is here to stay. It needs a little longer for that comfort to become sufficiently strong and to realise that they have a greater responsibility to give back to society.[10]"

For instance in Kenya, an aspect of declaring all that one has especially politicians according to one of the parliamentary debate is that it goes against African customs and values.[11] Really! The argument advanced here is the collective appeal to the African sentiment of the culture and customs. The logic behind such custom is that counting what one has goes against the African norm and invites personal tragedy. This argument however ignores public interest and public transparency that goes with the public service and modern public institutions. This argument transposes private opinions and imposes them to public sphere without regard to the different spaces (Gakero, 2017). Of course the arguments are against the unfettered right to privacy that makes public officers declare their wealth, for them it's a confidential matter. Related to the same argument is that access to the declaration of wealth of the public officer should only be made in cases where there was a criminal charge preferred against the officer.

While looking at the 2016 edition of the Knight Frank Wealth Report as it marks the 10th anniversary which looks back at the past 10 years and gazes into the future to predict what the next decade might bring. The report unveiled in Nairobi in partnership with CfC Stanbic Bank's Wealth and Investment division.[12] The survey report points out that the continent's

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[10] Rohini Nilekani, philanthropist. She is founder and chairperson of Arghyam, a charitable trust she has endowed to fund initiatives in water and sanitation. She is also founder and chairperson of Pratham Books, which seeks to democratise the joy of reading for children. From 2002 to 2008, she was also chairperson of the Akshara Foundation, which works in elementary education in Karnataka. She also sits on the boards of many non-profit organisations and funds work in education, health, the environment and microfinance. http://graphics.eiu.com/upload/eb/The_New_World_of_Wealth_WEB.pdf

[11] Republic of Kenya(2003). Kenya National Assembly Parliamentary Debates.DailyHansard. file:///D:/media/Sammy%20Gakero-%20Public%20officer%20Ethics%20Bill-%2011.7.2017.pdf

[12] CfC Stanbic Bank is a wholly owned subsidiary of CfC Stanbic Holdings Limited, which is a financial services organisation in Kenya listed at the Nairobi Securities Exchange. It is a member of the Standard Bank Group, Africa's largest bank by assets operating in 20 countries on the continent. In Kenya, the bank has a network of 24 branches, three of which have dedicated digital centres. It provides the full spectrum of financial services; Personal and Business Banking as well as Corporate and Investment Banking. Within Personal and Business Banking, the bank offers financial solutions to Kenya's small business and individual customers to meet their shifting expectations and growing wealth. Its Corporate and Investment Banking division serves a wide range of requirements for financing, trading, investment, risk management and advisory services. The CfC Stanbic Bank Wealth and Investment division is the high net worth wealth management division of the Group, and services clients with the potential for net investable assets in excess of US$1 million. With offices

Ultra-High-Net-Worth Individuals (UHNWI) – those worth $30 million or more in net assets, excluding primary residences – are worried less over anti-money laundering initiatives, 'know-your-client' initiatives and online security and privacy. Succession and inheritance have become a significant point of focus for most UHNWIs in Africa, afraid that their children would not be encouraged to create their own wealth and are likely to fritter away the inheritance. In Kenya, for instance, this is demonstrable through the numerous inheritance feuds being lodged with the courts by heirs of the wealthy, in cases where written wills are absent or wealth hasn't been distributed.[13] And so the Kenyan system of patronage is deeply embedded that accumulation of wealth is guaranteed depending on one's proximity to the government. This makes declarations of wealth by the wealthy who benefited from political largesse very uncomfortable.

The world's leading private bankers and wealth advisors do believe that portfolio diversification, privacy, and portfolio liquidity are of equal importance amongst high-net-worth individuals (HNWIs) in Kenya, with 53 percent of respondents in the affirmative (Shawiza, 2017). However, political uncertainty (63 percent) is deemed the biggest threat to Kenyan HNWIs' ability to create and preserve wealth over the next five years. This is followed closely by potential fall in asset values (37 percent), rising taxes (37 percent), tighter controls on movement of capital (37 percent) and rising interest rates (21 percent) as key threats. For HNWIs across Africa, political uncertainty (70 percent) remains the major threat to their ability to create and preserve wealth over the next five years (Shawiza, 2017).

Over the next decade, the world's wealthiest population is projected to increase by 43%, according to the data by New World Wealth, a wealth intelligence and market research company based in Johannesburg, South Africa.Globally, the least important factors for HNWIs in making wealth management and investment decisions are: philanthropic outcomes (41 percent), being seen as a responsible global citizen (35 percent) succession planning (28 percent), ability to move wealth quickly around the world (24 percent) and protecting wealth from political interference (21 percent). Kenyan HNWIs follow the same view on the factors at 58 percent, 47 percent, 42 percent 21 percent and 21 percent respectively (Shawiza, 2017). On education, wealth managers and advisors for Kenyan HNWIs believe that 68 percent of their clients are choosing to send their children overseas, compared to a 28 percent global average and 47 percent across Africa.

For high-net-worth Millennial's in Kenya, innovative investing (74%), capital growth (58%), portfolio (37%); are the most important factors in wealth management and investment decisions, according to their wealth managers and advisors. "It seems that Kenyan Millennials, in common with those in the rest of the world, have very different attitudes to wealth compared to their parents, (Shirley, 2016). Kenya's diversified economy means it is consistently one of Africa's top performers in terms of wealth creation. Kenyan HNWIs also stand out in taking a more personal role in their philanthropic endeavours (26%), far higher

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[13] Tycoon's family embroiled in court dispute over Sh2b estate inheritance

Read more at: https://www.standardmedia.co.ke/business/article/2001243173/tycoon-s-family-embroiled-in-court-dispute-over-sh2b-estate-inheritance Updated Mon, June 12th 2017 at 08:51

Why inheritance disputes are on the risehttp://www.nation.co.ke/lifestyle/lifestyle/Why-inheritance-disputes-are--on-the-rise/1214-2704056-e5xut3/index.html Saturday May 2 2015

than the global (10%) and Africa (15%) averages (ibid.). One key influence on income in 2016 has been the performance of stock markets in dollar terms. In many countries this was much stronger in 2016 than in 2015 (Block, March, 2017).

2.3.2.4 Wealth, power and the entanglement of elites/cronyism

Based on the above observations on wealth ownership and its declaration, it suffices to say that the prevailing political practice is such that the elites enlist state power in order to privatize state resources and also use proximity to state power as a patronage to perpetuate their power. By closing on the debate on wealth declaration and making it private and confidential, inadvertently the elites are inversely saying that the debate on inequality gap between the rich and the poor cannot be a legislative issue. This discussion sets the precedent in understanding the historicity of capitalism in Kenya.

The foundation for Kenyan capitalism is laid in the colonial period. Followed by neo-colonial and post-colonial periods, when Kenya enters the global economic space as an independent nation, and becomes the target of development action from the West. In the 1990s and 2000s innovations within communication break more barriers of economic development, and promoting entrepreneurship becomes one of the main storylines in the current capitalist narrative. The below table elaborates on this chronology.

Periods of capitalist development in Kenya.[14]

1800-1950	**Colonial Period**	**Transfer of economic surplus via unequal** **Terms of trade.**
1950-1970	Neo-colonial period	Transfer of economic surplus through "developmentalism" and technological rents, modernization
1970 –1990	Post-colonial period	Transfer of economic surplus via debt peonage, rise of neo-liberalism, dependency theories
1990 -	Informationalism	Global production nodes and global social division, good governance

[14] See also, a work written by Paula Holst "Kenyan Capitalist Narrative A discourse analysis of online media reporting on the Global Entrepreneurship Summit 2015in Nairobi" Spring 2016. Malmo University Faculty of Culture and Society.

2010 -	Entrepreneurialism	Power to the enterprising individual, convergence of development and market logic, social entrepreneurship

(World Bank, 2008)

David Himbara, author inequality in Kenya, agues the issue of inequality is a second axis of ethnic inequality. For instance, throughout the Kenyatta era beginning with Jomo Kenyatta, a large portion of the political elite consisted of members of the Kikuyu ethnic group. And, Himbara states that Kenyatta's policy of Africanisation was in fact a policy of "Kikuyization." However since the beginning of the Moi era, the Kalenjin ethnic group has displaced the majority of the Kikuyu from some of the most senior echelons of state power. This is in contrast to the tremendous wealth of the politically-and agriculturally-based economic elite, yet the vast majority of Kenyan population lives in poverty (Himbara, 1994). In contexts where there is abject poverty like sub-Saharan Africa the state should be the prime mobiliser of resources for the people. But when the state is hijacked by one or more ethnic groups, upward social mobility becomes a preserve of the elite groups, who use the state machinery for selfish ends as opposed to national development concerns. In this sense, a predatory state emerges whereby, clientelism and nepotism are used as yardsticks in the acquisition of state contracts and tenders (Namasaka, 2017).

The rich's collective portfolio performance in Kenya is however boosted by a growth in construction and financial services coupled by their limited exposure in the commodities market which has taken a hit globally. The Kenya's dollar millionaires extract most (19 per cent) of their wealth from real estate and construction, which have experienced unprecedented boom in the past 10 years. They too depend on the financial services, fast-moving consumer goods and manufacturing to grow their portfolios (Mutegi, 2016). "Residential property constitutes around 35 per cent of the net assets of an average Kenyan HNWI," according to the Wealth report this is a relatively high percentage compared to other African countries.

2.3.2.5 The wealthy and the taxman

Given the findings of wealth reports above, it is telling how little KRA knows about this group within Kenya: In Organization for Economic Cooperation and Development countries, personal income taxes make up about a quarter of all tax revenue collected. In Africa, they only make up about a tenth on average and as little as 4% in countries like Uganda and Rwanda. This is primarily up to 95 % collected from employees of formal businesses through the pay-as-you-earn system. Self-employed professionals generally evade taxes and formal employees often engage in informal business on the side. This informality contributes to African tax administrations lacking information on which citizens are high-net-worth individuals.

However, Kenya Revenue Authority's (KRA) publication of the top taxpayers' list has uncovered more than 100 little-known billionaires, whose net worth appears to have grown only recently, catapulting them into the coveted club of the rich. The fortunes of high-net-worth individuals (HNWIs) with gross annual incomes of between Sh350 million and Sh1 billion have defied the tough economic times that have characterised Kenya in the past six

years to grow at a robust speed, according to the taxman's latest ranking of the leading taxpayers (Juma, 2017).[15]

The study by Christian Aid/Tax Justice Network while referring to access to material had this to say, according to KRA data, only 100 people are registered with KRA as those whose income exceeds KSH 44 million/USD 528,021, qualifying them as High Net Worth Individuals (HNWIs). More accurately:

> The figures contrast sharply with the paltry 100 individuals who submitted their tax returns to KRA indicating that they earned at least Sh44 million and above during 2012 financial year. Another batch of 1,000 individuals, in the self-declaration returns, indicated that they earned at least Sh14 million and above in the same year (Watoro, 2016).

The interesting fact is that, at the same time, an estimated 40,000 people live in the top ten high end housing estates in Nairobi alone, where average housing prices range from KSH 35-65 million (USD 420,017-780,031). One wonders, how those people can afford living, if they do apparently not earn adequate income (Christian Aid; Tax Justice Network, 2014, p. 67).

Here, we have to emphasize, we are only talking about transparency as far as the taxation of INCOME is concerned. More transparency here does not automatically increase our knowledge of wealth assets and ownerships, especially, if those are located abroad or held by shell companies resident in tax havens!

In spite of this discrepancy of knowledge on part of KRA and wealth administrating agencies (or because of it) High Net-Worth Individuals targeted as a source of increased revenues.

And it is the apparent display of wealth which engages KRA increasingly to get on to their necks: "According to the KRA, other factors indicative of a growing number of HNWIs and UHNWIs include the increasing number of Aero-planes and helicopters being purchased by individuals and the growing number of high-end motor vehicles imported into the country." (Watoro, 2016). This is in line with the increasingly and ostentatiously visible display of assets of African UNHWIs generally (see above 2.3.1.3)

Nevertheless: Wealthy individuals may comprise only a small proportion of society, but there are several important reasons why governments around the world are targeting them as a source of increased revenues.

HNWIs pose significant challenges to tax administrations because of

- the complexity of their affairs
- the scale of their revenue contribution
- the opportunity for aggressive tax planning
- the impact of their compliance behavior on the integrity of the tax system (Ernst & Young, 2009)

At time of significant uncertainty and unpredictability in both the global economy and the taxation environment, it is essential for HNWIs to remain up to date with the latest

[15] KRA list reveals Kenya's billionaire taxpayer;The information comes out when in actual sense, Kenya is known to have a large group of super-rich individuals especially the politically connected, who have hidden their wealth in trusts and a labyrinth of companies to evade taxes. http://www.businessdailyafrica.com/news/Kenyas-little-known-billionaires/539546-4004254-1161nt0z/index.html

developments. Anything less than 100% compliance raises the prospect of penalties and, in some cases, criminal prosecutions. HNWIs fall under the spotlight.

Kommentar [J4]: What do you say here? Is this a quote from a PwC?

Rich Kenyans have always held their wealth in secret, forming companies and nominee accounts to hold their stock market investments and own land on their behalf. But recent wealth declarations by chief executives and nominees to senior government positions have validated reports of a growing list of millionaires.

Increasing tax compliance among the wealthy is challenging because economic elites have great political influence. They are also often members of the political elite. In Kenya, for example, the government tried to implement a capital gains tax on the sale of property and shares, but was forced to scrap it due to resistance from business (Gachiri, 2015) before reinstating it again shortly afterwards in a weakened manner.

2.3.3 Conclusion

The HNWIs pose significant challenge to tax administrators, for the Kenyan case the issue falls within the LTO department of KRA. First by focusing on HNWIs complex as it is, it does open an opportunity for integrity and revenue collection. Second, by focussing resources on the HNWIs the taxman encourages improvement in compliance. With the ever changing international environment on disclosure of taxes, many of the HNWIs, many if given opportunity are willing to voluntarily declare their worth with certain support and protection. In fact one will notice that most of them are closely linked with government for protection and financing some government entities. And many would want to be incentivised to give out.

There is expectation and concern that between the HNWIs advisors and tax administrators there is need for cooperation for reason of transparency to provide clarity on key concerns on tax evasion. Certain features of political institutions, such as poor accountability, bureaucracy and weak control of corruption in politics, tend to be negatively correlated with the strength of public investment management and tax administration and collection. The investment choices of the country's wealthiest are an implicit endorsement of the country's property rights laws and a sign that the super-rich are betting on the continued stability of the country and its economy.

2.4 Informal Economy

Between the discussion of income and wealth inequality and the chapter on poverty stands the chapter on informal employment, because high income ("super-salaries") and the wealth of some rests also upon the present structure of the economic system as well as the fact that many poor people live from subsistence farming, a barter economy or public subsidies and alms –or work under "informal" circumstances: Badly paid, precariously employed, no labour laws or organized representation.

The sector presents a number of attractions, where its size suggests opportunities to create jobs, raise productivity, and promote growth and fiscal revenues, while the association of less informality with higher income suggests developmental advantages of reducing and formalizing the informal sector over time. At the same time, the sector poses a formidable knowledge gap since, by definition, some or all aspects of informal economic activity is off the formal record. Fortunately, much new work is currently ongoing that should help fill these

gaps and aid in the development of policy recommendations (Nancy Benjamin,Kathleen Beegle, Francesca Recanatini and Massimiliano Santini, 2014).

2.4.1 Concept, history

The *informal sector* may refer to economic activities and the income derived from them that circumvent government regulation, taxation or observation. It includes unreported income from the production of legal goods and services, either from monetary or barter transactions, and so includes all economic activities that would generally be taxable if reported to the tax authorities. Generally, it is that part of an economy that is not taxed, monitored by any form of government, or included in any gross national product (GNP), unlike the formal economy. This can also be referred to as a sector that encompasses all jobs that tend not to have employment security; work security and social security are not recognized. Other terms used to refer to the informal sector can include the black market, the shadow economy, and the underground economy.

A major reason for the existence of the informal economy in African states is under-regulation by the state, i.e. that there are segments of the economy which exist outside state control. But this has not happened out of the blue, but is a consequent of neoliberalism and "structural adjustment programs" by institutions of the Washington Consensus: "The highest levels of informality coincide with the era of liberalization, which was characterized by significant job cuts." (Phiri & Nakamba-Kabaso, 2012, p. 15).

According to KIPPRA, the highest proportion of the underground economy in Kenya was recorded in the 1990s when it averaged 20 per cent of GDP. The potential tax accruable from the underground economy averaged 4 per cent of GDP, thus the tax authority has the potential to expand the tax base by 4 per cent of GDP. For the year 2005, this would have raised tax collections by about Ksh 55 billion. The figure also reveals that the size of the underground economy has been increasing over the years, probably due to improved technology, more stringent regulations and burdensome taxation measures that force many hidden economic activities to emerge.

For the World Bank, there understanding of informal sector is that the informal sector covers a wide range of labor market activities that combine two groups of different nature. On the one hand, the informal sector is formed by the coping behavior of individuals and families in economic environment where earning opportunities are scarce.[16] Second the informal sector, informal economy, or grey economy is the part of an economy that is neither taxed, nor monitored by any form of government. Unlike the formal economy, activities of the informal economy are not included in the gross national product (GNP) and gross domestic product (GDP) of a country. It is however, argued that the informal sector is a product of rational behavior of entrepreneurs that desire to escape state regulations. In Kenya, the informal economy is commonly referred to as "Jua Kali" (Open air) in Swahili, a name coined in the early nineties by entrepreneurs because of the characteristic nature of the sector's activities

[16] World Bank Group: The concept of Informal sector.
http://lnweb90.worldbank.org/eca/eca.nsf/1f3aa35cab9dea4f85256a77004e4ef4/2e4ede543787a0c085256a940073f4e4 accessed 8th /2/016

conducted under the blazing sun. In Kenya, the informal sector was initially associated with manufacturing. However, it has since grown to include trading activities as well as service businesses. Informal sector activities are mainly concerned with the production, manufacturing, distribution and sale of household, farming & industrial items[17].

Despite the growing size of the underground economy, the tax potential remains largely below 5 per cent of GDP. In fact the size of the underground informal economy has been rising with time as the economy improves, implying that some of the economic activities not only benefit from high economic growth but also contribute to improved economic performance. However, of greater importance is the use of the knowledge to expand the tax base to include the sector to enable it bears its fiscal responsibility.

2.4.2 Size

In Kenya, the underground economy is perceived to be expanding as the modern economy shrinks, which creates a worrisome situation in terms of revenue generation. It would be important to know why the sector is growing, so that if it is a reaction by entrepreneurs to unfavourable policies, then this can be addressed to reverse the trend. It has been observed, for instance, that some formal medium and large enterprises have been sub-dividing into smaller units to enjoy perceived benefits the small enterprises enjoy. Besides, since illegal economic activities form part of the underground economy, knowledge of such activities would enable the government to exercise control (The Kenya Institute of Policy Analysis and Research, 2007).

Regarding Kenya, the situation is as follows: The Kenyan governments report on the Economic Outlook 2015 reveals that the informal sector had the largest share of employment accounting for 82.7 per cent of the total employment. The total number of self employed and unpaid family workers within the modern sector was estimated to have increased from 83.8 thousand in 2013 to 103.0 thousand in 2014 (Economic Outlook 2015, 2015).

As can be seen: There is no trend for formal employment incorporating those employed informally, since growth rates in the informal sector are outstripping those in the formal sector:

Table 1 *Growth of Kenyan formal and informal employment and real average earnings (2000-2012)*

	Real Average earning growth (%)	Formal employment growth (%)	Informal employment growth (%)
2000	4.7	0.4	11.0
2001	8.7	-1.1	7.7
2002	12.7	1.3	10.0
2003	-2.7	1.5	8.6

[17](Mpapale, 2014) Broadening the tax base in Kenya. The case of informal sector. http://eatgn.org/wp-content/uploads/2014/11/Broadening-the-tax-base1.pdf

2004	9.9	2.1	8.0
2005	2.4	2.9	6.7
2006	1.3	2.8	6.6
2007	4.5	2.6	6.1
2008	-10.2	1.8	5.3
2009	-4.7	2.8	7.9
2010	-0.4	2.9	7.6
2011	-8.1	3.4	6.3
2012	-4.8	3.1	6.0

Source 3 (Bigsten, Manda Kulundu, & al., 2014, p. 14)

And another insight is revealed in the preceding table: The table illustrates that since 2008, real average earning growth in Kenya is declining, while the informal employment still displays higher growth rates than formal employment. This is, more likely than not, one consequence of the World Financial and Economic Crisis.

In 2015, there is no change: KRA states that the informal sector is faster thriving as the economy: "The faster growth of the informal sector (at 82%) against the formal sector (only 18%) implies that the proportion of the hard to tax sector will continue to grow." (Kenya Revenue Authority, 2015a, p.37)

An advantage of the African informal economy is that it provides employer with a mobile and flexible work force, the opportunity to pay very cheap wages, that those working here are underpaid and uninsured and that it is the only survival option for those living illegally on the territory of those states.

However, not everybody working in the Shadow/informal economy is poor. Informal sectors in Kenya and Zambia do not only contain subsistence workers and low pay persons. It is common knowledge that even in the worst of urban slums some own houses which they let to others, that way earning far more than a worker in the formal economy who is taxed through PAYE .Talking about tax justice also needs to take into account those complexities.

2.4.3 Discussion

As indicated already in chapter II/7, the informal economy is not a priority area of research. The majority of people working here are poor, this may be different with those employing them. Nevertheless: Since the survival of many depends on employment options available here this sector is not of major interest of the Tax Justice & Poverty project since its resource potential seems to be relatively limited to others and/or the effort to collect revenue here seems to be disproportionate if compared with the resource efficiency and potentiality in other segments of society.

2.5 The importance of land for wealth and poverty

2.5.1 Introduction[18]

Context

Land in Kenya today is classified into the following categories:

a) Public land - reserved for public use or environmental protection. It is administered and managed by National Land Commission on behalf of the people of Kenya.

b) Community land - it is held by communities on basis of ethnicity, culture or similar community interest.

c) Private land - this is land held by natural or legal persons. The Ministry of lands is tasked with the registration of any interest in private land. It is classified into the following land tenure system:

- Freehold land tenure system - it gives the holder absolute ownership of the land for life. A freehold title deed generally has no restrictions as to the use and occupation of the land. However there are some conditional freeholds which may restrict the use of land for agricultural uses only.
- Leasehold land tenure system - this is the interest in land for a specific period of time subject to payment of land rent to the National government and land rates to the county governments. Once a lease expires the land reverts back to the owner or the leaseholder can apply for a renewal or extension of the lease.

Only 20 per cent of the land is classified as medium to high potential, but this is where about three out of four Kenyans live. Given the rising population size and the continuing largely rural nature of income earning activities, pressure on land is growing. It is also a high profile issue, in part because of the well documented illegal appropriations of public land during the late 1980s and throughout the 1990s.

Land is a sensitive matter in Kenya, and has been since the pre-independence period. It was one of the primary causes of the liberation movements and wars. Consequently, the land policies that were in place at the time of independence have changed little. There is no consolidated land policy; rather, various policies on land are contained in the relevant sectoral policies. For example, the forestry sector contains policies on land that affect tenure of, and access to land in forested areas. In 1999 the Commission of Inquiry on Land (popularly known as the Njonjo Commission), was set upto examine growing dissension in Kenya over land grabbing amongst other issues (Wambui Kiai, Wagaki Mwangi and Eric Bosire, 2002).

Kenya's land issues are linked to events and processes in its colonial history that produced the present situation. The first of these processes was the alienation and acquisition of land during the establishment of the colonial state. The second was the imposition of English Property Law and the introduction of title deeds in alienated areas to safeguard and secure the settler economy. The third was the land tenure reform of the mid-1950s that consolidated these

[18] Francis Kairu & Jackline Wahome**: s**ee Transparency International Kenya June 2005

processes. These three events exacerbated socio-economic inequalities in Kenya through massive displacement of people in the alienated areas. Communities such as the Kikuyu and Maasai were evicted from their territories to pave the way for colonial capital. This marked the beginning of communities without rights of access to and control over land in Kenya (Kanyinga, 1998).

Kenya has an area of approximately 582,646 (Km2) comprising 97.8% land and 2.2% water surface. Only 20% of the land area can be classified as medium to high potential (suitable for arable agricultural) and the rest of the land is mainly arid or semi-arid (suitable for extensive livestock production, wildlife and irrigated farming) (David N. Siriba,Jasper N. Mwenda, 2013).

Land usage categories in Kenya

	Category	Area (Km2)	Percentage of Total Land and Water Area
1	Forest	7,084	1.2
2	Government Reserve	492	0.1
3	Townships	1,812	0.3
4	Alienated Lan	33,397	5.7
4	Game reserves	13,691	2.3
5	Nattional Parks	3,149	0.5
6	Trust land	457,449	78.5
7	Total area of water	11,230	1.9
	Total Land and Water	582,646	100.0

Source: Table adapted from Vision 2030 Medium Term Plan (2008-2012) Republic of Kenya, 2008, shows the land usage categories and their proportions.

Given the rising population size and the continuing largely rural nature of income earning activities, pressure on land is growing. It is also a high profile issue, in part because of the well documented illegal appropriations of public land during the late 1980s and throughout the 1990s.

2.5.2 History

Kommentar [J5]: Does this chapter need to be SOOOOOO expansive?

2.5.2.1 Traditional Systems

Prior to the arrival of the colonizers, the traditional land tenure system, which defined land rights in Kenya, was based on communal ownership. Land was not owned in any absolute sense by a person or household that lived on it or by village groups or the chief, but collectively by all these (Wilson 1938). Communal land ownership was premised on land as the free gift of nature and a common asset for all human beings. Every individual had rights of usufruct that were recognized by the community and which provided maximum security of tenure for the individual (Wambui Kiai, Wagaki Mwangi and Eric Bosire, 2002). However, these individual rights to land were determined on the basis of the individual's socialstatus in the community and ability to meet obligations inherent in that community. In addition, the relationship between the group and the land was complex with individual rights often co-existing with community rights to the same parcel of land (Elias, 1975). Access to land was based on membership in a land controlling social entity defined by birth, marriage, ritual, adoption or incorporation.[19] In this system land rights were hereditary. Individuals who were unable to find suitable land often migrated elsewhere, as lineage segments or individuals could be incorporated into communities (Wambui Kiai, Wagaki Mwangi and Eric Bosire, 2002).

Kommentar [J6]: ????

According to Okoth Ogendo, Access rights were open to every member of a social group and were equitably distributed on the basis of need to members of the social organisation controlling a particular territory. Land rights tended to be based on function, enabling several people to hold different rights to the same piece of land for different purposes (Ogendo, 1976),therefore a village could claim grazing rights over a parcel of land that was subject to hunting rights of another, transit rights of a third and cultivation rights of a fourth group. Each of these categories carried with it varying degrees of control exercised at different levels of social organisation (ibid.). A sociologist scholar Berry argues that within the communal land tenure system, security of tenure was linked to the overall security of the social and political life, and initial rights were established by first occupation and the continued investment of labour in bush clearing and cultivation (Berry, 1993). This way, land became the property of the pioneer occupier, individual or clan that assumed the right of control. Generally a stable and flexible structure of land access and control existed in pre-colonial Kenya, until the establishment of the protectorate in the early 1890's and the colonial state at the beginning of the century (Okoth-Ogendo, 1991). The colonial state altered this structure by appropriating land for settler capitalism and investment to finance the administration.

