

# Tax Justice & Poverty

Short Version of the final Synthesis Report



A research project conducted 2012-2017 by

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## Director's Preface

In 2008, the 35<sup>th</sup> General Congregation of the Society of Jesus (“Jesuits”), the highest decision making organ of this largest religious order of the Roman Catholic Church, passed a Decree entitled “Challenges to our Mission Today”. In it the delegates called, among others, for an improved international co-operation on research and advocacy. Jesuit institutions should ‘promote studies and practices focusing on the causes of poverty’ and pay attention ‘that research results and advocacy have effective practical benefits for society ... Advocacy and research should serve the poor’ (Nr. 35). An area for ‘special and privileged attention’ should be the engagement for and with Africa (Nr. 39). This was upheld by Decrees of the 36<sup>th</sup> General Congregation (2016) and its call for collective discernment, transnational cooperation and networking.

The Jesuitenmission in Germany, the Jesuit Centre for Theological Reflection in Zambia and the Jesuit Hakimani Centre in Kenya wanted to take up that challenge and initiated in 2010 an exploration into areas of mutual interest and concern. By 2012 it emerged that this could be a joint project into the complex relationships between “Tax Justice & Poverty.” This issue is even more challenging since so far there has been a focus on African mismanagement and misspending of funds due to bad governance, corruption and the like. This, however, is well researched and documented, so we did not feel the necessity to give it too much attention ourselves and rather, to focus on the taxation and collection capacities of our tax jurisdictions.

On the part of the African partners it was obvious that tax authorities in Kenya and Zambia were not adequately equipped to collect taxes needed for financing public tasks, including the support towards poverty reduction policies. One initial hypothesis was that, if African states were able to tax private and corporate actors adequately, they would no longer be dependent on Official Developmental Aid or bilateral and multilateral loans contracted from sovereign states and international capital markets. Through an efficient, effective and modernized taxation system which is broad-based, requisite resources for national development in the areas of major improvements in public infrastructure, and improved financing and targeting of poverty reduction strategies, accelerated development may be attained.

On the part of the German partner it was obvious that taxation policies over the past decades endangered the implementation of an important taxation principle, namely taxation in accordance to the ability to pay. Too many tax cuts and privileges were given to private and corporate wealth holders. Parallel to this policy public debt rose to over 2 trillion Euros and budgets financing infrastructure and the support of the poor were strained. One initial hypothesis here was that, if this taxation principle is restored, public debt could be repaid and also Germany would be able to meet the cost of major improvements in infrastructure and empower poor people to address structural poverty.

Accordingly, on account of the various factors and tangible taxation challenges as stated above there seemed to be adequate evidence of possible joint areas of co-operation. Work on the research commenced in summer 2013.

In the course of the research, initial research hypotheses were modified or discarded altogether, while other focal points of joint interest, most importantly the issue of Illicit Financial Flows, emerged and were incorporated into our proceeding.

Our research cooperation finds its conclusion in the publication of this paper, summarizing some of our findings and putting them into context and perspective. And as we hand over the results of our labour to the interested reader, we want to do it with two observations and hopes:

First of all, it is interesting and striking that there are fundamental similarities in key taxation problems across the three countries. As much as the three countries are geographically and economically different in the case of Germany/Bavaria, Kenya and Zambia, the three countries and tax administrations registered challenges in, to start with, the lack of transparency regarding holders of private and corporate wealth. There is – secondly – an overwhelming comparative tax knowledge of highly paid specialists, namely tax lawyers, tax consultants and tax auditors engaged by and working for private and corporate wealth holders, which is compounded by chronic understaffing and lack of requisite equipment and militates against efficient and effective collection of tax revenues. Tax administrations are, finally, severely constrained in their jurisdiction of operations on account of national sovereignty of other states and respect for international law and national boundaries, while international capital migrates easily between national states using many options which financial globalization and international instruments accord through sophisticated IT networks.

In our view, this Short Report serves for the first step, towards informing and alerting the readership about the need for international co-operation in the field of tax administration and tax justice. African states cannot resolve the challenges of tax evasion and planning on their own and with their own capacities only. This endeavour is highly dependent on the ongoing initiatives regarding transparency, as being started by the OECD's Base Erosion and Profit Shifting and Automatic Exchange of Information Programs and/or related international initiatives. Such an undertaking requires material, information and human resource linkages as well as capacity building of African tax administrations as a matter of urgency. Further, we also point out that Tax Jurisdictions must be autonomous enough from political and business interference if they are to have leverage over taxation policy implementation.

Therefore our hope is that this report will contribute to the dynamic gathering speed already in recent years, e.g. at the Addis Ababa Summit on Financing for Development or the UN Summit passing the Sustainable Development Goals, when a link was made between the development of poor countries and their ability to collect taxes and enforce existing legislation. We will be pleased should this report contribute towards the maximization of tax revenues collected through fair and just mechanism for purposes of development and poverty reduction across the face of our world, or, in the words of Pope Francis, our Common Home.

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## List of key abbreviations

AAAA: Addis Ababa Action Agenda

AEOI: Automatic Exchange of Information

BEPS: Base Erosion and Profit Shifting

CIT: Corporate Income Tax

DTA: Double Tax Agreement

FDI: Foreign Direct Investment

GDP: Gross Domestic Product

ICT: Information and Communication Technology

IMF: International Monetary Fund

IFF: Illicit Financial Flows

KRA: Kenya Revenue Authority

K: Zambian Kwacha (alternatively ZMW)

KSh: Kenyan Shilling

MNE: Multinational Enterprise

ODA: Official Development Aid

OECD: Organization for Economic Cooperation and Development

PIT: Personal Income Tax

SDG: Sustainable Development Goals

SME: Small and Medium Enterprise

SSC: Social Security Contributions

UHNWI: Ultra High-Net Worth Individual

USD: US-Dollar

VAT: Value Added Tax

ZRA: Zambia Revenue Authority

# 1 Introduction

This research took place in three countries: Germany, with a focus on the state of Bavaria,<sup>1</sup> Kenya and Zambia. It had its ups and downs, starting in 2012 with research hypotheses some of which were discarded, while others emerged and were followed through. This Short Report will not recount these developments, but will present the pertinent perspectives and insights coming up eventually.

The three countries are very different, as is illustrated by the following indicators:

**Table 1 Indicators of difference between Bavaria/Germany, Kenya and Zambia**

	Bavaria/Germany	Kenya	Zambia
Inhabitants	Ca. 12.6 million (2014, Bavaria)	Ca. 45 million (2014)	Ca. 14 million (2012)
Ethnic/language groups	Homogeneous	42	73
Size of Economy (nominal GDP)	EUR ca. 533 billion (2014, Bavaria)	USD ca. 69.0 billion (2015)	USD ca. 26.6 billion (2014)
Public debt (% of GDP, 2016)	68.1% (Germany)	55.2%	66.7%

**Source 1 See Synthesis Report, chapter 2**

There were discoveries capturing our attention: Despite those differences between our countries, there were striking similarities in problems, for example regarding the lack of insight into the extent of wealth ownership. If there are similar problems, we were wondering: Are there joint root-causes?

There were puzzling questions, for example when following the discussion about rising inequality: Why is there so much talk about income-inequality, but hardly any serious attempt to pierce to the heart of wealth-inequality, which in our view is equally worrying?

And there were complex questions, lacking an obvious answer, for example parallels in the behaviour of private, corporate and criminal wealth holders: all of them advance their interests by (mis)using components of Global Offshore Capitalism such as shell companies, trusts or foundations. Is there, nevertheless, a morally relevant difference in what they are doing?

Questions like these required in the end both empirical analyses and ethical reflection upon forces underlying global economic and political processes: For example, upon the norms and values behind the advancement of market thinking and competition into areas where this not

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<sup>1</sup> In Germany, tax legislation is a joint responsibility between the federal and state level, whereas tax administration is primarily in the hands of the 16 states of which Bavaria is one of the largest and wealthiest.



at home traditionally, or the maximization of individual and group interest rather than the increase of the Common Good of All etc.

## 2 Methodology

The research combined methods of quantitative and qualitative social research. On the quantitative side it means micro- and macro-calculations regarding the extent of inequality, capital flight or revenue development as well as the review of a wide range of literature, including for example books, academic articles, and publications of quality newspapers as well as questionnaires. Regarding tax data, the data bases are of varying quality: While there is plenty of material accessible in Germany (with restrictions regarding top income and wealth holders), it exists incompletely for some historic periods in Zambia and scantily for only 1% of the adult population in Kenya – the rest is intelligent guesswork and legwork, meaning interviewing experts.

This leads to the distinguishing mark of our research, namely the more than 100 extensive qualitative interviews with experts working in the field of tax revenue administration, tax policy, banking, auditing, wealth management, ICT, NGOs, churches or the legal profession: Given the secretive nature prevailing in the field of taxation, banking and financial flows, one of our main goals was to find out and compile practitioners' views upon the making of tax laws, of revenue collecting or tax-dodging related deficits via formalized and informal interviews and in the same process collecting suggestions on how those could be addressed and amended. The church's reputation for safeguarding anonymity and confidentiality enabled interview partners to express themselves openly, without fear that their views would find their way to state authorities.

For the sake of readability of this paper, only specific data and quotes receive proper referencing. For a more differentiated discussion please turn to the underlying Synthesis and Country Reports. Equally we ask you to note that behind all figures and numbers quoted in our reports, care was taken to assess strengths and weaknesses of varying methods and data-sets before selecting that which we present. Here, too, please be referred to our respective publications on the project website, most importantly:

- Methodology and core concepts: <http://tinyurl.com/TJP-Intro>
- German Country Report: <http://tinyurl.com/TJP-GER-CR>
- Kenyan Country Report: <http://tinyurl.com/TJP-KEN-CR>
- Zambian Country Report: <http://tinyurl.com/TJP-ZAM-CR>
- Synthesis Report: <http://tinyurl.com/TJP-Synthesis>
- Ethical papers: <http://tinyurl.com/TJP-Ethics>

Regarding the status of these reports, please take note of their date of publication, given at the bottom of the cover sheet, since some are right now still under elaboration and old versions may be replaced by more current ones.



# To see

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## 3 Points of Departure

### 3.1 Research questions and emerging issues

At the beginning of our research stood the desire to understand better the relationship between taxation and poverty with the main intent to find improvements in the effort to fight poverty. Regarding the latter, we did not bother too long with discussing differences between absolute or relative material poverty within or between nations. While “average income per capita” rises also if top-incomes rise over-proportionally fast, people at the bottom at the same time may suffer since that which they earn might not suffice for purchasing a daily meal in the world of real, inflation afflicted prices. Therefore, we adopted Amartya Sen's concept of poverty as deprivation of capabilities: While Sen agrees that no or low of income may be a major cause for poverty, he advocates shifting ‘primary attention away from *means* .... to *ends* that people have reason to pursue and, correspondingly, to *freedoms* to be able to satisfy these ends.’ (Sen, 2000, p. 94). This concept describes the situation not only of socially excluded individuals, but also marginalized groups and even nations. Such a definition makes it possible to comprehend that even in a wealthy country such as Germany people are deprived of their ability to develop potentialities and capabilities.

