

Corruption Wasting Human Rights

By Robert Mwanyumba

Presentation Overview

- Who is EATGN
- Case Study of East Africa - Kenya,
- Tax Havens and Corruption
 - Governance
 - Resource Base Perspective
 - The Triple Threat
 - Spanner in the works

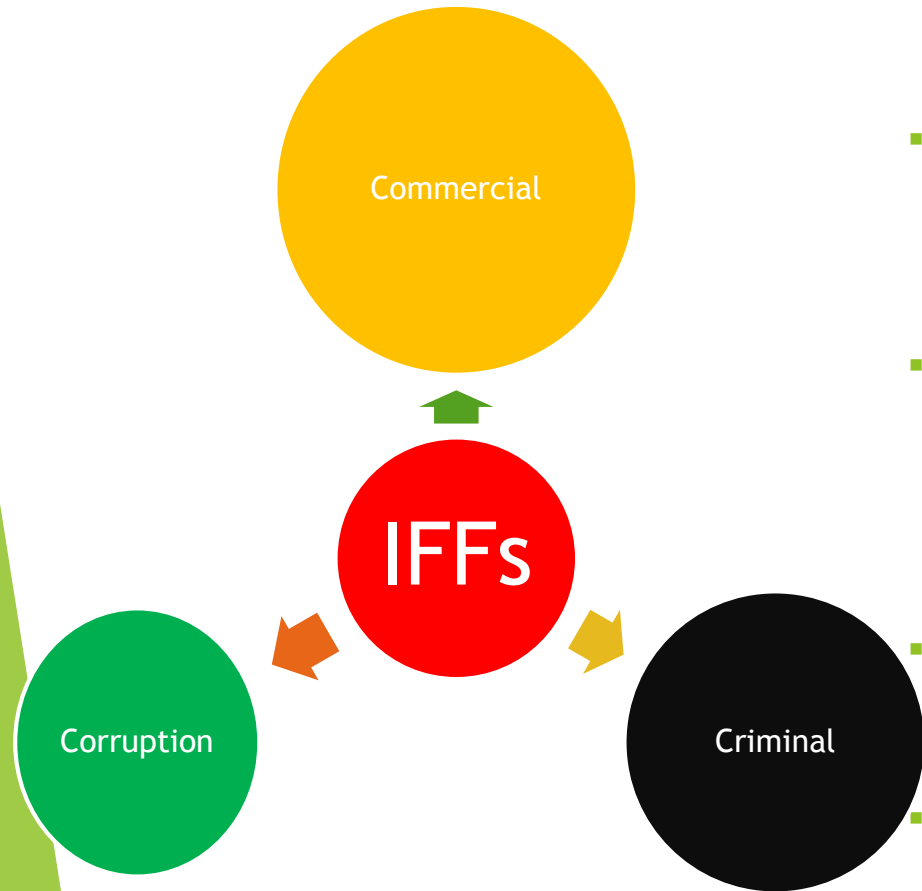
East Africa Tax and Governance Network

- ▶ The East African Tax and Governance Network (EATGN) is a network organization working on:
 - ▶ Taxation,
 - ▶ Governance,
 - ▶ Public policy,
 - ▶ Research and
 - ▶ Capacity building.
- ▶ EATGN focuses on influencing a just, transparent and citizen-driven tax system.
- ▶ 28 Members
- ▶ National Tax Platforms in: Burundi, Kenya, Rwanda, Tanzania and Uganda

Introduction

- Outcry on the cost of living - higher perks for state officers
- According to Oxfam International Inequality continues to grow top 50% increasing wealth, bottom 50% wealth continues to contract
- Is it a coincidence that companies holding oil rights in Kenya are registered in tax havens
 - Low or no tax regime
 - Difficulty in obtaining information
- Implication of aggressive tax planning
 - Profit maximization vs. deliberate undermining of potential tax base of a country

Background



- Two powerful individuals are charged with 53 counts relating to “commissions” paid out to secure lucrative contracts
- Upwards of KES 1 billion or USD 10 million stashed in Jersey Island by the two
- East Africa is not far removed from a global conversation; Panama Leaks is a Tax Havens Conversation
- AU HLP/Mbecki Report classifies IFFs as 3Cs:
- Corruption the understated underdog of IFFs; corruption acts as a catalyst for outflows

Contd.