2.5.2.2 Origins of Kenya's Land Policy

The ascendance of land to political pre-eminence and the creation of people without rights to land (squatters) came with the incorporation of Kenya into the British colonial empire in the late 19th Century and the subsequent establishment of a capitalist economy that shaped the land rights in place today (Okoth-Ogendo, 1991).

Although the British protectorate did not carry with it any title to land, the colonial administration imported a series of legislative regulations to guide future appropriations and

[19] Read Bruce J, and Migot Adhola S, eds, 1994, Searching For Land Tenure Security In Africa, Washington DC, The World Bank

to give previous ones the necessary judicial support. Subsequent appropriations were done following conflict arising from the imported legislative and administrative regulations. The introduction of these measures was based on an assumption that the relations of local communities to the land did not carry the notion of individual title, and that their rights were confined only to occupation, cultivation and grazing. Thus, unoccupied land reverted back to the territorial sovereign. As a result, several regulations were issued to facilitate land appropriation and the making of land grants to settlers (Sorrenson P, 1965). The first was the land regulation of 1897 that authorized the protectorate to issue certificates for a short-term occupancy of 21 years renewable for a similar period. In the Council of 1901 this regulation was incorporated into the East African (lands) Order and empowered the Administration to dispose of or lease unoccupied land in the Protectorate. The Crown Land Ordinances of 1902 permitted the sale of land by settlers, but did not confer titles to land. The Ordinance entrusted the State as the landlord, and settlers were subject to strict State control. The Ordinance created a personal and feudal relationship between the State and landholders, a factor that constrained land use in the colony (Sorrenson P, 1965).

The major consequence for access to land was that the Ordinance alienated all the land rights of 'subjects' and vested them in the Crown (Okoth-Ogendo, 1991). Occupants of land became tenants of the Crown. The state also located communal reserves in areas considered unsuitable for European settlement. It drew boundaries along ethnic lines and enacted legislation to ensure subjects only resided in their reserves. Problems in the reserves led to unrest due to population pressure, culminating in a political uprising organised around the issue of land control. The colonial State found a quick solution to the unrest by initiating land tenure reform in the reserves (Wambui Kiai, Wagaki Mwangi and Eric Bosire, 2002).

2.5.2.3 Aspects of Land Reforms

The contradictions brought about by the colonial settler economy and state domination set in motion the reform of the land tenure system. The state's neglect of African agriculture in favour settler agriculture gradually exerted both political and economic pressures. These pressures could only be resolved by addressing African demands for more suitable land, and for greater integration as producers into the expanding cash economy (Okoth-Ogendo, 1991). Reforms were introduced to address the emerging crises arising from land alienation, the creation of native reserves, the imposition of laws to govern agricultural development and the biased promotion of the settler agricultural economy. Land tenure became one of the most complex and serious colonial problems in Kenya and Africa up to present. The reforms set a precedent for the government to open the "white highlands", previously racially sacrosanct, to occupation and farming on a non-racial basis. There was a shift of land ownership tenure system from communal to individual ownership. Consolidation and registration of land holdings were the basis for issuing individual freehold title that conveyed new mobility in land transfer and disposition. In addition this period witnessed land alienation to non-tribal and non-racial buyers and bosses. The consequence was the emergence of a landless class, a phenomenon that was unimaginable under traditional native law. This arose from the accumulation of land holdings and imprudent sale or mortgage of land to raise capital or pay debts (Wambui Kiai, Wagaki Mwangi and Eric Bosire, 2002). Ever since, African customary land tenure practices have been undergoing changes, land consolidation and registration of

individual holdings was an attempt to address the fragmentation and dispersion of land holdings created by the colonial government, but was also viewed as a way to enable the natives to use their land as collateral to acquire development loans. At this point there was no legal basis for consolidation nor were consolidated holdings recognised in the law (ibid.).

Some of the effects of the land tenure and consolidation system were the removal of communal control over land, enhancement of land consolidation, creation of a landed and landless classes, and an increase in the risk of African indebtedness relating to individual ownership and control overland. The expropriation of land for settler capitalism and subsequent establishment of a legal framework led to a reduction in the amount of land controlled by affected African groups, and the subordination of customary practice, particularly in regard to land control (Ogendo, 1976). Okoth –Ogendo adds the categorization of reserve land meant that the idea of native reserves eroded the virtues of the customary structure of access to land within the reserves with individual families, rather than the clan or kinship. Hence propelling the individual becoming an important medium for land acquisition

2.5.2.4 Issues prevalent from post colonial to present time

A highly centralized and essentially top-down approach to land administration and management has remained in place in post-Independence Kenya. Perhaps more alarmingly, the practice of allocating land according to ethnicity also survived the transition to an independent Kenya. Both of these characteristics of the land administration system have played significant roles in facilitating grabs of public land by Kenya's elites.

A senior lecturer Nairobi University Law School with experience on Commercial Law of Taxation, Prof, Attiya Warris, concurs with the above observation by stating that the elites control the large shareholding of land in Kenya. And that mostly own it in prime areas. Land retains a focal point in Kenya's history. It was the basis upon which the struggle for independence was waged. It has traditionally dictated the pulse of our nationhood. It continues to command a pivotal position in the country's social, economic, political and legal relations. The fight for independence was based on the struggle to revert ownership of land from the colonialists back to the Africans. Vast arable land in the Rift Valley was designated as the White Highlands, reserved for European settlers while the indigenous communities were moved out (Commission of Inquiry into the Illegal/Irregular Allocation of Public Land, 2004).

The authority to allocate Crown Land was vested in the colonial Governor and he issued grants of leases for 999 years to the European settler community. It is the same allocation by direct grant that facilitated the irregular allocation of public land after Independence.

In 1963 a total of 7.5 million acres or half of the agricultural land in Kenya was in settler hands, with individual farmers like Lord Delamere reported to possess as much as 1 million acres. The Africanization of the White Highlands, areas previously reserved for European settlement, was carried out through the Million-Acre Scheme funded by the British government and the World Bank, to facilitate the orderly transfer of ownership of farms owned by settlers who wanted to leave after independence.The new African political class and home guards that had made fortunes by collaborating with the colonial government bought thousands of acres from the departing Europeans denying the majority of Kenyans the right to own land. The President widely abused his powers as trustee of public land to become a large landowner himself.

The illegal allocation of land by the first Kenyatta and Moi governments is well documented in a report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land

popularly known as the Ndungu report (Commission of Inquiry into the Illegal/Irregular Allocation of Public Land, 2004).

2.5.3 Current Legal Framework

In Kenya, there are three different of land classification: private land, public land, and community land. Private land is land owned by an individual under freehold or leasehold tenure. Public land is vested in the government for the benefit of the people in Kenya. It includes roads, all water bodies, forests, national parks, and land that has minerals, among others. Community land is held by and managed by communities. It includes land registered under group representatives, shrines, grazing areas and ancestral lands.

It is imperative to know that the state adopted all the ordinances relating to land control and enacted them into laws to regulate access to land. The Crown Lands Ordinance of 1915 became the Government Lands Act (Cap 280). As with the Ordinance, which accorded the governor all powers over the control of Crown lands, the Act vested in the state, through the President and Commissioner of Public Lands, all powers to lease, grant and dispose of Government or former Crown land. The Act also followed the Ordinance in retaining the provision for a Commissioner of Public Lands, recognising the state as the main landlord, and according the President the opportunity to grant land to individuals and corporations.

The 1920 Registration of Title Act was enacted to provide for the transfer of and registered under this legislation. The Registered Land Act (Cap300) enacted in 1963, conferred absolute and indivisible power on registered landowners. This further eroded the principle of multiple rights over land and enforced exclusivity as espoused in the land reform program. The Act aimed to replace the law on land registration and required those who had registered land previously to reregister under the Act. In essence, customary land rights were extinguished in areas where land had been consolidated and registered. Rights of control, access or use were consolidated into ownership rights (Wambui Kiai, Wagaki Mwangi and Eric Bosire, 2002). The demise of the customary tenure system led to the evolution of a freehold tenure system as envisaged in the Swynnerton Plan of 1954. In this system, the landowner holds the piece of land individually, and through heirs or successors can assign this land forever (Wambui Kiai, Wagaki Mwangi and Eric Bosire, 2002).

Unlike the former system, there is no restriction on an individual's occupation of land, although in practice there are conditional freeholds that can restrict the use of a piece of land. The freehold system allows the owner to undertake definite and long-term development based on secure tenure. Another land tenure system that resulted from the collapse of the traditional land tenure system is leasehold. This was developed to define the ownership of land in former native reserves. The county councils or government, which holds such land as trustees, grant leasehold tenure. The Commissioner of Lands awards it. Additionally, an individual or organisation owning freehold land can grant it. Leases are available for 999 years for agricultural use and 99 years for township plots.

In both leasehold and freehold systems ownership of land is the single determinant of access and control. In total Kenya now have three land tenure systems, namely, public, modern and customary. Public tenure land is owned by the state and is governed by various laws and

administered through the Government Lands Act (Cap 280). The modern system is based on the English Common Law, while in the customary system; land tenure is based on the Indigenous Property Arrangement. In the latter system the community collectively owns the land, but neighbours recognise boundaries (Wambui Kiai, Wagaki Mwangi and Eric Bosire, 2002).

The principal legal regimes governing land management in rural areas are the Constitution, the Trust Land Act, the Land Adjudication Act and the Land Consolidation Acts. Chapter five of the Constitution ordinarily provides for Land management and ownership in Kenya. Section (61) states that all land belongs to the people of Kenya collectively as a nation, as a people and as individuals. The constitution includes the procedure to administer trust lands, the circumstances under which leases and licenses may be issued, and provides for the Commission of Lands (Sec. 67) to manage trust lands as an independent entity of the government.[20] The Land Adjudication Act deals with ascertaining and recording rights and interests in land and provides a mechanism for ascertaining and recording title to trust land held under customary tenure. Ascertainment of land rights is done through an adjudication process that involves surveying and demarcating the land and recording the right to it. The Land Consolidation Act provides for the ascertainment of rights and interests in the land, and the consolidation of land in special areas to ensure plots are not divided into undersized unites.[21] Consolidation and adjudication are undertaken concurrently

2.5.3.1 What is land tenure?

Due to rapid population increase, agricultural land is rapidly being converted to plots for residential, industrial or commercial use. Most people seeking plots, however, end up with unsuitable ones for the projects they had in mind simply because they do not understand the various categories of land and the tenure system applied in Kenya. Understanding the types of land ownership available is important especially if one intends to purchase land. Prior to colonial rule, land was owned communally. This was however changed by the colonial government which introduced land title deeds and therefore individual ownership of land. At the time of independence, there were two substantive regimes in property law and five registration systems supported by administrative institutions to effect the objects of the regime. The dual land tenure system comprises of individual title and customary rights to land - in other words, land ownership in Kenya has been under a complex mixture of English law and traditional customary law. The English system was introduced to facilitate the appropriation of prime agricultural land, the 'white highlands' into individual tenure system. On the other hand, there were parallel policies that restricted the access to and control by Africans to designated reserves under customary tenure system (David N. Siriba,Jasper N.

[20] The constitution of Kenya, 2010

Mwenda, 2013). For historical reasons, Kenya uses the title system of land registration, that is, the title is recorded and secured.

The regulations under the Registered Land Act(RLA) require that a register be opened for each land parcel. A form of ledger card (called the register) is opened and filed using loose-leaf system. All details on the parcel of land such as the size, ownership, encumbrances are shown. There are two types of cards depending on the ownership interest on the parcel of land: for freehold, the card is in green colour, while for leasehold the card in white colour. Each register is divided into three sections: the Property section, Proprietorship section and the Encumbrances section. The Property section contains information on the "unique" number of the land parcel, the size and location. The Proprietorship section contains information particulars of the owner. The Encumbrances section gives information about all adverse interest to the owner, for example leases and charges (Republic of Kenya, 2012).

Land legislations in Kenya have over the years given rise to three types of land tenure systems/categories. These are private, customary and public tenure system. It gave prominence to private land over indigenous/communal land. The current constitution and subsequent land laws recognize indigenous/communal land and consequently categorize land into public, community and private land and these are in the ratios of 10%, 70% and 20% respectively (David N. Siriba,Jasper N. Mwenda, 2013). Public land is the land that was formerly crown land that is now held by the government, for example, army barracks, forest lands, national parks, game reserves, wetlands, riparian reserves and protected areas. Trust land is the land held by the local authorities (county governments) on behalf of the people ordinarily resident in their areas of jurisdiction. Trust land includes un-adjudicated land in the rural areas, rural markets, rural public schools etc. Private land is land held by individual persons or legal persons like private companies and co-operative societies after alienation from government land or adjudication from trust lands (David N. Siriba,Jasper N. Mwenda, 2013).

Land tenure is a set of rules that determines how land is used, processed, sold, etc, in a given society. In Kenya, these rules are called land law and are found in various documents, the most important being the Constitution. Chapter 5 of the Constitution provides for land and environmental management. Other sources of land law include: The Lands Act 2012, Land Registration Act 2012, and National Lands Commission Act. There are two types of land tenure system in Kenya: (1) Freehold: It is the greatest interest a person can have on land as it gives the holder absolute ownership of the land for life. This means descendants can succeed the owner for as long as the family lineage exists. A freehold title deed generally has no restrictions as to the use or occupation. However, there are conditional freeholds, which restrict the use of the land, for instance, for agricultural purposes or ranching only. A freehold interest is also known as fee simple or absolute proprietorship. (2) Leasehold: This is the interest in land for a specific period subject to payment of a fee or rent to the grantor. Payment of rates is made to the respective local authority for services rendered. Leases are granted by the Government for public land, local authority for trust land and individuals with freeholds. The maximum term of government leases is 999 years for agricultural land and 99 years for urban plots. It is also common to find 33-year leases in respect to urban trust land (Odhiambo, 2009).

There are other processes that involve the transfer of land within one category between individuals. They include: land redistribution; land transfer or conveyance; land subdivision; and boundary re-establishment, either for the purpose of extension of lease or for dispute resolution. Managing the use of land is an essential land administration process. Land use planning and control systems however differ from one country to another. In Kenya, the preparation of the physical development plans makes reference to the survey plans.

2.5.3.2 Who can own land

Article 40 of the Constitution provides everyone with the right to own property of any description, including land, in any part of Kenya. However, if one is not a citizen of Kenya, they can only own land on leasehold, for a maximum of 99 years. Women, whether married or unmarried, have equal rights as men to own land. However, in Kenya, most people depend on traditional inheritance of land through their families.

2.5.3.3 What is the difference between freehold and leasehold?

For freeholds, the period of lease will be as agreed upon between the landlord and tenant. Once a lease expires, the land or property reverts back to the owner. A leaseholder can also apply for a renewal or extension of the lease more particularly if he or she wants to re-develop the property and the lease period is about to expire or the remaining period is not enough to recoup the investments. Freehold tenure gives the owner absolute rights to do anything they want with the land, subject to laws and regulations. Under leasehold tenure, the land owner is a tenant of the government, and has to pay yearly rates to the government.

2.5.3.4 Specifics

2.5.3.4.1 Does the government have a right to take away your land?

Sometimes the government may need land for public interest projects such as expanding roads or establishing other public utilities. In such instances, the rights of the government override individual rights of ownership, and therefore the government can take privately owned land through a process termed as compulsory acquisition. However, the government must give adequate notice and compensation to the private owners of the land before acquiring it.

Land in Kenya can be acquired through purchase, inheritance, allocation, or adverse possession. To protect your land rights, it is important to ensure that the land is first registered in your name. This can be done at a lands registry situated in every county within Kenya. The Constitution also provides for the right to go to court to protect land rights, but also tasks the National Land Commission with encouraging the use of traditional methods or dispute resolution in land conflicts.

2.5.3.4.2 Adverse possession of land

Adverse possession has been defined to mean “possession inconsistent with the title of the owner. But not for instance possession under licence from the owner or by way of trust on his

behalf. There must be denial of the owner's title in one form or another for possession to be adverse.[22]

Adverse possession is a legal concept that prevents the true registered owner of land from claiming land against a squatter or another person who has been occupying his/her land. Under the laws of Kenya, if a person occupies and uses a piece of land which is registered to another person, and uses it without interference from the real owner for twelve years or more, then the real owner is barred by law from claiming that piece of land. When this happens, the squatter has a right to approach the Environment and Land Court for the piece of land to be registered in his or her name.

2.5.4 What is land administration?

A land administration system entails determining, recording and disseminating information about the ownership, value and use of land when implementing land management policies. Land administration is the way in which land law and regulations are applied in the society. It includes activities such as land registration, survey, and land planning and land use regulation. This is usually done by the government through institutions such as the National Land Commission, County Land Management Board and the Ministry of Land, Housing and Urban Development. The two main functions of land administration systems are: keeping the contents of the relationships between man and land up-to-date (based on regulations and related transactions); and providing information from the registers. Although land administration systems differ from one country to another because of different cultural practices and colonial histories, the goal of information management underlies all such systems, even in cases where the functions of land administration are not managed under one agency or department (David N. Siriba,Jasper N. Mwenda, 2013).

Land administration in Kenya since independence in 1963 has been under the Ministry responsible for land matters variously referred to under different names. The Ministry (now renamed Ministry of Lands, Housing and Urban Development) carries out the basic functions of land administration, which include juridical (land tenure), fiscal (valuation) and regulatory (Land use planning) through its four (4) departments, which are further divided into divisions, branches or sections. The organization structure present the current structure without considering the reorganization proposed in the national land policy (Republic of Kenya, 2009), that was enacted prior to the current constitution and the additional departments of housing and urban development according to the current government structure.

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[22]In its most basic sense, "adverse possession" is a legal doctrine that allows a person to acquire legal ownership of property that he *treats* as his own, if he does so for a long enough period of time, even though the property is *not* his own. In other words, a person who uses another person's property, without permission, for a long enough period of time, can acquire legal ownership of that property. As an example, if a fence separates two properties — Parcel A and Parcel B — but does not run along the actual property line, a portion of Parcel B might be located on Parcel A's side of the fence.

See also: Hot From the Bench LawAfricas: Charles Kanjama. Read Adverse Possession Date: *Tue 5 Oct 2010* www.lawafrica.com.

The National Land Policy (Republic of Kenya, 2009) proposed devolved structure of land administration in regard to land administration, which involves the establishment of local-level mechanisms for sustainable land rights administration and management among them the
Land Control Boards (LCBs) and Land Disputes Tribunals (LDTs). The current constitution also provides for a decentralized to-tier government consisting of National and County governments. According to the already enacted land laws, in particular, the National Land Commission Act 2012, the legislative framework envisages a situation where the National Land Commission shall establish county offices and on behalf of county governments to carryout physical planning, land surveying and mapping, land adjudication and consolidation, and settlement (David N. Siriba,Jasper N. Mwenda, 2013).

So land valuation and taxation of land is essential as it serves a number of functions, namely: generating public revenue, providing a stable fund for the acquisition of land for banking, servicing land, facilitating the efficient utilization of land, providing incentives for appropriate land uses, and discouraging speculation. Existing laws empower the State and local authorities to assess and collect taxes such as stamp duty, estate duty and rates.

2.5.5 Wealth and cronyism

But the coming into force of the 2010 constitution in place; has since seen a new way of laying a new foundation for property rights. Since independence, right to land has been the country's most contentious topic. Foreigners are now only permitted to lease land for a period up to 99 years. The constitution also prescribes that legislation shall specify maximum and minimum acreages of ownership and introduces options for repossessing illegally acquired land. These provisions target the excessive land ownership by the ruling elite and their cronies (Bertelsmann Stiftung, 2016). The Land Act of 2012, however, does not determine those limits but requires the government to commission an academic study to this effect. These provisions may be the real reason why large segments of the political elite either openly opposed the current constitution (or tried to secretly undermine it, as it represents a threat to their wealth (Bertelsmann Stiftung, 2016).

Land inequality as measured by the Gini was .612, based on reported size of ownership in 1997. Nationally, there was a 36 percent increase in the Gini over the period 1997-2005/6, to about .83 when we look at landholding in the entire population. The worsening of land holding was especially marked in the Coast and Nyanza provinces, while levels of inequality are remarkably high not only in Nairobi, but also the Rift Valley and Coast. Even among landholders only, it is notable that the reported levels of inequality are much higher than the estimated consumption ginis, and high also by international standards (The World Bank, 2008).

The increase in land inequality in most parts of the country over the past decade suggests that land is rapidly becoming more serious in objective terms as well as in terms of political salience. There is a well-established policy agenda and hopefully now improved momentum to address this challenge. However, corruption and impunity from prosecution means that land grabbing by politicians and others is very common. It is recommended that the accountability of the relevant institutions as well as the issues of taxation of unused arable land be addressed and discussed. There is a need to update policy proposals to reflect recent

events, especially displacement and prospective returns. We also need to understand how the crisis has affected property rights in parts of the country. More generally, Government and stakeholders could take account of the foregoing evidence about levels and trends in land inequality, and its relation to poverty, to inform policy development. In sum, the analysis of drivers of poverty and inequality underline the importance of economic growth, but also the need for attention to the distribution of opportunities (The World Bank, 2008).

Given that most leading Kenyan politicians are also successful businessmen, privatization is ultimately seen as a means of promoting individual business interests, rather than as a political goal per se. But although the privatization process has been manipulated, private businesses remain the backbone of the economy and economic growth (Bertelsmann Stiftung, 2016).

The 2010 constitution prevents foreigners from owning land in Kenya, but as Kenyans have come to find out implementing these provisions is complicated by the ambiguous nature of the law and deliberate moves by the landed class to frustrate the process. For instance when Kenya's Attorney General told the International Criminal Court in July 2013 that there were no records to indicate that President Uhuru Kenyatta owned any land in the country, his comments offered a reflection of the mysterious nature of landownership in Kenya.[23] It is well known that the family of Kenya's First President, Jomo Kenyatta, father to the current President, owns large tracts of the most productive land particularly in Central Kenya and at the Coast. Forbes Magazine placed the total land owned by Kenyatta and his family at 500,000 acres of prime land spread across the country. His net worth is an estimated $500 million, which translates to almost 50 billion Kenyan Shillings (Odero, 2011).[24]

In a WikiLeaks cable dated June 26th 2009, former US ambassador to Kenya Michael Ranneberger described Uhuru's wealth this way: "Although his wealth is the inheritance from his father's corruption, the Kenyatta family still holds a special status". Yet another description from veteran Kenyan journalist and lecturer Joe Kadhi on his blog 'Msemakweli' goes: "Among the haves, Uhuru represents the pinnacle of cornucopia. He has wealth he hardly worked for. Wealth acquired by his father through the use of despotic powers. All this, when children of true freedom fighters are languishing in indescribable poverty, caused by the exploitation by the very people who opposed the fight for independence."

A survey in 2014 found that 50% of Kenya's wealth is in the hands of political families, with the ownership of land providing the core of this wealth. The skewed ownership of land is dire in a country where only 17% of the land is arable, with the rest mostly arid and semi-arid. The Kenya Land Alliance says that more than 65% of this productive land in Kenya is in the hands of only 20% of the population. The chaotic nature of land records in Kenya obviously suits the political and business elite who would like to maintain secrecy over their ownership of the country's land. In recent audit, The Lands Ministry discovered that 1.3 million files were lost, misplaced or misfiled (Mazera Nduya and Merab Elizabeth, 2014).

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[23] Kenya's President Uhuru Kenyatta owns no land: ICC told.Read more at: https://www.standardmedia.co.ke/article/2000127656/kenya-s-president-uhuru-kenyatta-owns-no-land-icc-told

[24] According to the Forbes magazine, it does not include political leaders on its list of the richest because it is not easy to calculate how they have generated their wealth. In November 2010, the online business magazine "Africa Investor" wrote that Uhuru had estimated his family's wealth at $10 billion.

2.5.5.1 Excursus: The Presidential Family

A more detailed examination of the wealth amassed within the presidential family is the following. In 2011 Uhuru Kenyatta was, with a net-wealth estimated USD 500 million, on position 26 of Africas top 40 wealthholder. Regarding the source of wealth, Forbes informs about the following: Kenyatta is 'heir to some of the largest land holdings in Kenya. He owns at least 500,000 acres of prime land spread across the country. The land was acquired by his father in the 1960s and 1970s when the British colonial government and the World Bank funded a settlement transfer fund scheme that enabled government officials and wealthy Kenyans to acquire land from the British at very low prices. Uhuru and his family also own Brookside Dairies, Kenya's largest dairy company, as well as stakes in popular television station K24 and a commercial bank in Nairobi, among other interests.'[25]

In 2015 he fell back in the ranking, which might be different if not personal wealth, but the wealth of his family would be assessed. For example, there are information that not Uhuru Kenyatta, but his brother Muhoho Kenyatta is responsible for the creation and multiplication of wealth in the family. There are publicly accessible sources in the internet spelling out more detailed the ownership of the family, for example the Website "NairobiWire"[26]:

- 10,000 acre Gichea Farm in Gatundu.
- 5,000 acres in Thika.
- 9,000 acres in Kasarani Mwiki
- 5,000-acre Muthaita Farm
- 24,000 acres in Taveta
- 50,000 acres in Taita,
- 29,000 acres in Kahawa Sukari along Thika Superhighway
- 10,000-acre ranch in Naivasha
- 52,000-acre farm in Nakuru
- 10,000 acres in Rumuruti

40,000 acres in Endebes in the Rift Valley

On some of the above land, agriculture and other economic projects take place, in the process leading to the employment of thousands of Kenyans. A small part of the Kahawa land is occupied by the expensive Peponi School.

Some other businesses owned by the Kenyatta family include:

- *Brookside Dairies,
- *Commercial Bank of Africa,
- *Mediamax [Owners of K24, Kameme FM, Milele FM, Meru FM, People Newspaper]
- *Insurance companies in Europe
- *Properties in Britain

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[25] Retrieved 26 June 2015 from http://www.forbes.com/lists/2011/89/africa-billionaires-11_Uhuru-Kenyatta_FO2Q.html

[26] Retrieved 26 June from http://nairobiwire.com/2013/02/list-of-uhuru-kenyattas-land-and.html

- *Peponi School

Etc.

Interesting enough, those listings are much lower than the otherwise asserted (and not seriously disputed) amount of land ownership by the Uhuru family, amounting to 500,000 acres and more. It is also interesting that this entry justifies land ownership by the Kenyatta family with the creation of jobs, where otherwise criticism is voiced that this land ownership is on the cost of the landless and should be made accessible or even distributed among them. Also other information in the above quoted article published on "Nairobi Wire" suggests a president friendly perspective.

In a discussion ahead of the 2013 elections,[27] people were asked about their assessment of the Kenyatta land ownership. They all agreed that the mass of land ownership has not been acquired by paying an adequate price (which would agree with the above mentioned Forbes entry on the origin of land ownership) and that indeed the amount of land owned by the President of a country with many landless people should consider distributing land to the landless.