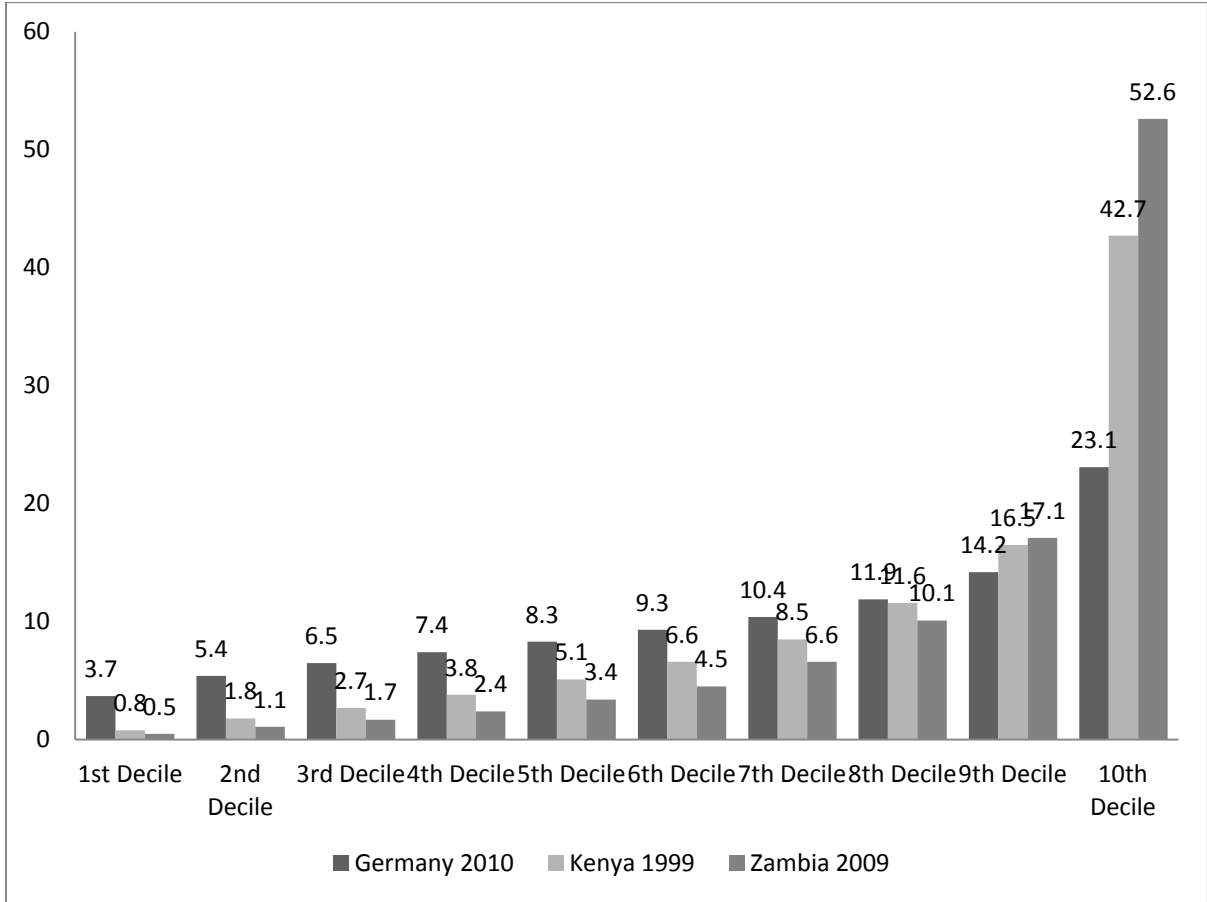
This leads to the difference between poverty and inequality: While inequality theoretically may rise while, in reality and because of a “Trickle Down” Effect, all may be better off than before, poverty is a status of deprivation which also involves socio-cultural and structural framework conditions, preventing people from obtaining income in the first place or being unable to move out of poverty. Given the difference between Bavaria, Kenya and Zambia, this is difficult to compare. It is more obvious in Africa, where parents cannot afford paying school fees, books or uniforms, children have to join work in sustaining the family, girls interrupt education because they are being married, or boys return from employment in town to take care of their family at home. But even in Germany the social status of the family into which a child is born nowadays determines to a growing extent the social status which this child itself will have later in life. At present, the reduction of poverty is not happening at an satisfying speed: Kenya is lifting only 30 people out of extreme poverty every hour, making it a poor performer compared to the neighbouring Ethiopia where 300 people get out of the debilitating condition per hour. Accordingly, Kenya falls short of the momentum required to eliminate extreme poverty by 2030 in line with the UN’s Sustainable Development Goals (SDGs).

Now to the difference between income and wealth inequality: To measure income is comparatively easy as far as income from (dependent) labour is concerned. Regarding income from wealth assets (capital or real property) measurement is more difficult since here ownership can be concealed and, with that, income deriving from that source. To measure the net worth of wealth assets is even more difficult because this depends on fair market values, expectations of profitability or currency fluctuations. It is very important to keep in mind that wealth comes along with social and political influence. For example: the owner of a business may

draw some income in form of dividends from shares or when he sells them. But the real point is the control of the course of business and the weight of that control within society, because of its importance for jobs and employment. Keeping this in mind, we looked at the “gap in income” and “gap in wealth”.

Regarding income inequality, one has to note that in Kenya and Zambia exists a notable divide between rural and urban regions and that not everybody has a monetary income in the first place. Bearing this in mind, the distribution of income among deciles is as follows:

Figure 1 Income inequality in Germany, Kenya and Zambia



Source 2 See Country Reports

The extent of inequality is most commonly illustrated by the Gini coefficient, whereby a figure closer to 0 indicates equality, a figure closer to 1 growing inequality in a society:<sup>2</sup>

- Germany: From 0.25 (1995) to 0.307 (2014)
- Kenya: From 0.42 (1994) to 0.445 (2012)
- Zambia: From 0.476 (1996) to 0.74 (2015)

Those figures indicate that, roughly for the past 20 years, the income gap is growing.<sup>3</sup> We also find that in our countries income at the top of the scale is growing faster than that of others.

<sup>2</sup> For the following figures see Synthesis Report, chapter 3.

Equally, if not more, alarming are developments related to the wealth gap, i.e. the gap in ownership of assets and debt, because ‘wealth – including saving, investments and property ownership – tells us about enduring power, stability and security’ (Collins, 2012, p. 22). At the bottom are people with no possession at all (subsistence farmer, working poor, people dependent from social welfare...) which are, in addition, often indebted. At the top are millionaires and billionaires whose income is not only rising faster, but is also nourished from sources unavailable to the ordinary citizen: Income from capital, real property, businesses, inheritance etc. We observe that the wealth gap in our three respective countries is growing, even though the extent is difficult to establish because of great deficits in transparency.

- In Bavaria, in 2013, tax administration knew of 2,512 “people of considerable income” (i.e. > 500,000 Euro) in the entire state, while Wealth Reports revealed for the Bavarian Capital of Munich alone 1,113 (Knight Frank, 2014) or 1,805 Ultra-Wealthy (UHNWIs) (Wealth-X & UBS, 2014) with disposable assets of more than 30 million USD.
- Also in Kenya, tax administration lacks knowledge about wealthy individuals: For the 2012 financial year, merely 100 taxpayers revealed that they earn more than 44 million KSh (ca. 430,000 USD), a further 1,000 that they are above 14 million KSh (ca. 135,000 USD) (Watoro, 2016). Knight Frank’s annual Wealth Report (2016) suggests that the number of USD-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. Nairobi alone is 6,200 millionaires (Chrispinus, 2017).
- Even for “poor Zambia”, Knight Frank reports a growth of wealthy people, its annual growth rate of 7% is only topped by Monaco’s 10% (2015, p. 18) and reports for Lusaka alone show 620 millionaires and 8 UHNWIs (Knight Frank, 2016, p. 65).

Looking at these differences in knowledge between tax administrations and Wealth Reports, we give more trust to the insights of the latter for a simple reason: wealth owners do not reveal their possessions to tax authorities, for this is against their interest. With wealth managers it is the other way round: The better they know about means and assets, the better they can invest and multiply them.

Due to the lack of transparency regarding asset ownership, we only have a Gini coefficient indicating wealth inequality inside Germany, which is at 0.76 and said to be one of the highest worldwide. The link between growing wealth and increasing influence upon social and political governance is more indirect in Germany, but openly visible in Kenya, where the “Wealth in Kenya” report 2014 revealed that 50% of Kenya’s wealth is in the hands of (former) politicians or their families (more below in 7.3).

In our research we placed a specific focus on the ownership of real property (i.e. real estate plus buildings): It is not only an increasingly popular and “crisis proof” asset for the wealthy,

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<sup>3</sup> Very recently there are indications that income inequality in Kenya and Germany is decreasing. We want to mention this, but otherwise ignore it: First, people especially at the lower end still have less net-spending power than 20 years ago, second, it is too early to tell whether this is merely a hiccup or the beginning of a reverse trend.

but also of major importance for the livelihood of poor people, e.g. farmers, in Kenya and Zambia and of major implication for costs of living as far as affordable rent and housing for the average citizen is concerned. Real property is, along with capital, an asset where tax policy makers and revenue agencies in our countries try to implement some form of wealth taxation. But, as it turns out, this is an undertaking of major complexity and modest yield (see below, 4.1 and 5).

Inequality, poverty, marginalization and depravation can be reduced by labour market and social policies, which are in place in our three countries. At the same time, only the German system of social security and welfare is able to care more or less adequately for all and is indeed reducing inequality to some extent. But even for Germany, OECD and others indicate that the redistributive effect is decreasing. The situation is more complex in Kenya and Zambia: As traditional structures of solidarity crumble, the new systems are not yet developed enough to care for all in need, which leaves a high burden upon the general taxpayer and government funded programs.

Next we want to point to the proportion between formal and informal employment in our countries:

**Table 2 Formal and informal employment (in 1000 and percent)**

	Formal employment	Informal Employment		Size of informal sector in relation to total GDP, country average 1999-2007
		Germans	Non-Germans	
	2016			
Germany (2012)	41,610	7,650	871	16.0%
		Rural/agriculture	Urban/non-agriculture	
Kenya (2013)	2,366.9	7,176.4	3,973.7	33.2%
Zambia (2012)	847.4	2,784.9	1,867.3	47.1%

**Source 3 See Synthesis Report, chapter 3**

The figures are important for two reasons: They illustrate first why there are so few registered taxpayers in Kenya and Zambia, and second how unfairly the burden of taxes and mandatory social security contributions is distributed: also the latter are borne to a large extent by those working in the formal economy. Even though also German society suffers losses from evaded taxes and SSCs, the combined burden upon formal employment in Kenya and Zambia is enormous. However, the causes underlying the informal economy in Kenya and Zambia and the “Shadow Economy” in Germany are very different, one being, among others, that the former exists because of lack of regulation, the latter due to over-regulation. Accordingly, solutions vary, which is why we eventually put this topic outside our joint reflection.

Another area of our original research interest was the question, whether and how a better taxation policy could reduce public dependence from external financing. Here we also found, that this is no issue of equal and comparable importance for our countries: While Germany has no problem in raising money at the international capital markets and, given its strong economic,

fiscal and financial performance, even earns money via negative interest by selling bonds and other state issued papers, dependence was, is and remains a problem for Kenya and Zambia, where continuing domestic and external borrowing limits governments’ room for maneuvering via the obligation to repay loans or pay interest rather than investing in public goods and services. Here, too, we decided to abandon a joint approach related to those issues, but to place rather emphasis upon the respective country contexts, developing from there adequate recommendations. We want to note, however, that in our countries private and corporate wealth holders profit is disproportionately high from public debt or debt related spending policies such as Private Public Partnerships. We also share the analysis of Thomas Piketty and others, that there is a parallel development in the increase of private and corporate capital on the one hand, and decline of public debt on the other.

A new area of mutual interest emerged in the course of our research cooperation, namely the issue of Illicit Financial Flows (IFFs). As a relatively new and emerging concept in the context of financial and development discourse, it is not yet conceptually defined but rather lumps together issues as different as tax evasion, trade misinvoicing, terrorism financing, proceeds from corruption, organized crime, smuggling, trafficking, and many other things. As a consequence, great care is needed when analyzing causes and solutions because of the huge grey area making it difficult to determine the border between legal, illicit and illegal practices. And yet we found IFFs to be an important concept to illustrate the magnitude of illicit, illegal and criminal flows between developing and developed countries: For example, there is growing evidence that more capital is leaving Africa than entering via ODA and FDI, and of course benefits and losses are unequally distributed, as can be shown in the case of our countries:

**Table 3 IFF in- and outflows (guesstimates)**

Germany, <i>inflow</i> only for money laundering	Kenya: IFF <i>outflow</i>	Zambia: IFF <i>outflow</i>
50-100 billion Euro	83 million USD	2.9 billion USD

**Source 4 see Synthesis report, chapter 3**

Most disturbing when reading this table is the fact that the average annual IFF outflows for Zambia surpasses the government’s annual budget, which in 2014 rates amounted to 2.7 billion USD.

However: besides absolute numbers, attention should be given to relations, especially when measuring IFF losses against the states’ GDP, that way revealing the proportional magnitude of loss for developing countries – as the following tables does only in view of tax avoidance:

**Table 4 Estimated revenue losses due to tax avoidance in 2013, IMF and the Governments Revenue Databases**

Germany				Kenya				Zambia			
IMF bn USD	GRD in bn USD	IMF % GDP	GRD % GDP	IMF bn USD	GRD bn USD	IMF % GDP	GRD % GDP	IMF bn USD	GRD bn USD	IMF % GDP	GRD % GDP
22.09	15.05	0.61	0.42	1.22	1.06	2.70	2.34	1.13	0.98	5.10	4.42

Source 5 (Cobham & Janský, 2017)

Accordingly, we also looked into IFFs leaving African countries, taking their course via Off-shore Jurisdictions and ending up in developed countries as a form of investment in shares, businesses or real property. Quickly we discovered that attempts to combat IFFs in all their forms reveal a particularly strong gap between political declarations of intent on the one hand, e.g. when talking about achieving the Sustainable Development Goals, and de-facto cooperation and support of developing countries by developed countries on the other.

