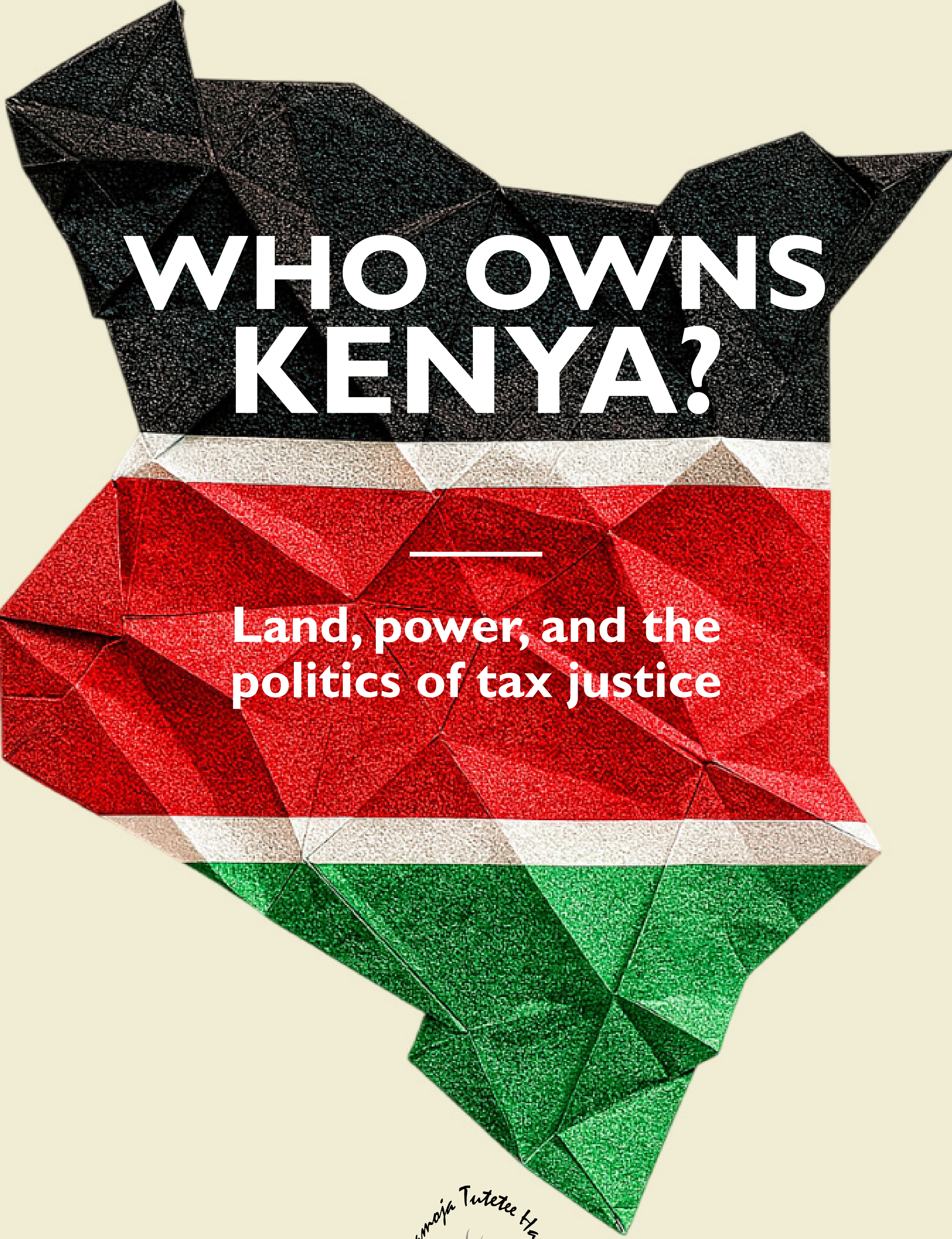
WHO OWNS KENYA?