Whatever the truth behind the competing views, several items seem to be ascertained: More interesting than the question of wealth of a single person is the question, how much wealth is owned by the family, brothers and Mama Ngina included. Here might be a parallel to the question of wealthy family dynasties in Germany. Without some sort of already obtained social and educational privileges in the time when the British colonialists withdrew it would not have been possible to acquire this position of wealth and ownership. Besides land ownership, also ownership in shares and businesses suggests a profitable portfolio of economic-financial assets. For a politician, certainly controlling shares in media businesses is highly attractive and the note about "properties in Britain" suggests a strategy to invest family assets in an environment which is not only politically stable but highly profitable. Here, of course, the Kenyatta family just follows the stream of foreign investment into the UK which certain wealth reports as the already mentioned one by Knight Frank, indicate.

2.5.6 Land and the poor

Rural:

Land is the mainstay for majority of people in Kenya; the national economy is largely agro-based and more than 75 percent of the population is in rural areas (Kenya Land Alliance, 2013, p. 5). However, most people depend on inheritance of land as an avenue of accessibility. Given the rapid population growth, and contrary to the perception of abundance of land in sub-Saharan Africa, the pieces of land owned undergo subdivisions across generations. More than 60 percent of the households have less than 2.5ha (Salami, Kamara, & al., 2010) and over half of Kenya's rural population lives in areas exceeding 250 persons per square kilometer (Jayne & Muyanga, 2012). Yet there are many people who cannot access land as they are born in families that own none. At the same time, Kenyan elites have huge parcels of land that is underutilized, as has been shown above.

[27] Retrieved 26 June 2015 from http://jamhurimagazine.com/index.php/kenya-real-estate/3883-how-did-kenyatta-get-500-000-acres-land-3-times-nairobi-county-173-000-acres.html

Urban:

Despite the boom in the real estate and home ownership plans in Kenya, a vast majority of people do not own homes as it is closely linked to land rights. Furthermore, its relation to poverty is well documented. A UN-Habitat (2003) identifies the link between the trapping effect of people living in slums and poverty as a result of exclusion from the rest of society. This situation leaves a huge number of households, more than 71% of the total urban population, to seek refuge in informal settlements with poor amenities and in danger of their health. The annual informal settlement growth rate is at 5 percent and is projected to double in 30years if not mitigated according to UNDP (2007) report.

Especially in Nairobi, the contrasts between poor and wealthy clashes visibly, as the Christian Aid/Tax Justice Network report captures it succinctly:

> The residents of the slums provide essential services to the upmarket residential areas, where an average family of five lives on one acre of land while in a slum a family of eight lives in one small room. However, slum dwellers are continually ignored and do not receive essential services such as health, education, garbage collection, lighting, water or even security. This has created a sense of neglect and deprivation which provides fertile grounds for crime, conflict and insecurity. (2014, p. 13)

2.5.7 Conclusion

Real property is an attractive wealth asset: 40 percent of Kenya's rural population resides on five percent of its arable land and three percent of the population controls 20 percent of the land (Jayne & Muyanga, 2012). These 3 percent hoards land which could have been used by people who do not own any but have adequate skills and resources to invest in such land and maximize production (Kenya Land Alliance, 2013).

Housing is a major source of income and wealth for Kenya's middle class. In 2009, one third of the houses in Kenya were inherited and only 1.5% of house owners acquired it through credit. The distribution of house types differs across the country. In Nairobi, over 70% of the houses are permanent but that figure drops to only 54% in coastal regions (Arvanitis, 2013).

2.6 Poverty

2.6.1 Concept

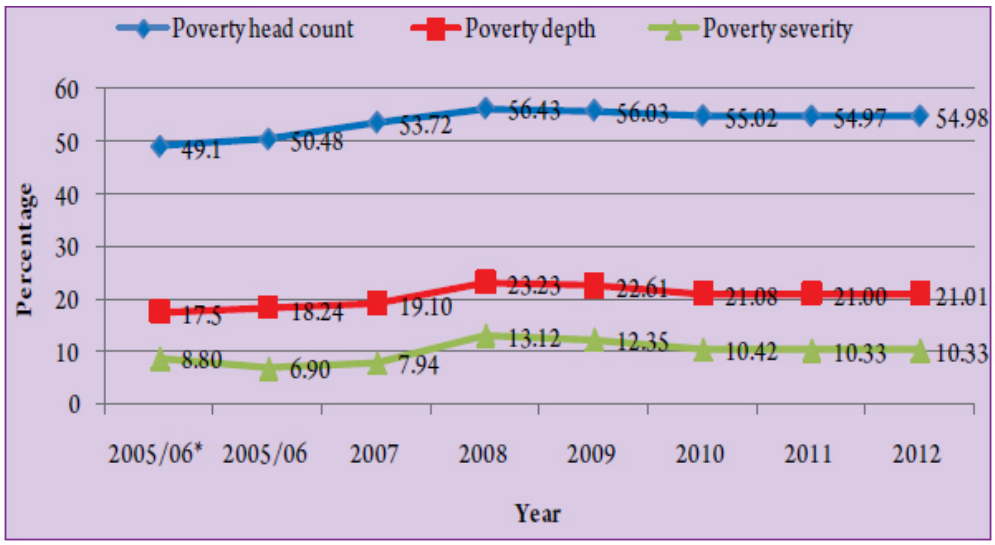
Inequality and poverty are distinct, but related, concepts. A concern with inequality is fundamentally focused on the differences between classes and shares of total income, while poverty (at least as defined here) is focused most on the absolute material well-being of those toward the bottom of the income spectrum (Kamin, 2013, p. 602).

I/IV/ Sen concept

2.6.2 Urban and rural

Difference in rural-urban poverty, first rural poverty:

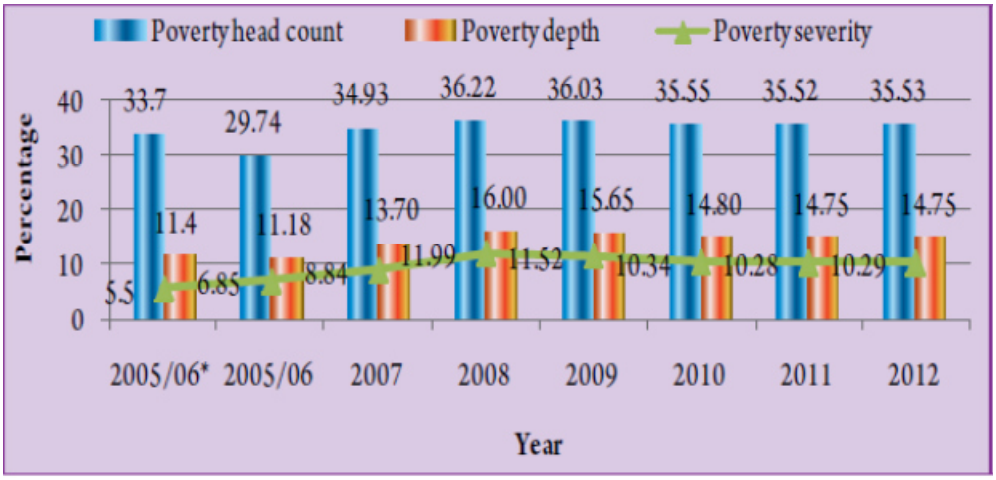
Graphic 3 Rural poverty profile 2005-2012



Source 4 (KIPPRA, 2013, p. 20)

Urban poverty

Graphic 4 Urban poverty profile



Source 5 (KIPPRA, 2013, p. 25)

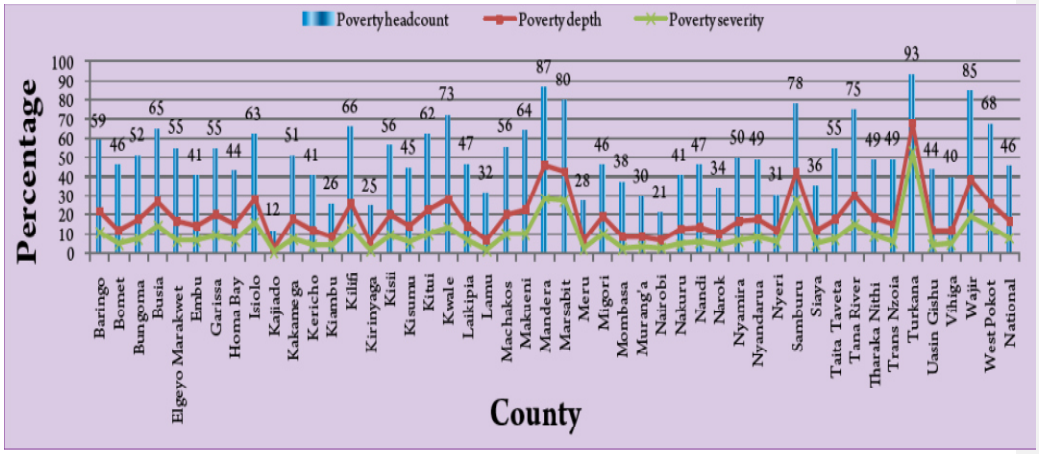
Regarding Kenya, poverty is linked to land ownership, as will be explained in more detail below#).

2.6.3 Regional differences

Inequality disparities in Kenya are manifested both across and within counties. On the extremes is Nairobi County with 21.8 percent poor people and Turkana with 87.5 percent,

whose inhabitants are four times poorer than their Nairobi counter-parts. Within county inequalities are also evident with counties in the North, which are among the poorest counties in the country, having quite low income inequality. The poorest county Turkana (with a poverty level of 87.5%), for instance, is also the most equal county in Kenya (with a Gini coefficient of 0.283). Turkana (0.283), Mandera (0.332) and Wajir (0.321) are among five counties with lowest income inequality as measured by the Gini coefficient. By contrast, the coastal region has the top three counties with the highest income inequality i.e. Tana River (0.617), Kilifi (0.597) and Kwale (0.565). Income inequality is therefore highest at the Coast and poverty is highest in the North. The poverty gap between the county with the highest gap (Tana River at 46.1 percent) and the county with the lowest gap (Nairobi at 4.1 percent) is 11 times (Society for International Development, 2004, pp. 13-15)

Graphic 5 National poverty profile by county, 2005/2006



Source 6 (KIPPRA, 2013, p. 21)

Another sphere where disparities are evident is the rural/urban divide. There are large income differentials between urban and rural areas. Although the level of poverty in the rural areas is higher than that in the urban areas, the Gini coefficient is marginally higher in the urban areas compared to rural areas. This means that there is more inequality in urban areas compared to rural areas in terms of both income and expenditure (Society for International Development, 2004, p. 28). Incomes are more equal in urban areas than in rural areas at lower decile levels; at higher levels of income, there is higher inequality in rural areas (ibid). 44.6 percent of the total rural population compared to only 2.6 percent of the urban population is in the first quintile and thus spends Ksh 1,440 and below. This is in comparison to 34.1 percent of the urban population and 1.5 percent of the rural population which is in the fifth decile and spends Ksh. 7,200 and above (ibid).

The above inequalities are reflected in consumption expenditures. Nairobi and Mombasa counties display significant differences with the 5th quintile spending more than the first quintile by 691 times and 75 times, respectively. This illustrates a much skewed distribution in expenditure compared to the other eight top ranked counties. In eight of the bottom 10 counties, at least 50 percent of the population is in the bottom first quintile with

expenditures below KSh 1,440 compared to only 0.6 percent of the population in Nairobi County. Overall, the share of the fifth quintile (with the highest expenditures of KSh7, 200 and above) in Kenya is 3.6 times more than that of the first quintile (with expenditure shares below KSh 1,4 40). Expectedly, variations in consumption expenditure are more pronounced in urban areas where expenditure shares in the fifth quintile are 121 times more than the expenditure shares of the first quintile.

Interestingly, rural-urban population dynamics also exhibit some form of disparities. For example, Nairobi County, typically urban, has the highest proportion of households (62.4 percent) with 3 or less members compared to Mandera County (a rural area) which has the highest proportion of households (79 percent) with 7 or more members. Overall, higher dependency ratios are observed in the northern counties compared to Nairobi and the central province counties of Kenya.

2.6.4 Conclusion

Different solutions for rural/subsistence farming and urban slum dweller.

Any regional solidarity mechanism between the poor and the wealthy counties?

2.7 Social Mobility, inequality of opportunities

- ➔ Where do you deal with the fact that inequality of opportunity can best be eradicated by public investment in education and professional training, thus making up against the advantages of somebody being born into the "right"family?

2.7.1 Education deficit in Kenya

Moving from a particular social class to another through individual merit is a feature often associated with modernity, democracy and industrialization. However it is certainly unrealistic to think that equal opportunities would be accomplished as long as formal postulates are incorporated in national and international frameworks. But one could expect modern societies to become progressive and more fluid. A key pathway for modern times to enable social mobility is education. In fact, the extent to which educational systems may foster or otherwise constrain social mobility is a controversial issue on the sociological agenda (Abrantes, 2012). Education it is argued has not served as a mechanism for increasing social mobility, rather it has become the means by which advantages have been transmitted intergenerational. In fact specific patterns regarding employment structure, gender and migration, social status have to be taken into account in the analysis of the complex relation between education and social mobility.

Take the issue of school enrolment for instance, itself a good thing but it is good news and bad news in Africa. The good news story on education in Kenya is that out-of-school numbers have fallen dramatically over the past decade. Primary school enrollment has increased from 62 percent to 82 percent in 2012, gender gaps are narrowing, and more kids are making it through to secondary school (The World Bank, 2012). According to Watknis ten years ago, countries such as Ethiopia, Kenya, Tanzania, Zambia, Mozambique and Senegal were treading water, or slipping backwards on enrollment. Now they are heading in the right direction. The elimination of school fees, increased investment in school infrastructure, and increased teacher recruitment have all contributed to the change (Watkins·, 2013).

The bad news comes in a double dose. There are still some 30 million primary school-age children out of school – one-in-every-four in the region – and progress towards universal

primary education has stalled. Instead of hitting the Millennium Development Goal target of universal primary education by 2015, the out-of-school number could rise by 2 million (Watkins·, 2013). Meanwhile, Africa has the world's lowest secondary school enrollment rates. Just 28 percent of youth are enrolled in secondary school, leaving over 90 million teenagers struggling for employment in low-paid, informal sector jobs.

According to UNICEF, access to basic quality services such as health care, education, clean water and sanitation, is often a luxury for many people. Large segments of the population, including the burgeoning urban poor, are highly vulnerable to economic and social shocks. As such, progress on the Millennium Development Goals, especially in regards to social security, is challenged.

Why has progress on enrollment ground to a halt? Partly because governments are failing to extend opportunities to the most marginalized. Africa has some of the world's starkest inequalities in access to education. Children from the richest 20 percent of households in Ghana average six more years in school than those from the poorest households. Being poor, rural and female carries a triple handicap. (Watkins·, 2013).

2.7.1.1 Millions in School Fees

In kenya besides cars, the rich spend a fortune educating their children. At Brookhouse School in Nairobi, children in early years pay $2,240 a term. Boarders between years 12 and 13 cough up $9,300 for boarders. So, where do these children go when school closes? Well, to answer that, we will ask you to consider this: real estate and property company Knight Frank recently sold what is regarded as one of Kenya's most expensive homes for $9 million. The colonial house sits on nine acres in lower Kabete and will be brought down to be replaced by high-rise buildings (Chege, 2014). A country house valued at $6.3 million in Karen was also on sale in the recent past. That is informs the deficit in learning prospects as far as the education system is in Kenya.

The Human Development Index (HDI) 2014 says that despite improvement on incomes, access to healthcare and education, only a small portion of the Kenyan population has benefited directly from growth. Each of Kenya's 42 million citizens would earn Sh189,624 ($2,158) annually were total income distributed equally, the report says, but that is unlikely to happen any time soon as the rich continue to get richer, widening the gap between them and the poor (Omondi, August 2015). Ranked by the Gini Coefficient – a measure of income gap that assigns zero to perfect equality and 100 to absolute inequality, Kenya's score stands at 47.7 behind Rwanda's 50.8, but 10 points above Burundi – the East African nation with the best wealth distribution with a score of 33.3 points (Omondi, August 2015).

The need for equitable growth model is not unique to Kenya but is a challenge that faces even the developed economies, argues businessman Robert Shaw in the Business daily (Omondi, August 2015). He says that Kenya's rate of growth is also too low to have an immediate impact on widespread poverty. There needs to be pro-poor policies and continuous investment

in health and education to ensure that the benefits of economic growth trickle down to the bottom of the pyramid rather than being concentrated in the hands of a few people.

The deficit in learning is well captured by Learning Barometer,[28] it states that one-third of children fall below the learning threshold, reflecting the large number of failing schools in areas servicing predominantly low-income black and mixed race children. Disparities in learning achievement mirror wider inequalities in education. In most cases in Kenya as elsewhere in Africa say South Africa, children from the poorest households are seven times more likely than those from the richest households to rank in the lowest 10 percent of students. Almost half of the children sitting in Grade 5 classrooms are unable to perform basic literacy and numeracy tasks. More alarming still is that half of the children who entered primary school have dropped out by this stage. There are 127 million children of primary school age in Africa. In the absence of an urgent drive to raise standards, half of these children – 61 million in total – will reach adolescence without the basic learning skills that they, and their countries, desperately need to escape the gravitational pull of mass poverty (Watkins·, 2013).

[28] The Africa Learning Barometer is an interactive feature that analyzes the state of education and learning in sub-Saharan Africa through four indicators: school enrollment, school completion, quality of education and education inequality. The Barometer is a collaboration between the Brookings Center for Universal Education. https://www.brookings.edu/interactives/africa-learning-barometer/

Learning Levels

Country	Literacy (%)	Numeracy (%)	Composite (% Not Meeting Basic Learning Level)
Benin	44.8	38.5	41.7
Botswana	10.6	22.4	16.5
Burkina Faso	31.4	24.9	28.2
Burundi	16.6	15.5	16.1
Cameroon	9.0	10.2	9.6
Chad	45.0	34.9	40.0
Comoros	37.5	30.8	34.2
Congo	37.9	31.9	34.9
Ethiopia	54.2	56.3	55.3
Gabon	6.2	10.9	8.6
Ghana	21.1	43.1	32.1
Ivory Coast	33.6	48.3	41.0
Kenya	8.0	11.2	9.6
Lesotho	21.2	41.8	31.5
Madagascar	23.6	6.5	15.1
Malawi	36.6	59.9	48.3
Mauritius	11.1	11.2	11.2
Mozambique	21.5	32.8	27.2
Namibia	13.6	47.7	30.7
Nigeria	65.7	51.0	58.3
Senegal	24.0	19.2	21.6
Seychelles	11.8	17.8	14.8
South Africa	27.2	40.2	33.7
Swaziland	1.4	8.6	5.0
Tanzania	3.5	13.3	8.4
Uganda	20.4	38.8	29.6
Zambia	44.1	67.3	55.7
Zimbabwe	18.5	26.6	22.6

Country coverage: (SAQMEC III) Botswana, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania (Mainland), Uganda, Zambia, and Zimbabwe; (PASEC) Chad, Benin, Comoros, Madagascar, Gabon, Burkina Faso, Congo, Senegal, Burundi, Cote d'Ivoire, and Comoros; (National examinations) Ghana, Ethiopia and Nigeria.

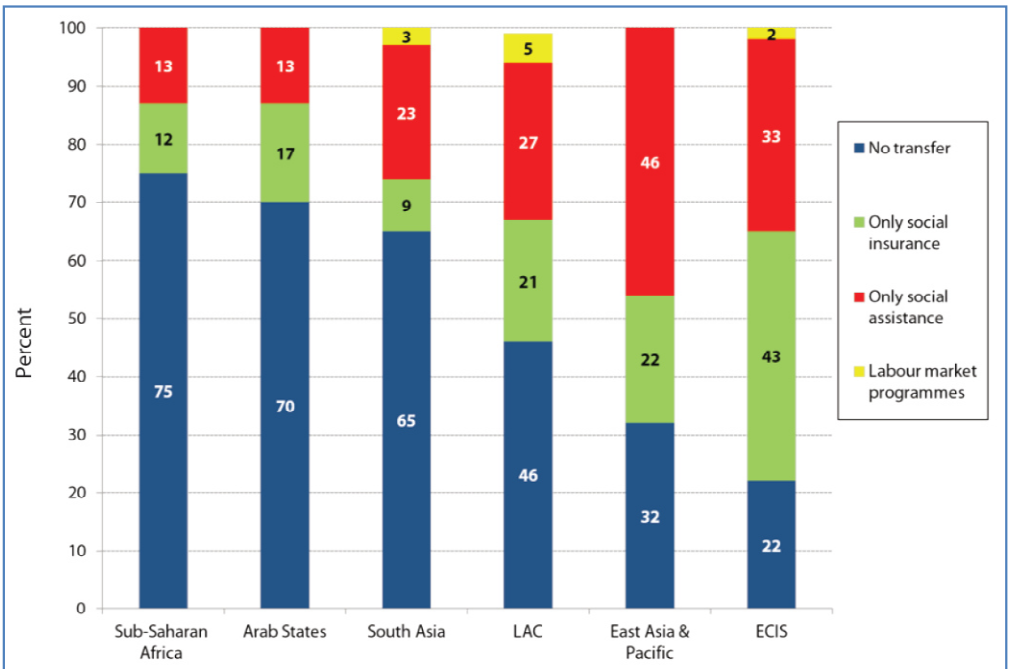
Public spending often reinforces disadvantage, with the most prosperous regions and best performing schools cornering the lion's share of the budget. In Kenya, the arid and semi-arid northern counties are home to 9 percent of the country's children but 21 percent of out-of-school children. Yet these counties receive half as much public spending on a per child basis as wealthier commercial farming counties.

To state bluntly, Africa cannot build economic success on failing education systems. And it will not generate additional jobs needed for young people joining the labor force over the next decade if systems are not fixed. Education planners have to look beyond counting the number of children sitting in classrooms and start to focus on learning. Teacher recruitment, training and support systems need to be overhauled to deliver effective classroom instruction. The allocation of financial resources and teachers to schools should be geared towards the improvement of standards and equalization of learning outcomes. Africa's children have a right to an education that offers them a better future – and they have a right to expect their leaders and the international community to get behind them.The cycle of poverty and education deficiencies that perpetuates inequality have to be addressed inclusively.

Inequality and poverty are bad, but it is tolerable if there is a way out which normally is meant with "social" or "income mobility", i.e. that one's fate is not pre-determined by the family into which I am born but that there is equal opportunity for all to improve social and economic status in life due to good education and hard work – basically, the promise of liberal society. For that purpose, a redistributive system with a good public education system renders good services.

Unlike Germany and in Kenya, there is no comparable system of redistribution and social welfare in place. As the UNDP report "Humanity divided" (see I/IV/2.5) illustrates, sub-saharan states are worst when it comes to public services, investment and social security provisions for the poor:

Graphic **6 Coverage of population by social assistance and transfers, percent by region**



Source: *World Bank (2012, Fig. 3.3, p.23).*

Source 7 (UNDP, 2013, p. 241)

This, impacts, of course, also upon social and income mobility within these states. Regarding Kenya social mobility exists to some extent.

→ Kenyas attempt to provide free education?

Young people, by professional means or via education, try to improve the financial situation of themselves and their families. At the same time, existing options for social mobility in Kenya and Zambia are hardly adequate and sufficient when considered in relationship to the demographic structure of the population and their needs, as also has been investigated by Andebos contribution to this research (Andebo, 2014a). All these are reasons why from many young people (try to) emigrate domestically (and to some extent abroad).

IMF studies spell out an aggravating fact regarding the low share of social spending in sub-Saharan countries, and argue that those transfers which are occurring do rather go to high income groups than the poor (International Monetary Fund, 2014a, p. 20).

2.8 Conclusion

Putting these results into perspective suggests that some income inequality emanates from environmental forces and normal human behavior. However, public policy may exert a positive influence on reducing income inequality through economic policy that promotes economic growth, lower unemployment, greater labor force participation and appropriate tax

policy. Although by and large GDP growth is a natural variable that can't be directly affected by policy makers, it's still arguably the most important factor in reducing income inequality. Tax and regulatory policy, for example, are indirect ways to influence growth as significant and sustained economic growth has been shown to be among the biggest levelers of income inequality (Jackson, Lucas, 2017).

Wealth gives some people advantages over others who are equally talented and meritorious, advantages they did nothing to deserve except having the right parents. The wealthy have access to better education, highly valuable social networks, more educational opportunities outside the classroom, and so on. That alone is cause for concern, but there is more. The very thing that wealthy owners worry about with social programs is that the (largely unfounded) payments to the needy will seriously undercut motivation on a wide scale, is certainly present for those who receive large inheritances.

According to Gĩthĩnji, Kenya is "horizontally unequal and ethnicity plays an important part in obtaining economic opportunities at the top of the distribution", and rather than correct historical inequalities, the Kenyan state has only managed to worsen the differences. To provide people across different ethnicities equal access to opportunities, Kenyan political economy would require a large restructuring. There must be clear guidelines for the line ministries on how to deal with inequality as well as incentives to being a Kenyan citizen as opposed to an ethnic citizen.[29]

Thomas Piketty's concerns about inherited wealth "History, as well as fiction, suggests that being born to inherited wealth is not normally a spur to greater effort; instead, life is devoted to social display or indolence." Wealth that is earned rather than inherited is more defensible; though there are legitimate questions about how much of this wealth is truly the result of an individual's effort rather than from luck, the help of society, and political and economic power that distorts the flow of income. A meritocracy is undermined when workers are not paid what they are worth — when the income workers have earned through hard work is misdirected to those at the top. Hence, there are legitimate questions about how much of the income and wealth of those at the top should be reclaimed and redistributed through taxation. We should not allow ideological arguments dressed up as economic facts, arguments that serve wealthy interests but have little foundation, to deter us from pursuing what's best for the vast majority.

Wealth inequality translates into economic inequality (also known as the gap between rich and poor, income inequality, wealth disparity, or wealth and income differences) which consists of disparities in the distribution of wealth (accumulated assets) and income as well as the inequality of opportunities and it is of growing concern to policy makers. The issue of economic inequality in Kenya and elsewhere is not only related to the idea of equity but also equality of outcome and equality of opportunity. The gaps in wages continue to produce inequality between different types of workers. Apart from market-driven factors that affect wage inequality, government sponsored initiatives also increase inequality. Social scientists and policy makers debate the relative merits and effectiveness of each approach to regulating inequality (KIPPRA, 2013).

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[29] Gĩthĩnji M. 2015. Erasing Class/(Re)Creating Ethnicity: Jobs, Politics, Accumulation and Identity in Kenya. The Review of Black Political Economy.Vol 42:1. Pg: 87-110. Available at:

http://link.springer.com.proxy.mah.se/article/10.1007/s12114-014-9191-0/fulltext.htm

To reverse this situation policies are required to address challenges including persisting gender gaps; the challenge of high wealth concentration, and the role for redistribution policies. Policies that focus on the poor and the middle class can mitigate inequality. Irrespective of the level of economic development, better access to education and health care and well-targeted social policies, while ensuring that labour market institutions do not excessively penalize the poor; can help raise the income share for the poor and the middle class. Inequality dampens investment, and hence growth, by fuelling economic, financial, and political instability.