- Tax havens provide a legitimate instrument through which IFFs are perpetuated
- Taxation as key to a state's survival:
 - Right to tax - legal provisions hinged on public financing
 - Obligation to tax - functional properties and ability to maintain the social contract
- Low tax rate inability to meet its public financing obligations vs high tax rate leads to sustenance by workers and businesses structuring activities around aggressive tax planning

Undermining
the tax base

Undermining
service delivery

Undermining
human rights

Corruption Wasting Human Rights

- Definitional and conceptual perspectives limit the interaction of taxation and human rights and create an exclusive club of experts.
- IFFs manifestation through corruption and drawing from an economic perspective (legal offense in the economic sphere Susan Rose Ackerman) its preponderance traverses the social, political, ethical and moral sphere

Legal and Policy Prescriptions

- ▶ International convention on civil and political rights, Universal Declaration on Human Rights
- ▶ International convention on economic, social and cultural rights,
- ▶ African Charter on Human and Peoples Rights
- ▶ Ethics and Anti-Corruption Act
- ▶ Income Tax Act
- ▶ Tax Procedures Act
- ▶ Convention against organized crime

Questioning Tax Havens

- Do tax havens guarantee fundamental freedoms?

Tax Havens attract FDI - attract savings, eliminate barriers for doing business, raise a country's borrowing limit, provide reserves during downturns for liquidity and investment

Amartya Sen argues that high incomes do not necessarily lead to the wellbeing of an individual;

Ben Shepherd, argues that politics should not be misconstrued with [good] governance in the broader context of economic growth

Contd...

- ▶ The interplay of social and political factors in economic growth which cannot be overemphasised.
- ▶ A single factor, therefore, cannot be the sole premise for consideration of economic growth.
- ▶ Economic growth therefore, of necessity will not translate to better enjoyment of human rights for the citizenry.
- ▶ In 2014, G20 High Level Principles on Beneficial Ownership Transparency, took an incline towards corruption, tax evasion and money laundering - implication on human rights??
- ▶ Growth of the African Economy - telecommunications sector, agricultural sector, extractives sector, financial services sector, manufacturing sector and consumer goods sector

Contd...

- ▶ Intra-agency transactions within multinational consist of upwards of 60% of global economic activity.
- ▶ In 2014, almost 72% of the Fortune 500 companies operated subsidiaries in tax haven jurisdictions.
- ▶ Mispricing accounted for 80% of illicit financial flows out of developing countries over the last decade (US\$4.688tn of the estimated US\$5.86tn in total illicit financial flows).
- ▶ Growing interest in doing business in Africa may speak to the potential of revenue loss and subsequent deprivation of access to social services.
- ▶ In a bid to attract FDI, Tanzania is a classical case where tax incentives to companies are costing the country Tshs 381 Billion (\$141 million)

Contd...

- ▶ Corruption acts as a conduit for IFFs
- ▶ Tax havens provide an intrinsic web whose navigation is often shrouded in secrecy
- ▶ These systems self-preserve by legitimising their existence in the global financial architecture
- ▶ Tax havens do not simply exist to provide an escape from taxation, but create secret societies that enable multinationals and individuals to disregard their societal responsibility while enjoying the benefits therein