Land, power, and the politics of tax justice



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KENYA HUMAN RIGHTS COMMISSION

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Abbreviations and Acronyms

ACHPR	African Charter on Human and Peoples' Rights
AU	African Union
CBDR – RC	Common but Differentiated Responsibilities and Respective Capabilities
CESCR	Covenant on Economic, Social, and Cultural Rights
CGT	Capital Gains Tax
CRA	Commission on Revenue Allocation
DTA	Double Taxation Agreement
EACC	Ethics and Anti-Corruption Commission
EPZ	Economic Processing Zone
FDI	Foreign Direct Investment
FPIC	Free Prior and Informed Consent
GBP	British Pound Sterling
GDP	Gross Domestic Product
GIS	Geographic Information System
HA	Hectares
HNWI	High Net Worth Individual
IDP	Internally Displaced Person
IPC	Integrated Food Security Phase Classification
ITA	Income Tax Act
KES	Kenyan Shilling
KIPPRA	Kenya Institute for Public Policy Research and Analysis
KRA	Kenya Revenue Authority
LAPSSET	Lamu Port-South Sudan-Ethiopia Transport
LRA	Liberia Revenue Authority
LVT	Land Value Taxation
MP	Member of Parliament
Ndung'u Land Report	Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land, 2004
NIEO	New International Economic Order
NLC	National Land Commission
NRT	Northern Rangeland Trust
OECD	Organisation for Economic Cooperation and Development
PAYE	Pay as You Earn
PIT	Personal Income Tax
PPP	Public Private Partnerships
SEZ	Special Economic Zone
TAT	Tax Appeals Tribunal
TJRC	Truth Justice and Reconciliation Commission
UHNWI	Ultra-High Net Worth Individual
USD	United States Dollar
VAT	Value Added Tax
Waki Report	Report of the Commission of Inquiry into Post-Election Violence

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Executive Summary

In Kenya, land has been the foundation of injustice for generations. Colonial authorities forcefully displaced communities, redrew boundaries, and allocated vast tracts to settlers and their local allies. Independence did not reverse these injustices. Instead, land was transferred from colonial hands into the control of political families and their networks. To this day, land ownership remains the single most powerful determinant of wealth, political influence, and access to opportunity in Kenya. Any conversation about fairness or economic justice must therefore begin with land.

This report finds that Kenya's political economy is structured around land, and the systems governing it continue to favour a small elite. While ordinary Kenyans pay heavy taxes on consumption and income, wealthy landowners hold expansive tracts of land, often unused or acquired irregularly, without paying a fair share back to society. Land-related wealth remains largely untaxed, even though it represents the bulk of elite wealth in Kenya.

Critically, the report shows that taxing land, especially through robust land value taxation (LVT), offers one of the most powerful, equitable, and sustainable ways for Kenya to raise revenue. If implemented effectively, land taxation could generate sufficient and predictable revenue to finance essential social and economic services, including education, healthcare, social protection, and more. It would also reduce Kenya's over-reliance on regressive taxes, such as VAT, which currently disproportionately burden the poor.

The findings indicate that fewer than two percent of Kenyans own more than half of the country's arable land. This concentration restricts livelihood opportunities, reduces agricultural productivity, perpetuates food insecurity, and prevents millions from utilizing land titles to access credit. High land prices, driven by speculation rather than productive use, have locked out young people and women from ownership and the generational wealth it creates.

Community land remains especially vulnerable. Delays in registration, boundary manipulation, forged titles, and politically engineered dispossessions continue to expose communities to exploitation. Weak land governance systems, exacerbated by elite interference, enable public institutions to be exploited for the protection of illicit wealth rather than for the defense of citizens.

The report shows that Kenya operates a dual land economy. A wealthy minority controls vast tracts of land and benefits from weak taxation, opaque ownership systems, and political protection. Meanwhile, the majority struggle to access land, pay high taxes on basic goods and income, and face shrinking public services due to a narrowing fiscal space.

Land taxation sits at the heart of breaking this cycle. A progressive land tax, especially an LVT, would curb speculation and idle landholding; promote productive land use; ensure that those who hold the most valuable land contribute proportionately to national development; strengthen counties' revenue autonomy; finance rights-based social services; and provide a meaningful pathway for restorative and distributive justice.

This report demonstrates that fair and effective land taxation could raise substantial revenue, narrow inequality, and begin addressing historical land injustices. It would also improve transparency by forcing the disclosure of beneficial land ownership, which is a major step toward dismantling the secrecy that shelters illicit wealth.