Redistribution policies have historically mitigated inequality through public policy—primarily progressive taxes and social transfers such as public retirement benefits that go the working population. Technology and strong labor markets have also contributed to the inequality. However this can be reversed through various policies that can be undertaken by the government. Policymakers in the Kenyan government need to consider policies to tackle inequality. Raising the income share of the poor, and ensuring that there is no hollowing-out of the middle class is actually good for growth. Redistribution through the tax and transfer system is found to be positively related to growth and is negatively related to growth only for the most strongly redistribution countries. This suggests that the effect of redistribution on enhanced opportunities like upgrading of slums for lower-income households and on social and political stability could potentially outweigh any negative effects on growth through a damping of incentives.

3 Dependence on external financing

- ➔ If we put the Table into the Annex you need to insert references to it throughout the text.
- ➔ You need to revise the bibliographic references, where you entered in APA "personal authors" into "institutional authors".

3.1 Introduction

3.1.1 Definition of terms

Governmental Dependency[30]: Dependency can be defined as an explanation of the economic development of a state in terms of the external influences--political, economic, and cultural--on national development policies (Ferraro, July 1996). Another scholar named Theotonio Dos Santos, emphasizes the historical dimension of the dependency relationships in the definition:

[Dependency is]...an historical condition which shapes a certain structure of the world economy such that it favors some countries to the detriment of others and limits the development possibilities of the subordinate economics...a situation in which the economy of

[30] Dependency theory, produced by dependency theorists whose aim was important in challenging modernization and growth theories of development. The discourse is asociated with a number of key intellectuals from Latin America—Andre Gunder Frank, Fernando Henrique Cardoso, and Peter Evans in Latin America, Samir Amin and Walter Rodney in Africa—the *dependentistas* turned modernization theory upside down by arguing that contact with Western capitalism created (rather than solved) underdevelopment in the Third World. Most notably, the dependentistas rejected the dual approach to development, arguing for a more global approach that examined unequal terms of trade and the role of Western capital in the perpetuation of these inequalities

a certain group of countries is conditioned by the development and expansion of another economy, to which their own is subjected (Santo, 1970).[31]

Three common features to these definitions which most dependency theorists share are; first, dependency characterizes the international system as comprised of two sets of states, variously described as dominant/dependent, center/periphery or metropolitan/satellite (Santo, 1970, pp. 231-232). The dominant states are the advanced industrial nations in the Organization of Economic Co-operation and Development (OECD). The dependent states are those states of Latin America, Asia, and Africa which have low *per capita* GNPs and which rely heavily on the export of a single commodity for foreign exchange earnings.

Second, the two definitions have in common the assumption that external forces are of singular importance to the economic activities within the dependent states. These external forces include multinational corporations, international commodity markets, foreign assistance, communications, and any other means by which the advanced industrialized countries can represent their economic interests abroad.

Third, the definitions of dependency all indicate that the relations between dominant and dependent states are dynamic because the interactions between the two sets of states tend to not only reinforce but also intensify the unequal patterns. Moreover, dependency is a very deep-seated historical process, rooted in the internationalization of capitalism. Dependency is an ongoing process[32]**.**

The expression "**external financing**" originates within the business sector and refers to funds and capital for a company, entity or country acquired outside as opposed to internally raised capital, e.g. from profits. Analogously, the World Bank uses the phrase when distinguishing capital and investment raised within and between states and/or "the markets". In other words: the distinction is drawn between finance raised within the state by public institutions such as taxes or levies on the one side, and money acquired from outside, e.g. banks, funds, donor institutions etc. on the other side. The expression "governmental dependence on external financing" refers to a situation where a state is structurally and over a long time dependent on external financing and therefore bound or severely restricted in its own spending decisions.[33] For instance, economic theory does not automatically generate strong conclusions about the impact of government outlays on economic performance. Indeed, almost every economist would agree that there are circumstances in which lower levels of government spending would enhance economic growth and other circumstances in which higher levels of government spending would be desirable (Mitchell, 2017). Yet it is undefined, that if government spending is zero, presumably there will be very little economic growth because enforcing contracts, protecting property, and developing an infrastructure would be very difficult if there were no government at all. In other words, some government spending is necessary for the successful operation of the rule of law.

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[31]Vincent Ferraro, "Dependency Theory: An Introduction," in The Development Economics Reader, ed. Giorgio Secondi (London: Routledge, 2008), pp. 58-64. https://www.mtholyoke.edu/acad/intrel/depend.htm

[32] The Structure of Dependence Author(s): Theotonio Dos Santos Source: The American Economic Review, Vol. 60, No. 2, Papers and Proceedings of the Eightysecond Annual Meeting of the American Economic Association (May, 1970), pp. 231-236 Published by: American Economic Association Stable URL: http://www.jstor.org/stable/1815811 Accessed: 25/08/2009 09:08

[33] For Germany, the expression "public debt" (öffentliche Schulden) would be closer to common usage, but the African partner rejected this term to be misleading for their respective context, which is why "governmental dependence" was adopted as a compromise.

- ➔ External debt/borrowing
- ➔ Domestic debt/borrowing

3.1.2 Excursus: Theoretical understanding of dependency

The international-dependence models, comprising the main streams, the neo-colonial dependence approach, the false-paradigm approach, and the dualistic-development approach, have strongly criticized the nature of the relationship between the world's poor countries and the rich ones (including their sponsored institutions). The relationship between these two groups is characterized by dependence and dominance, with poor countries reduced to perpetual subordinates of rich countries (Ilorah, 2011).

This relationship has over the years resulted in the political and economic exploitation of the poor countries by the developed. According to the neo-colonial dependence approach, the grossly skewed resource distribution and, by extension, the unequal power relationship between the rich developed countries and their poor developing counterparts have over several decades promoted foreign aid, weakening attempts by the later at achieving self-reliance and especially economic independence. The neo-colonial dependence approach therefore views dependency on foreign aid as a form of political and economic control of poor developing countries by their rich developed counterparts, assisted by forces from within the poor countries (Ilorah, 2011). A condition of dependency is therefore perpetuated in the poor developing countries, trapping these countries in more serious conditions of backwardness, making them vulnerable to exploitation.

Furthermore, this dualistic-development approach one would argue that the co-existence of industrialised developed countries and poor developing countries has become so entrenched, reinforcing itself with the former getting only richer and the later only poorer. This co-existence of unequal partners, both politically and economically, with minimal hope of a breakthrough for the poor countries, renders any attempts by these countries to cut loose their foreign aid dependency trap an uphill battle. Dependency and poverty among developing countries therefore reinforce and exacerbate a cycle of dependency, the situation in Africa providing a good example. Even though these theoretical facts are often ignored by foreign aid proponents they nonetheless remain an important basis for criticisms against the continent's chronic dependency on foreign aid (Ilorah, 2011).

3.1.3 Excursus: The Structural Context of Dependency

Historical research demonstrates that contemporary underdevelopment is in large part the historical product of past and continuing economic and other relations between the satellite underdeveloped and the now developed metropolitan countries. Furthermore, these relations are an essential part of the capitalist system on a world scale as a whole (James D. Cockcroft, Andre Gunder Frank, and Dale Johnson, 1972, p. 3).

The capitalist system has enforced a rigid international division of labour which is responsible for the underdevelopment of many areas of the world. The dependent states supply cheap minerals, agricultural commodities, and cheap labour, and also serve as the repositories of surplus capital, obsolescent technologies, and manufactured goods. These functions orient the economies of the dependent states toward the outside: money, goods, and services do flow into dependent states, but the allocation of these resources is determined by the economic interests of the dominant states, and not by the economic interests of the dependent state. This division of labour is ultimately the explanation for poverty and there is little question but that capitalism regards the division of labour as a necessary condition for

the efficient allocation of resources. The most explicit manifestation of this characteristic is in the doctrine of comparative advantage (Ferraro, July 1996).

To a large extent from the Kenyan context, the dependency mode rest upon the assumption that economic and political power are heavily concentrated and centralized in the industrialized countries, an assumption shared with Marxist theories of imperialism. If this assumption is valid, then any distinction between economic and political power is spurious: governments will take whatever steps are necessary to protect private economic interests, such as those held by multinational corporations. However, the Marxist theory of imperialism explains dominant state expansion while the dependency theory explains underdevelopment. Stated another way, Marxist theories explain the reasons why imperialism occurs, while dependency theories explain the consequences of imperialism[34].

There are a number of propositions, all of which are contestable, which form the core of dependency theory.

1. ***Underdevelopmen****t* is a condition fundamentally different from *undevelopment*. The latter term simply refers to a condition in which resources are not being used. For example, the European colonists viewed the African continent as an undeveloped area: the land was not actively cultivated on a scale consistent with its potential. Underdevelopment refers to a situation in which resources are being actively used, but used in a way which benefits dominant states and not the poorer states in which the resources are found.

2. The distinction between underdevelopment and un-development places the poorer countries of the world in a profoundly different historical context. These countries are not "behind" or "catching up" to the richer countries of the world. They are not poor because they lagged behind the scientific transformations or the Enlightenment values of the European states. They are poor because they were coercively integrated into the European economic system only as producers of raw materials or to serve as repositories of cheap labour, and were denied the opportunity to market their resources in any way that competed with dominant states.

3. Dependency theory suggests that alternative uses of resources are preferable to the resource usage patterns imposed by dominant states. There is no clear definition of what these preferred patterns might be, but some criteria are invoked. For example, one of the dominant state practices most often criticized by dependency theorists is export agriculture. The criticism is that many poor economies experience rather high rates of malnutrition even though they produce great amounts of food for export. Many dependency theorists would argue that those agricultural lands should be used for domestic food production in order to reduce the rates of malnutrition.

4. The preceding proposition can be amplified: dependency theorists rely upon a belief that there exists a clear "national" economic interest which can and should be articulated for each country. In this respect, dependency theory actually shares a similar theoretical concern with realism. What distinguishes the dependency perspective is that its proponents believe that this national interest can only be satisfied by addressing the needs of the poor within a society, rather than through the satisfaction of corporate or governmental needs. Trying to determine what is "best" for the poor is a difficult analytical problem over the long run.

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[34] Vincent Ferraro, "Dependency Theory: An Introduction," in The Development Economics Reader, ed. Giorgio Secondi (London: Routledge, 2008), pp. 58-64. https://www.mtholyoke.edu/acad/intrel/depend.htm

Dependency theorists have not yet articulated an operational definition of the national economic interest. [35]

5. The diversion of resources over time (and one must remember that dependent relationships have persisted since the European expansion beginning in the fifteenth century) is maintained not only by the power of dominant states, but also through the power of elites in the dependent states. Dependency theorists argue that these elites maintain a dependent relationship because their own private interests coincide with the interests of the dominant states. These elites are typically trained in the dominant states and share similar values and culture with the elites in dominant states. Thus, in a very real sense, a dependency relationship is a "voluntary" relationship. One need not argue that the elites in a dependent state are consciously betraying the interests of their poor; the elites sincerely believe that the key to economic development lies in following the prescriptions of liberal economic doctrine.[36]

3.1.4 New forms of dependency

The new form of dependence is conditioned by the exigencies of the international commodity and capital markets. The possibility of generating new investments depends on the existence of financial resources in foreign currency for the purchase of machinery and processed raw materials not produced domestically. Such purchases are subject to two limitations: the limit of resources generated by the export sector (reflected in the balance of payments, which includes not only trade but also service relations); and the limitations of monopoly on patents which leads monopolistic firms to prefer to transfer their machines in the form of capital rather than as commodities for sale. It is necessary to analyze these relations of dependence if we are to understand the fundamental structural limits they place on the development of these economies (Santo, 1970, pp. 232-233).

The first consequence of this dependence is the need to preserve the traditional export sector, which limits economically the development of the internal market by the conservation of backward relations of production and signifies, politically, the maintenance of power by traditional decadent oligarchies. In the countries where these sectors are controlled by foreign capital, it signifies the remittance abroad of high profits, and political dependence on those interests. Only in rare instances does foreign capital not control at least the marketing of these products (ibid.).

3.1.5 Discussion

The emphasis here is that domestic borrowing in itself isn't bad. However, the concern of the research is the over reliance on "external financing". Yet from this research Kenya has the capacity to effectively collect enough resources if the recommendations we suggest are to take root.

Further we agree to the fact that concessional loans though with long grace periods of payment meaning a country gets subsidised development offers. concessional policies associated with foreign direct investment are the single largest drain on revenue.

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[35] See, Vincent Ferraro, "Dependency Theory: An Introduction," in The Development Economics Reader https://www.mtholyoke.edu/acad/intrel/depend.htm

[36] Vincent Ferraro, *The Ruth C. Lawson Professor of International Politics* Mount Holyoke College

AB, Dartmouth College; MIA, Columbia University; PhD, Massachusetts Institute of Technology https://www.mtholyoke.edu/acad/intrel/feros-pg.htm.

Vincent Ferraro, "Dependency Theory: An Introduction," in The Development Economics Reader, ed. Giorgio Secondi (London: Routledge, 2008), pp. 58-64. https://www.mtholyoke.edu/acad/intrel/depend.htm

But Kenya and other states can hold on without if domestic borrowing and local bonds and borrowing is tapped (see#).

3.2 Kenyan Debt situation

3.2.1 Introduction

But then the scenario for Kenya is quite complex. In that even though many policymakers understand that government spending undermines economic performance, some think that special-interest groups are too politically powerful and that reducing the size of government is an impossible task. Since the burden of government has relentlessly increased, this is a reasonable assumption. However, the size of government has a major impact on economic performance, but it is just one of many important variables. It is true that policy choices also have important effects independent of the level of government spending. For example, the tax policy, monetary policy, trade policy among others. In addition to a nation's economic performance is determined by its level of corruption, openness of capital markets, competitiveness of financial system, and flexibility of prices. Government spending by the Republic of Kenya should be significantly reduced it has grown far too quickly in recent years. Budgetary restraint should be viewed as an opportunity to make an economic virtue out of fiscal necessity.

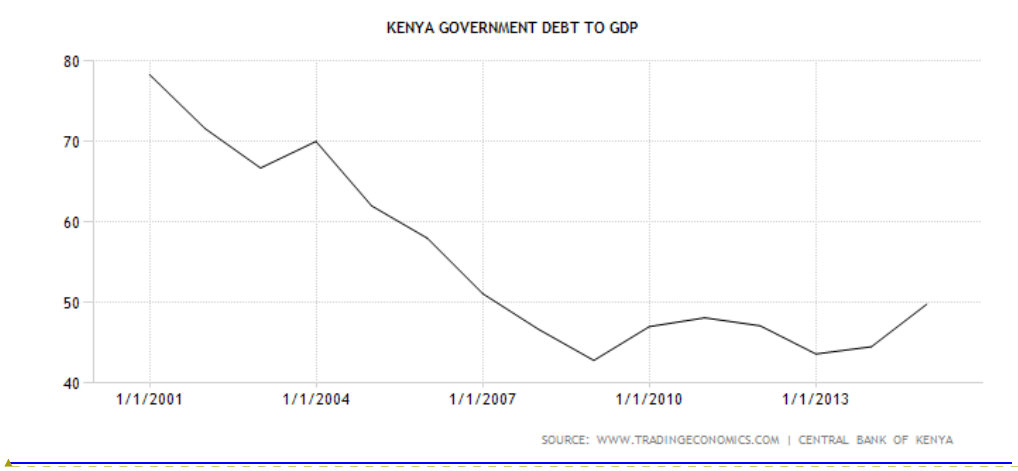
To be sure, if the government spends money in a productive way that generates a sufficiently high rate of return, the economy will benefit, but this is the exception rather than the rule. There is overwhelming evidence that government spending is way too high and that Kenya's economy could grow much faster if the burden of government was reduced. The real problem is not about government spending but rather borrowing money from the multilateral institutions and private sector and spending it in ways that are often counterproductive. The result is accumulated debt burden.

The accumulation of debt started quite some time, for instance Kenya's largest creditors 2010-2014 are China, Japan France and Belgium to the tune of 120 Billion Shillings. The World Bank argues that heavy debt burden and China's loans can bring debt to unsustainable levels. As much of China's loans are non-concessional, this can raise debt to GDP levels quickly. However, according to Apurva Sanghi, (Apurva Sanghi,Dylan Johnson, 2016) a lead economist for the World Bank and one of the co-authors of the report, it doesn't matter where these loans come from but whether the debt Kenya is accumulating is sustainable.

John Perkins, in his book "*Confessions of an Economic Hit Man*", (Perkins, 2004) points out how Less Developed Countries (LDCs), e.g., Kenya, get enslaved by Developed Countries (DCs) by being offered huge loans that eventually become impossible to pay back. In this game, he explains, the LDC gets "clearance" from the Bretton Wood Financial Institutions to borrow huge monies. These loans are directed towards building new infrastructure: highways, airports, railway lines…also based on falsified studies that give a sense that after the infrastructure are put up, there shall be economic boom in the LDC. In short the binding condition is that the building of these infrastructures is undertaken by the construction companies based on the terms of DC that is advancing the loan. In addition, the money is withdrawn from one account, say the Central account of the Peoples Republic of China Bank (since this is where our so-called leaders are notorious borrowing and burying our country under the weight of gigantuan loans), to the account of China Construction Company; simply, the money circulates within China, boosting the economy of China.

3.2.2 Overall development of debt

➔ I put together here information giving an overview upon the overall development of debt (Public and external) in relation to GDP. You may smoothen the transition between those graphics.



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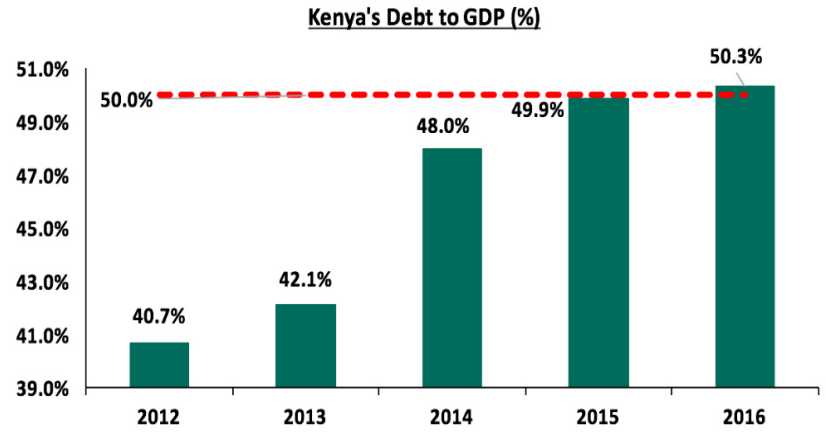
As can be seen from the graphical representation, after a drop in debt, there is another acceleration and growth between 2013 and 2016. Kenya needs to look at the factors that have led to the acceleration in government borrowing over the last three years like first, slow growth in revenue collection compared to the budget growth: The revenue growth has

averaged 14.2% over the last five years while budget growth has been at 15.4% over the same period resulting into more borrowings to fund the budget deficit; second, significant investment in infrastructure projects: Though investment in infrastructure will eventually result in an increase in economic activity, it will take time for the economy to start benefitting from such investments and third misalignment of fiscal and monetary policy decisions**:** The government continues to borrow money from the market at high rates despite having initiatives in place to achieve a low interest rate environment (Juma, 2016).

Over the years, the national budget continues to grow with the total expenditures growing at an average of 15.4 percent to 2 trillion shillings in 2015/16 from 977.0 billion shillings in 2010/11, while revenue growth (KRA Tax collections) has increased by 14.2 percent to 1.3 trillion shillings in 2015/16 from 670.0 billion shillings in 2010/11 meaning that the difference has been funded through borrowing (Juma, 2016).

- ➔ Reference the Controller and auditor general summary report for 2015. Budgeted and expensed and the KRA excel sheet.

On the foreign borrowing, though it gives the government another borrowing avenue apart from the domestic market, the challenge is that it opens up the country to trends in the global market, which may destabilize the economy in times of global crisis. According to IMF managing director Christine Lagarde, the IMF-WB joint note proposes that Kenya finds new mechanisms of funding its huge infrastructure projects.[37] According to the joint lenders, Kenya's debt load crossed the 50 per cent of GDP mark to stand at Sh2.11 trillion or 57 per cent of GDP by end of December 2013 (Were A. , 2015).[38] And today stands at 51 per cent of the rebased economic output[39]



[37] The Business Daily, http://www.businessdailyafrica.com/IMF-and-World-Bank-raise-the-red-flag-over-Kenya-debt/-/539546/2252232/-/68mp65/-/index.html

[38] Bloomberg: The charts that show Kenya's Economy after four years of Jubilee government Read more at: https://www.standardmedia.co.ke/business/article/2001248246/the-charts-that-show-kenya-s-economy-after-four-years-of-jubilee-government. Updated Wed, July 19th 2017

[39] Kenya media "IMF, World Bank raise the red flag over Kenya's debt. http://kenyamedia.co.ke/blog/2015/07/10/imf-world-bank-raise-the-red-flag-over-kenyas-debt/

According to Bloomberg , Kenya's government debt has surged to more than 50 percent of gross domestic product from less than 40 percent eight years ago as the government borrowed to plug a budget deficit that widened to a revised estimate of 10.2 percent of GDP in 2016-17. Half of the debt is owed to external creditors. While the Treasury forecast the shortfall may narrow to between 6 percent and 6.5 percent this fiscal year, the nation must monitor its debt sustainability, according to the International Monetary Fund (Bloomberg, 2017).

3.2.3 Development external debt

One way to assess the performance and fundamentals of Kenya is the Country Policy and Institutional Assessment (CPIA). This little- known tool of the World Bank is actually one of the most comprehensive and thorough rating exercises of countries' policies and institutions in the world (Fengler WolfGang, 2011). For Kenya, external debt indicators for previous years are as follows

Kenya's external debt indicators— debt to GDP ratio and debt to exports ratio — have risen from an average of 38.5% and 121.1% for the 1970-80 period, and from to 89.2% and 268.2% for 1991 –1999 period, respectively. At the end of 2012, Kenya's nominal public external debt stood at 23 percent of GDP or US$ 9.1 billion. The net domestic debt at the end of the same year (2012) was 20 percent of GDP (Ksh. 708 billion) similar to the average of Kenya's domestic debt between 2006-2012 (International Monetary Fund, 2013b).

In January 2013, Kenya's parliament raised the external debt ceiling from US$ 8.7 billion to US$ 13 billion. By September 30, 2014, the external debt stood at US$11.4 billion (Olingo, 2014). According to the Bank of Kenya, the more recent development is as follows:

Graphic Kenya Central Government External Debt, in billion KSH 2015/2016[40]

[40] Retrieved 13 June 2016 from http://www.tradingeconomics.com/kenya/external-debt

Some of China's loans are non-concessional, which can raise debt-to-gross domestic product (GDP) levels quickly," World Bank lead economist for Kenya Apurva Sanghi and his counterpart Dylan Johnson argues. The main borrowing pertains to the standard gauge railway (SGR) funding. The duo adds, Kenya's debt to China stood at Sh262 billion ($2.6 billion) in June, 2009 last year, up from Sh82.9 billion ($821 million) a year earlier and Sh14.7 billion ($146 million) in 2010. It is important to note that Kenya's domestic debt market has no grace period, while the cost has remained high due to high interest rates. Countries like Kenya, Ethiopia, Ghana, South Africa and Senegal have external financing above 10 per cent of GDP, which poses a risk not only to the completion of the projects but also for loan repayments," adds Mr Sanghi.[41] It is actually true that China has a low Foreign Direct Investment in Sub Saharan Africa (SSA) (Apurva Sanghi,Dylan Johnson, 2016).

Most of this external debt is on concessional terms, although its commercial component has increased. An example is the succesful issuance of a sovereign bond (which raised US$2 billion through a Eurobond raising the level of debt from 23 to 26% of GDP) in 2014. However, economists suggest the sound economic development; the debt to GDP ratio for Kenya has been improving over the past years. Nonetheless, some fear that Chinese imports could lead to deindustrialization because Kenya produces and trades few intermediate goods, researchers have concluded. Many suspect a premature decline of industry because manufacturing growth was 3.4 percent in 2014, down from 5.6 percent in 2013. The manufacturing sector is ten percent of GDP, but the government wants it to be 20 percent of GDP as part of its Vision 2030 program, (KNBS, 2015). Kenya will need to promote more FDI into manufacturing, improve labour productivity and infrastructure, lower transport costs, and lighten the regulatory burden of trade it if hopes to boost exports and the share of manufacturing in GDP (Apurva Sanghi,Dylan Johnson, 2016).

3.2.4 Development domestic debt

Raising funds from the domestic market is much easier and faster and there is already a defined time table for this either weekly through treasury bills and monthly through treasury bonds and for this, the Central Bank acts as the borrowing agent of the Treasury. Local borrowing is also advantageous as it is faster and simple to administrate, but the main issue is that government competes with the private sector for funds from banks which leads to crowding out of private sector and slowdown in economic growth as the contribution by the private sector to economic growth reduces (National Treasury, 2015).

According to National Treasury the government continued to pursue the twin objectives of developing a deep and liquid domestic market since the development of the first Mid Term Debt Strategy (MTDS) in June 2009. And the development of the 2014 MTDS, reaffirmed the government's commitment in realizing this objective of deepening the domestic debt market (National Treasury, 2015).

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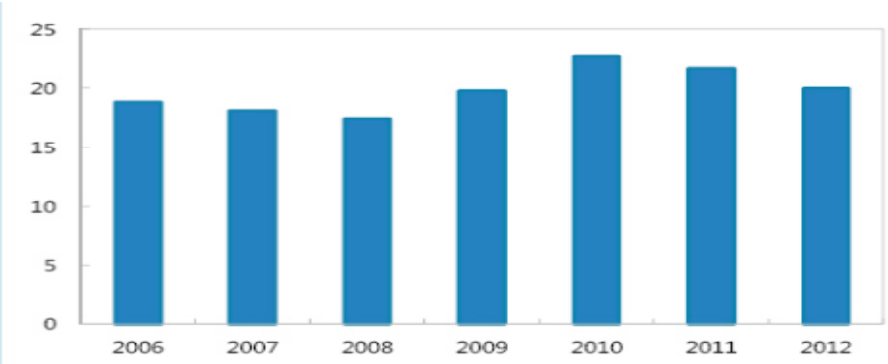
[41] Business Daily, March 2016.World Bank warns Kenya over rising appetite for Chinese loans.

http://www.businessdailyafrica.com/World-Bank-warns-Kenya-over-rising-appetite-for-Chinese-loans/-/539552/3132704/-/wxlhb0/-/index.html

Graphic; Kenya Public Domestic Debt (as per cent of GDP 2006-2012)



Source 8 (International Monetary Fund, 2013b)

More recently the interbank interest rates dropped to 7.2 percent in December 2014 from 12.19 percent in December 2013. The dip in short-term interest rate reflected a decreased inflationary expectation and availability of liquidity in the financial system. The CBK policy rate Central Bank Rate (CBR) has remained stable at 8.5 percent from May 2013 to December 2014 down from 11 percent in December 2012. This led to a reduction in short term interest rates, save for the commercial banks' lending rates which remained at about 16 percent. The high spread between the lending and deposit rates led to an increased investment in Government securities by retail investors. Meanwhile, the Government borrowing programme progressed as planned with the cost declining as evidenced by the marginal decline in Treasury bill rates (National Treasury, 2015). To confront the challenges of revenue shortfall and expenditure pressures, the Government stepped up efforts on tax administration and mobilization of revenue to eliminate leakages and increase revenue collection as targeted in the Financial Year 2014/15, as well as cut and rationalize expenditure so as to remain within the domestic borrowing ceiling of Ksh. 118.8 billion.