### 3.2 Root causes

In the course of our research we could not ignore the fact that most, if not all, stated developments originate in, or are influenced by, a common set of values and norms: Anglo-Saxon Neoliberalism and its “gospel” of privatization and deregulation as well as cuts in public institutions and services. For many decades this paradigm shaped the institutional outlook all over the globe. The dynamic inherent in this form of “competitive capitalism” (M. Friedman) led to a number of political decisions resulting in today’s crises afflicting human labour, growing inequality, resource-overexploitation and climate change. We follow those establishing a link between neoliberal policies and the emergence of working poor, growth of the informal or shadow economy and decline of state power relative to financial and economical actors up to the point where Multinational Enterprises (MNEs) are in the position to enforce favourable treatment from governments. And while there is undoubtedly some progress in diminishing overall global material poverty and inequality, progress is not uniformly spread within and across countries. To put it very simply: China and other Asian countries are gaining, the middle class especially in developed countries is losing; and the gains for African countries remain modest. At the same time, the accompanying costs of this progress for present and future generations are high, especially in the area of social justice and ecological sustainability.

Neoliberal, competitive thinking left its imprint also upon tax policies, legislation and administration and, consequently, upon revenue collection and spending. First of all, there is the “tax consensus”, being part of IMF policies for many decades, but most importantly, because within neoliberal thinking and “supply-side economics”, the importance of competition among “locations” (i.e. states, regions or towns) includes “tax competition” with the inherent danger of a “race to the bottom”.

# 4 Legislative issues

## 4.1 National options

A first trend in tune with the neoliberal “tax consensus” are decreasing rates in direct taxation, namely Personal Income Tax (PIT) and Corporate Income Tax (CIT), resulting revenue losses being counterbalanced by increasing indirect taxes upon consumption such as VAT.

Table 5 Changes in PIT and Sales Tax/VAT between the 1970s and today

	Germany		Kenya		Zambia	
	1975	2017	1974	2017	1970	2017
Top PIT Rate	56%	45%	65%	30%	45%	37.5%
Sales Tax or VAT	11%-5.5%	19%-7%-0%	10%	16%-0%	n.a. <sup>4</sup>	16%-0%

Source 6 See Synthesis Report chapter 4

Admittedly, there have been recent changes in Kenya (modification of tax bands) and Zambia (increase of the top rate from 35% to 37.5%), but still there is an imbalance since the top rate starts already comparatively low on the income scale so that members of the middle class are much harder hit than those receiving high incomes. Given the known extent of income inequality we think that an additional rate for top earners would be more than justified.

The taxation of MNEs is more complex since taxation is not confined to profits (at which CIT aims), but also other forms of gains (e.g. Royalties), or taxation is shared and cumulative between the local and national level. And yet: MNEs in all our countries have more options to lower the tax burden which are not at the disposition of individuals or SMEs. This starts in Zambia with different tax rates applying for businesses active in different economical areas (industrial or farming), allowing then shifting economic activities and gains in the high-tax category towards the low-tax category. And while the questions, whether MNEs are able to negotiate preferential treatment with government and administrations is disputed for Germany, MNEs in Kenya and Zambia are known to obtain privileges, exemptions or concession, e.g. via rate reduction, tax incentives or holidays etc., up to the point that they negotiate individual arrangements such as fiscal stability agreements.

For the sake of completeness we want to state that taxation should, of course, not endanger quality jobs. The latter is of particular importance if one considers bringing SMEs from the informal sector into the tax net. At the same time our interview partners tell us that there are, regarding SMEs, adequate procedures in place to prevent this from happening, while the feeling is widespread that BEPS activities of MNEs in response to tax efforts are not really endangering jobs due to the suspected profit margin.

<sup>4</sup> The rate could not be retrieved, only the note that Sales Tax in those years applied only for luxury goods.



A second trend under the tax consensus is the privileged treatment of income from capital, which is in our countries generally taxed at a lower rate than income from labour.

This leads to the third trend, namely the weakening, or non-existence, of taxation specifically targeting forms of wealth:

**Table 6 Selection of wealth relevant taxes**

	Germany	Kenya <sup>5</sup>	Zambia
Wealth Tax	Suspended	None	None
Capital Income (interests)	25% Flat Tax	10-25%	25%
Capital Income (dividends)	25% Flat Tax	5-10%	15%
Capital Gains	25% Flat Tax	5%	None
Inheritance & Gift Tax	Yes, but riddled with holes	None	None
Real Property Taxation	Yes, but undergoing reform	Yes	Yes
Real Property Transfer Tax	Yes, but undergoing reform	Yes	Yes

**Source 7 See Synthesis Report, chapter 4**

Regarding the taxation of real property, we take note of attempts by our respective legislators to impose some tax not only on income from real property, but also upon the assets as such and their transfer as well. At the same time, we witness a number of weaknesses: In our countries, the competence to tax real property is shared between the national and local government or exclusively with the local government, but dependent on national framework conditions. This opens competition among those lower bodies of government, reducing the potential of revenue, and causes loss when it comes to the exchange of information needed for administration and enforcement. The successful and effective taxation of real property requires proper valuation laws and procedures being in place. Here, too, we note persistent problems. In Germany, a complication with the Valuation Law prevents updating of the standard value, the basic unit underlying the calculation of tax, which has accordingly not been adjusted since 1964 (West Germany) or 1935 (East Germany). Reform negotiations are under way for years without any end in sight. In Kenya, the Rating Act originates from 1972, other rules go back even to 1921, leaving great flexibility in defining the tax base. In addition, only the valuation of real estate is regulated, and not added “improvements” such as buildings. Zambia’s local councils struggle with similar problems, the situation in Kenya and Zambia being compounded by the absence of ownership cadastres and/or the lack of enforcement in spite of available information (see below, 5).

<sup>5</sup> The Kenyan tax laws on income from capital and real property are complex and leave room for many exemptions, e.g. depending on source of income, location of business or citizenship.

The increasing awareness of climate change is paralleled by discussions, whether, and how, “Green Taxes” could slow down deterioration or even assist in the transformation towards a “Green Economy”. In Germany, the lesson is twofold: First, that Renewable Energy Levies burden, as indirect taxes, specifically low income households while businesses are gaining exemptions, second, the effectiveness of those levies for achieving its intended ends is debatable. In Kenya and Zambia, only scant initiatives exist: Zambia has a minimal Carbon Emissions Tax, Kenya merely prohibited the use of plastic bags.

Regarding mandatory SSCs, we note the disproportionate burden upon formal labour and their employer, especially among SMEs, whereas the wealthy are able to buy themselves better, capital based, provisions. This offends our view of solidarity.

**4.2 International influences**

In the course of our cooperation we observed a number of outside influences impacting upon a (developing) country’s ability to impose taxes and collect revenue; the main problem being the number of (often conflicting) national laws, bilateral treaties and multinational framework conventions.

Most importantly, we want to mention Double Taxation Agreements (DTAs). Their goal is originally to avoid double taxation of foreign investors, their effect within the global Offshore System increasingly deprives developing countries of urgently needed revenue and creates overall a situation of double-non-taxation. As can be seen, issues regulated under DTAs benefit mainly private and corporate wealth holders. We begin with a sample taken from Zambia’s 22 DTAs:

**Table 7 Impact of DTAs on taxing rights of Zambia**

	National taxing rate	Reduced taxing rates and rights in accordance with the respective DTA				
	Zambia	China	Germany	Ireland	Swiss	Kenya
Interest	25%	10%	10%	0%	20%	0%
Dividends	15%	5%	10%	0%	0%	0%
Royalties	9%	5%	0%	0%	0%	0%

**Source 8 See Synthesis Report, chapter 4**

Regarding Kenya, its recent DTA with Mauritius was brought to court on grounds of the Tax Justice Network’s argument that it undermines state taxing rights enshrined in the new Kenyan constitution. Similar to Zambia, severe rate reductions are noted, for example bringing the national rate for Withholding Taxes of 20% down to 10% and also otherwise opening numerous avenues for tax avoidance.

Germany and its businesses are at the winning end, which is noted in research by Action Aid (2016), revealing that the German-Zambian DTA is particularly restrictive and, for Zambia, disadvantageous, which is why a re-negotiation was recommended.

The next problem are exploitable legal loopholes between different tax jurisdictions, Offshore Jurisdictions included, which enable private, corporate and criminal wealth holders to avoid and evade taxation. It is important to note, that many options available are indeed legal: Laws passed by Offshore Jurisdictions enjoy the same respect as the laws of the countries which are home to tax evader. Arising from here, the Principle of Dual Criminality (meaning that Offshore Jurisdiction participate in investigations only if the deed at stake offends against the law in both jurisdictions) is among the prime obstacles prompting Offshore Jurisdictions to refuse cooperation with tax administrations elsewhere.

As exemplified already (3.1) by illustrating the difference in knowledge between tax authorities and wealth managers regarding wealth holders and asset ownership, transparency is crucial also when it comes to the question where it is held or hidden. Here, individual states could increase transparency, e.g. by abandoning banking secrecy for tax auditors or enabling an easier piercing of the “Corporate Veil”, the reason being that the interest of the state and community equal, perhaps even supersedes, the interests of the business. As long as the Offshore System exists, however, such policies have to take into account potential negative side-effects such as the relocation of assets. Beyond that, states will hit a wall when they go against interests of powerful developed countries such as Germany: The claim of NGO researchers substantiated in 2015, namely that Germany grants tax privileges to capital deposited in Germany from outside Europe, including up to 93 billion Euro from developing countries, is up to the present day not convincingly refuted by the federal government (Meinzer, 2016a). One possible indication why Germany prevents the establishment of EU wide public registers of beneficial ownership.

Still, all countries can do a lot within their own country or respective region. However, a closer look reveals differences even in areas where international consensus is quite advanced, e.g. in the cooperation against money laundering and terror financing under the Financial Action Task Forces (FATF) regime. When the Kenyan government brought out its Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) in 2009, the Eastern and Southern Africa Anti-Money Laundering Group was scathing in its critique (see the Group's Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism, 2011). Of the 40+9 recommendations put forward by the Financial Action Task Force, Kenya was found compliant in only one case, largely compliant in another, while partially or non-compliant in all the others. However, when Zambia was reviewed in 2008, it did not perform much better when receiving only four “largely compliant” ratings. And also Germany does not seem to be over-ambitious when it comes to the effective implementation of FATF recommendations: In its 2010 Mutual Evaluation Report, deficits even in the area of core recommendations were stated, e.g. criticizing progress regarding uncovering beneficial ownership, or that entitlements under “professional secrecy” regulations were too far reaching.

Those variations can occur for many reasons. A first is the lack of resources, as probably in the case of Zambia. Another the unwillingness of governments, be it because wealth and po-

litical power goes more visibly hand-in-hand, as is the case in Kenya, be it because benefits from the present international system of financial governance outweigh reforms, as in the case of Germany. A third reason being tax competition and generally the attempt to preserve “competitive advantages” in view of attracting all possible forms of capital.

## 5 Administrative issues

### 5.1 Staff levels

In all countries we learned that tax administrations and related institutions suffer from the lack of qualified and dedicated personnel. In Germany, staff levels were reduced due to recommendations arising from a screening conducted by a neoliberally inspired consulting agency, advocating the “streamlining” of public administration combined with the prospect that digitalization and computerization would make up for such decreases. This resulted in work overload, an increase in sick leaves and serious enforcement deficits especially regarding complex tax cases. In Kenya and Zambia, staff levels never even reached levels close to accepted international standards.

Table 8 Number of tax officials

	Bavaria	Kenya	Zambia
Actual Number of tax officials	14,633 (2013)	4,629 (2015)	1,450 (2013)
Should-be number of tax officials	16,477 (2013)	6,618 (2015)	1,482 (2013)
Relation of tax officials to 1000 citizens (2010)	1.15	0.104	0.099

Source 9 See Synthesis Report, chapter 5

Zambia is in the most difficult situation of all: as all resource-rich countries, it offers MNEs (its largest taxpayers) many opportunities for trade based tax dodging, e.g. via aggressive transfer-pricing or trade-mispricing. At the same time, ZRA has least resources to uncover illicit or illegal exploitation since MNEs hide operations behind the difficult-to-pierce “Corporate Veil”.