Introduction

The global financial architecture has long perpetuated inequitable and unsustainable development, benefiting a small elite at the expense of the collective well-being of nations. In the midst of polycrises – debt crises, climate crises and extreme inequality – this paradigm is finally facing increased scrutiny in several arenas, including in relation to a just transition, a UN Framework Convention on International Tax Cooperation, a draft Covenant on the Right to Development, a proposed UN Framework Convention on Sovereign Debt, and advocacy for increased climate finance, among others.

These initiatives aim to democratize global economic decision-making, ensuring that states can generate their maximum available resources to meet their obligations and realize human rights, including the right to development. From climate justice frameworks to tax cooperation initiatives, global conversations are increasingly centring equity and reparations.

A key part of these discussions involves the taxation of wealth, at the global and domestic levels. In Kenya and Africa more generally, wealth and property, in particular, have been underutilized as a source of revenue.[1] In Kenya, the wealth gap is not abstract; it is deeply rooted in who owns land. Unlike liquid assets, land in Kenya carries historical, political, and emotional weight. Thus, any meaningful discussion on tax justice must confront the land question directly.

In Kenya, land has historically been a focal point of injustice, dating back to colonialism and continuing through post-colonial and neo-colonial practices of elite capture, displacement and dispossession, extraction, and exploitation. These deep-seated land injustices, compounded by modern financial inequities, pose a critical challenge to Kenya's tax justice and inequality issues.

This report aims to reframe the issue of land justice as a central concern within the broader context of tax justice and inequality, particularly in Kenya, while exploring how addressing land inequalities can drive sustainable development and reparative justice.

1 Ali, M. et al, Property Taxation in Developing Countries, (2017), CMI, Vol 16 No. 1, https://www.cmi.no/publications/file/6167-property-taxationin-developing-countries.pdf

Study Rationale

Kenya's current economic crisis, which is manifested in rising public debt, ballooning cost of living and widening inequality, cannot be divorced from the long shadow of neoliberal policy frameworks. From the painful legacies of the Structural Adjustment Programmes (SAPs) in the 1980s and 1990s to today's fiscal austerity and externally driven debt obligations,[2] Kenya has borne the brunt of policies that prioritise market liberalisation,[3] deregulation and privatisation[4] over-inclusive development.

Efforts to increase wealth taxation, including through capital gains tax and increased personal income tax on high-income earners, are ongoing. However, land dispossession – a primary source and means of wealth accumulation for the elite – and the continued lack of its redress continue to disempower and impoverish vulnerable communities, exacerbating existing inequalities. Beyond the immediate benefits of security of property for housing, access to and ownership of land provide for agricultural use (the largest employer of people in Kenya) as a means of livelihood and social mobility. Further, the inability to own and leverage land prevents individuals, households, and communities from accumulating capital and building economic resilience.

This report argues that land justice is not a peripheral issue, but a central pillar of tax justice, resource distribution, and equitable development. Without adequately addressing the historical and ongoing injustices surrounding land ownership, wealth and income inequality will persist, undermining efforts to create a fairer tax system and an equitable development agenda. By more closely integrating the question of land justice into the fiscal justice framework, including improvements in property taxation, land titling, and the return or provision of compensation for stolen land, the state can generate substantial resources for public services and development while promoting reparative justice for historically and presently marginalized communities.

Objectives

1. To examine the extent to which land injustice contributes to inequality in Kenya.
2. To analyze how wealth, particularly land ownership, is concentrated among Kenya's elite and assess its implications for broader wealth inequality.
3. To evaluate the actions taken and not taken to address land injustices in Kenya and to identify the underlying reasons for these gaps.
4. To assess the potential fiscal and developmental gains that Kenya could unlock through meaningful land tax reforms.

2 Maci, R., (January 16, 2025), "Debt and Austerity and the IMF's Legacy of structural violence in the Global South", https://www.theelephant.info/analysis/2025/01/16/debt-and-austerity-the-imfs-legacy-of-structural-violence-in-the-global-south/

3 Ngugi, D., (1997), The Implications Of Agricultural Market Liberalisation For Market Efficiency And Agricultural Policy In Kenya: The Case Of Maize, https://erepository.uonbi.ac.ke/handle/11295/96140

4 The Economic and Social Rights Centre - Hakijamii, Center for Human Rights and Global Justice at NYU Law School, (2021), Wrong Prescription: The Impact of Privatizing Healthcare in Kenya, https://chrgj.org/wrong-prescription-privatizing-healthcare-kenya/

Research Questions

1. To what extent is land injustice at the heart of inequality in Kenya?
2. How is wealth, particularly in the form of land, concentrated among the elite in Kenya, and what are the implications of wealth inequality?
3. What actions have been taken or have not been taken to address land injustices, and why?
4. What fiscal and developmental gains could Kenya unlock through meaningful land tax reforms?