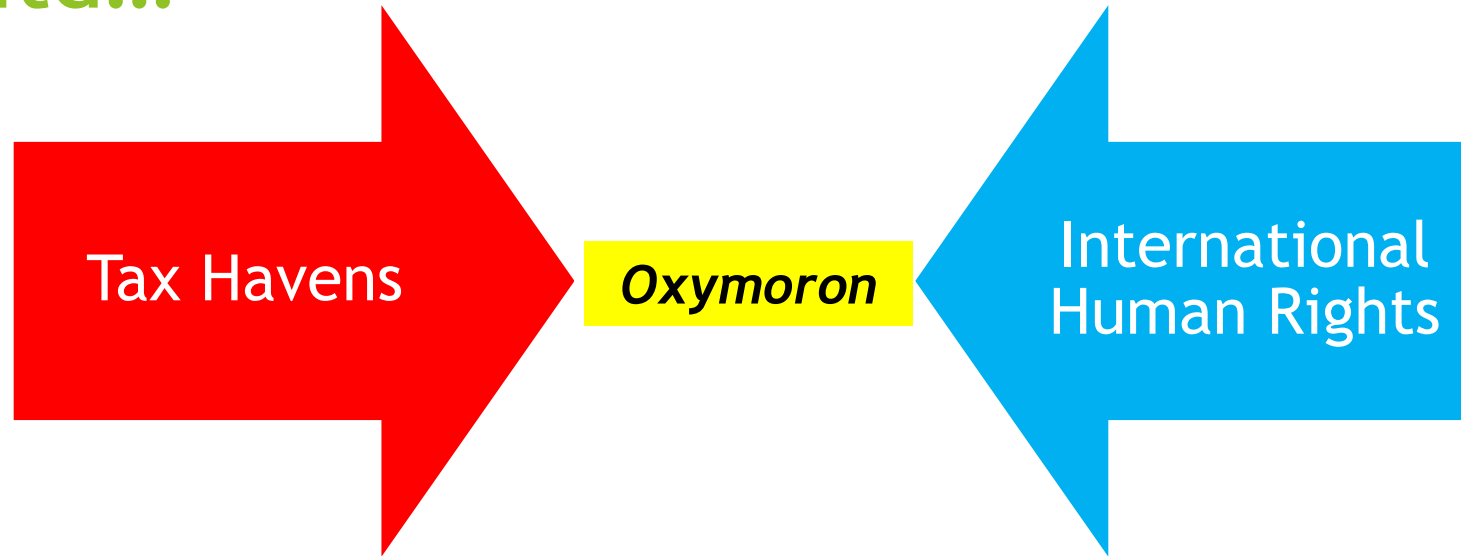
Contd...

- Is there really a justification by states for progressive realization through the rhetoric of insufficient funds?
- Burundi, had aimed to reduce under -5 mortality rates from 164 per 1000 in 2000, to 63 per 1000 in 2015.
- The actual annual reduction from the year 2000 to the year 2011 was a mere 1.5 per cent which meant that Burundi required 63 years to achieve its set out goal.
- Burundi, lost about 6% of its GDP to IFFs which if invested in the reduction of under-5 mortality rates would have taken the Burundian government 25 years from the year 2000

Corruption at the Detriment of the State

- African constitutions place an emphasis on the revenue generation function rather than the reciprocal relationship of the function of the taxes.
- Evident in the emphasis of the role of the citizenry with words such as “*duty, obligation, imposition of tax, power of the state to tax...*” within constitutions.
- This speaks to the disconnect in the conversation between taxation and human rights
- The act of maleficence against the state is embodied in corruption - it takes away state resources and destroys the legitimacy of institutional mandates
- Interplay of power and corruption - political power often translates to economic resources and the reverse, accumulation and maintenance of resources.

Contd...



- Sustainable development models demand that developing countries maximise the potential for domestic resource mobilisation
- High poverty levels (resource deprivation) - perpetuation of structural injustices manifest through human rights abuses (inequality, oppression and exclusion)
- Tax havens create a disproportionate shift in tax burdens

Conclusion

- Triple Threat of Tax Planning: companies holding oil rights



- Coincidence of registering in tax havens?
 - Excellent tax planning
 - Severe compromise to the potential for revenue generation
- Deliberate efforts to deprive states of much needed resources to provide social services are in themselves a form of abuse:
 - Act of omission
 - Act of commission

Contd...

- ▶ Tax havens play a facilitatory role in human rights abuse
- ▶ *“Stop the Bleeding”* Campaign by Tax Justice Network - Africa



Thank you

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. These shapes are primarily located on the right side of the frame, creating a modern, layered effect against the white background.