The question, why states even now, since deficits are apparent, do not employ more staff in tax administrations, has, at first sight, many answers: In Germany, governments excuse themselves by pointing to high debt levels and the resulting obligation to keep public spending low, in Kenya and Zambia it seems to be a mix of political unwillingness and the simple lack of money.

We are convinced that referring to the lack of money is an inadequate excuse, because especially top civil servants in the auditing and fraud investigation departments collect far more surplus revenue than they cost in terms of salaries and welfare packages:

- In Germany/Bavaria, the average audit of MNEs generated in 2013 surplus revenue of 277,344 Euro, the audit of private wealth holders (“persons of considerable income”) of 135,000 Euro. A tax auditor working in Munich generated an annual surplus of 543,000 Euro, a tax fraud auditor working in Munich of even 2.2 million Euro (Alt, 2016a, p. 63ff.)
- ‘In Kenya revenue collection from transfer pricing audits has doubled from USD 52 million for year from June 2012 to USD 107 million for year ended June 2014.’ (OECD, 2015, p. 33). Audits among ten MNEs turned a declared loss of eight billion Kenyan Shillings into profits, the subsequent rewriting of financial statements yielded four billion KSh taxes (Irungu, 2013).
- In Zambia in 2014, ‘the number of audits increased by 26.9 percent to 8,366... yielding K 1,013.3 million out of which K 172.6 million was deferred tax. Further ZRA charged penalties amounting to K 828.9 million in the same period of time for non compliance to tax regulations.’ (Zambia Revenue Authority, 2015, p. 16).

Given the undeniable extent of surplus revenue even the Bavarian Court of Auditors stated publicly that not-spending money on the employment of tax inspectors is saving money in the wrong segment of public budgets. Similar, the Kenya’s Auditor General admonishes government to transfer dedicated funds to KRA, enabling it to do its work.

A common problem in our countries is the competition between private and public sector employment. Everywhere conditions are more attractive in the private than the public sector which is why bright young people rather consider going there. For that reason, in Bavaria, almost twice as many apprentices train to become tax advisors rather than tax inspectors. In addition, Kenyan and Zambian revenue agencies all too often lose trained and qualified personal to the private sector while those cases are rare, but not unheard of, in Germany. All this contributes to the fact that in our three countries tax lawyers, tax consultants or tax auditors in the private sector clearly outnumber those employed at revenue agencies. That way the imbalance is consolidating when it comes to the development of clever tax avoidance and evasion schemes on the one side, and capacities for unraveling and investigating those on the other.

A final point: Corruption of civil servants is no issue in Germany, but it is in Kenya and Zambia. Especially in Kenya, the perceived level of corruption is high and regularly malpractice is exposed and reported in the media. KRA itself admits that there are cartel-like schemes even in the auditing context both in tax and customs administration. In Zambia, business surveys reveal that gifts or payments towards tax and customs officials are widespread. To fight that, once more adequate payment is of importance: A German interview partner, when asked, why there is no corruption among German civil servants argued that the risk of losing lifelong accumulated payment and remuneration packages by far outbalances any momentary gains, especially since adequate monitoring procedures are in place.

## **5.2 ICT**

A major issue for all tax administrations is the question to what extent digitalization, computerization and automation enable revenue collecting agencies to work better and more efficiently. Obviously, the advance of computerization is unstoppable, and therefore tax admin-

istrations have to familiarize themselves with this development and work hard to keep abreast of change.

Our interview partners highlighted the following challenges in particular: First, a major emerging “Hard-to-tax area” are digital business models such as Business-to-Business (B2B) or Business-to-Client (B2C) online trading via virtual market places and Websites. Second, software based means of (concealing) payments and financial transfers are as important for the transborder movement of assets as legal loopholes in the area of law. In general, developments in ICT imply a number of consequences: Machines, software and training costs are high and again employment opportunities for capable people are more attractive in the private than the public sector.

But ICT is in general not the panacea to all woes. Due to the complexity of operations, mistakes or errors along the entire chain of data processing may occur, which is why there is right now at best a balance of relief from work due to automation on the one side and additional work for staff on the other; a situation which our interview partners think will continue for the foreseeable future: Before IT hard- and software is of any use, data has to be correctly collected, filed and entered into the machine – a big challenge for Kenya and Zambia who do not have adequate registers so far or are just in the process of establishing them. This is most widely discussed in the area of the Informal Economy, but applies also for the taxation of wealth and income from wealth. For example, the Kenyan Lands Ministry discovered in a recent audit that 1.3 million files were lost, misplaced or misfiled (Mazera & Merab, 2014). A related activity is the proper assessment and continuous adjustment of the value of a given piece of land or buildings upon it. Next, information needs to be accessible for those in charge of setting taxes and enforcing laws. This is not (yet) the case in Kenya and Zambia, and even in Germany it is difficult for tax administrators in Bavaria to investigate ownership of real property in Berlin, especially if beneficial ownership is hidden behind Share Companies, a tax dodging trick whose application worldwide is growing in popularity as the Paradise Papers revealed. Therefore investment in personnel for investigation and registration is a prior requirement before ICT processed financial gains can be hoped for.

All in all: Our interview partners both within and outside tax administration agree that computers cannot and will not replace skilled and experienced human investigators in the foreseeable future. And while the Bavarian tax administration seems to become more sober as time goes along about potential gains and limits of ICT, enthusiasm of KRA seems to unchangingly optimistic, whereas ZRA informants are concerned about limitations in financial resources to establish and update state-of-the-art ICT structures in the first place.

A final point concerns the question of how the conflict between computerized data processing or data mining and inherent risks of manipulation or hacking can be reconciled with sovereign state acts and the right of individual privacy and individual treatment.

### **5.3 Efficiency**

In our countries efficiency losses and deficits in synergy arise first from the sharing and overlapping of competences between local or national levels of administration. Similar problems are reported when it comes to the coordination of work among different departments of tax

administration, but in particular when cooperation with institutions outside the tax administration is required. The latter is almost routinely called for in complex cases of suspected aggressive tax avoidance, tax evasion or investigations of other illicit and illegal flows of capital: Here, competences in our countries are spread among five or even more departments and institutions.

Those deficits are worsening if transborder cooperation between states within the geographical region or even continents is called for. The latter requires in particular highly trained (and costly) specialists, e.g. in international law, as well as plenty of resources, starting from expensive Big Data software, access to databases, the participation in training programs and generally frequent travels abroad.

This leads to a final point, namely the continuing relevance of Whistleblower for uncovering tax revenue related crime. This is most visibly admitted by the Kenyan Revenue Authority: Even though KRA is most confident about the potential of their IT programs in the field of Risk Management and other areas of deficit identification, they rely in crucial areas of revenue collection on their Informer Reward Scheme, which is publicized on their official website. But also for Germany and Zambia, data leaks beginning with Offshore Leaks up to the Paradise Paper were crucial to spark off investigation and prosecution of institutions in the first place. To us the question whether moral education, more efficient tax administrations or data leaks are more decisive when it comes to increasing tax honesty, is clearly answered: First data leaks, which then result in investigation, which then prompt changes in attitude. Consequently and as long as the lack of transparency and unresolved legal issues blocking administrative cooperation continue, the importance of Whistleblower will remain high.

## **6 Case studies**

We want to present some examples to illustrate the complexities described in parts 4+5:

A famous case published right at the outset of our own research was that of Zambia Sugar, researched by the NGO Action Aid (2013). It showed how Zambia Sugar, a subsidiary of the British MNE Associated British Foods, transferred funds via sister companies via several tax havens, that way reducing tax obligations towards the Zambian state amounting to millions of USD. All this involved a South African Company named Ilovo Sugar Ltd. The case is of relevance to us because we met informants to this case when preparing our own methodology, learning how they were threatened and suffered intimidation when it became known that they took part in uncovering those practices. It demonstrated to us the dangers implied in this kind of research. And: Later we discovered that Ilovo Sugar Ltd., even though implicated in this complex tax evasion scheme, ranks as “Best Performer 2014” in the Social Responsibility Index of the Johannesburg Stock Exchange, putting in question the value of such labeling.

In the course of our research we came across stood the German company Ferrostaal, purchasing a large piece of land in Mpika, Northern Province of Zambia, in cooperation with the South African Company Deulco Renewable Energies. Ferrostaal is known for its “industrial services” on a larger scale and for citations over its involvement in a number of corruption cases. What possible interest does it have in opening a Jatropha plantation and by that gaining access to a whole range of tax incentives? When we visited Mpika in 2014, the land lay idle –



despite reports that at least a trial phase was under way since 2011. At the same time: people living there had been expelled from their traditional homesteads and security guards watched over the fenced compound. A case of land-grabbing or money-laundering? We asked Ferrostaal via registered letter to comment on that – they never replied. We asked experts, and they told us that the only way to find out is a Joint Tax Audit, conducted simultaneously in Zambia and Germany. We tried to find out more via the Zambian Embassy in Berlin and they promised via Email to inquire and get back to us. They never did, but we heard that ZAMPALM, a branch of the Zambian parastatal ZAMBEEF, took over that land which explains the sudden dropping of interest on part of the Zambian Embassy (Alt, 2016b).

In Bavaria, the tax evasion case of the “Engelhorn Sisters” became prominent: Data leaks suggested to investigators, that they evaded, via a network of shell companies, up to 440 million Euro taxes. The problem: How to prove it, since tax havens only cooperate with investigators when the Principle of Dual Criminality applies (see 4.2). This, however, was not the case in Switzerland and Bermudas, which is why the German requests for information were stalled. When the sisters had to be released from investigative custody, they fled instantly to Switzerland, where they assumed citizenship. This forced the Bavarian state into a settlement: When the sisters accepted a penalty of 2.1 million Euro each and the repayment of 135 million Euro, the case was dropped in 2016. But: when the Paradise Papers leaked in 2017, an even wider net of shell companies controlled by the sisters was revealed, suggesting, that their tax evasion is probably even higher than thought of originally.

One case brought to justice links the largest German Bank, the Deutsche Bank, and Kenyas former Finance Secretary, Chris Okemo, together with the former head of state-owned Kenya Power and Lighting Company (KPLC), Samuel Gichuru: They are accused of receiving 900 million Kenya shillings (9.5 million USD) in kickbacks between 1999 and 2002, transferring them with the help of the Deutsche Bank via the Tax Haven Mauritius. By now, Okemo is accused in 15 cases of bribery and money laundering, and Gichuru in 40 cases. This case illustrates the length (and costs) of transnational prosecution across 12 jurisdictions, dragging on for years. It also highlights problems of judicial extradition and difficulties of states to seize and recover assets under the existing set of international laws. Another interesting point is that the Kenyan government does not seem to be too interested in curbing tax avoidance via Mauritius, as the recently concluded Double Tax Agreement suggests.

Talking about (conduit) Tax Havens or Offshore Jurisdictions: After Paradise Papers, the EU Commission published a “Black List” of 17 Tax Havens, which surprises for many reasons: Famous tax havens like Caymans, Bermuda or British Virgin Islands are missing, including all those of importance in this section of illustrative cases from our own research. At the same time unknown tax havens such as Mongolia, South Korea or Namibia are listed, no sanctions are linked to this listing. Most importantly: Why is no EU member state included, which would have to be the case if the EU had taken its own list of criteria serious: Ireland, Luxembourg, Netherlands and many others? Equally puzzling is the following: The EU Commission ruling that Ireland or Luxembourg granted illicit tax benefits to Apple and Amazon, obliging them to refund those unfair advantages to the extent of 13 billion Euro. Why is it, that neither EU member state is interested in executing this order? The answer to both is, once more, be seen in the fear of suffering disadvantages in “global competition.”