Research Methodology

This research employed a mixed methods approach, incorporating qualitative data from interviews and a review of primary and secondary materials as follows:

1. **Literature Review**

A comprehensive review of existing literature on land justice, tax justice, and their intersections was conducted. This included an analysis of Kenya's legal and policy frameworks, as well as international best practices in reparative justice and their intersection with wealth and land taxation.

2. **Case Studies**

Case studies are used to highlight specific instances of land injustice and their socio-economic consequences for disenfranchised communities. These are analysed in terms of opportunity costs for revenue and reparatory justice, showing the broader economic impacts of land dispossession on national development.

3. **Legal and Policy Analysis**

The paper provides a legal analysis of reparative justice frameworks, domestically and internationally, to integrate them into Kenya's tax and land reform strategies. This analysis also considers how taxation can be used as a tool to rectify historical injustices.

4. **Interviews and Stakeholder Consultations**

Key stakeholders, including legal and reparative justice experts and land rights activists, were consulted to provide insights into the extent and practical implications of land and reparative justice, as well as how it can contribute to a more just tax and land governance system. These interviews were conducted during the scoping phase of the study and as part of the validation and review of the key findings.

PART 1: THE LINKAGE BETWEEN TAX, INEQUALITY AND LAND JUSTICE

Land and Wealth Inequality in Kenya

1. Land Inequality

Land in Kenya is a critical natural resource – economically, socially and politically – and is particularly essential for livelihoods because the majority of it is arid and semi-arid, with only about 20 percent of it being arable or available for productive use. About 75 percent of the country's population resides in the productive land.[5] Land scarcity, therefore, has been and continues to be the cause of conflicts between individuals, communities and other entities in the struggle to secure their livelihoods; and land inequality continues to be a dividing factor between the elites and the remaining majority.[6] This scarcity, coupled with unequal distribution, has entrenched socio-economic divides, rendering land both a vital livelihood asset and a powerful political tool.

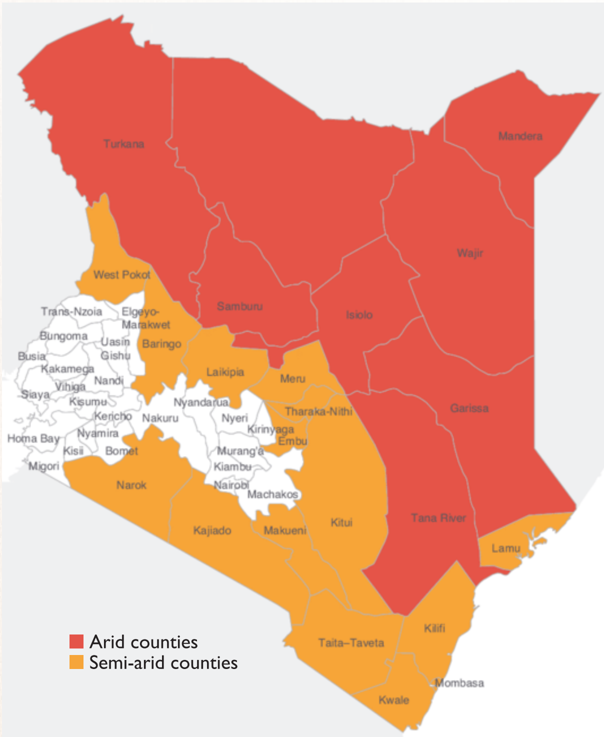


Figure 1: Map of arid and semi-arid counties in Kenya

Land ownership in Kenya and across sub-Saharan Africa is highly concentrated.[7] The large farms of the former colonial settlers particularly stand out in contrast to smallholder farms in Kenya. Some 98 percent of the farm holdings in Kenya are small (averaging 1.2 ha), lie mainly in the high potential areas, and occupy 46 percent of the total farmed land area.[8] Medium-sized farms are between 10