The domestic debt market has proved an effective source for providing longer-dated funds for investment for the private sector through corporate Infrastructure Bonds (IFBs). The Republic of Kenya issued its debut USD 2 billion International Bond on 16th June, 2014. The issue comprised of USD 500 million at an interest rate of 5.875 percent with a five year maturity and USD 1.5 billion at an interest rate of 6.875 percent with a maturity of 10 years.

Further, the Government in November 2014 reopened the Euro Bond to raise USD 750 million. Between the bond components, the 5 year was reopened for USD 250 million at a yield of 5.0 percent while the 10 year was tapped for USD 500 million at a yield of 5.90 percent. One of the objectives of the Euro Bond issued in FY 2013/14 and the reopening in FY2014/15 is to act as a benchmark for the corporates who may wish to access external funding (National Treasury, 2015).

3.2.5 Losses and costs of the World Financial and Economic Crisis

It is important that one distinguishes losses as well as direct and indirect costs of the crisis – all of which had an impact on the potential to raise taxes and public spending. According to Dorothy Cormick the global financial crisis hit Kenya in both the short and long terms. The most immediate impact was the depreciation of the Kenya shilling relative to the US dollar. The shilling fell 3per cent in September and another 9per cent in October 2008. From an exchange rate of approximately 65 to the dollar for much of 2008, the shilling briefly

fell as low as 79 to the dollar in late October. Close observers attributed the change to speculation as to what economic conditions abroad will mean for Kenya in the longer term (Cormick, 2008, p. 1).

The Kenya Shilling weakened annually against the US Dollar and the Euro by an average of 0.9 per cent and 2.0 per cent, respectively as shown in table below. In 2008, the Kenyan Shilling notably weakened against the trade weighted exchange rate index by 18.0 percent, Euro by 21.4 per cent and the US Dollar by 23.9 per cent. The weakening of the Kenyan Shilling against the major world currencies during 2008 can partly be attributed to the global economic and financial crisis (Tabitha Kiriti Nganga and Gabriel Kirori, 2009).

Year	31st Dec. 2004	31st Dec. 2005	31st Dec.2006	31st Dec. 2007	31st Dec. 2008
1 US Dollar	77.3	72.4 (-6.5%)	69.4 (-4.1%)	62.7 (-9.7%)	77.7 (23.9%)
1 Pd Sterling	149.0	125.0 (-16.1%)	136.3 (9.0%)	124.3 (-8.8%)	112.3 (--9.7%
Euro	105.3	85.9 (-18.4%)	91.4 (6.4%)	90.2 (-1.3%)	109.5 (21.4%)
100 Jap Yen	75.4	61.7 (-18.2%)	58.3 (-5.5%	54.5 (-6.5%)	53.8 (-1.3%)
Overall weighted index 1982=100	754.2	623.7 (-17.3%)	639.6 (2.5%)	604.0 (-5.5%)	712.9 (18.0%)

Source: Kenya National Bureau of Statistics (Statistics, 2009)

The stock markets, and respective investors, recorded a sharp fall in the value of their investments and general financial net worth following the global financial meltdown. Stock markets fell by 21 percent in Uganda, 24 percent in the South Africa and 27 percent in Kenya between September 1 and November 30, 2008.

The global economic slowdown and the cash crunch hit businesses across all sectors, putting them under enormous pressure to cut back on expenses. In Kenya, a number of companies laid off workers. For example companies like Zain, Telcom among others retrenched a number of employees. This resulted into an increase in the pool of the unemployed (Wanjohi, 2011). According to the Central Bank of Kenya, Kenya's economy is primarily a rural agro-based with only a small minority of them within the population directly interfacing with the developed world. The main sectors that likely feel the impact include tourism and commercially-oriented agriculture such as horticulture, tea and coffee. Other effects were felt through foreign exchange volatility cost, and availability of inputs exchange

volatility, cost and availability of inputs and also the credit and trade restrictions (Mwega, The Effects of the Global FinancialCrisis: A Case Study of Kenya, 2007).

And according to the Deputy Governor of Central Bank of Kenya, he underlined that African markets so far had remarkably been resilient to the Global Financial Crisis, primarily due to the fact that its financial systems do not hold any of the "toxic" securities and debts that have precipitated and spread the crisis in the international financial system. The exception is Nigeria, whose financial markets are currently experiencing enormous strains due to both global and local market liquidity issues and high dependence on oil (Nyangito, 2009.)

Other costs and losses for Kenya were a slowdown in Foreign Direct Investments (FDI), a drop in the sale of exported goods and the inflow of remittances from legal and illegal migrants of the country who were living in the crisis stricken developed countries. Macro-economically the crisis manifested itself in mounting deficits in trade and payment balances, dwindling currency reserves, currency devaluations, increasing rates of inflation, higher indebtedness and soaring public budget deficits (Gurtner, 2010). Additionally the regression in economic growth entailed a sinking per capita income. The imbalance was and is still mounting. Net capital flows to the developing countries sank sharply. According to the World Bank, capital flows to the developing countries sank to USD 727 billion in 2008. Consequently, not only were the flows of portfolio and direct investments to the developing countries significantly lower, but commercial bank credits and non-bank financing were also reduced. Regarding foreign direct investment (FDI) in the developing countries, the United Nations Conference on Trade and Development (UNCTAD) posted a weak growth of 7% on a sinking curve for 2008 (Gurtner, 2010).

It is true that FDI which includes equity capital, reinvested earnings and intra-company loans, brings in financial resources for investment to host countries, it provides new technologies and may enhance the efficiency of existing ones. FDI facilitate access of export markets, thereby playing an important role in strengthening the export capabilities of domestic economies. However, during the global financial crisis there was a reduction in foreign direct investments as companies were hit by the crisis in one way or the other (Gishiwa, 2017).

Shortly before the G-20 meeting in Washington in November 2008[42] the World Bank estimated that a fall in growth of 1% would force 20 million people into absolute poverty. Six months later the World Bank predicted that the number of poor would rise further in half the developing countries. Among the low-income countries as many as one-third and in the countries south of the Sahara as many as three-quarters would be affected.[43] This means that the Millennium Development Goals faded into the distance for many countries. As a consequence there was social unrest in some countries (Gurtner, 2010). However it was expected Kenya's exposure to the crisis will be affected by the following key factors:

- Demand for Kenyan exports declined. The recession in North America and Europe triggered by the credit crunch did also reduce demand for Kenyan exports goods.

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[42] Read the Declaration of the Summit on Financial Markets and the World Economyi ncluding the Action Plan to Implement Principles for Reform, November 15, 2008 and Reforming International Financial Institutions. The Summit on Financial Markets and the World Economy set forth five principles for their reform: strengthening transparency and accountability; enhancing sound regulation; promoting integrity in financial markets; reinforcing international cooperation; reforming international financial institutions.

[43] World Bank GMR. 2009. Global Monitoring Report 2009: A Development Emergency Washington. http://www.worldbank.org/gmr2009 DOI : 10.1596/978-0-8213-7859-5

- Kenyan banks having deposits and placements in foreign institutions. Kenyan institutions also that did have credit lines with foreign banking institutions. The collapse of any of these institutions or the credit crunch hurt the economy.
- Kenyans living abroad remitted money home to support consumption, and for investment purposes. Indications from banking institutions showed that remittances declined as disposable incomes declined in the countries experiencing the global recession.
- Tourism industry got affected as tourists postponed or cancelled visits abroad on account of difficult economic conditions and uncertain duration of the economic recession. However, some recent data indicates that tourism was recovering.
- Kenyan exporters and importers use letters of credit issued by financial institutions abroad to facilitate trade between Kenya and the rest of the world. Since confidence in the market was at its lowest, the global interbank lending effectively was very minimal and affected both export and imports.
- The shilling depreciated to the US dollar between September 1 and November 30, 2008following pressure from the global financial crisis as foreign investors "fled to safety" while consolidating their finances to meet their obligations abroad.
- The stock markets, and respective investors, recorded a sharp fall in the value of their investments and general financial net worth following the global financial meltdown. Stock markets fell by 21 percent in Uganda, 24 percent in the South Africa and 27 percent in Kenya between September 1 and November 30.
- Kenya receives foreign assistance from overseas for official use to finance development projects e.g. roads, energy etc), and through NGOs to finance poverty reduction activities. This assistance declined due to the crisis (Nyangito, 2009.)

3.2.6 Impact upon the wealth gap and dependence on external financing

As in previous times of financial turmoil, the post-crisis period was characterized by (i) a surging asset prices that proved unsustainable; (ii) a prolonged credit expansion leading to accumulation of debt; (iii) the emergence of new types of financial instruments; and (iv) the inability of regulators to keep up. Cross-border spillovers intensified after the crisis broke because financial institutions and markets across borders were closely linked and risks highly correlated (IMF, 2009). Additionally one of the main reason why the Kenya's economy was and still is increasingly imbalanced is that the country relied and continue to rely more on importing too much and exporting too little. This made it vulnerable to shocks. The gap between imports and exports needed to be financed by financial inflows other than export earnings. Spending pressure arose more as the economic slowdown continued. Pressures for added social spending and an increase in debt-servicing costs all these was associated with currency depreciation and higher borrowing costs in both domestic and international markets could not be greater than expected. Contingent liabilities associated with support for domestic financial institutions and depositors were also higher (IMF, 2009).

The issue of trade globalization: This is two sides of a coin. Trade has been an engine for growth in many countries by entering into trade pacts that promote competitiveness. Nonetheless, high trade agreements and financial flows between countries, partly enabled by technological advances, were and are cited as driving income inequality. In fact the UN Conference on Trade and Development's The Least Developed Countries Report 2009, did argue for a new approach to governance in pursuing development.

The economic debts of the developing world will not be fully repaid, quite simply because the people who live in the developing world cannot afford to repay debts. The harsh reality of poverty in poorer countries was the initial stimulus for the loans. Those who live in the rich countries of the developed world can readily observe profound poverty: all who live in the

wealthy, industrialized nations do not have equal access to education, health care, good nutrition, and housing. The fact that these deprivations exist alongside great wealth is shocking, but they pale when compared to the scale of global poverty. The homelessness, illness, and suffering of the poor in the developed countries multiplied a thousand times. It did begin to reflect the scope of poverty in the world's poorest nations as well (Vincent Ferraro and Melissa Rosser, 1994).

Kommentar [J7]: Does this contain useful information which is not already contained in the previous chapter or is it just some reflection on the World Financial Crisis? I would cut this out.

3.2.7 Discussion

Kenyan debt situation needs to be considered on several levels:

- Historic dependence and continuation
- New Dependence (China), which is linked to the behaviour of African/Kenyan Elites
- Other external influences beyond Kenyan Control (World Financial Crisis)
  - ➔ Like her international obligations to other bodies and sovereign entities ie WTO

As to the former: There is entitlement for assistance, but the right one

As to the second: Kenyas elites need to seriously consider whether they want to be financially independent and then need to go the hard and tedious way of cleaning up corruption and collect revenue, perhaps with smaller benefits for themselves, but greater benefit for the country.

As to the third: The important issue is whether Kenya really wants to go its own way or whether it wants to join the neoliberal game, as moves towards the International Financial Center indicate as well as the promotion of financial titles which are known for being co-responsible for the 2007 Crisis.

On four; How does she want her commitments on market access and national treatment of the individual countries' and commitments to open markets in specific sectors — and how open those markets will be. Here its is about market access and market access-limitation. The account here is autonomy versus liberation?

3.3 Sustainability, coping with interest and repayment

3.3.1 Introduction

The IMF's assessment gives Kenya a clean bill arguing that by 2033, Kenya's external debt, which is on the rise at the moment, will decline to 8 percent of GDP -well below the 40 percent indicative threshold. Similarly, the analysis points to a possible rise in debt-to-exports ratio to about 90 percent by 2018 but then would gradually decline to 49 percent by 2033 (International Monetary Fund, 2013b).

According to Magdalene Mukami, the Kenyan government debt grows, and the economy falters, is a concern for the country's ability to repay its creditors As the data from IMF points out the challenge is huge. Data from the International Monetary Fund (IMF) shows that, by the end of November, Kenya had a public debt of $28.4 billion, a 20 percent increase from the $22.5 billion debt in the same period last year that is 2014 (Mukami, 2015).

In fact the argument by economist is that, the economy is not that stable and the shilling has weakened against the dollar, which means that paying the debt that Kenya has will be a challenge especially for the taxpayer.

Nonetheless, Kenya's external debt is rising against a slower growth in export earnings, a situation which may be detrimental to the whole external debt serviceability both in the short and long run. Added to this slow growth, Kenya faces even a greater risk in its external debt sustainability from the exchange rate shocks and less favourable terms on new public sector loans. Changes that may possibly trigger a slowdown to the economy include drought and its adverse effects on agriculture and hydropower, protracted slowdown in trading partner growth in Euro-zone and declining commodity prices that would lower earnings, reduction in remittances and FDI inflows (International Monetary Fund, 2013b).

Kommentar [J8]: Is there a contradiction between the first and second paragraph? If yes, it needs to be explained. Since those issues are to be discussed in the Results chapter I would tend to cut it here.

Debt repayment for Kenya has to be put in its historical perspective. In the late 1990s, the international community came up with the Heavily Indebted Poor Countries (HIPC) debt initiative that was meant to help them service their debts but Kenya was left out. Kenya, alongside Angola, Yemen and Vietnam, was said to have a sustainable debt level –its Net Present Value (NPV) of debt to export is more than 148%[44] which is technically speaking below that of sustainability requirements. If Kenya's debt level at the time was judged sustainable, then considerations of the UNCTAD's (2004) definition of debt sustainability were overlooked. By UNCTAD's definition, debt sustainability should be determined by considering whether a country can meet its current and future debt service obligations in full, without recourse to debt relief and/or rescheduling accumulation of arrears (Afrodad, 2005, p. 8). This should have allowed Kenya the HIPCs status especially reflecting on the recent debt burden. Kenya's exclusion from debt relief, however, implies that Kenya has been paying out more funds than it receives, thereby reducing domestic resources available for development. The huge burden of external debt constitutes a serious obstacle to growth and employment creation as investment resources have to be used to meet external debt obligations.

External indebtedness is not harmful per se. Nor does heavy external debt automatically imply that growth must necessarily below. What is detrimental for many African countries is their inability to meet current debt obligations—compounded by the lack of information on the nature, structure and magnitude of the external debt. A country may be able to export enough to generate the foreign exchange needed to buy the increasing imports associated with rapid growth and still service a high level of debt. Or it may be able to generate the necessary foreign exchange by borrowing more. But the concept of solvency implies that this is a process that cannot go on forever. Most of the countries classified as Heavily-Indebted Poor Countries (HIPCs) not only face solvency problems, but also face liquidity problems (Were M. , 2001).

It has become widely accepted that the heavily-indebted countries, particularly in Sub-Saharan Africa (SSA), require debt relief initiatives beyond mere rescheduling to have a turn-around in their economic performance and fight against poverty. In the late 1990s, this understanding appears to have stirred the international community to consider 'deeper, broader and faster 'external debt relief— such as the HIPC debt initiative.

But, before thinking about debt relief, one needs to think about public debt sustainability and whether a country is capable to both make use of borrowing and be capable of repaying those debts.

3.3.2 Public Debt Sustainability in Kenya

➔ Defining the term debt sustainability

[44] However, "Debt is considered sustainable when the ratio of the Net Present Value (NPV) of debt to export is more than 150%, or when the NPV of debt to revenues is more than 250%" (Afrodad, 2005).

We have to take note that concessional policies associated with foreign direct investment are the single largest drain on revenue for African countries. This partly occurs when investors are allowed duty-free imports on capital equipment. The immediate effect is that it denies governments much needed tax revenue and continually bleeds the country of foreign exchange earnings (Hambayi, 2016).[45]

Kommentar [J9]: We come to t hat in the laws, admin and results chapter!

Kommentar [J10]: In this chapter of yours you have a lot of content, but you do not explain what Public Debt Sustainability is. This is done in the chapter "underlying assumptions" Here you have to see whether you merge those two chapters or

The release of revised national accounts data, and prospective borrowings under a precautionary Fund arrangement for Kenya, indicates that; Kenya's risk of external debt distress remains low, while overall public sector debt dynamics continue to be sustainable. However, the recent pace of public debt accumulation has been rapid; while this is financing infrastructure that should address bottlenecks and boost sustainable growth, containment of the fiscal deficit now and further medium-term consolidation efforts are also needed to limit and eventually reverse the rise in public debt.

This Debt Sustainability Analysis (DSA) is based on macroeconomic assumptions that are consistent with the framework outlined in the accompanying staff report. Main changes compared with the January 2015 DSA update include (text table):

Table1.

Kenya: Selected Macroeconomic Assumptions

	2013	2014	2015	2016	Long term 1/
Real GDP growth					
Current DSA	5.7	5.3	6.5	6.8	6.8
Previous DSA (January 2015)	5.7	5.3	6.9	7.2	6.8
Primary Fiscal Deficit (percent of GDP)					
Current DSA	3.0	4.8	5.4	4.3	0.7
Previous DSA (January	3.0	4.5	5.1	3.8	0.7

[45] Africa needs billions of dollars to finance the Sustainable Development Goals. Its not clear where this money will come from. Trevor Hambayi, "The Conversation" | 21 August 2016 00:04 https://omigacouk.wordpress.com/2016/08/22/debt-dependency-cycle-in-africa/ or "How African countries can break the cycle of debt dependency" August 15, 2016 4.09pm https://theconversation.com/how-african-countries-can-break-the-cycle-of-debt-dependency-63536

2015)					
Non-interest Current Account Deficit (percent of GDP)					
Current DSA	8.6	10.2	9.2		
Previous DSA (January 2015)	8.4	8.3	6.8	5.6	

Source: IMF staff estimates.

1/ For current DSA update, average 2021-34. For previous DSA update, average 2020-34 (IMF, 2015).

Temporary delays in external debt service payments emerged in 2014–15 for Kenya, reflecting a coordination failure rather than inability to pay. The external arrears reported between July 2014 and March 2015 cumulated to around US$64 million, but were individually small—signalling capacity constraints at the National Treasury's Debt Management Office (DMO) and interagency coordination problems rather than an underlying inability to service external debt. All reported arrears have been cleared. The authorities are taking corrective measures to address the identified capacity and coordination problems (IMF, 2015).

Public debt has been increasing rapidly owing to infrastructure-related borrowing, but under program policies is projected to taper off in 2015–16. Kenya's overall public debt increased by Sh608 billion in 12 months through December 2016, data by the Central Bank of Kenya shows the underlining increased debt appetite for infrastructure development. The CBK's quarterly Economic Review report for the second quarter of 2016-17 financial year indicate the value of debt rose to Sh3.763 trillion from Sh3.155 trillion a year earlier. This means that debt has doubled during the current administration's first term, having increased by 98.94 per cent compared to Sh1.89 trillion the regime inherited in June 2013 (CBK, 2016). Further, the CBK data indicate that about 54.6 per cent of Kenya's national wealth, technically referred to as gross domestic product, being in debt compared to 45.8 per cent in the second quarter of 2015-16 fiscal years. For instance funds borrowed domestically increased 25.39 per cent year-on-year to Sh1.931 trillion by December 2016 from Sh1.540 trillion, while external debt grew by 13.45 per cent to Sh1.83 trillion from Sh1.62 trillion a year earlier (The Star Independent, 2017).

Kommentar [KJ11]: Check with the CBK second quater repeort for 2015/16

Overall gross public debt reached 53 percent of GDP at end-2014, owing to the $2.75 billion in sovereign bond issuances[46], and initial disbursements of the SGR-related loan from China's Exim Bank (IMF, 2015). Taking into account the frontloading of subsequent disbursements, overall public debt was projected to increase to 56 percent of GDP in 2015–16 (IMF, 2015). The deficit is significantly wider in 2014–16, reflecting a wider than projected current account deficit outturn in 2014, and additional frontloading of infrastructure-related imports in 2015 and 2016.

[46] The June 2014 issuance comprised two tranches: a five-year $500 million bond at a yield of 5.875 percent, and a 10-year $1.5 billion bond at 6.875 percent. In December 2014, Kenya added $250 million to the five-year tranche at a 5.0 percent yield and $500 million to the 10-year tranche at 5.9 percent

3.3.3 Sustainaility of the projected baseline path

The LICDSA framework currently remains relevant for Kenya, since a majority of its external public debt remains concessional or semi-concessional. However, the 2014 sovereign bond issuances and the commercial component of the SGR have resulted in a significant rise in the share of commercial external debt.

The projected debt path remains below the EAC public debt convergence criterion (ceiling of 50 percent in PV terms), albeit with tighter margins than previously projected. Significant shocks could take the debt path above the 50 percent ceiling.

The projected debt path is also below the LIC DSA public debt benchmark for those countries whose, Country Policy and Institutional Assessment (CPIA) Index (average score in 2012–14: 3.84) (CPIA) score for quality of policies and institutions is assessed as strong (74 percent of GDP, also in PV terms) above which the risk of public debt distress is heightened. However, this public debt benchmark applies conceptually to the widest possible coverage of the public sector, and ideally should include the obligations of regional and local governments, and government-controlled enterprises (especially in cases where the government owns more than half of the voting shares). The measured public debt path excludes legacy debts of the pre-devolution county governments, whose size is not yet fully clear. In addition, public debt should include planned annuities intended to finance road construction: although the annuity obligations may not necessarily be classified as debt under local law, they nevertheless represent public debt obligations.

Excluding publicly guaranteed external debt, contingent liabilities are not conceptually part of the public debt but do represent a source of fiscal risk. The extent of contingent liabilities stemming from Public Private Partnerships (PPPs), mostly in the energy sector, is not yet fully assessed (IMF, 2015).

3.3.4 Discussion of “permanent” and “current” resource gap

It is often argued that, in considering the resource gap or primary fiscal gap, one should look not at current levels of real interest rates and GDP growth rates and current (cyclically unadjusted) values of trade and primary balances but rather at the medium/long-run levels of real interest rates and growth and structural values of trade balances and primary balances, i.e. stabilization of the debt to GDP ratio should be considered in a medium term perspective, not a short term one. In other terms, one should look at the “permanent” rather than “current” primary gaps and resource/trade balance gap (Roubini, 2001).

There are arguments in favor and against using permanent rather than current gaps. In normal circumstances where insolvency is not at stake it may make sense to look at the permanent gap; if growth is low or negative for a year or so and real interest rates are temporarily high for some reason while a recession is leading to a transitory primary deficit or a temporary trade balance improvement, it does make sense to look at the permanent values, rather than current/cyclical values of these variables.

But in situations where structural factors (such as a persistently weak fiscal position, or an overvalued currency) are leading growth to be low or negative (in the absence of a policy/currency regime change), are leading real interest rates to be very high because the country is deemed to be borderline insolvent and leading primary deficits to be high because of structural impediments to growth or trade balances improved because of structurally depressed imports (with growth being structurally low or negative), it makes more sense to

look at the "current" gap rather than the "permanent" one as the permanent one cannot be achieved without a major change in regime (be it the currency regime or the stock of debt of the sovereign) (Roubini, 2001). This is important for the case of Kenya that has had over three years of negative growth and where real interest rates are extremely high given the market belief that the country is on a growth trajectory.

3.3.5 Pros and cons of the "Gap analysis"

While the "practical criterion" for foreign and public debt sustainability (a measure of the primary gap and the trade balance gaps) provides as useful benchmark (i.e. debt is not sustainable if its ratio to GDP is growing over time without bounds), it does not directly provide a tool to assess whether a certain stock of debt is sustainable or not. As long as the debt ratio (to GDP) is stabilized over the medium term, it is considered as sustainable regardless of its level.While the practical criterion provides a normative rule (how much a trade surplus or primary surplus is required to close the resource or primary gap), such debt stabilization goal may not be realistically achievable if the initial level of the debt is too high; in that case, the country/government may not be able to close the resource/primary gap over time and debt reduction may be required (Roubini, 2001).

Kommentar [KJ12]: Visit the lates t definition and what UNCTAD says or IMF undrstanding.. How does the country deal with the other issue of Intewrnational Sovereign Bonds? The new tricky on the continent of investing in properties or companies that under perfom ing and therefore undervalued?

In other terms, the initial debt to GDP ratio may be so high that, given the expected long-run values of real interest rates and growth rates, the trade surplus or primary surplus required to achieve debt ratio stabilization may not be economically and/or politically sustainable. For example, foreign debt may be so high and the interest rate on it so large that the country may be unable to have a trade surplus large enough to service such debt in a way that stabilized the debt ratio. Achieving the required trade surplus may imply a draconian cut in domestic private consumption or government consumption (public services) or private investment that may not be economically/politically feasible. Similarly, achieving the required primary surplus that stabilizes the public debt ratio may imply a draconian cut in government spending or increase in public revenues that may not be economically/politically feasible.

Difficulties in deciding what is draconian, i.e. "politically"/"socially" feasible or not should not be underestimated but, as discussed below, there are ways to make such an assessment. Comparison of current growth rates, interest rates and primary/trade imbalances with their historical averages may provide a sense of what is realistically feasible. The discussion above suggests that, in assessing sustainability, one should look at both the primary/resource gaps and the debt ratios (appropriately scaled) (Roubini, 2001)

3.3.6 Discusions

This DSA update finds that Kenya remains at low risk of external debt distress. The recent emergence of temporary external payment arrears do not reflect an underlying inability to service debt and so do not change this conclusion, but do signal a need for prompt action to strengthen capacity at the Debt Management Office as well as interagency coordination. Standard stress tests suggest scenarios in which external debt would increase, but remain within sustainable bounds. Under such stress tests, a large exchange rate shock represents the largest upside risk to external debt. At the same time, Kenya has strong market foundations and long-standing sound macroeconomic policies—absence of price controls, flexible exchange rate and interest rates, limited budget subsidies—which give it scope to respond to shocks.