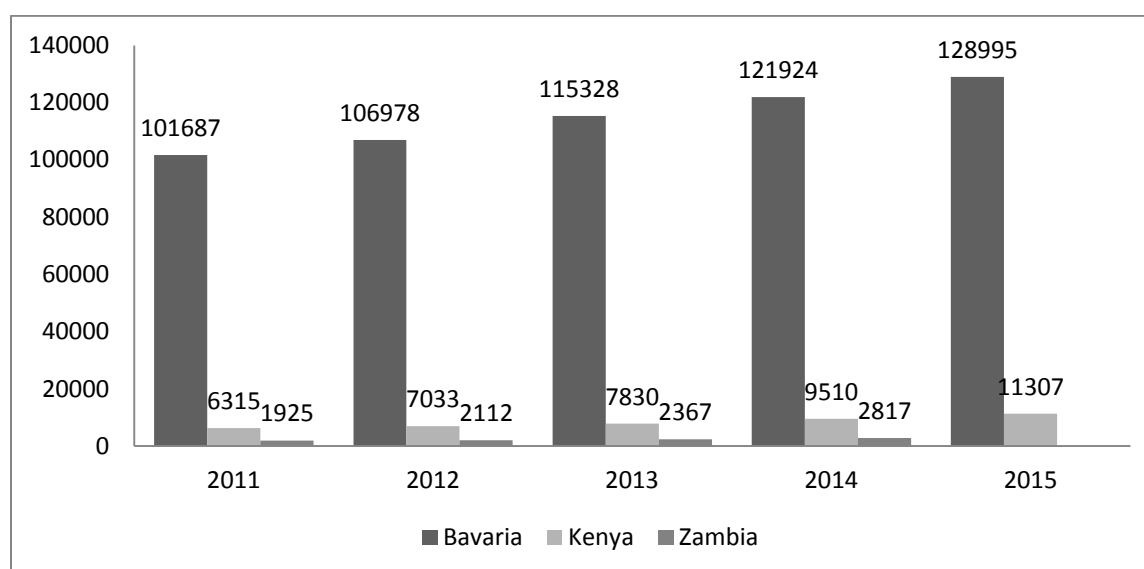
## 7 Core issues

What are, then, the most important insights of our empirical research?

### 7.1 Revenue collection, actual and potential

The good news is that revenue collection in our countries is on an upward trend as far as the absolute amount of money collected is concerned. When looking at the following figure, please be aware that Bavaria is just one of Germany's 16 states, whereas for Kenya and Zambia the nationally collected revenue is given:

Figure 2 Revenue collection trends in Bavaria, Kenya, Zambia, 2011-2015, in million USD



Source 10 See Synthesis Report, chapter 6

At the same time, the low tax quota in relationship to GDP indicates that there is plenty of room for improvement in particular for Kenya and Zambia: In 2010, this quota for Germany was at 22.2% (2017: 22.7%), for Kenya 15.7% (2015: 16.3%) and Zambia 13.2% (n.a.).

As we explained in (4+5) a lot more could be collected in our countries via national efforts. For example: tax privileges granted over past decades to private and corporate wealth holders could be reviewed. Kenya is calculated to lose here every year the equivalent of 1.1 billion USD – the equivalent of one tenth of its budget and of 3.5% of GDP. But so far an evaluation of their usefulness is only announced, not executed (Kenya Revenue Authority, 2015, p. 50). Next, legislation improving transparency of financial flows could be implemented. This would give Zambia an insight into where the 2.9 billion USD in IFF outflows originate, equally Germany could trace private wealth assets hidden in tax havens, amounting to an estimated equivalent of 16% of the German GDP (Alstadsaeter, Johannesen, & Zucman, 2017b).

But as we also pointed out: It is increasingly difficult for states to implement tax related policies in the national interest, without other states cooperating in the enforcement.

## **7.2 Direct, indirect and wealth taxes**

One major issue arising from and within neoliberal tax consensus agendas are changes in the tax composition making up the overall amount of collected tax. Here we observed in (4.1) the shift from direct to indirect taxation. One major rationale behind, especially, privileges of private and corporate wealth holders is the belief that they will increase investment, the number of jobs and finally consumption, that way balancing revenue losses occurring. In reality we find a questionable value for host countries regarding investments done, e.g. in Export Processing Zones, and a shift of the direct tax burden towards smaller and medium sized enterprises as well as middle and lower income groups, while the creation of jobs may be limited to the time when tax concessions expire. Especially no and low income households suffer from VAT since they, too, have to pay it when purchasing consumer goods. In Zambia, low income urban households spend more than 50% of their earnings on food items – the average monthly income (mostly earned in the informal economy) being 1,545.70 K (153 USD) in 2012. (Central Statistical Office , 2013, p. 79).

Governments intend to counter the impact upon poor households by imposing reduced or no rates upon goods of basic nutrition or even subsidizing prices. We note, however, that this leads to a feast of lobbyists in Germany trying to gain reduced rates for non-essential goods as well (e.g. for overnight stays in Hotels), and we find shortcomings in Kenya and Zambia of the kind that such support is often visibly linked to other political goals (e.g. buying votes during election campaigns).

Another reason behind this shift are collection costs for tax administrations: They are cheap for withholding taxes or indirect taxes, whereas the establishment of a fair taxation according to the Principle of Ability to Pay, involving investigating categories and ownership of wealth assets and the amount of income received therefrom, is costly. Here it is the view of our interview partners that the acceptance of a society's Social Contract, including trust in political institutions administering this contract, depends on the shared perception that every citizen is treated equally and fairly. The impression, that some are "more equal than others", weakens this Social Contract, social cohesion and solidarity, by increasing evasive behavior also of others. This is why not only civil rights organizations, but also Supreme Courts such as the German one request tax administrations to put a particular effort into verifying tax declarations of wealth holders and the enforcement of tax laws where more options to avoid and evade exist. In other words: Taxation according to the Ability to Pay admittedly is more costly than the taxation of dependent labour or consumption tax. But social justice justifies those costs and expenses since they will be more or less recovered directly by verification measures and, resulting from that, indirectly, there is an increase in tax honesty.

By now, OECD, IMF and other organizations reverse the original principles and dogmas of the neoliberal tax consensus: They suggest a more progressive taxation of PIT and CIT rates and the taxation of wealth assets, especially real property which is not mobile (as financial assets) and least distortive (when it comes to investment). The goal: re-establish equity and fairness in the distribution of tax burden. Beyond that, OECD and IMF suggest specific departments to tax private wealth holders, similar to specialized departments to deal with MNEs. Sadly, in our countries we gain the impression that those calls go unheeded: progress aiming

to restoring vertical and horizontal equity is stalled, the enforcement of existing laws continues to be wanting: In Germany, because understaffing and decentralization of relevant departments persists, in Kenya, because a specialized tax office for private wealth holders was suggested, but dropped again, in Zambia, because of the overall absence of such discussions. Why is that so?

### **7.3 The power of the 1%**

This leads to a crucial observation of our research: While data leaks and publications continuously illustrate the power of MNEs vis à vis governments, awareness about the comparable influence of private and criminal wealth holders is gradually emerging. A reason for that is the pertinent lack of transparency and the many “secrecies” protecting their interests: Banking-, trade-, data-, social-, and professional secrecy and finally the Corporate Veil are between the tax official and the natural or legal “subject under examination”, hiding ultimate beneficial ownership of corporations, shell companies, foundations and trusts. And finally, tax secrecy, being one of the strictest protected secrecies in the world, shields findings from the general public, exceptions, such as Scandinavia, only confirming that rule.

As indicated in the introduction: Even though we see a categorical moral difference in the tax dodging of private, corporate and criminal wealth holders, we consider these groups together for the following reasons:

1. As stake- and shareholders of MNEs they are co-responsible for their policies.
2. Many of them pursue their interests at the expense of the Common Good of all.
3. They make use of the same set of instruments provided by the Offshore System.
4. The line between legal, legitimate, licit, illicit, illegal and criminal is often intentionally blurred.

The latter was revealed most famously at a hearing conducted at the British House of Commons: The Heads of Tax Departments of the Big Four i.e. PwC, KPMG, EY and Deloitte, admitted that their tax saving models are considered to be legit even if there is only a 50:50 chance that the proposed construction is legal when challenged at court. Doing that, they are well aware that resources of tax administration are such that they are forced to avoid protracted legal proceedings wherever possible. This is easy to calculate: While the British tax administration has 65 experts on transfer pricing, those Big Four employ 250 of them. Even better: If their proposed scheme does not live up to judicial review, ‘there are no consequences for the firms.’ (Committee on Public Accounts, 2013, p. 9). And even if the Big Four are increasingly in the limelight, more highly professional and secretive networks exist such as the London based Society of Trust and Estate Practitioners with its 20,000 members.

The previous comment highlights the all too often neglected institutional and “professional” framework needed to implement tax dodging and transborder movement of capital, most importantly service providers in the formal and shadow financial sector, tax consultants, lawyers, auditors, wealth managers and many other professional groups every now and again highlighted in cases of money-laundering, such as real estate agents, notaries and owners of gambling halls.

Whether the global Top 1% of private, corporate and criminal wealth holders indeed forms a “global class of its own” (transcending national boundaries and united by shared norms and social practices), or whether distinctions between them are too big to speak of such a class is contested among scholars. We observe, and find confirmation in the interviews we conducted, that there is more connecting than separating them. Most importantly, their prime interest is to multiply and secure wealth and power, more often than not oblivious of negative impacts:

First of all, we find lobbying, cronyism and entanglement in our countries, pressurizing governments into legislation benefitting private and corporate wealth holders. Here we suggest reading chapter V of the *Zambian Country Report*, detailing the Chamber of Mines activities against the Zambian government's 2015 attempt to impose 8% and 20% mineral royalties for underground and open cast mining operations respectively. Eventually, the plan was dropped and replaced by a 9% flat tax. A comparable story is the obstructed reform of the Inheritance and Gift Tax in Germany: Mandated by the Federal Constitutional Court, prepared in an acceptable way by the Federal Government, and watered down by lobbyists paid by the top wealth holding German families, finding their joint political spearhead in the governments of Bavaria and Baden-Wuerttemberg, even though they belong to different political camps.

We mentioned the issue of direct corruption already in (5) and add here the importance of indirect corruption via non-transparent gifts and donations offered by wealth holders not only to civil servants, but politicians or political parties.

But while distorting and “corruptible” influences are widely expected to occur in African countries, there are indications that the situation is not too different in Germany and Bavaria: Chapter VIa and VII of the *German Country Report* contain examples for direct and indirect interference in the work of government institutions. We report of lobby organizations putting ready-made text-blocks into legislation, that way facilitating continuation of the Cum-Ex tax fraud leading up to revenue losses of about 30 billion Euro. We find influence provided by “independent expertise”, for example academics or Think Tanks adhering to the neoliberal set of values. And yet we think that the most problematic and opaque area of influence are forms of “entanglement” where elites of finance, business, politics and administration simply know each other via “socializing” or “shared interests” and that way influence the course of (tax) legislation, administration, even auditing as well as criminal investigations and prosecution.

All in all: our research confirms the link between inequality and parallel danger for democracy, also stated by the IMF: ‘(B)etter-off individuals tend to have more political influence, for example, through lobbying, access to media and greater political engagement.’ Research finds ‘that countries with historically more unequal income distribution often have political systems that are dominated by elites.’ (International Monetary Fund, 2017, p. 13).

## **7.4 International tax governance**

Beyond doubt we state: Given the global scale of financial flows, global wealth and value chains, professionally organized tax dodging and other indications for interconnectedness and interdependence of global scale: individual states are no longer capable of addressing deficits in the enforcement of their tax laws. All this is widely agreed, but the way ahead is disputed.

Two developments sparked off major efforts to combat tax dodging and IFFs: First, data leaks beginning with Offshore Leaks (2013), resulting in the OECD's Base Erosion and Profit Shifting (BEPS) and Automatic Exchange of Information (AEOI) programs, second, commitments arising from the Financing For Development 3 (FFD3) conference in Addis Ababa and the adoption of the Sustainable Development Goals, declaring that the implementation of the latter requires improvements in Domestic Revenue Mobilization and the combating of IFFs. Those declarations go along with promises on parts of developed states to support developing states in doing that, especially the Addis Ababa Action Agenda (AAAA) and related programs such as Tax Inspectors Without Borders.

At the same time and in particular the FFD3 conference illustrate the difference of opinion between developed and developing countries as to the preferred framework within which these efforts should be placed: The attempt of the G77 states to elevate the UN Committee of Tax Experts into an intergovernmental body failed due to efforts on part of OECD states, involving more or less “buying” Ethiopia and South Africa into breaking away from G77 and siding with the OECD. As a consequence, the OECD is the unquestioned framework of global tax governance. Having first agreed its BEPS Actions as well as the Common Reporting Standard enabling the Automatic Exchange of Information, developing countries were only subsequently invited to participate in the Inclusive Framework to implement those rules and receiving help for that. To put it more bluntly: Even though participation in the Inclusive Framework is, in principle, open to all, participation rights are “graded”: Germany is among those states setting the tone, Kenya is participating in some fora but, being no member, but “Associate”, does not have voting rights, Zambia is not taking part at all.