5 Republic of Kenya, Sessional Paper No. 3 of 2009 on National Land Policy (2009) para 29.

6 Syprose Achieng, Ashebir Solomon, Carolina Cenerini and Alberto di Grazia, 'How to Deal with People in Post Displacement – Reintegration: The Welcoming Capacity Approach' (FAO Land and Water Division Working Paper 7, 2014) or TJRC report

7 Burke, W.J. and Jayne, T. (2014) Smallholder Land Ownership in Kenya: Distribution between Households and through Time. Agricultural Economics, 45, 185-198. https://doi.org/10.1111/agec.12040

8 Kamau F.K., (1998), A Kenyan Experience on R&D efforts linking crop and livestock improvement, NRM and human research

and 60 ha (averaging 20.0 ha) and account for 1.9 percent of the holdings, occupying 15 percent of the land area. In contrast, large farms, averaging 77.8 ha (more than 50 percent larger than 200.0 ha), account for only 0.1 percent of farm holdings but occupy 39 percent of total land area.[9] Table 1 below illustrates that the majority of farm holdings are held by only 0.1 percent of the population, yet they occupy 39 percent of the total farmed land.

Table 1: Size and proportion of farm holding relative to percentage of ownership by the population

Farm holding ownership %	Average size (hectares)	Equivalent in acres	Total farmed land %
98	1.2	2.97	46
1.9	20	49.42	15
0.1	200	494.21	39

Within the smallholder farms, there are also vast differences in land sizes. Inequitable asset ownership leads to disparities in income growth, potentially slowing overall growth and hindering poverty reduction. Income disparities create inequalities in other areas such as educational attainment and, thereafter, social mobility. Self-employment in plots of less than two hectares (2 ha) using traditional methods may not yield financial returns sufficient to support a decent livelihood. Since income is a critical input into socio-economic function, low incomes associated with working on small plots may limit the attainment of education, healthcare, and financial stability in rural areas, as well as the potential for social mobility and participation in general. Additionally, poor rural areas are often neglected in terms of infrastructure such as roads, access to piped water and electricity, resulting in a vicious cycle of inequality.

Landlessness is positively related to income and life expectancy. Landlessness averages 30 percent and has been identified as a major cause of poverty in most of the former provinces. Land area is only positively related to income when the distribution is above five hectares (5 ha), likely because smaller land sizes are not economically viable using current production technologies. Land sizes below 5 ha are positively related to poverty and negatively related to life expectancy, as their production capacities do not make a positive contribution to the quality of life measured by income. Therefore, even where you have low cases of landlessness, such as in the former Nyanza and Western provinces, you may still have high levels of poverty because land ownership has not increased people's incomes. Tenure security, however, in the form of individual tenure, is positively related to income, negatively associated with poverty, and positively related to life expectancy. Therefore, income and life expectancy increase with the security of tenure, and poverty decreases with it.[10]

in East Africa, IDRC-ILRI international workshop held at ILRI, Addis Ababa, Ethiopia.

9 Paul M. Syagga, Jacinta Kimuyu, Minimum and Maximum Land Holdings in Kenya. Report for National Land Commission and Institution of Surveyors of Kenya, March 2016, https://www.researchgate.net/publication/308120685_Minimum_and_Maximum_Land_Holdings_in_KenyaReport_for_National_Land_Commission_and_Institution_of_Surveyors_of_Kenya

10 Syagga, P.M., "Land Ownership and Use in Kenya: Policy Prescriptions from an Inequality Perspective", Readings on Inequality in Kenya: Sectoral Dynamics and Perspectives, https://land.igad.int/index.php/documents-1/countries/kenya/rural-development-3/801-land-ownership-and-use-in-kenya-policy-prescriptions-froman-inequality-perspective/file

Land ownership and the adequacy of size for productivity are therefore critical for income generation, human development, and intergenerational equity; however, inequalities in this regard are already glaring. Attempts have been made to address this issue. The Minimum and Maximum Land Holding Acreage Bill, 2015 and its 2023 version attempted to limit landholding acreage. The Bill sought to give effect to Article 68 (c) (i) of the Constitution of Kenya, 2010, which requires Parliament to enact legislation to prescribe minimum and maximum land holding acreages in respect of private land, and regulate the way any land may be converted from one category to another. It went through its first reading but received pushback from parliamentarians[11] and has not been listed again for reading,[12] though the National Land Commission has continued to attempt reform in this regard.[13]