Overall public debt remains sustainable, though fiscal policy efforts are needed to ensure that the recent increases taper off. The baseline public debt path remains consistent with the EAC convergence criteria and below the relevant public debt benchmark, subject to coverage

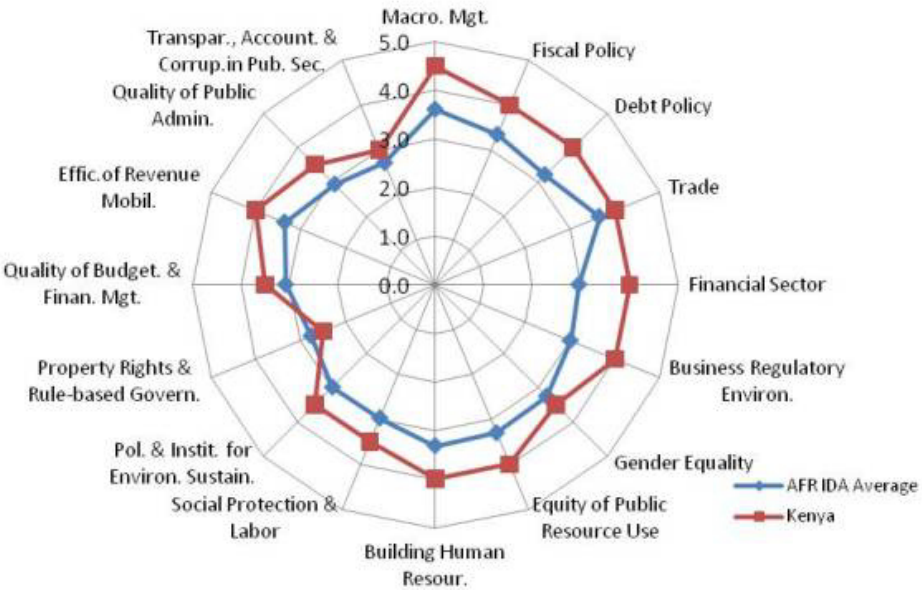
issues including outside the national government. Recent increases in public debt reflect increased borrowings to address infrastructure needs, and temporarily high primary deficits. Standard stress-testing scenarios show that if the primary deficit were to remain at current levels, public debt would remain on an upward path. These scenarios are more pessimistic than the authorities' stated policy intentions—which are to reduce the primary balance in the medium term consistent with the convergence criteria for the EAC monetary union—but also highlight the need to follow through on the intended medium-term fiscal consolidation.

As noted in the previous DSA update, risks to debt dynamics are to the upside in the near to medium term. In the near term, the fiscal deficit and borrowing needs could widen further if execution rates on foreign-financed projects (for which debt has been contracted but not disbursed) rise faster than expected; if management of the devolution process falters and the new county borrowing framework lacks sufficient safeguards; and/or if risks materialize from contingent liabilities. In addition, the picture is particularly uncertain with regard to nongovernment external debt in view of long-standing data gaps that the authorities have begun to address; in the meantime, however, risks remain of an unmonitored buildup in external vulnerabilities.

In the medium to long term, however, natural resource discoveries represent positive potential. If confirmed as viable, resourced discoveries could translate into exports that significantly improve Kenya's external prospects, as well as an additional source of revenue. Prospects for viability could be tempered by the further declines in energy and commodity prices since mid-2015, especially if these are sustained.

The authorities agree with the conclusions of the DSA update. They concur that Kenya is at low risk of external debt distress. On this basis, they are requesting that the SBA-SCF arrangements discontinue the ceiling on no concessional external debt, in line with the Fund's new debt limits policy.

Gaphic 7 Kenya's Policy and Institutional ratings according tot he World Bank



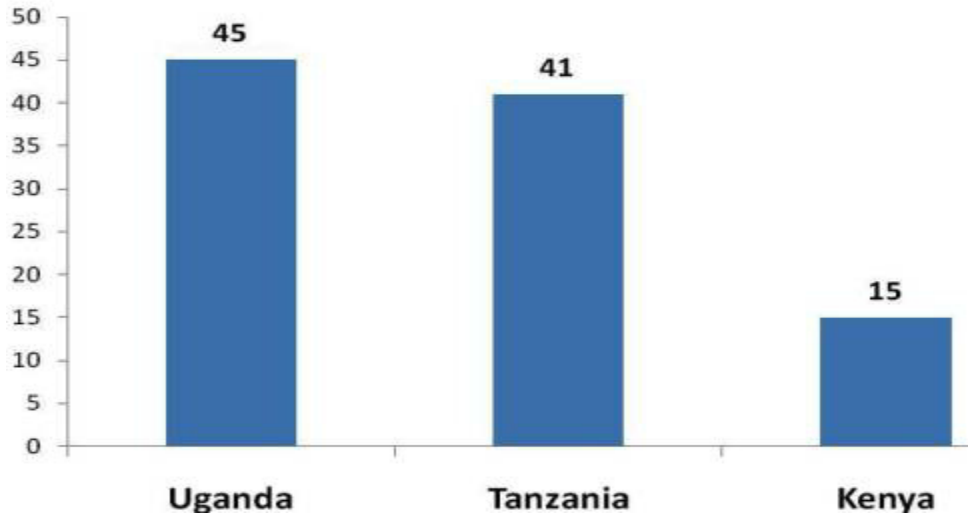
Source: http://blogs.worldbank.org/africacan/unleashing-kenya-s-potential

Fengler adds that Kenya's performance has been improving continuously since 2008. After stagnating from 2005 to 2007 and declining in 2008, Kenya has made headway in recent years improving its average rating from 3.6 to 3.8 a substantial improvement by CPIA[47] standards! But there arose certain myths about the country in so far as foreign aid is concerned.

Myth number one; Kenya needs donors to finance its budget. Kenya doesn't really need donors – although it certainly could use donor funds to bolster its development spending, as many emerging economies have demonstrated. Kenya is not aid dependent. Only some 15 percent of Kenya's public expenditures are foreign-financed, compared to more than 40 percent in other EAC countries (see figure). Kenya boasts one of the strongest revenue performances in Africa and most of Kenya's public services are financed with Kenyan taxpayer's money (Fengler, 2011).

[47] Every year the World Bank rates developing countries on 16 criteria covering four broad areas that shape their development prospects: macroeconomic stability, structural policies, social and environmental policies, and governance. The resulting ratings – on a scale of 1 to 6 – largely determine the way the Bank allocates its soft loans and grants.

Gaphic 8 ???



Source: World Bank staff estimates (Fengler, 2011)

Myth number two: Kenya's financial management systems are too weak to permit direct budget support. Donors typically channel their resources in two ways: project financing, which is tied to a specific activity (such as constructing a road or energy plant), or budget support, which is a direct infusion of cash into the Treasury in support of government spending through the national budget. Most developing countries receive a combination of project financing and budget support. Even countries with relatively weak governance, such as Afghanistan, Iraq or Burundi, have benefitted from budget support in recent years. But Kenya, even though it performs better than its peers on most public financial management benchmarks, has been left out (Fengler WolfGang, 2011).[48] Clearly, there are still major weaknesses in Kenya's budget system, and many of these have in fact been exposed by Kenyan institutions. The sticking point for donors is their perception that "corruption with impunity" still flourishes in Kenya, despite a public financial management architecture that has been greatly improved over time.

Myth number three: to deliver outcomes, make your projects small and "ring-fence" them tightly from government processes. Small projects can deliver many benefits. They can spur innovation and reach isolated communities. But they also contribute to aid fragmentation, multiplying administrative costs and complicating donor coordination by recipient governments. Moreover, they are almost never able to achieve transformative change. Unfortunately, although aid volumes have been growing in recent years, average project size has been shrinking (Wolfgang Fengler and Homi Kharas, 2011).

Thus, ring-fencing donor funding almost guarantees that even successful projects will leave no lasting improvements in government capacity to deliver key services, since the government will have been bypassed rather than engaged in service delivery. Ring-fencing also won't help to ensure that development spending, on the whole, achieves better results

[48] See. http://blogs.worldbank.org/africacan/unleashing-kenya-s-potential ,

because money is 'fungible'. In Kenya, the health sector is still receiving a substantial amount of international support, most of which bypasses government systems. As a result, donors feel confident that their money is well-spent, but they are making no contribution to improving the quality of the much larger government spending in the health sector. In addition, large "off-budget" donor contributions to the health sector are freeing up government resources that might have been spent on health for other expenditures that may or may not be achieving results for Kenyans. By contrast, when donors provide funding that is on budget, their interests are aligned with the interests of Kenyan taxpayers to ensure that all resources are spent for the purposes intended.

3.4 To whom is debt owed and who profits?

An old and universally valid saying is "Somebody's wealth is somebody else's debt" – and vice versa. It is more difficult to establish a specific link between national debt and private and corporate wealth.

It is widely known that Kenya is indebted to external donors of money such as institutions like the IMF, the World Bank, but also or those banking and investment institutions buying bonds and obligations issued by Kenya on the international market. The interesting question here, as elsewhere, is: Who owns those banks and, therefore, profits from interest payments made by Kenya? At the same time, it is less well-known that even a wealthy state like Germany is indebted and here as well one might ask: to whom? Or, more provocatively: Who owns Germany?

External Debt in Kenya remained unchanged at 0 KES Billion in December from 0 KES Billion in November of 2016. External Debt in Kenya averaged 644.63 KES Billion from 2000 until 2016, reaching an all-time high of 1849.02 KES Billion in September of 2016 and a record low of 0 KES Billion in October of 2016. External debt is a part of the total debt that is owed to creditors outside the country (Central Bank, 2017).

Gaphic 9 Kenya Central Goverment External Debt

Figure 1 (Central Bank, 2017)

"Kenya still has a heavy debt burden and China's loans can bring debt to unsustainable levels," the World Bank warns in a policy research working paper titled *Deal or No Deal, Strictly Business for China in Kenya*. (DN, 2016). According to the World Bank

report, in the current financial year, Kenya's debt was the highest in the region, at Sh3.2 trillion, with more than 60 per cent of it being domestic. Further Treasury CS Henry Rotich in 2015 attributed the growth of external debt to the floating of an international sovereign bond worth Sh176 billion.

The outstanding domestic debt increased from Ksh 1,284,327 million as at end June 2014 to Ksh 1,420,444 million as at end June 2015, an increase of 11 per cent. Domestic debt accounted for 50 percent of total public debt. The proportion of Treasury Bonds in total domestic debt increased from 71.2 per cent in 2013/14 to 72.9 per cent in 2014/15 while Treasury Bills declined from 23.3 per cent to 22.5 per cent during the same period.

Commercial banks were the largest holders among all investor categories of public domestic debt and held Ksh 730,419 million (51.4 per cent) of the total domestic debt at end of June 2015 compared to Ksh 617,221 million (48.1 per cent) at end June 2014. The share held by non-bank investors in total domestic debt stock decreased marginally from 46.8 per cent in June 2014 to 44.1 per cent in June 2015. Kenya's outstanding external debt (including publicly guaranteed debt) stock rose from Ksh 1,138,505 million as at end June 2014 to Ksh 1,423,252 million as at end June 2015, an increase of 25 per cent. External debt accounted for 50% of total public debt (National Treasury, 2016).

Publicly guaranteed debt, which accounted for 4.0 per cent of total external debt as at June 2014, declined to 3.1 per cent at end June 2015 (bilateral creditors accounted for 89.9 per cent of the publicly guaranteed debt; multilateral, 10.1 per cent as at end June 2015. Multilateral creditors accounted for 48.1 per cent of total external debt while bilateral and commercial banks accounted for 31.3 per cent and 19.5 per cent respectively. Debt owed to suppliers' credit was low at 1.2 per cent as at June 2015 (ibid.).

3.5 The problem of ODA

A final issue is, as always when discussing the financial situation of African states, the question of Official Development Aid. Since it has been illustrated already that Kenya is not aid dependent the question is what best aid Kenya could get from other countries

Kommentar [J13]: All you have on this topic is discussion, not facts. What to do with it since we both agree that Kenya could use some assistance, but no ODA

➔ Are there other alternatives that kenya could take in form of aid? The issue of overreliance on Foreign Aid is it worth ?

3.5.1 Myths and reality

The main paradox of aid is that, despite increasing flows and more players, aid has declined in relative importance in most countries. Kenya is a case in point: there are many new players on the aid scene in Kenya and increasing aid fragmentation is a result.[49] In addition, Kenya has been exposed to a high degree of aid volatility due to the "stop-and-go"

[49] According to the World Bank Notes, by Wolfang Fengler and Homi Kharas "Delivering Aid Differently—Lessons from the Field". They argue that the multiplication of donors has led to greater fragmentation of aid into ever-smaller activities. But the fragmentation of aid comes at a heavy price. Each project must be prepared, negotiated, supervised, and reported on. Many projects create project implementation units and steering committees entirely outside existing bureaucracies. These structures incur substantial administrative costs and may weaken domestic institutions by poaching scarce staff from key government positions. One evident cost of fragmentation is the time government officials spend receiving high level delegations from donor organizations. www.worldbank.org/economicpremise

behavior of many donors. The relationship between the Kenyan government and the international community has often been contentious and is based on three misperceptions of the role of aid in East Africa's largest economy. Even before discussing let's talk about myths about Aid for Kenya.

The term 'aid' may, however, be a misnomer to the extent that it may suggest something that is free. But, aid can be free or not free. Free aid comes in the form of a grant; whereas non-free aid comes in the form of a loan. When aid comes as a loan, it can be concessional or non-concessional, depending on its terms. Most 'aid' to Africa has actually been in the form of loans (Kwakye, 2010, p. 1). Aid has also come with costs, including crippling debt and imposition of conditions that may not always favour Africa's long-term development interests. Furthermore, prolonged use of foreign aid has led to addiction from which Africa has found it difficult to wean itself. Also, aid has created moral hazard to the extent that it has bred complacency and apathy especially in seeking alternatives.

Discussion

- ➔ The main argument for official aid to Africa is to assist recipient countries fill their savings-investment gaps or their foreign exchange-trade gaps.
- ➔ But what about Official Development Aid, i.e. (unconditional) grants from developed countries to developing countries? Since the 1950s aid has attracted critics who claim that it is largely wasted and/or that it makes recipients more dependent by reducing growth and tax collection, and promotes corruption, a position also strongly advocated by the Zambian Economist Dambisa Moyo in her books, e. g. "Dead Aid." (2009).

Foreign aid represents an important source of finance for many countries in sub-Saharan Africa (SSA), where it supplements low savings, narrow export earnings and thin tax bases. In recent years the donor community has become more stringent about fiscal discipline and good policies, which has led to freezing of donor funds to governments that do not conform to aid conditionality's (Njeru, 2003).The Kenyan government has experienced such aid cuts in the past. The empirical results indicate that:

- the flow of foreign aid does influence government spending patterns
- there is a positive and statistically significant relationship between the share of government expenditure in gross domestic product (GDP) and the share of net disbursement of overseas development assistance (ODA)
- there is little evidence that aid leads to tax relief
- there are strong indications that the government renders aid fungible by financing recurrent expenditures

Three main arguments have been advanced to explain the disappointing results of most aid given to Kenya; (1.) aid is misallocated (donors give aid for strategic reasons to the wrong recipients), (2.) aid is misused (the government pursues non-developmental agendas) and (3.) GDP growth is not the right measure of aid effectiveness (International Monetary Fund, 2005, p. 4). The exposition of the anomalies implied in these three arguments is apt. First, while all aid effectiveness papers implicitly define the donors' objective as solely the promotion of economic growth or the reduction of poverty in the recipient countries, a parallel strand of

literature on aid allocation has shown that most donors often pursue a different underlying agenda and allocate aid also according to their own strategic interest.

If a significant part of aid is allocated for strategic purposes, no positive impact in terms of growth or poverty alleviation should be expected. Second, a number of studies on aid effectiveness in Kenya assume that the government shares the donor's officially altruistic objective. Many a times the government and a perfectly altruistic donor do have conflicting objectives, as the former represents a variety of stakeholders, including wealthy individuals who might influence the aid distribution. If foreign aid is misallocated and misused, then it cannot be expected to have a significant impact on growth. Third, aid effectiveness should not be measured by its impact on GDP growth. Aid could be increasing consumption rather than investment, which would explain the disappointing results of studies on growth, but still reduce poverty through either "higher consumption of the poor or greater provision of services to the poor.

The costs associated with aid fragmentation[50] can be grouped into three broad categories. The first is the increased transaction costs associated with numerous and diverse do-nor rules and procedures for managing aid projects and programmes. The second cost arises from the fact that in many cases, foreign aid projects are associated with large fixed costs and high returns to scale. These returns to scale are unexploited due to aid proliferation, and to the extent that projects are complementary, coordinated efforts may be needed to maximize the benefits from such projects. The third cost arises from the fact that aid fragmentation undermines the recipient's financial ability and administrative capacity for example by providing project rather than programme aid, generating a recurrent cost problem or by distorting the incentives faced by local bureaucrats by inducing them to focus on donor projects to the neglect of their other responsibilities. Amid a growing cacophony of donors, very little space is left for local agencies to build, coordinate among themselves and strengthen local governance (Mwega, A Case Study of Aid Effectiveness, 2009).

3.5.2 Discussion

A clear understanding of the aid environment and dynamics is necessary before postulating any reforms. From the outset, the lesson to be learned is that aid has two potentially conflicting objectives. The first being promotion of long-term growth and the reduction of poverty in developing countries. Second is the promotion of the short-term political and strategic interests of donors. It is not unusual, for example, that aid from OECD countries went to regimes that were political allies of the major Western powers, irrespective of their macroeconomic policy frameworks.

Aid dependency is an issue of concern for Africa — although in the short run, it is quite inevitable. While there is considerable country variability, the high aid dependency is a

[50] Fragmentation is a problem if there are high transaction costs, large economies of scale in projects, or high fixed costs. In essence, fragmentation describes aid that comes in too many small slices from too many donors, creating high transaction costs and making it difficult for partner countries to effectively manage their own development. OECD Journal on Development: Volume 10/1 Development Co-operation Report 2009. When aid comes from too many sources and is spread over too many programmes– when it is "fragmented" – it can create serious problems. Fragmentation is recognised as a real barrier to aid effectiveness in the 2005 Paris Declaration on Aid Effectiveness, which called on countries to ensure that donor efforts complement each other, and for donors to concentrate their aid and expertise where it can bring the biggest benefits. Feb 18, 2009

reflection of the low savings prevalent in our countries. It has serious implications for the sustainability of the development momentum and adds to the number of questions being asked about what is the optimum levels of aid and aid effectiveness? Without the reforms outlined above, aid effectiveness is likely to remain low and aid dependency perpetuated. Policy makers need to keep at the top of the agenda the issues of improving the efficiency and impact of public expenditures financed with foreign aid resources and "optimizing" aid's share in development expenditures, so as to aim at reducing aid dependency in the long run. The insignificant effect of Oversees Development Aid (ODA) on growth in the short run could be attributed to Dutch disease, volatility of ODA flows to Kenya and/or diversion of ODA resources into unproductive use (white elephants and wrong projects).Some of the projects funded through ODA do not provide benefits as expected as they die within the funding period(for instance, Tana delta irrigation project which was damaged by floods the same month it was completed) and therefore; sustainability of projects is key (Joseph, 2014). It could also be hypothesized that the insignificant effect of ODA on growth is due to allocation of more ODA to social sectors which contribute to welfare rather than economic growth. Kenya should focus on internal factors rather than external factors to stimulate economic growth. Given the negative effects of the debt burden on economies and the need to release resources, the issue of debt and dependency should be discussed more fundamentally from a political dimension and the perspectives of Africa's economic development.

In Kenya as in other emerging economies it is high time to rethink the old aid model, where the North channels money to the South to finance discrete development projects. Today, this model is increasingly irrelevant because strong growth in developing countries, including in Africa, has reduced the financial prominence of aid. Instead, aid should catalyze and leverage itself into larger transformative programs inside and outside government. Donors should not seek to build their own successes but instead to identify local success stories and help amplify them .In Kenya, the best way to do so is to use information technology, which can also create pressures to hold local leaders accountable. Big players with global experience should also focus on knowledge services to help governments leverage their overall development program. They should help out in the "machine room", behind the scenes, instead of building their own monuments.

Take a case of Eritrea. Perhaps a critical and non-prejudiced look at Eritrea's struggle with aid would help. Eritrea is often criticized for rejecting all aid. This is not true. Eritrea asks for and accepts aid that supports its development goals. Eritrea has strict guidelines on how and where aid money could be spent. Above all, Eritrea insists aid should not lead to dependence. But Donor countries and agencies have their own agenda. Donors seek to build their own success stories that fit their contributor's goals and agendas. To believe aid is good will money with no strings attached is foolish. There is no free lunch and Africans are better off without it. However, rejecting aid or putting limits on it comes at a price. Aid agencies were the first to tarnish Eritrea's image and call the country a beggar with an attitude. As the American saying goes, buyers be aware[51].

Taxation, combined with democratic institution, popular participation and empowerment is, in the view of this research, an adequate answer to the phenomenon of dependency, created and sustained by inadequate ODA policies. Thus, it follows that a state that relies on broadly levied taxes as its main source of financing will tend toward accountable and representative

[51] By Yemane Abselom on Mon, 11/21/2011. **Eritrea rejects Aid that breads dependence** But from my perspective, countries should neither isolate themselves from international developments nor become aid dependent. Fortunately, there are many countries in the world today where aid has been effective and reinforced government ownership. Please have a look at this Op Ed by our Managing Director in preparation of the Busan summit: http://www.project-syndicate.org/commentary/indrawati2/English Wolfgang Wolfgang

government. And we ought to understand that taxation is intimately linked to legitimization of the state. The way taxes are bone is always one way of knowing how state institutions are created. From this research, scholars have argued that aid may undermine the "social contract" believed to stem from broad-based taxation, and discourage the collection of taxes, and insulate the government from citizen pressure.

3.6 Conclusion

The research argues that on matters of debt sustainability, and Kenya's long dependence on foreign aid has created a moral hazard by breeding complacency and apathy in seeking alternative sources of mobilizing development resources. It is time the country broke this aid addiction, given its costs. Some financial engineering is all that is needed to seek alternative resources.

The first vehicle is the budget itself. The budget offers scope for augmenting the resource envelope. This requires both revenue and expenditure measures. On the revenue side, there is room to broaden the tax base by roping into the tax net, wealth tax, and gapping the loop holes on illicit financial flows and reducing exemptions, and enforcing compliance with taxation. On the expenditure side, there is a need for prioritization by curtailing non-essential spending to create space for priority spending.

The second vehicle is the domestic capital market. The domestic capital market can provide long-term funds for the budget and other developmental activities in the key sectors of the economy. Bonds could be issued by government, municipalities and the private sector. In this regard, it will be necessary to develop the necessary institutional infrastructure and legal framework. A stable macroeconomic and political environment will also be conducive for the market.

The third vehicle is remittances. Remittances have a vast potential as a source of development financing. Measures required to tap remittances fully for development include: offering terms that make it more attractive to route them through formal rather that informal channels; reducing remittance costs by improving the financial infrastructure and regulatory framework; and courting remittances through reciprocal bilateral arrangements.

The fourth vehicle is Diaspora Bonds. This can be used to tap resources from Africa's Diaspora populations. While allowing them to earn some return, they will also be contributing to the development of the continent. Diaspora bonds can be used to tap into the wealth of the African Diaspora and a return of flight capital held abroad by Africa's residents.

The fifth vehicle is future foreign exchange flows. This entails bringing these flows forward for today's development through securitisation. Such flows include export receivables, tourism receipts and remittances. In this case, African countries would pledge their future foreign-currency receivables as collateral to raise funds for today's development. It is important, however, that the resources are used prudently and, to the extent possible, for productive activities and not for consumption purposes.

The sixth vehicle are Illicit Financial Flows. This has two sides. The first is to stem capital outflows; the second is to recover stolen wealth hidden abroad. The first requires strengthening anti-corruption institutions to check financial abuse by political leaders and to institute strong punitive measures for offenders. The second calls for using vehicles established by international bodies working to recover countries' stolen assets, including the Stolen Assets Recovery (STAR) initiative of The World Bank and the United Nations Office on Drugs and Crime (UNODC). The STAR initiative also helps countries establish institutions that can detect and deter illegal flow of funds.

4 Illicit Financial Flows (IFFs)

4.1 Context and History

Due to global financial integration and technological innovation, nowadays an increasing number of options arise for wealthy and well-advised individuals or corporations to transfer money into secrecy jurisdictions a.k.a. tax havens where states cannot tax them. Those problems are discussed within the emerging concept of international Illicit Financial Flows, referring to financial transfers which are done illegally or illicitly both within and outside formal financial institutions. The concept evolved over time, starting 1989

> In July 1989, the leaders of the economic powers assembled at the G7 Paris summit decided to establish a Financial Action Task Force (FATF) to counter money laundering as an effective strategy against drug trafficking by criminal 'cartels'. Here began an international anti-money laundering (AML) regime. Since then it has expanded its scope to fight transnational organized crime and counter the financing of terrorism. During that time other illicit or unregulated money flows have appeared on the international agenda as well. Today, tax evasion and avoidance, flight capital, transfer pricing and mispricing, and the proceeds of grand corruption are seen as perhaps more detrimental obstacles to good governance and the stability and integrity of the financial system (Blickman T. , 2009, p. 3).

Tax related crimes were, for quite some time, not considered to be a predicate offence to money-laundering or part of IFFs, as has been detailed in the chapter on IFFs (G/VII/5.3.2). This had to do with the fact that some states were interested to keep advantages from tax evading and avoiding behaviour which is why, not surprisingly, Switzerland and the UK belong to the most outspoken critics of including tax evasion in money laundering regimes.

Another problem in this context is that there was an early multilateral basis for Anti-Money laundering regimes, providing a basis for internationally investigating and prosecuting money laundering offences, e.g. the 1988 Vienna Convention. Tax evasion was, on the other hand, primarily dealt with in bi-lateral Double Taxation Treatments whose prime purpose was, for a long time, to ensure that companies (and wealthy individuals) were not taxed twice.

This changed in the wake of the 9/11 attacks as well as the various data leaks such as Offshore, Luxembourg and Swiss Leaks or the Panama Papers. Now tax evasion is part and parcel of G20 and OECD discussions surrounding IFFs and also entered into some instruments underlying (predicate) deed preceding money laundering procedures.

As Blickman indicates: a common link to those crimes is the condition of its possibility, namely the global financial integration involving numerous options to transfer and hide money (see I/IV/5.3): The formal financial sector consists of those banks and financial institutions which are making headlines and are well known to many people. They are, at least to some degree, under the regulation of national and international law or, in the absence of laws, self-imposed regulations symbolized e.g. in stock exchanges. However, there are also financial transfers outside this regulated area in the so-called "shadow- banking" sector, where one finds hedge funds, private equity or other financial intermediaries. In addition to that are modern, decentralized systems such as Western Union or M-Pesa, more traditional banking systems such as Islamic banking, Hawala or Hundi banking, and classic courier systems – all of which, thanks to technological innovation, enable money transfers across

borders and around the world which are difficult to control by tax authorities. The use of tax havens is a cornerstone of today's system of illicit financial flows. By registering subsidiary companies, trusts, shell companies and other legal constructs it is possible to hide private and corporate wealth and assets in a way that tax authorities are no longer able to trace the beneficial ownership of wealth, thus being unable to determine the amount of taxes and identifying the tax authority in charge of collecting them.