There are further areas of unequal and unfair treatment, e.g. when it comes to share insights arising from data collected via the AEOI mechanisms: Here developing countries receive information only if they are able to reciprocate. This, however, will not be achieved for any foreseeable future. ‘It is estimated that Sub-Saharan Africa would need around 650,000 more tax officials to reach the world average.’ (European Commission, 2015, p. 19). This is clearly a burden which those states alone are not able to shoulder.

At the same time: How realistic would it be to elevate the UN framework into an effective and fairer global tax governance structure? Differences between our three states illustrate the problems at hand:

- Germany profiting from the present system and defending its efforts to attract and protect capital deposits from outside Europe. In the Financial Secrecy Index 2018, Germany is on rank six, behind states like Switzerland, the Caymans or Luxemburg.<sup>6</sup>
- Zambia suffering under the present system, but lacking resources to effectively push for its interests by having not even enough money to participate in an adequate number of international workshops.
- Kenya’s stance is ambiguous: It subscribes to international convention and participates in respective fora. At the same time it facilitates tax dodging by permitting the use of bearer bonds and certificates, tries to attract IFFs from the region into the “Nairobi In-

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<sup>6</sup> See <https://www.financialsecrecyindex.com/introduction/fsi-2018-results>

ternational Financial Centre” or enters into tax treaties where even KRA says that the state will lose billions in revenue. In the Financial Secrecy Index 2018, Kenya was incorporated for the first time, namely on rank 27.

Add to this the course of the USA, not even fully participating in BEPS and AEOI, further indicated by the 2017 Tax Reform bill, giving big extra benefits to private and corporate wealth holders; add to this Post-Brexit Britain’s potential moves, which may also include massive lowering of corporate taxation as well as measures to strengthen, not fight, Offshore business; add to this China, which on the surface advocates multilateralism but, as Kenyans and Zambians know, puts its interests first as well: It seems to be extremely unlikely that anything more effective and fair can be implemented within the foreseeable future anywhere.

## **7.5 Systemic crisis?**

At the end of our empirical part we want to look back at our quest into root causes behind those worrying developments, namely neoliberal competitive capitalism and implications of its tax consensus (above, 3.2): we see it behind the emergence of Offshore Jurisdictions, leading to a redistribution of wealth from the bottom to the top and the lack of effort and/or success on the part of states to recapture their fair share of revenue to finance public institutions, goods and services. And all that, even though the OECD detailed already in 1998 forms of “harmful tax competition”, or senior judges point out that competition is good for sports and markets, but not for the realm of law, or the IMF warns that with tax competition, the sum of losses likely ‘exceeds the gains’ and ‘gains from closer cooperation might be considerable.’ (International Monetary Fund, 2013a, p. 33).

But we perceive a deeper crisis: In the course of history, neoliberal thinking even undermines its own set of values. A careful look reveals that one of the largest contribution(s) to the growth and consolidation of wealth are inheritances and gifts. This gives some people advantages over others who are equally talented and meritorious, advantages they did nothing to deserve except having the right parents. That way, the liberal promise is broken that individual effort and merit is rewarded because those receiving inheritances did not work themselves for that which they receive. At the same time, growing inequality decreases social and income mobility or destroys the vision that a dishwasher may become a millionaire. What is rather seen is a stratification and consolidation of different milieus, perhaps even classes. Accordingly, economists nowadays also criticize emerging forms of “financial feudalism” (Freeman) “patrimonial capitalism” (Piketty), or an “inherited oligarchy” (Stiglitz).

We further note that propositions made within the neoliberal paradigm to ameliorate negative developments are not adequately implemented or not positively effective: Andrew Carnegie, for example, in his “Gospel of Wealth”, discourages inheritances, but advances the establishment of charitable foundations, which is admittedly done by some. Looking closer at the legal and institutional makeup of such foundations we discover, however, also attempts to place accumulated wealth outside the reach of the tax man for good, to preserve control over assets rather than placing them into a setup which is open to democratic participation, or to ameliorate with charitable activities evils which the donor contributed to create or to maintain with those activities leading to his or her wealth in the first place. We are similarly critical towards



the concept of “Corporate Social Responsibility”: Here we are of the opinion that the prime obligation of “corporate citizens” should be paying their fair share of taxes first, and only then implementing selective additional projects. And so on.

The Whistleblower of the Panama Papers data leak justified its act as follows: There

has been a complete erosion of ethical standards, ultimately leading to a novel system we still call Capitalism, but which is tantamount to economic slavery.... (S)laves are unaware both of their status and of their masters, who exist in a world apart where the intangible shackles are carefully hidden amongst reams of unreachable legalese....But when it takes a whistleblower to sound the alarm, it is cause for even greater concern. It signals that democracy’s checks and balances have all failed, that the breakdown is systemic, and that severe instability could be just around the corner. (Doe, 2016).

Politicians and scholars in developed countries often argue that developing countries are systematically corrupt which is why investment and engagement are not worthwhile. Insights into the Offshore System, however, facilitating IFFs across the world, widen the picture!

If this spirit of competition and maximization of interest and profit is not replaced by a spirit of cooperation and solidarity, further dangers loom: Not only will capital flight continue, but also the relocation of jobs in response to attempts to achieve fairer payment or stricter environmental standards or its replacement by machines in the attempt to lower production costs.

Due to those ingrained and negative implications we resolutely question the usefulness of neoliberal set of values and norms: We denounce its contribution to the crisis of human labour, increasing inequality and ecological degradation. And we question its utility for the creation of a socially just and ecological sustainable social order, advancing and protecting the wellbeing of all. In one word: We argue for reform and replacement.

To change this is difficult, because it is not merely a matter of policy and technicalities, but it implies a number of deep seated, apriori value assumptions about the best ways society and economy should be organized. This implies ethical reflections to which we turn now.

# To Judge

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## 8 Ethical Reflection

### 8.1 *Basic assumptions and implications*

The “Common Wealth” of nations is composed of human capital, social capital, natural capital and financial capital. Over time, the latter obtained a ruling position, no longer subservient. With the end of the cold war, and under the leadership of Margret Thatcher and Ronald Reagan, neoliberal thinking was seen to be victorious to the extent that some hailed already the “end of history” (F. Fukuyama) – with the consequences highlighted in the empirical part of our paper.

However, as early as 2001, Pope John Paul II, widely known to be market friendly, criticized the intrusion of market thinking into areas where it should not be at home:

One of the Church's concerns about globalization is that it has quickly become a cultural phenomenon. *The market as an exchange mechanism has become the medium of a new culture. ... We are seeing the emergence of patterns of ethical thinking which are by-products of globalization itself and which bear the stamp of utilitarianism. But ethical values cannot be dictated by technological innovations, engineering or efficiency; ... Ethics cannot be the justification or legitimation of a system, but rather the safeguard of all that is human in any system.* Ethics demands that systems be attuned to the needs of man, and not that man be sacrificed for the sake of the system. (John Paul II, 2001).

As it turned out eventually, those patterns of ethical thinking transformed into something even worse than utilitarian maximization: it was reduced to the promotion and defence of the interests of the powerful few.

And another important insight of John Paul II needs to be mentioned: His analysis about the emergence of “structural sin”. Here he wrote in *Sollicitudo Rei Socialis*:

“Structures of sin,” ... are rooted in personal sin, and thus always linked to the concrete acts of individuals who introduce these structures, consolidate them and make them difficult to remove. And thus they grow stronger, spread, and become the source of other sins, and so influence people's behavior.... One can certainly speak of "selfishness" and of "shortsightedness," of "mistaken political calculations" and "imprudent economic decisions." (But) Man's condition is such that a more profound analysis of individuals' actions and omissions cannot be achieved without implying, in one way or another, judgments or references of an ethical nature. (Nr. 36).

Indeed, abstract market forces are nowadays a force to reckon with. In our interviews with responsible business people and wealth holders, we often heard statements such as ‘We have to act like that since “the markets” request it!’ or ‘If we do not act like this, somebody else does it and we are out of business!’

At the same time we are convinced, that everybody has more room to maneuver than it seems at first sight, and that a structure which emerged as result of many human decisions can also be weakened, subverted and, eventually, be replaced if an increasing number of actors join a movement towards an alternative order. On that background, we propose a two pronged approach: One fundamental, one more technical.

## 8.2 Long term transformation of the socio-economic order

We first of all call for a restructuring of the socio-economic order in reference to the Principles of Catholic Social Teaching. They were developed in the mid-19<sup>th</sup> Century when inequality and other forms of social injustice resulted into major upheavals against the dominance of capital – a very similar constellation to today’s challenges. Also today it is important to re-establish a balance between

- human rights and dignity of the individual and the Common Good of All (which is more than the greatest good of the greatest number or just the sum of individual well-being, but an emergent entity of its own),
- solidarity (i.e. active support of those in need) and subsidiarity (i.e. identifying adequate structures to secure this support and participation of those involved),
- social justice (the latter addressing the makeup of social institutions, enabling and assisting individuals and groups to develop their capabilities) and ecological sustainability.

Phrased differently: we need to replace individualism, consumerism and free market ideology by a market economy which is socially and ecologically embedded, similar to already existing models of a “social market economy” (which has been strongly influenced by CST), bringing unprecedented wealth and well-being to some states after World War II. Major characteristics were, for example:

- rules for markets and market actors, set by democratically elected and accountable governments, preventing the emergence of monopolies and oligopolies.
- social partnerships between capital and labour, employer and trade unions.
- mechanisms of social redistribution, including effective systems of social welfare.

For the reduction of poverty as understood by Amartya Sen (see 3.1) or CST, it does not suffice to propagate “equality of opportunity”. Called for, rather, is the implementation of equity, enabling individuals to benefit from opportunities in the first place and getting social mobility started again.

On that background, the promise of the Addis Ababa Action Agenda and the SDGs, to leave nobody behind, is not adequate and sufficient. Rather, the Principle “Option for the Poor” implies work towards the establishment of an agreed and guaranteed set of minimal Human Rights for each and everybody, facilitating a catching-up-development for the disadvantaged and marginalized to the extent that each individual has ways for claiming entitlements effectively *and* that enforceable obligations exist upon those having the means to pay for the provision of those entitlements (e.g. Encyclical *Pacem in Terris* and *Populorum Progressio*).

To secure such a set of rights, a Basic Income for the Needy or some Guaranteed Minimal Income could be considered, funded from taxation upon wealth or machines, especially if the latter reduce available quality jobs.<sup>7</sup> Less ambitious would be progress regarding existing

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<sup>7</sup> Please note: This suggestion should not be confused with the concept of an Unconditional Basic Income Grant: It is neither paid to the wealthy, nor to those working in jobs whose unionized bargaining power results in adequate wages. It could, however, replace present social welfare arrangements.

public systems of social security and social welfare, based upon intergenerational solidarity, and their extension to include all who are able to contribute, and combine this with reforms to increase democratic control and transparent spending. Private and corporate charity is welcomed to be added once the payment of legitimate and mandatory taxes and SSCs is done.

While such a major review and reconstruction of the present socio-economic order will take a lot of time, the question remains how our countries are able to move towards more social justice and ecological sustainability in the meantime. Here our second proposal comes in, which is more technical:

### **8.3 Short term moves towards less injustice**

It is obvious that different world views have a diverging understanding of what characterizes “social justice”. Accordingly, adherents of neoliberalism or Catholic Social Teaching would disagree not only about the content of that concept, but also ways and means to achieve and implement it. Given current pluralism in our countries, this would probably impede progress.

This is why we are also siding with those who propose a focus upon ways and means to rather reduce unjust conditions and situations, such as e.g. Amartya Sen, Karl Popper, Ulrich Beck or Thomas Pogge.

Adherents to different world views are able to agree relatively easy upon grievances, and once agreement exists it is also comparatively easy to identify strategies for improvement. In other words: This will not leak to achieve a “just society”, but towards a “more just” or at least “less unjust” society. Such proceeding also assists in evaluating injustice inherent in present taxation models, as will be shown in (9).

### **8.4 CST and taxation**

Admittedly, taxation is a relatively new topic within CST. In earlier times, the church advocated other means of redistribution to bring about a more equal and just spread of wealth, e.g. the (re-)distribution of land or shares or the insistence upon the payment of fair wages. The question of taxation fits however, with the Church's preoccupation with institutional and structural injustice and attention grew after the second Vatican Council. It was Paul VI, for example, who first criticized tax evasion in his encyclical letter *Populorum Progressio* as follows: ‘It is not permissible for citizens who have garnered sizeable income from the resources and activities of their own nation to deposit a large portion of their income in foreign countries for the sake of their own private gain alone, taking no account of their country's interests; in doing this, they clearly wrong their country.’ (Nr. 23).

Obviously, Catholics living in countries influence by protestant or Anglo-Saxon traditions have an interpretation of CST implications for taxation which differs from that of countries influenced by a more catholic or central European view. At first sight, only minimal agreement can be obtained, e.g. regarding combating tax related crime or the use of taxation to advance more ecological sustainability. But we think that there is much more potential:

## **8.5 Obligation and opportunities for Churches**

In today's debates surrounding fairer taxation, Christians and especially the Catholic Church have both obligations and opportunities. First of all nationally, where, given the plurality of views the Catholic Church should make itself heard more clearly opposing those who still adhere to neoliberal dogma. This has happened, for example, in the US Bishops' Conference several times, the last time by opposing the recent Republican Tax Reform and calling it "unacceptable" and some provisions even "unconscionable". But looking at our own transcontinental study, we see even more potential for advancing global tax justice:

Catholic Social Teaching is, different from Latin American Theology of Liberation and via the Compendium of Social Doctrine (2005), the Church provides a universally accepted tool kit for social analysis and policy development. Standing on that foundation, the Church as a Global Player itself is present in almost all countries worldwide, and is therefore able to transport information and to form transnational partnerships on the road towards a fairer and more sustainable world order.

Three examples for potential activities aiming for the reduction of poverty arising from here:

Regarding excesses within the present neoliberal, free market paradigm and its emphasis upon individual entitlement, Catholic Social Teaching should emphasize the social mortgage upon every form of property. This is even more important since there is enough wealth upon this earth to remove hunger and inequality, if the benefits are shared more fairly.

Given the de-facto globalization in areas of finance and economy and the inability of states to regulate developments, the Principle of Subsidiarity obliges the making up of this deficit in the area of political governance, for example by the establishment of a public World Authority with means to set fair rules and enforce them. This had been promoted from Pope John XXIII onwards in view of UN structures and resurfaced after the 2007 World Financial and Economic Crisis. Given current disputes about the lack of fairness in tax governance described above (7.4), the Church could be mediator and driving force in looking, how institutional improvements could contribute to bring about globally fairer tax governance.

At the same time, improved regional cooperation seems to be most promising for quicker improvements, e.g. within EAC, SADC and the EU, eventually resulting into a partnership between EU and AU. Given diverging "value oligopolies" of the Anglo-Saxon world, and China's sphere of influence, Europe and Africa have the opportunity to create a third option since their values and traditions are most compatible when it comes to advance reforms increasing "ubuntu" or the Common Good of All.

Finally we want to list the following short, but important points:

- CST should no longer be the Church's "best kept secret", but explore more diligently the importance of taxation for the reduction of structural injustice and, via redistribution of revenue and its potential contribution to the development of individual capabilities and freedoms.
- The church has considerable resources to deepen and spread knowledge about these issues, via universities and other institutions of education, as well as the level of parishes, social centres, youth and other organizations and federations.

- The church should give a good example with wealth and possessions of its own, e.g. paying taxes upon assets whose proceeds are not directly spent upon serving the poor or (pension) obligations to its own staff.

## 9 Guidelines and criteria for policy development

Building upon the preceding, our research comes up with ethical guidelines and criteria to use taxation and related instruments effectively to improve framework conditions supporting, and policies leading towards, a socially more just and ecologically sustainable order.

### 9.1 General guidelines

- (1) Among human capital, social capital, natural capital and financial capital, the latter has to be placed into a serving, position once more as a means, serving to the end of an economical order orientated towards the end of increasing the Common Good of All. Within such transition processes, taxation plays a role, for example, businesses using Common Good balance sheets could receive tax concessions.
- (2) Many of today's "fashionable" reform proposals and voluntary initiatives based within the present neoliberal ideology (Corporate Social Responsibility, Social Impact Investment, activities of charitable or non-profit foundations...) do not convince us since on balance their emphasis still seems to be on the preservation of privileges of those profiting from the present status quo. And yet: there are admittedly better ways to reduce inequality and poverty than taxation, even within the present economical order, e.g. fairer trade relations or a stronger role of trade unions representing labour vis a vis employer or capital.
- (3) Taxation is at least some answer to deregulation and privatization of public capital. Since privatization cannot be reversed easily, taxation at least assures that wealth holders provide to the Common Good of All according to their Principle to Pay – which requires regulatory measures and cooperation.
- (4) Given the plurality of world views in today's societies, agreement is first needed regarding as to who is responsible for what in society: (a.) the market(s), (b.) the state, (c.) CSOs/civil society and (d.) private initiative of families and individuals. Conflicts arising in view of regulation and taxation are dependent on positions taken here.
- (5) Competitive capitalism made "competitive" thinking enter areas where it should not be at home. This calls for pushing back competition where it hurts the Common Good and replace it with stronger cooperative efforts, including efforts to enforce legitimate tax claims.
- (6) Competitive Capitalism increases market failures and inequality among market participants, distorts market access and the distribution of gains and profits. Taxes are among those instruments to regulate market activities and to cushion their negative social and ecological consequences, e.g. by protecting own industries and markets (developing countries!), collecting fair taxes from all (including removal of disadvantages from SMEs as opposed to MNEs!), improving market access of market players by improving education and training. Pigovian taxes may negatively, direct subsidies may

positively advance the transformation of the competitive/free market economy towards a socio-ecological market economy.

- (7) Inequality may be acceptable as far as development improves indeed qualitatively and sustainably the situation of present and future generations. Inequality turns bad where some are left behind, social and income mobility no longer works and/or where the privileged position of some expands its dominant influence also via the open or hidden manipulation of political power. This endangers social cohesion and democratic participation of equal citizens in any joint undertaking to determine the nature of the Common Good of All. Here the state is called to intervene, e.g. by imposing taxation decreasing asset concentration in the hands of few, inequality and power-imbalance.
- (8) The Common Good of all grows in an acceptable manner only if it increases fairly and sustainably the qualitative wellbeing of each individual. In order to secure that, a minimum bottom line should be agreed and implemented on the background of a growing consensus regarding minimum standards arising from Human and Basic Social Rights, SDGs, “Happiness Economics” etc....
- (9) Today it is no longer adequate to think the Common Good of All nationally. The emergence of a Global Network Society, making traditional borders redundant when it comes to migration, volatility of global financial markets, crime, terror, climate change etc., calls for a new way of thinking, because borders are powerless against those phenomena – they at best keep them out of sight for a short moment while its destabilizing potential keeps growing. Today’s challenges imply that the Common Good must be considered globally and they call for new forms of international governance and solidarity. Here, taxation and tax cooperation can play a role also in view of combating root causes of the problems mentioned.
- (10) Combating such global and “borderless threats” require a pooling of resources between countries. Here, the Principle of Common but Differentiated Responsibilities should apply in many ways because developed states have more potential to contribute to solutions than developing states. This could mean that changes in the economic system or trade may justifiably put a higher burden upon wealthy nations, even that tax revenue collected in wealthy states may be spent on projects inside poor countries. Here, policy coherence is called for within governments, e.g. between Ministries for Development and Finance.
- (11) This is even more justified, given the extent of historically grown privileges and advantages of developed states, depriving developing countries after political independence of financial independence. By assisting developing countries in their effort to fight Illicit Financial Flows and/or to collect their fair share of taxes wealthy states could make up for this injustice and put them on their own feet.
- (12) Determining a “more just taxation” is a complex situational and conceptual “composite”. It requires careful empirical analysis and assessment and draws from different concepts of justice: most importantly social and distributive justice, but also legal, commutative, contributive, ecological, intergenerational, international legal and restorative/retributive/corrective justice. This cautions against too much emphasis on theoretical reflection.

## 9.2 Specific guidelines and criteria

- (13) Since we suggest starting with the identification of unjust situations, especially the following may be considered, whereby the potential for agreement is likely to decrease from top to bottom:
- Illicit, immoral and illegal offenses against existing laws (e.g. concealing wealth assets in Tax Havens, aggressive tax avoidance, tax evasion, tax fraud...).
  - Unequal distribution of the total burden of taxes and mandatory Social Security Contributions.
  - Offenses against equality and fairness in tax policy, laws and tax administration (e.g. transparency, checks and auditing).
  - Offenses against the Principle of Ability to pay with consequential concentration of income and wealth as well as economical, financial, social and political power.
  - Unequal living conditions and, from there, resultant inequality in social and income mobility.
- (14) Prioritize the enforcement of existing laws (by combating misuse and offenses and enforcement of legitimate claims) over the introduction of new laws.
- (15) A just and fair tax is characterized by (a.) being passed by legitimate authorities, (b.) a recognizable link to the common good and (c.) no disproportionate burden upon the poor and/or proportion to everybody's ability to pay (impact assessment). These three aspects require corresponding underlying requirements, arising from the citizens' entitlement to participate in the writing of laws, which can be secured (d.) via hearings and periodical elections. Tax law formulation and administration needs to be (e.) transparent in terms of procedures, input into policy formulation ("legal footprint") and administration (insight into financial situations of tax subjects, auditing). Further, (f.) ambiguity in legal terminology needs to be avoided (to lower risk of misuse) and (g.) there need to be adequate provisions and means right from the beginning for checks and controls, securing everybody's contribution according to his/her abilities and excluding tax evasion ("The Principle of Enforceability").
- (16) Simple tax laws seem to be impossible to define, for fear that they offend against requirements of justice by ignoring individual situations. Rather, simplification of tax procedures should be aimed for.
- (17) Sharing insights arising from improvements in the exchange of information and international cooperation is a precondition for reconsidering tax rebates and privileges given over past decades to private and corporate wealth holders since now the relocation of assets is made more difficult.
- (18) Increase transparency of wealth holders by striking a better balance between justified privacy interests and the public interest in a fair sharing of burdens. Distinguish between the right to intimacy and privacy on the one hand, and the social impact of decisions taken by individuals, i.e. where the behaviour of wealth holders impacts upon society and the wellbeing of its members.
- (19) Taxation should not endanger jobs. Regarding "hard-to-tax" areas, scarce resources should, on balance, be spent on enforcing justified claims towards wealth



holders rather than on getting the informal economy into the tax net, since the latter is a way for many to find employment.

- (20) Conversely: If machines replace jobs, a machine tax should be imposed whose revenue may fund the support of the unemployed.
- (21) If people, their dignity, capabilities, labour and quality of life have priority over capital, growth, goods and economic gains, this implies the abrogation of tax privileges for capital as opposed to taxing wages and salaries.
- (22) Tax privileges should be removed where they unjustifiably diminish the tax base of private and corporate wealth holders. If justifications exist, direct subsidies are preferable to tax exemptions since the former are transparent and verifiable, the latter are non-transparent regarding the extent of tax losses.
- (23) The Principle of Horizontal and Vertical Equity in combination with the Principle of Ability to Pay require that the equal is taxed equally and the unequal is taxed unequally. Since nobody's wealth is merely accumulated by individual effort, but always implies contributions from society (infrastructure, public education, institutional safeguards) and social groups (especially labour), a higher taxation of "unearned" income is justified as opposed to earned income from labour.
- (24) Since wealth assets privilege its owner by their sheer possession and awards a number of options ordinary citizens do not have, it distorts principles of democratic equality. Beyond revenue collection, taxation is also an instrument to secure that nobody is "more equal" than others. Here adequate, even expropriating, taxation is called for to reduce the gap in wealth and undue socio-political influence in society.
- (25) The entire burden arising from tax *and* mandatory Social Security Contributions should be distributed fairly in accordance to the Principle of Ability to pay. Regarding the support of low income households, income tax allowances are preferable to the payment of social welfare support. While there is tax relief, but no relief in the payment of mandatory SSCs, low income households are unfairly burdened here and corrections are needed.
- (26) Progressive direct taxation on income and mandatory Social Security Contributions seem, on balance, to be more adequate under a justice perspective than alternatives (flat taxes, indirect taxes on consumption, private options...).
- (27) Taxation should also be considered as a way to change behavior, e.g.: prompt private initiative to donate or endow more, or prompt corporate initiative to reduce "Silent Reserves" by investing more in the real economy, paying better wages or doing more for ecologically sustainable production.
- (28) In order to secure tax honesty of all, a higher number of checks and audits is needed towards those who submit their own tax declaration (self-employed, wealth holders, businesses) and those who most likely reduce their tax base with the help of professional advisors.
- (29) In developing countries, corruption seems to be among the biggest obstacles against tax honesty. Fighting corruption implies paying attractive remuneration packages as well as elaborated systems of transparency, checks and balances. To the extent that citizens perceive that the state makes good use of tax revenue, their identification

with state institutions will grow alongside their willingness to participate in administering the Common Good of All.