But, of course, there are more weaknesses, deficits and instruments which enable and facilitate IFFs. (Elhiraika, 2014), for example, lists the following push and pull factors by including also tax havens, which are part of the present-day formal global financial system as a major reason

I. Poor governance
II. Weak regulatory structures
III. Tax incentives
IV. Weak capacities of authorities
V. Double Taxation Agreements (DTAs)
VI. Financial secrecy jurisdictions and/or tax havens

4.2 Kenyas importance

Kenya as a country, and Nairobi as its capital, is the financial hub for Eastern Africa. If offers everything for transfers of money, be it cash or electronic, what is possible and conceivably, both within the formal and the informal sector. The following, quite update passage from the INCSR gives an insight into the options, dimension and importance for the entire region:

> Kenya remains vulnerable to money laundering and financial fraud. It is the financial hub of East Africa, and its banking and financial sectors are growing in sophistication. Furthermore, Kenya is at the forefront of mobile banking. Money laundering and terrorism financing occur in the formal and informal sectors and derive from both domestic and foreign criminal operations. Criminal activities include transnational organized crime, cybercrime, corruption, smuggling, trade invoice manipulation, illicit trade in drugs and counterfeit goods, trade in illegal timber and charcoal, and wildlife trafficking… Kenya's financial sector supports 43 licensed commercial banks, many with branches throughout East Africa; 12 deposit-taking microfinance institutions, with 99 branches; 85 licensed foreign exchange bureaus, with Nairobi hosting 69 bureaus and Mombasa nine; one mortgage finance company; and 15 licensed money remittance providers, all located in Nairobi. There are three licensed credit reference bureaus and seven representative offices of foreign banks in Kenya. In 2014, Kenya's $58 billion in bank assets roughly equaled Kenya's nominal GDP and represented 61 percent of the total bank assets in East Africa. Although banks, wire services, and mobile payment and banking systems are available to increasingly large numbers of Kenyans, there are also thriving unregulated networks of hawaladars and other unlicensed remittance systems that lack transparency and facilitate cash-based, unreported transfers that the Government of Kenya cannot track. Foreign nationals, including refugee populations, as well as ethnic Somali residents (both foreign nationals and Kenyan citizens) primarily use the hawala system to send and receive remittances internationally. Diaspora remittances to Kenya are growing annually, contributing significantly to the country's foreign exchange inflows. In 2014, remittances to Kenya totaled $1.42 billion, and were at $1.4 billion between January and September 2015, with North America providing between 45-50 percent of all of these remittances and Europe and the rest of the world accounting for approximately 25 percent each. The 12-

> month cumulative remittance inflow through September 2015 increased by 7.7 percent over the previous comparable period (up from $1.4 billion to $1.5 billion).
> The Communications Authority of Kenya (CAK) reports that mobile phones have 74 percent total market penetration, with about 36 million mobile phone subscriptions in a population of approximately 45 million. Safaricom controls 67 percent of the mobile phone subscription market. The CAK also reports there are about 30 million internet users, which implies that 68 percent of the population has access to the internet. There are about 130,000 mobile-money agents in Kenya, most working through Safaricom's M-PESA system. There are over 10 million M-Shwari accounts, Safaricom's online banking service. One-third of all active M-PESA users are also active M-Shwari customers and 54 percent of M-Shwari accounts were held by customers without any other bank account. (Bureau of International Narcotics and Law Enforcement Affairs, 2016, p. 156f.)

Not surprising that those structures are also used for smuggling, money laundering and all sorts of economical crimes, tax evasion included.

4.3 Scope and concepts

4.3.1 Legal, illicit, illegal, criminal

There is no internationally accepted definition of IFFs so far, and there are even doubts, whether IFFs qualify as an area of scholarly and rigorous research, as has been indicated in the discussion of the most widely used definitions, namely that by GFI and the OECD in our Introductory chapter IV/6.1.1.

A most complex issue is the distinction between the legal, illicit, illegal and criminal aspect of financial flows, illicit being a category right in between the unequivocal legal and the unequivocal illegal. Following our analysis of concepts in I/IV/6.1.2, we define as "illict" an

> act/action/activity is not necessarily against the law, even though it may be something that some/most people do not approve of. An illicit love affair, for example, might be a love affair between a married man and an unmarried woman. Such an affair is no longer punishable by law, but it would probably be kept secret/hidden nevertheless, since many people in society would not approve of it. …

More to the point, as far as the misuse of legal regulation are concerned:

> a legal rule might be established for a very good reason, but unforeseeably tricky lawyers find loopholes by stretching the intention and interpretation of the rule in a way that "justifies" activities which were never meant to be permitted by the lawgiver. That way, a legal rule, instituted for a good reason, can be 'legally' abused for egoistic or other not-foreseen reasons.

This indicates, that as important as a legal determination of the letter and spirit of the law may be, also ethics, moral and a possible criminal intention need to enter the perspective: in chapter I/IV/6.1.4 we therefore argue

> an activity can be illegal or illicit, but the person acting has the best of all intentions for doing so. Here, too, a large grey area exists in cases where some people knowingly do something illegal, but for some higher good. A widespread problem is, for example, that some small business owners cheat on their tax bill in order to keep their business afloat and their labourers employed. ... The criminal intention behind an illegal deed is well informed and well aware of the illegal nature of its act and the criminal therefore intentionally wants to afflict damage to the community and to others for the sake of the advancement of his own egocentric personal or group interests.

4.3.2 "Damage to the common good"

Whatever we discuss and consider, therefore, it is important in our eye that not only something is "in accordance with existing legislation", a frequent excuse in the field of aggressive tax avoidance, but that it is also in the interest of the common good, i.e. the many, and not only in the interest of the few. Illicit financial flows defined like that, have in common the following points:

a. They directly damage the community by depriving it of revenue and resources which would be urgently needed to address issues of common (i.e. also in the interest of the wealthy and businesses!) interest, e.g. the maintenance of infrastructures, health care or education. b. They increase the tax burden on those who have to foot the bill. c. They distort market competition by offering advantages to those acting in informal market economies as opposed to those acting and paying taxes in the formal and legal economy. d. They advance the informal and criminal (e.g. the trafficking of drugs, arms and human beings) economy. e. Finally, these actions benefit primarily those who have already plenty and are able to pay expensive experts for advice.

More precisely, the following crimes are normally lumped together among the terminology of "IFFs":

- Corruption/bribery, as far as it is interfering with good governance (incl. Tax administration) or important market mechanisms (e.g. in the case of bidding procedures which then would endanger sound businesses and quality jobs),
- Money laundering,
- Trade mispricing and trade misinvoicing,
- Tax evasion and aggressive tax avoidance,
- Tax fraud, e.g. Turnover Tax Fraud,
- In literature, two more topics are linked to this debate, namely "mere" capital flight or the funding of terrorism. The first is of importance since this capital would be needed for local investment for jobs and infrastructure, the latter is growing in importance because it preoccupies authorities increasingly, while at the same time neglecting other areas of importance.

As will be shown further down, for Kenya even more issues need to be counted among IFFs, e.g. misdeeds arising in the area of wildlife and environment (#) (and Ponzi schemes?)

4.4 Examples from Kenya

In our introductory chapter IV/6.2 we presented and reported a number of "guesstimates" and studies trying to assess the extent of direct and indirect damage which IFFs do to developing countries in general and sub-Sahara Africa in particular. It seems to this research project, that Raymond Baker of the GFI is correct in his statement:

> Much attention has been focused on corruption in recent years, that is, the proceeds of bribery and theft by government officials. In the cross-border flow of illicit money, we find that funds generated by this means are about 3 percent of the global total. Criminal proceeds generated through drug trafficking, racketeering, counterfeiting and more are about 30 to 35 percent of the total. The proceeds of commercial tax evasion, mainly through trade mispricing, are by far the largest component, at some 60 to 65 percent of the global total (Global Financial Integrity, 2009, p. 1) .

4.4.1 Trade mispricing and misinvoicing

4.4.1.1 Structural background

For Kenya being an export oriented country, commercial and trade based IFFs are of great importance. Here, it is particularly difficult to mix malpractice up with totally legal activities such as transfer-pricing. Boyce/Ndikumana explain the difference as follows:

> Trade misinvoicing can be detected by comparing the invoices submitted to customs authorities in the exporting and importing countries on either side of a given transaction. In principle, the quantity and value of the goods should on both invoices, so that country A's recorded exports to country B are the same as country B's recorded imports from country A. In practice, however, there are often systematic discrepancies between the two. … Exporters may understate quantities or values, or importers may overstate them, as a means of capital flight. Conversely, importers may understate quantities or values – or, in the case of pure smuggling, not report them at all – to evade customs duty.
> Transfer pricing, in contrast, does not entail the submission of different information to the exporting country and the importing country. The same quantities and the same values – computed on the basis of the same transfer prices – are invoiced at both ends of the transaction. But the prices assigned for this purpose differ greatly from those that would have been paid in an arms-length transaction between different firms. Hence the scale of transfer pricing cannot be ascertained by trading partner data comparisons of the type used in capital flight measurement. … Strategies to combat both trade misinvoicing and transfer pricing related to international trade, and they often will involve international cooperation. (Boyce & Ndikumana, 2015, p. 396)

Kenya's tax loss from trade *misinvoicing* by multinational corporations and other parties could be as high as 8.3 per cent of government revenue, hampering economic growth and resulting in billions in lost tax revenue.[52] The net effect of the trade misvoicing means that Kenya has less to spend on education. Additionally, Alvin Musioma of Tax Justice Network (Kenya) says that, apart from IFFs, Kenya loses over Sh100 billion ($1.1 billion) each year from legitimate tax incentives and exemptions granted to multinational companies (Musioma, 2015). Of these, trade-related tax incentives were at least Sh12 billion ($133 billion) in 2007 and 2008. For instance in 2010/11, the government spent more than twice of its health budget on tax incentives. It is argued that many foreign companies invest in Kenya mainly for the reason of access to local and regional markets, political and economic stability and favourable bilateral trade agreements in the region. Only one per cent of the firms surveyed mentioned fiscal concessions offered to those operating in the EPZs as reason for setting shop in Kenya. They are an expense the country can do without.

There are four basic categories of trade misinvoicing: import under-invoicing, import over-invoicing, export under-invoicing, and export over-invoicing. Most trade misinvoicing is done with the knowledge and approval of the seller and the buyer in the transaction. The two parties, if they are not part of the same company, will agree to the misinvoicing and how they

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[52] See, Africa countries lose money through misinvoiced trade. Fraudulent Trade Transactions Channelled at Least US$60.8 Billion Illegally in or out of 5 African Countries from 2002-2011.http://www.gfintegrity.org/press-release/african-countries-lose-billions-through-misinvoiced-trade/http://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf

will settle the transaction outside legal confines, often through a deposit into another bank account (Global Financial Integrity, 2014).

Trade mispricing is affecting especially African states and one might guess a link to weak governance structures. In a report done specifically for African states, Kenya included, the researcher give the following tables as overview (Baker, Clough, & al., 2014, p. vi+vii):

Table 2Summary Annual Average Trade Misinvoicing Figures from 5 African Countries (2002-2011)

Table 1. Summary of Annual Average Trade Misinvoicing Figures from Five African Countries, 2002–2011 1/, 2/
(in millions of U.S. Dollars)

Country	Export Misinvoicing		Import Misinvoicing		Illicit Outflows	Illicit Inflows	Gross Illicit Flows
	Under-Invoicing	Over-Invoicing	Under-Invoicing	Over-Invoicing			
Ghana	568	-270	-464	221	732	707	1,439
Kenya	1,029	0	-438	42	1,071	438	1,508
Mozambique	140	-79	-247	119	259	326	585
Tanzania	0	-1,034	-11	828	828	1,044	1,873
Uganda	26	-46	0	813	839	46	884

1/ Data for 2011 for Kenya, Mozambique, and Tanzania was not available at the time of writing.
2/ A negative sign indicates an inflow; a positive sign indicates an outflow.

Table 3Summary of the Estimated Average Annual Tax Revenue Loss Due to Trade Misinvoicing 2002-2011

Table 2. Summary of the Estimated Average Annual Tax Revenue Loss Due to Trade Misinvoicing, 2002–2011 1/
(in millions of U.S. dollars or in percent)

Country	Average Government Revenue	Average Tax Loss due to Trade Misinvoicing	Tax Loss as a Percent of Government Revenue
Ghana	3,494	386	11.0%
Kenya	5,242	435	8.3%
Mozambique	1,793	187	10.4%
Tanzania	3,339	248	7.4%
Uganda	1,916	243	12.7%

1/ Data for 2011 for Kenya, Mozambique, and Tanzania was not available at the time of writing.

The situation is seen especially critical for Kenya which is seen worst of the five states under examination regarding the Failed State Index and second-worst regarding the Corruption Perception Index (Baker, Clough, & al., 2014, p. 19). The specific data for Kenya is as follows for the years where data is available:

Table 4 Kenya Trade Misinvoicing vis-à-vis the world, 2002-2010

Table 4. Kenya: Trade Misinvoicing Vis-à-Vis the World, 2002–2010
(in millions of U.S. dollars) 1/

Year	Export Misinvoicing		Import Misinvoicing		Illicit Outflows (A+D)	Illicit Inflows (C+B)	Gross Illicit Flows	GDP	Total Trade	Total ODA	Gross flows as percent of GDP	Gross flows as percent of Trade	Gross flows as percent of ODA
	Under-Invoicing (A)	Over-Invoicing (B)	Under-Invoicing (C)	Over-Invoicing (D)									
2002	1,698	0	0	45	1,743	0	1,743	13,150	5,361	393	13.25%	32.51%	604.24%
2003	1,084	0	-592	0	1,084	592	1,676	14,900	6,137	523	11.25%	27.31%	523.64%
2004	1,920	0	-861	0	1,920	861	2,781	16,100	7,237	660	17.27%	38.43%	590.76%
2005	846	0	-388	0	846	388	1,234	18,700	9,442	759	6.60%	13.07%	236.43%
2006	756	0	-143	0	756	143	899	22,500	10,748	947	4.00%	8.36%	115.77%
2007	702	0	-555	0	702	555	1,257	27,240	13,069	1,327	4.61%	9.62%	151.99%
2008	844	0	-1,095	0	844	1,095	1,939	30,500	16,047	1,366	6.36%	12.08%	203.10%
2009	715	0	-305	0	715	305	1,020	30,600	14,670	1,776	3.33%	6.95%	83.28%
2010	695	0	0	332	1,027	0	1,027	32,200	17,224	1,629	3.19%	5.96%	88.49%
Average	**1,029**	**0**	**-438**	**42**	**1,071**	**438**	**1,508**	**22,877**	**11,104**	**1,042**	**7.76%**	**17.14%**	**288.63%**
Cumulative	**9,260**	**0**	**-3,939**	**377**	**9,637**	**3,939**	**13,576**	**205,890**	**99,934**	**9,379**	...	...	...

1/ Outflows (export under-invoicing and import over-invoicing) have a positive sign whereas inflows (export over-invoicing and import under-invoicing) have a negative sign. Estimates of misinvoicing are based on export and import of commodoities reported by all member countries to the United Nations for publication in the Commodity Trade database (UN Comtrade). Captial flows due to trade in services are not included in the above estimates.

Besides insights provided by the comparison of balance sheets, there are also indications about the dimension of fraud by examples detected and investigated by authorities:

4.4.1.2 Cases

The Kenya Council for Employment and Migration accused cable firm Doshi of claiming tax refunds on products exported to East and Central Africa through its subsidiary Mestec Cables. Some of the goods were allegedly sold in the local market while in some instances it supposedly overstated the quantity of goods in its tax documentation. This in itself is an illegality. They illegally channeled export goods to the local market and later claim export levies reimbursement from KRA for goods to Tanzania, Uganda and others. KCEM wants top KRA officials to be sacked for the alleged loss of more than Sh30 billion by over 100 conglomerates. The lobby says that KRA officials have been colluding with firms to help them evade tax (Wasuna, 2014).

Kenya Revenue Authority (KRA) has been investigating a number of multinationals, including the country's three largest flower companies, for abusive transfer mispricing (Daily Nation, 2015).

4.4.2 Money laundering

Money Laundering is the process of making illegally-gained proceeds (i.e. "dirty money") appears **legal** (i.e. "clean"). Typically, it involves three steps: placement, layering, and integration. First, the illegitimate funds are furtively introduced into the legitimate financial system. Layering involves the wire transfer of funds through a series of accounts in an attempt to hide the funds' true origins. Integration involves the movement of layered funds, which are no longer traceable to their criminal origin, into the financial world, where they are mixed with funds of legitimate origin (West's Encyclopedia of American Law , 2008) (Twum-Danso, 2012).

What is mostly overlooked: Investing some money somewhere is NOT a crime, but business and investment. It becomes a crime once it can be proven that this money has a "dirty" origin – then both, i.e. the predicate offence and the laundering becomes criminal. Hence, the most crucial element of investigating money laundering is obtaining insight and clarity about the criminal nature of the underlying (predicate) offences.

The likelihood of money laundering increases with the available options to transfer money without too many questions being asked, and as has been indicated above (Kenyasimportance#), the availability and accessibility of options in Kenya is particularly large.

Two examples to illustrate the problem:

In 2015 for instance it was reported by a consulting firm that a number of buyers were trying to pay cash for top end real property in Nairobi (Damka Proproperties Consultants, 2016). This, in itself, is no crime. But: More recently, a case of the former Chairman accused of fraud arising after misappropriation of funds from Chase Bank by the Anti- Banking Fraud Unit. Here, the predicate offence was fraud.[53]

4.4.3 Piracy

There are rumours that Nairobi is target of proceeds arising from organized crime, e.g. by Somalian pirates, which then are invested into real property. At the same time, there are investigations by the World/Bank and Interpol arguing that the dimension here is grossly exaggerated and that the Nairobi Real Estate market largely drives because of banking credits, remittances and other legal practices. At the same time, the authors admit that those crime structures cause problems because of the increasing Khat-trade.[54] However, as in Germany, it can be assumed that authorities have only little insight in that which is going on "underground" and that they have even less possibilities to prove their suspicion. If one looks into case studies, e.g. two business men caught in Belgium and being involved in money laundering activities (not only the short version in the media but the more detailed one from the UN),[55] if one reads the US cable exposed on Wikileaks about a Kenyan Auditor revealing

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[53] http://www.nation.co.ke/news/Chase-bank-boss-Mohammed-Zafrullah-Khan-charged/1056-3991180-2h7xli/index.html

Read the court papers: Chase Bank wants chairman assets frozen after fraud revelations. http://www.the-star.co.ke/news/2017/04/13/read-the-court-papers-chase-bank-wants-chairman-assets-frozen-after_c1543171

[54] World Bank/Interpol (2011) Pirate Trails. TRACKING THE ILLICIT FINANCIAL FLOWS FROM PIRATE ACTIVITIES OFF THE HORN OF AFRICA. Retrieved 7 July 2015 from http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Pirate_Trails_World_Bank_UNODC_Interpol_report.pdf

[55] Oketch, W (2015, May 24) UN Report: How Kenya invited and hosted Somali pirates. In: Standardmedia. Retrieved 2 July 2015 from http://www.standardmedia.co.ke/article/2000163324/un-report-how-kenya-invited-and-hosted-somali-pirates. UN Security Council (2014, October 13) Report of the Monitoring Group on

money laundering at the Charterhouse bank,[56] if one listens to a Kenyan lawyer confessing his deeds[57] one might get the impression that there is much more going on than authorities will admit.

4.4.4 Bribery and Corruption

4.4.4.1 Anglo Leasing

A first case which gained international prominence was the Anglo Leasing and Finance in Kenya. The scandal is alleged to have started when the Kenyan Government wanted to replace its passport printing system, in 1997, but came to light after revelation by a government officer, in 2002. A sophisticated passport equipment system was sourced from France and forensic science laboratories for the police were sourced from Britain. The transaction was originally quoted at 6 million euros by a French firm, but was awarded to a British firm, Anglo Leasing Finance, at 30 million euros, who would have sub-contracted the same French firm to do the work. The tender was not publicly advertised, and its details were leaked to the media by a junior civil servant. The Anglo-Leasing sales agent was Sudha Ruparell, a 48-year-old woman who is the daughter of Chamanlal Kamani and sister of Rashmikant Chamanlal Kamani and Deepak Kamani. The Kamani family has been involved in various security supplies scandals in the past. In January 2006, the Anglo-Leasing Scandal was given fresh impetus through the publication of John Githongo's report. The new revelations indicate that Anglo Leasing Finance was just one of a plethora of phantom entities, including some UK companies, used to perpetrate fraud on the Kenyan taxpayer through non-delivery of goods and services and massive overpricing.[58]

4.4.4.2 Okemo-Gichuru

The second case involved the largest German Bank and relates to the former Finance Secretary from Kenya, Chris Okemo MP, and the former head of state-owned Kenya Power and Lighting Company (KPLC) Samuel Gichuru are accused of receiving 900 million Kenya shillings ($9.5 million) in kickbacks at KPLC between 1999 and 2002 and transferred them with the help of the Deutsche Bank via the Tax Haven Mauritius. Right now, Okemo is accused in 15 cases, Gichuru of 40 cases of bribery and money laundering, the case is ongoing. [59]

Somalia and Eritrea pursuant to Security Council resolution 2111 (2013): Somalia Retrieved from http://www.un.org/ga/search/view_doc.asp?symbol=S/2014/726

[56] Cable 06NAIROBI3217, CHARTERHOUSE WHISTLEBLOWER DETAILS MONEY LAUNDERING (2011, March 1). Retrieved 7 July 2015 from http://kenyastockholm.com/2011/03/01/wikileaks-releases-nairobi-cable-no-23-money-loundering-at-charterhouse-bank/

[57] Nasongo, W. (2011, March 5) Confession: Kenya Lawyer tells how he helped pirates. In: Al Shahid - English. Retrieved 7 July 2015 from http://english.alshahid.net/archives/18812

[58] (van der Does de Willebois & al., 2011) and https://en.wikipedia.org/wiki/Anglo-Leasing_scandal

[59]Charles Abugre: The world of dirty money. Pambazuka, Issue 540, 21.07.2011. http://pambazuka.org/en/category/features/75085, Galgallo Fayo: Okemo, Gichuru extradition case to proceed.

4.4.4.3 Official of the National Lands Commission

On 4 May 2017 "a top National Lands Commission official was…found with a whopping Sh17 million (163,540 USD) in his house during a raid by detectives from the Ethics and Anti-Corruption Commission (EACC). A senior EACC official told Capital FM News that they found $160,000 and Sh1 million in local currencies – in what they described as a major breakthrough in their investigation of skewed compensation of land for the Standard Gauge Railway." (Muga, 2017)

4.4.5 Theft: National Youth Service-Scandal[60]

In January 2017, several local and national bank officials including CEOs were arrested, accused of failure to report suspicious transactions linked to a scandal with the National Youth Service (NYS Scandal). The NYS has been a key priority for the Jubilee Administration's plans to address the issue of youth unemployment. It has thus been allocated significant budget for expansion to drive youth employment, training and improvement. This expansion, coupled with weak oversight, seemingly gave individuals within both government and the private sector opportunity to manipulate procurement rules and accounting systems in order to siphon an estimated KES 6.3billion KSh. The funds were siphoned from various state agencies to individuals through various local banks including Family Bank, Equity Bank and Jamii Bora Bank. The charges involved several counts of failure to report suspected proceeds of crime including gaps at the Central Bank of Kenya and the FRC. The bank officials were accused of failing to report unusual transactions relating to several personal and state-owned accounts including a Family Bank Account held by the Kenya Tea Development Authority. Meanwhile, 28 banks are under investigation of having assisted in the scam, and 40 businesses are under investigation of being shell companies set up to hide beneficial ownerships.

This theft speeded up the revision of the POCAMLA law of 2009.

4.4.6 Fraud: Ponzi schemes or pyramid companies

By definition, is a form of fraud in which belief in the success of a non-existent enterprise is fostered by the payment of quick returns to the first investors from money invested by later investors "a classic scheme built on treachery and lies" and is based on promoters seeking to exploit perceived loopholes in legislation

Kommentar [J14]: OK as a marker

Business Daily Africa, 05.02.2013. www.businessdailyafrica.com/Okemo-Gichuru-extradition-case-to-proceed-/-/39546/1685928/-/b1xs44/-/index.html.

[60] (2016, August 22) 11NYS scandal suspects charged with money laundering" http://www.the-star.co.ke/news/2016/08/22/11-nys-scandal-suspects-charged-with-money-laundering_c1407511
Njagih M. (2016November 27) National Youth Service (NYS) probe turns to Sh6.3b paid through 28 banks. In: Standard Media. Retrieved from https://www.standardmedia.co.ke/article/2000224870/national-youth-service-nys-probe-turns-to-sh6-3b-paid-through-28-banks

4.4.7 Poaching

Another category listed among IFFs is poaching and related IFFs, see, e.g. (Global Justice Now, 2017) by referring to UN categorization. Ibrahim Thiaw, UN Assistant Secretary-General and Deputy Executive Director of the United Nations Environmental Programme (UNEP), writes

> The scale and nature of this harsh reality is widely known. The current United Nations Environmental Programme (UNEP) environmental crime report pinpoints a number of international conventions and national initiatives that seek to address this reality. At stake is the financial loss running into billions of dollars that these environmental crimes cause, the ecosystem disruption, loss of biodiversity and crippling ecosystem services that underpin human wellbeing to build resilience economies and adapt to climate change. Globally, the cumulative monetary value of different forms of transnational organized environmental crimes is between $70 billion and $213 billion annually.[61]

Similar findings: UNEP and INTERPOL report "The environmental Crime Crisis" of 2014.[62]

Kenya appears to be facing an escalating poaching threat tied to domestic corruption, organized crime, and local poverty, as well as to cross-border Somali poaching gangs, including those linked to al-Shabaab, and other Somali militias. Statistics show that poaching in Kenya is steadily increasing, and Kenyan poachers are particularly notable for their high levels of violence when confronted with ranger forces. Shootouts, ambushes, and ranger casualties are no longer uncommon, while poachers appear equipped with increasingly better information, equipment, and weaponry. A significant amount of evidence suggests the collusion of Kenyan state, security, and political officials in the ivory poaching trade. Kenya's largest port of Mombasa is currently the continent's single most active ivory trafficking hub, servicing much of Central and East African poaching.

Kommentar [J15]: Which???

Kommentar [J16]: What evidence?

An estimated $29 billion a year was stolen from Africa in illegal logging, fishing and the trade in wildlife and plants

Kommentar [J17]: Source???

4.4.8 Tax related crimes

Central terms of tax related malpractice are: (see also I/IV/6.1.3)

- Tax Fraud: The core distinguishing feature of tax fraud is a taxpayer's intent to defraud the government by not paying taxes that he knows are lawfully due. Tax fraud can be punishable by both civil (i.e. money) and criminal (i.e. jail time and money) penalties. Tax fraud as a general matter is very difficult for the government to prove because they have the burden to show the court that the taxpayer has intentionally defrauded the government out of tax revenue. Proving that a taxpayer knowingly violated the highly complicated Internal Revenue Code is a very difficult task, so the government often chooses to pursue the taxpayer civilly for simply underpaying tax,

[61] http://www.un.org/africarenewal/web-features/critical-link-between-resource-plunder-and-illegal-trade-wildlife

[62] Compelte report: https://www.cbd.int/financial/monterreytradetech/unep-illegaltrade.pdf Summary findings: http://www.unep.org/newscentre/illegal-trade-wildlife-and-timber-products-finances-criminal-and-militia-groups-threatening-security

which does not require proving that the taxpayer intentionally underpaid their taxes. Tax fraud essentially entails cheating on a tax return in an attempt to avoid paying the entire tax obligation. Examples of tax fraud include claiming false deductions, claiming personal expenses as business expenses, and simply not reporting income.