- (30) Because there are so many gaps and deficits in the national and international enforcement of tax laws, the provider of leaked data uncovering aggressive tax avoidance and evasions (“Whistleblower”) should be protected, not punished. Their deeds may be illegal or immoral, but the preceding, even larger illegal and immoral deeds of some with its impact upon the many justify that.

# To Act

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## 10 Results and policy recommendations

### 10.1 Ten summarizing areas of concern

This brings us to those areas of concern applicable to Germany, Kenya and Zambia alike, while individual variations or additions can be looked up in the respective Country Reports. The following summarizes our main findings which we propose to address as a matter of priority:

1. Finish tax competition, advance cooperation with other states, especially with the intent to close legal loopholes by legal cooperation/treaties, followed by effective cooperation of respective authorities to combat aggressive tax avoidance, tax evasion and other tax related crime and IFFs.
2. Remove poverty by giving some sort of existential security via an improved Social Welfare System or a Guaranteed Minimum (Basic) Income. Regarding current social security systems, remove opt-out for wealth holders and replace capitalized life- or pension insurances with a system based upon intergenerational solidarity.
3. Diminish inequality via enforcing existing tax laws, via asserting direct taxation and via (re-)introducing Wealth Taxation following the Principle of Ability to Pay, by that financing the effective securing of equity and of equality of opportunities for all.
4. Revise the relationship between direct and indirect taxation, assessing impact of taxes upon poor and low-income households.
5. Fulfil national and international obligations towards ensuring a life in equal dignity for all, being aware of challenges arising from demographic developments, living up to implementing the Sustainable Development Goals.
6. Reduce the intrusion of the private and corporate sector in financing public goods and public services, as can be the case with CSR, foundations, donations, sponsoring of education or PPPs.
7. Reduce the influence of wealth holders in political decisions, curb lobbyism, corruption and other attempts at state capture und undermining of democratic participation.
8. Reduce public debt which restricts governmental spending for the benefit of living and future generations because of paying interest and repaying debt.
9. Tackle global challenges which did not exist in the past and require cooperation and funding, e.g. IFFs, global migration, climate change, or transnational crime. Here, the Principle of Common but Differentiated Responsibilities may serve as an adaptation of the Principle of the Ability to Pay both nationally and internationally.

All in all:

10. We concede that that private property and enterprise should be respected where they positively increase the Common Good of All. At the same time we state that voluntary systems of charity and solidarity seem to generate considerably less for the Common Good than state imposed alternatives, which is why we finally promote a fairer and more equitable implementation of taxes and mandatory forms of contributions.

From that derive the following policy recommendation, to be addressed internationally and nationally, by our three governments and beyond:

## 10.2 General policy suggestions

The following addresses wider policy preferences underlying tax related policies.

- Stop Tax competition, improve Tax cooperation; and most importantly, find ways to close down Tax Havens globally and/or regionally.
- Distribute the tax burden more equally and fairly, not only between individuals, but also between MNEs and SMEs.
- Regarding the extent of wealth inequality start a public discussion about excessive levels of wealth-inequality, about whether wealth holders contribute adequately to the Common Good of All and about how this could be changed.
- All alternatives to taxation such as Corporate Social Responsibility, Social Impact Investment, charitable foundations need to demonstrate that they contribute as much to the common good, transparency and democracy as taxation does.
- We suggest Pope Benedict XVI's proposal of "Fiscal Subsidiarity"<sup>8</sup> as a compromise between state-imposed limits to excessive wealth accumulation on the one hand, and private freedom in spending assets for the common good on the other.
- Identify, remove or reduce options inherent in existing economic and financial structures enabling IFFs, e.g. non-transparent modes to transfer funds outside the formal financial sector, ways and means facilitating trade mispricing, abusive transfer pricing or the hiding of beneficial ownership behind shell companies, trusts or foundations.
- Explore ways how taxation or levies could be a way to diminish environmental degradation by putting a price upon negative externalities, e.g., making the waste of non-renewable energy more expensive and its saving more attractive ("Pigovian Taxes").
- Reform existing systems of Social Solidarity to the extent that all citizens of a country are bound to contribute in accordance to their ability to pay and all in need receive assistance in the attempt to develop their capabilities. Replace capital based private options by a system based upon intergenerational solidarity
- When providing assistance with a view to implementing the Sustainable Development Goals, care should be taken to not advance corruption but to invest as directly as possible in the build-up of poverty reducing systems, infrastructure and capacity-building programs.
- Discuss how nationally and internationally transparency regarding beneficial asset ownership of wealth holders can be increased.
- Developed states should share data arising from AEOI and BEPS, even though developing countries might not yet be able to reciprocate. This could, in our mind, follow when the "Principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances" (Nr. 59 AAAA) is applied in this context.
- Improve global tax governance with the goal of an impartial forum to settle conflict between states and to mediate a fair setting of new rules. In order to escape the OECD-UN debate, consider also some new treaty body or International Tax Office. This may also promote suggestions which are more beneficial for developing countries than those discussed within the OECD context, e.g. a Common Consolidated Corporate Tax Base or Formulary Apportionment.

Regarding the specific proceeding within our countries we suggest to

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<sup>8</sup> 'One possible approach to development aid would be to apply effectively what is known as fiscal subsidiarity, allowing citizens to decide how to allocate a portion of the taxes they pay to the state.' (Caritas in Veritate, Nr. 60).

- Remove privileged access of lobby groups serving private and corporate wealth holders and increase participation of CSOs in the formulation of tax policies and tax laws.
- Increase knowledge and interest of the public in tax matters, e.g. by making tax education part of secondary education.

### **10.3 Suggestions towards legislation**

- Remove loopholes and vagueness within and between national tax law systems which right now enable aggressive tax planning and tax evasion etc. Most importantly, find a solution to address obstacles arising from the Principle of Dual Criminality.
- Revise DTAs under the perspective of whether they disadvantage the interests of developing countries, as was done by the Netherlands.
- Improve transparency by establishing beneficial asset ownership of wealth holders, e.g. via registers of such ownership regarding business shares, financial assets or real estate. We advocate equal transparency regarding income and asset ownership of all natural persons towards Revenue Authorities. Regarding MNEs and “legal persons” and their impact upon society, we advocate public registers disclosing beneficial ownership. Regarding illegal and criminal cases we want tax secrecy to be subordinated to the public interest in fight crime.
- Once the Automatic Exchange of Information is working, consider re-establishment taxation in accordance with the Principle of Ability to Pay.
- Remove tax privileges accorded to capital as opposed to labour.
- In view of specific wealth taxation, we advocate Inheritance and Gift Taxes with the goal of reducing wealth inequality, and a wealth tax on real property.<sup>9</sup>
- Increase direct progressive taxation, especially for MNEs, while cutting indirect taxes and levies.
- Review the impact of indirect taxation upon poor households, including the impact of levies on gas, electricity and other household relevant fuels. We advocate the removal of exemptions benefitting capital and wealth holders (e.g. exemptions upon financial products) and the increase of exemption benefitting poor households e.g. upon basic nutrition items. Also other options of indirect taxation with the goal to achieve more justice should be considered such as a Luxury VAT or a Financial Transaction Tax.

### **10.4 Suggestions towards administration**

- Facilitate better national, regional and transcontinental cooperation between tax administrative staff and other investigative bodies for combating tax dodging or IFF related illegal and criminal acts.
- Improve options for national tax administration to cooperate internationally in the enforcement of national tax laws, e.g. by enabling Joint Audits.
- All national tax administrations need well trained experts on international tax enforcement issues. Here, too, we think that the “Principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances” (Nr. 59 AAAA) could be applied to advance an increase in training towards capacity building and the provision of state-of-the-art ICT equipment.

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<sup>9</sup> Given the growing importance of land for all, however, we raise the question whether “real estate” should be considered to be a public Common Good as is the case with water or air, and accordingly being exempted from being “private property” in the first place.

- Be realistic about what ICT can do and what not. We advocate anything making the submission of tax declarations easier. ICT may even be able to process simple tax returns or assist with Risk Management. It will reach its limits when it comes to complex cases, requiring investigative skills.
- Increase checks and audits examining tax declarations submitted by self-employed, wealth holders and businesses.
- Establish a specific department to tax private wealth holders.
- Ensure that financial and non-financial service providers comply with obligations arising from instruments combating tax evasion and money-laundering, for example “Know your customer”.
- Provide guarantees towards potential Whistleblowers and encourage them to come forward.

## 11 Conclusion

In the Project Concept at the outset of our inquiry into links between Tax Justice and Poverty, we set out the hypothesis ‘that there is enough money for public tasks, but it is increasingly difficult for governments and tax authorities to get their hands on it.’ For this we could find ample support in all three countries.

We find that the tax burden is strongly biased towards the wealthy, as is the general financial and economical order in many aspects. The motto of the Kenya Revenue Authority ‘Pay your taxes and set your country free’ is unheeded among Kenyan (and also Zambian and German) elites: Private, corporate and criminal wealth holders in our countries hide wealth from the tax administrations and other authorities, but with particularly grave consequences for Kenya and Zambia where only comparatively few “natural” and “legal” persons are taxed according the Principle of Ability to Pay. It is therefore to a large extent up to them, whether or when their countries obtain financial and fiscal independence and self-determination – some years ago summed up concisely by KRA Commissioner General, Waweru: “Kulipa ushuru ni kulinda uhuru”- or To Pay Your Taxes is To Set Your country Free.

Clearly, a lot needs to be done on the road towards more tax justice, enabling states to better assist the poor to develop their capabilities. On that background, we want to conclude this paper as follows:

We want to re-emphasize the historic obligations of developed states to give concessions and active support to developing states in their efforts to recapture a fairer share of the “revenue pie”: Unfair structures established with colonization continued during time and were reinforced during Cold War, along with the imposition of neoliberal recipes via the IMF or Free Trade Regimes. In today’s discussions, we should not only worry about the wellbeing of future generations, but accept responsibility for the misdeeds of our forefathers and live up to consequences and obligations arising from them.

When asking a lot from others, we also have to commit ourselves:

As we stated above (7.5, 8.1), awareness regarding the inherent dangers, limits and damaging side-effects of the present socio-economic order are growing even among those institutions which so far promoted it. The major problem is the inability of states and governments to en-

force policies arising from those insights and regain again some sort of control and regulatory power.

At the same time it is not by chance that major improvements in global tax governance have been pushed by the media and civil society: As capital, they are also able to cross borders quickly and enter into co-operative alliances. One successful example is the Financial Transaction Tax/Robin Hood Tax, which is both a Pigovian Tax with the goal of reducing volatility at financial markets, and a revenue generating tax to support the fight against poverty and climate change: The movement started from citizens, CSOs and churches, gained support of parliaments, gained support of governments and the EU-Commission and is still under construction among ten states even though the financial sector is trying everything in its power to prevent it from succeeding.

What is missing for even greater success towards a fairer and more sustainable socio-economical order is, however, a unifying set of values and norms to bind all those different actors into one coherent movement of shared vision and action. Here the Church, itself the oldest and one of the largest Global Players, could provide such a framework if the usefulness of CST norms and principles can be communicated. There are major points of contact already with Human Rights and Ecology movements or findings of Happiness or Common Good Economics. If those points of overlap could be structured and deepened, enormous synergies would be the result!

In other words: The value of church contributions in the struggle to obtain more tax justice with the goal of combating poverty is not so much in presenting brilliant social analyses and laws, but in always reminding each and everyone about the ultimate end of all economic, social and political means: To increase the wellbeing and dignity of all human beings, to assist all in developing their capabilities and enabling their active participation in the human endeavour to build our Common Home for ourselves and the generations to come.

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