- Tax evasion, the most widespread area of tax fraud. For example, income tax evasion occurs when a person intentionally does not file a tax return when they are required to in order for their tax filings to be complete and accurate. It usually involves paying less money for your taxes than you legally are obligated to.
- Tax avoidance should be distinguished from "tax evasion". While tax evasion is the unlawful act of trying to hide one's tax liability, tax avoidance, on the other hand, is perfectly legal, and simply involves using the tax laws strategically, to reduce one's actual tax liability as much as legally possible.
- "Aggressive tax avoidance" refers to the grey area of legal provisions and the intention of the legislator, meaning that a legal provision may become illicit once the taxpayer or his tax advisor stretches the letter of the law against its spirit, i.e. misuses it for practices which were not intended to be covered by the law when the legislator passed the law. This practice therefore implies the tendency to move from legal tax avoidance into the illegal or even criminal sphere of tax evasion or tax fraud.

As an example in case, the Charterhouse Bank Scandal can be referred to, which combined tax evasion with money-laundering.

4.4.8.1 The Charterhouse Bank Scandal[63]

Kommentar [J18]: Explain the footnotes content to me?

Three different audits undertaken between 2004and 2006 by the Central Bank of Kenya's due diligence team, investigations by PricewaterhouseCoopers, and the government's Joint Investigation Task Force all raised serious questions about the operations of Charterhouse Bank. They all found strong indications that the bank's clients were involved in both tax evasion and money laundering. The bank was also found to be violating the Banking Act and the prudential regulations issued by the CBK.

The PwC audit and the government's Joint Investigation Taskforce uncovered considerable evidence of activities suggesting that there was gross money-laundering at Charterhouse Bank. According to the CBK prudential guidelines of 2000, the following activities constitute suspicious transactions and may indicate possible money laundering ;Including; Account

[63] References to this document in these cables

06NAIROBI5077

07NAIROBI407

06NAIROBI4105

Retrieved from. https://wikileaks.org/plusd/cables/06NAIROBI4421_a.html

And: Kamau, John (2016, June 4) The information can be further be read from "Ten-year-old puzzle that was Charterhouse Bank" In: The Daily Nation. Retrieved from http://www.nation.co.ke/news/Ten-year-old-puzzle-that-was-Charterhouse-Bank/1056-3233030-136xk9k/index.html

activity e.g. large, frequent or unusual deposits, withdrawals, payments or exchanges of cash, Foreign currency or negotiable instruments which is not consistent with, or reasonably related to the customer's normal business activities or financial standing (AFRICOG, 2012)

In August 2004, whistle-blowers inside Nairobi-based Charterhouse Bank revealed to the CBK that Charterhouse had helped its clients conceal billions of shillings earned through tax evasion and money laundering over a five-year period. At the request of then-CBK Governor Andrew Mullei, and the late former Finance Minister David Mwiwaria authorized CBK to establish a special Joint Action Team chaired by the Kenya Anti-Corruption Commission (KACC). The Team included members from the CBK and the Kenya Revenue Authority (KRA), and its mandate was to investigate and compile evidence jointly to enable all three to use their various legal authorities to maximum advantage. The Team's November 2004 initial report to the Ministry of Finance on 85 suspect accounts confirmed the whistleblowers' allegations. In March 2006, CBK Governor Mullei wrote to then Finance Minister Kimunya outlining the allegations of massive tax evasion and money laundering. The letter recommended the Minister cancel Charterhouse's banking license. Shortly afterwards, Governor Mullei was charged with improper procurement procedures in hiring the very forensic investigators used to examine the Charterhouse accounts. He was suspended and his case remains in court (Wikileaks, 2006).

In addition to problems uncovered at Charterhouse, CBK's forensic auditors also found evidence of unrelated money laundering at five other banks in Kenya. Paramount Universal Bank was found to have laundered $32 million in the space of seven months. Melville Smith, the principle forensic auditor hired to unravel the Charterhouse accounts, reported to the USG in June 2006 that money was flowing from the Cook Islands through Kenya to New York and other destinations. One account showed suspicious transfers of $950,000 in March 2005, $760,000 in January 2006 and $400,000 in February 2006 to the Wall Street Banking Corporation in New York. The CBK and Ministry of Finance have not taken any action on this report, which Smith and investigative journalist Robert Shaw believe represent only the tip of a massive money laundering iceberg in Kenya (Wikileaks, 2006).

Smith told Emboffs in July 2006 that the flows indicate a thorough knowledge on the part of the perpetrators of Financial Action Task Force (FATF) and national reporting regulations. For example, Charterhouse transferred $500,000 to a temple in India in one day without notice by breaking up the transfer into 36 payments, all below the $10,000 ceiling. Smith also expressed concern about the high number of forex bureaus in Kenya and their likely money laundering role for narcotics revenues. He cited the example of Sterling Forex, which received its license in only a few weeks, instead of the usual long delay, and now moves Ksh 4 million ($14,000) per day.

Lack of Action by GOK Agencies

KACC stopped calling meetings of the Charterhouse Team after November 2004. The investigation stopped, and neither Mwiraria nor his successor, Amos Kimunya took any action. However, after opposition Member of Parliament Billow Kerrow publicly revealed in June 2006 the findings of the initial investigation, Finance Minister Kimunya temporarily closed the bank and the CBK appointed Rose Ndetho as statutory manager. Kimunya's June

27, 2006 statement to Parliament understated the magnitude of the scandal and claimed (unconvincingly) that Mullei's prosecution was unrelated to his pursuit of Charterhouse. However, investigative journalist Shaw informed the Embassy in September that Statutory Manager Ndetho had obtained access to Charterhouse General Manager Sanjay Shah's computer, which yielded evidence confirming the Team's initial report. Ndetho submitted her report to acting CBK Governor Jacinta Mwatela in the middle of August, and Shaw presumes Mwatela forwarded the report with recommendations to Finance Minister Kimunya. Kimunya was yet to take any additional action. Smith and Shaw speculate that Ringera, Kimunya and others were afraid of John Haroun Mwau, the reknowned narcotics kingpin and owner of both Charterhouse Bank and the Nakumatt supermarket chain. According to Smith, Shaw and other contacts, Mwau has a reputation for extreme violence when his interests are threatened. Smith and Shaw theorize that Mwau, through connections to a contact in the presidency was also responsible for Mullei's dismissal (Wikileaks, 2006).

The former, Kenya Anti-Corruption Commission (KACC) Chairman Justice Aaron Ringera testified in private about Charterhouse on August 17 before Parliament's Finance, Planning and Trade Committee. Unconfirmed Committee sources claim Ringera revealed that a local supermarket chain had evaded paying taxes amounting to Sh800 million ($11 million). Ringera announced on September 13 that KACC had obtained warrants to seize 78 bank accounts, but it is unclear if KACC has taken follow-up action. Parliament returned to session on October 2, but no MPs have announced plans to focus on Charterhouse (Ibid).

Courts Order Charterhouse Re-opened

Charterhouse management filed a suit claiming the CBK's actions were illegal under Kenya's Banking Act, and that the CBK-appointed statutory manager should be removed and the bank allowed to reopen. Courts in Nairobi consistently ruled against Charterhouse until September 22, when a judge ruled in favor of unnamed businessmen in Eldoret and ordered CBK to reopen Charterhouse. Statutory Manager Ndetho took advantage of the court's failure to serve her directly, and has not allowed transactions to restart. CBK Chief Bank Examiner Gerald Nyaoma told acting Econ Counselor Charterhouse could not pass any real examination and that the CBK would defy any court order to reopen it or give customers access to their accounts. He claimed the judge in Eldoret had ordered CBK not to pass any reports on Charterhouse to the Ministry of Finance, such as a request to close the bank permanently, and that CBK is appealing this too. Nyaoma referred to AML and bank examiner training he had recently taken in the U.S. and Canada, and said it had helped him better understand the high risks Charterhouse represented. He is working on amendments to the Banking Act that will strengthen Kenya's know-your-customer regulations, and transfer authority to close a bank from the Ministry of Finance to the CBK. .

Kommentar [J19]: Could it be shorter?

4.5 Quantification-"guesstimates"

One has to be aware that IFFs take place in the hidden and dark and that it is therefore extremely difficult to get any reliable insights. And: Given the different categories of IFFs, some are more easy to calculate than others. As Global Financial Integrity has a widely accepted method to calculate the extense of trade-based IFFs, other financial flows, taking

place in the shadow banking sector or via other money transfer modes outside the area of formal financial balance sheets and trade statistics are more difficult to quantify.

Two examples can be used to illustrate the range of calculations:

Table 5 Illicit Financial Funds ranking in the years of 2004 – 2013:

Nation	IFFs	Ranking
Burundi	$87m	124
Congo (DRC)	$225m	107
Djibouti	$375m	96
Ethiopia	$2,583m	46
Eritrea	$38m	133
Kenya	$83m	125
Rwanda	$359m	97
Somalia	$0m	147
Sudan	$1,311m	67
Tanzania	$482m	90
Uganda	$715m	78

(*In millions of U.S. dollars, nominal)*

Source 9: Global Financial Integrity December Report 2015 (MineBane, 2017)

Kommentar [J20]: I am sure that you do not have the same table in both publications!

➔ ***Kenya on rank 125?? This does not seem to be so alarming to me??? And the more current report coming only has a damage of 23,862 million per annum? Or is that only trade mispricing,while the previous with its 83 million per annum includes other IFFs?***

The next report is more current and illustrates the wide margin of variation which can arise, depending on the methods chosen:

Estimated IFFs for 2014

Country	Illicit Financial Flows				Trade Misinvoicing				BOP Leakages		Total Trade (millions of US $)
	Outflows		Inflows		Outflows		Inflows				
	Low	High	Low	High	Low	High	Low	High	Outflows	Inflows	
Kenya	1%	2%	11%	23%	1%	2%	7%	20%	0%	4%	23,862

Estimated IFFs for 2005-2014

Country	Illicit Financial Flows				Trade Misinvoicing				BOP Leakages		Total Trade (millions of US $)
	Outflows		Inflows		Outflows		Inflows				
	Low	High	Low	High	Low	High	Low	High	Outflows	Inflows	
Kenya	0%	1%	6%	14%	0%	1%	4%	12%	0%	1%	168,124

(Global Financial Integrity, 2017)

Nevertheless, there is wide agreement that IFFs indicate the enormous loss of developmental potential for developing countries, Africa in specific:

Kommentar [J21]: Is this true, given the caution one has to apply?

Recent research and attempts to increase transparency in international financial flows reveal the huge amount of private and corporate wealth kept offshore. Existing quantitative "guesstimates" vary widely, depending on their underlying methodological assumptions and accessed data bases; one finds figures describing annual losses between US$ 189 billion and EUR 1 trillion

Kommentar [J22]: Source???

By many accounts; about $50 billion is taken away from Africa yearly due to trade mis-pricing (Crystal Simeoni, Luckystar Miyandazi & Robert Mwanyumba, 2016). Estimates by the ECA place this figure to $60 billion based on a different data set and approach.[64] African gross domestic product would be at least 16 per cent higher were it not for illicit financial outflows based on conservative estimates.[65]

According to the East African newspaper, EAC, Uganda, Kenya and Tanzania have been losing $926 million annually in the past 10 years in domestic tax and tariff revenue as a result of illicit outflows of capital through trade misinvoicing (Among, 2014).

This is so damaging for Africa. One in 12 African children dies before their fifth birthday. Thirty-four million children are being deprived of a primary school education, and Africa has the world's lowest secondary school enrollment rates. Forty million young people are out of work on our continent. It is a tough time to be a young African. Meanwhile, offshore companies connected to 44 of Africa's 54 countries appear in the Panama Papers. Let there be no doubt, this is no coincidence (Byanyima, 2016). By 2030, Africa could have tens of millions of new stable, wage-paying jobs for these well-educated young adults. But for this to happen, economic growth has to be inclusive. Tax avoidance and evasion must stop (Byanyima, 2016).

Kommentar [J23]: This is a KEN report, therefore refer back to the sub-chapter where you dealt with education deficits in KEN.

All this cannot be outbalanced by developmental aid or other outside help: A more recent study named "*Honest Accounts 2017 - How the world profits from Africa's wealth*" reveals that African countries receive $161.6 billion in resources in form of loans, remittances and aid each year, but lose $203 billion through factors including tax avoidance, debt payments and resource extraction, creating an annual net financial deficit of over $40 billion (Global Justice Now, 2017). The research further states that:

Kommentar [J24]: I warned you about that one. If you insist putting it back please indicate that you know about the weaknesses, e.g. money which REMAINS in the countries!!!!!!!!1

African countries received around $19 billion in aid but over three times that much ($68 billion) was taken out in capital flight, mainly by multinational companies deliberately misreporting the value of their imports or exports to recuse tax.

[64] ECA, 2013.The State of Governance in Africa: The Dimension of Illicit Financial Flows as a Governance Challenge

[65] ECA and AUC, 2015: Report of the High Level Panel on Illicit Financial Flows from Africa

African governments received $32.8 billion in loans but paid $18 billion in debt interest and principal payments, with the overall level of debt rising rapidly.

Kommentar [J25]: This has nothing to do with IFFs, but dependence from outside aid.

And it is here, where illicit and illegal practice coincides with legal, but unethical practices by private and corporate wealth holder, depriving Africa of even more wealth, revenue and development potential:

Nick Dearden, the director of UK campaigning organisation Global Justice Now, argues that it's time to change the way the West talks and thinks about Africa. Some of this wealth leaving Africa is direct, such as $68bn in mainly dodged taxes. Essentially multinational corporations "steal" much of this – legally – by pretending they are really generating their wealth in tax havens. These so-called "illicit financial flows" amount to around 6.1 per cent of the continent's entire gross domestic product (GDP) – or three times what Africa receives in aid (Dearden, 2017). Then there's the $30bn that corporations "repatriate" – profits they make in Africa but send back to their home country, or elsewhere, to enjoy their wealth.

There are now around 165,000 very rich Africans, with combined holdings of $860bn. But, given the way the economy works, where do these people mainly keep their wealth? A 2014 estimate suggests that rich Africans were holding a massive $500bn in tax havens (Dearden, 2017).

Clearly, it is a multifaceted problem, requiring a multifaceted reply. At the same time it is clear that measures against aggressive tax avoidance and tax evasion have to be part of the solution.

Beyond that, illicit financial flows are not merely a loss in terms of revenue. The larger damage is that money is withheld from poor countries where it would be urgently needed for investment in infrastructure, businesses and the creation of jobs.

4.6 Curbing IFFs?

As indicated in I/IV/6.1, the wide range of definitions always poses the problem of how the problem of IFFs is best addressed. Should it be addressed "component by component",e.g. Money Laundering by Money Laundering provisions, Corruption by Anti-Corruption provisions, tax evasion by Anti-tax evasion provisions etc.

Or do IFFs need to be addressed as an ensemble since the damage developed countries in its entirety and have a common "condition of possibility", namely Financial Integrations and all instruments inherent to it to transfer and hide financial assets (see above#).

Another issue is that tax havens are not only exotic Caribbean islands, but also entities within the jurisdiction of developed countries, thus enabling transfer and investment of funds from poor countries to developed economies where they bring more profit. Research indicates that Africa looses billions of dollars every year, while the main beneficiaries are the USA, the UK and Germany. The latter is one of the reasons why fighting IFFs are so tricky since it would curb financial flows to those destination countries.

4.7 Focusing the research

As should be obvious: IFFs in its entirety are complex and would surpass expertise and resources of the researchers. Therefore it shall be attempted to concentrate on issues which are linked to areas which benefit the common good more than others (see above, #) and which are linked tax revenue relevant issues. For example:

As deplorable as Piracy, theft, or poaching and IFFs resulting from wildlife are, they are not within the core interest of this research. (Or: As worrying the ongoing success of Ponzi Schemes is, its major damage does not arise in the area of taxation, but the cheating and exploitation of good faith of simple people). On that background, the following areas are of major importance:

- Trade mispricing and misinvoicing seem to be from the research at first sight, but there are three important overlapping issues: First, this malpractice reduces the tax base and cannot therefore be captured by tax, customs and excise. It is an important area for KRA and asks for a lot of resources, the question being: Are those resources been used well? Third, the indirect damage to Kenya as a country is enormous since resources leave the country which otherwise could be invested and used to improve the quality of living. At the same time: While the loss of revenue due to smuggling or illicit trade within the informal sector is difficult to detect and is therefore an immediate case for police,[66] this is different will illicit practices committed by TNCs, whose malpractice could in principle be more easily detected if KRA had an unhindered access to accounts and balance sheets.
- Proceeds from bribery and corruption have to be part of the discussion since it impacts upon the transparency regarding asset ownership and the collection of revenue.
- Money laundering is a wide field and involves a large number of underlying offences, e.g. proceeds arising from Organized Crime in the field of arms trade, trafficking, drugs dealing etc. Here, the research focuses its interest upon corruption and tax related offences.

5 Conclusion

5.1 Reducing inequality and poverty

This research's' main goal is reducing poverty, and there admittedly many ways which might be best to achieve that.

Wealth, or more specifically, its uneven distribution, has become an increasing subject of debate over the past few years. Some, such as the controversial French economist Thomas Piketty, argues that governments should take action and levy higher taxes on the rich in order to re-distribute wealth[67]. Others, like Dr Pippa Malmgren, believe that higher taxes could

[66] For the dimension and extension here, see (Bureau of International Narcotics and Law Enforcement Affairs, 2016)

[67] Thomas Piketty's, Capital in the Twenty-First Century, 2 has acted as an accelerant fuelling the fiery public debate over increasing inequality in America and around the world. Piketty makes the provocative empirical claim that the rate of return to private capital inevitably exceeds the rate of economic growth (r > g) and thus

actually prove a barrier to economic growth, undermining the opportunity for wealth creation across every stratum of society. In the prevalent global capitalism, governments – and this is certainly true for the Kenyan – see it as their duty to create suitable conditions for economic prosperity for the country they represent. Large companies, previously trusted as stable employers, are constantly cost-optimizing their operations, which results in mass-scale layoffs and worsening global unemployment. Since less and less people will be able to enjoy secure employment, entrepreneurship is seen as an important agenda for battling economic decline and unemployment in the North and South alike. It is therefore very interesting to examine the forms of entrepreneurial activities as a complementing element of more traditional international development. Can entrepreneurship be harnessed to tackle un-employment and poverty? (Holst, 2015).

Out of this, other acts of philanthropy may follow when it comes to how the present system benefits the poor, such as Impact Investment, SDG, foundations, donations.

And yet: What way is seen to be the best is heavily contested:

5.2 The role of taxation

What (or what mix) is best remains to be seen as we go through this research, which is why taxation policy (politics, law and administration) and tax based redistribution is at the core of this research project.

Certainly, Tax administrations have to strive for "co-operative compliance" with wealthiest tax payers. And a growing number of tax administrations are setting up dedicated high net worth units which aim to gain a more comprehensive understanding of the affairs and behavior of HNWIs. The tax administrations hope that this will lead to significant improvements in compliance and a better understanding of the risks posed by the HNWI segment. According to the Consulting firm Ernst & Young, their views are that of course HNWIs are always free to determine their own appetite for risk. But as they navigate this complex environment and comply with global tax laws, close collaboration with subject matter professionals, many of whom are often former tax inspectors, can be a significant factor in helping to building improved relations with revenue bodies. In return, it will assist the revenue body to understand the issues affecting the HNWI, ensure they develop an appropriate risk rating, deploy the appropriate resources and reach the right tax conclusions in turn helping to meet the needs both of economic policy and of taxpayers (Ernst & Young, 2010, pp. 32-33).

Kommentar [J26]: I am not sure where this belongs. It could also be in the conclusion of chapter VI or go into VII

All the same: There is increasing acknowledgment that global tax justice is essential for developing countries to be able to raise more domestic funds, also called domestic resource mobilization(DRM) thus making it an integral part of the global agenda to achieve the United Nation's Sustainable Development Goals. Whilst the Panama Papers dealt mainly with rich individuals hiding their wealth, big multinationals have also made the headlines around the world. A study from the Institute on Taxation and Economic Policy, found that "virtually every state's tax system is fundamentally unfair, taking a much greater share of income from

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leads to growing concentrations of wealth among the richest members of society. Piketty also makes the normative case decrying high-end wealth concentration and prescribes a global wealth tax to alleviate this inequality.

low- and middle-income families than from wealthy families." The study adds that state and local tax systems are "indirectly contributing to growing income inequality by taxing low- and middle-income households at significantly higher rates than wealthy taxpayers (Robert, 2015)." In other words, it said the tax systems are "upside down," with the poor paying more and the rich paying less.

5.3 Wealth gap and power

This introductory paper indicates already, that there is a problem in wealth inequality and power and, possibly resulting from that, a violation of the Principle of Ability to Pay and as well as a violation of the tax principles asking for horizontal and vertical equality.

However, the extreme levels of wealth concentration occurring today threaten to exclude hundreds of millions of people from realizing the benefits of their talents and hard work. Extreme economic inequality is damaging and worrying for many reasons: it is morally questionable; it can have negative impacts on economic growth and poverty reduction; and it can multiply social problems. It compounds other inequalities, such as those between women and men. In many countries, extreme economic inequality is worrying because of the pernicious impact that wealth concentrations can have on equal political representation. When wealth captures government policymaking, the rules bend to favour the rich, often to the detriment of everyone else. The consequences include the erosion of democratic governance, the pulling apart of social cohesion and the vanishing of equal opportunities for all (Oxfam International , 2014). The impact of political capture is striking. Rich and poor countries alike are affected. Financial deregulation, skewed tax systems and rules facilitating evasion, austerity economics, policies that disproportionately harm women, and captured oil and mineral revenues are all examples. Unless bold political solutions are instituted to curb the influence of wealth on politics, governments will work for the interests of the rich, while economic and political inequalities continue to rise.

This massive concentration of economic resources in the hands of fewer people presents a significant threat to inclusive political and economic systems. Instead of moving forward together, people are increasingly separated by economic and political power, inevitably heightening social tensions and increasing the risk of societal breakdown (Oxfam International , 2014)..

5.4 The lack of transparency

Preceding the ability to taxis the inability of governments worldwide to have insight into the ownership of assets. This also applies to Kenya.

According to Swiss leaks[68], Kenyans have stacked $559.8M in the offshore account (Matthew Caruana Galizia, Rigoberto Carvajal, etal, 2015).

[68] The Swiss Leaks project is based on a trove of almost 60,000 leaked files that provide details on over 100,000 HSBC clients and their bank accounts. Explores the data to see how different countries compare, and find out more about some of the clients of the bank:

Draft version, not yet officially authorized for quoting.

Annex 1

KEY INDICATORS OF PUBLIC DEBT, 2012 – 2015					
INDICATOR	**Unit**	**June 2012**	**June 2013**	**June 2014**	**June 2015**
PUBLIC DEBT					
Total Public Debt (including guaranteed Debt)	Ksh million	1,622,801	1,894,117	2,422,832	2,843,696
% of GDP	40.7	42.1	48.0	49.9	
Total Domestic Debt	Ksh million	858,830	1,050,555	1,284,327	1,420,444
% of total debt	52.9	55.5	53.0	50.0	
Domestic Debt to GDP	%	21.5	23.3	25.5	24.9
Total External Debt (including publicly guaranteed Debt)	Ksh million	763,971	843,562	1,138,505	1,423,252
% of total debt	47.1	44.5	47.0	50.0	
External Debt to GDP	%	19.2	18.8	22.5	25.0
DEBT SERVICE					
Total Debt Service	Ksh million	113,644	145,228	160,600	253,271
• Domestic interest	Ksh million	82,339	110,184	119,200	139,727
	Ksh million	31,305	35,044	41,400	113,544

• External (interest and principal)					
• Total Debt Service as a % of Revenue	%	16.5	18.7	17.5	24.6
• Total External Debt Service as a % of Exports	%	6.3	6.6	7.9	21.6
NEW EXTERNAL LOAN COMMITMENTS					
• Average Maturity	Years	26.3	33.7	18.1	21.0
• Average Grace Period	Years	6.2	8.0	6.2	6.4
• Average Interest Rate	%	0.8	1.2	2.6	2.5
• Average Grant Element	%	65.8	68.6	63.9	63.2
DOMESTIC DEBT-new commitments					

Average Maturity	Years	5.3	5.2	4.9	5.3
DOMESTIC DEBT STOCK BY INSTRUMENT					
• Treasury Bills	Ksh million	132,047	267,211	299,406	318,929
%	15.4	25.4	23.3		22.5
• Treasury Bonds	Ksh million	686,951	744,174	914,762	1,035,662
%	80.0	70.8	71.2		72.9
• Others (Pre-1997 Government Debt, CBK Overdraft, etc.)	Ksh million	39,832	39,170	70,159	65,853
%	4.6	3.8	5.5		4.6
DOMESTIC DEBT STOCK BY HOLDER					
• Commercial Banks	Ksh million	411,867	524,505	617,221	730,419
%	48.0	50.0	48.1		51.4
• Non-bank Financial Institutions and Other sources	Ksh million	399,580	486,880	601,406	626,689

%	46.5	46.3	46.8	44.1	
• Central Bank	Ksh million	47,383	39,170	65,700	63,335
%	5.5	3.7	5.1	4.5	
EXTERNAL DEBT STOCK BY BROAD CREDITORS (including publicly guaranteed debt)					
Multilateral	Ksh million	455,077	511,791	597,340	684,631
%	59.6	60.7	52.6	48.1	
Bilateral	Ksh million	243,543	257,637	289,914	445,057
%	31.9	30.5	25.5	31.3	
Commercial Banks	Ksh million	50,540	58,928	234,799	276,937
%	6.6	7.0	20.7	19.5	
Export Credit	Ksh million	14,812	15,453	14,537	16,628
%	1.9	1.8	1.3	1.2	
Total	Ksh million	763,972.0	843,808.5	1,136,590.0	1,423,252
%	100.0	100.0	100.0	100.0	
GUARANTEED EXTERNAL DEBT STOCK	Ksh million	**47,383.4**	**43,537.2**	**45,221.1**	**43,933.6**
CURRENCY STRUCTURE OF EXTERNAL DEBT					
US Dollar	%	33.0	32.3	42.8	56.7
Euro	%	31.0	33.0	28.5	23.9
Yen	%	19.0	15.1	11.5	9.2

Sterling Pound	%	6.0	5.5	4.7	5.4
Yuan	%	4.0	5.7	4.8	4.3
Others	%		7.0	8.4	7.7

Source: National Treasury, 2016 Budget Policy Statement (Treasury, 2016)