A significant explanation for inequality in land ownership can be given through land grabbing, which can be categorised in three forms through which land governance has evolved:[14]

1. **Colonial Dispossession:** Land grabbing by colonial acquisition of land to establish colonial rule and provide land for incoming settlers, among other reasons. During British colonisation, fertile lands in central Kenya were seized for White settlers, and indigenous communities were herded into reserves. These land seizures laid the foundation for wealth stratification.[15]

2. **Post-Independence Maldistribution:** Land grabbing by the new political elites who were keen on retaining power upon independence. Land meant for redistribution was captured by elites and politicians under what was called "willing buyer, willing seller" programmes, marginalising the poor.[16] Ethnic favouritism in land allocation exacerbated tensions, especially in the fertile Rift Valley and coastal regions.[17] These historical injustices fuelled tensions between communities perceived as "settlers" (often referring to Kikuyu and other communities resettled from Central Kenya) and those seen as "indigenous" (such as Kalenjin, Maasai and coastal communities), especially in multi-ethnic regions.[18]

11 Mutai, E., "MPs back push for private landholding caps, (November, 23, 2022), Business Daily Africa, https://www.businessdailyafrica.com/bd/economy/mps-back-push-for-private-land-holding-caps--4030920

12 Kamunye, K. and Nyaboke, C., "Implications of Agricultural Land Subdivision in Kenya," June 30, 2023, KIPPRA, https://kippra.or.ke/implications-of-agricultural-land-subdivision-in-kenya/

13 "NLC engages stakeholders on minimum and maximum landholding in Kenya," June 24, 2025, National Land Commission, https://landcommission.go.ke/portfolio/nlc-engages-stakeholders-on-minimum-and-maximum-landholding-in-kenya/

14 Kariuki, F. and Ng'etich, R., Land Grabbing, Tenure Security and Livelihoods in Kenya, African Journal of Legal Studies 9 (2016) 79–99

15 Okoth-Ogendo, H. W. O. (1991). Tenants of the Crown: Evolution of Agrarian Law and Institutions in Kenya, https://www.scirp.org/reference/referencespapers?referenceid=3082425

16 Klopp, J. M. (2000). Pilfering the Public: The Problem of Land Grabbing in Contemporary Kenya. Africa Today, 47(1), 7–26, https://www.researchgate.net/publication/236725658_Pilfering_the_Public_The_Problem_of_Land_Grabbing_in_Kenya and Republic of Kenya (2004), Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (Ndung'u Report), https://kenyalaw.org/kl/fileadmin/CommissionReports/A_Report_of_the_Land_Commission_of_Inquiry_into_the_Illegal_or_Irregular_Allocation_of_Land_2004_Annexes_Volume%20_II.pdf

17 Boone, C. (2012). Property and Political Order in Africa: Land Rights and the Structure of Politics. Cambridge University Press, https://journals.openedition.org/anthropodev/449

18 Klopp, J. M. (2001). "'Ethnic Clashes' and Winning Elections: The Case of Kenya's Electoral Despotism". Canadian Journal of African Studies, https://colab.ws/articles/10.2307%2F486297 and Kenya Human Rights Commission (KHRC) (2006). Lands of Conflict: A Human Rights and Policy Audit of Land Reforms in Kenya.

The 2007–2008 post-election violence was not solely a political issue. It was also significantly driven by land disputes, especially in the Rift Valley. Underlying factors included long-standing resentment over perceived land injustices arising from colonial and settlement schemes, politicised narratives around land ownership and ethnic entitlement, and targeted violence against communities perceived as land intruders, leading to forced evictions and mass displacement. According to the Report of the Commission of Inquiry into Post Election Violence (Waki Report) (2008), land grievances were a major trigger for the violence, particularly in Uasin Gishu, Nakuru and Trans Nzoia counties, where land was used as a proxy for ethnic identity and political loyalty.[19] Such conflict highlights how unresolved land injustices persist as a source of political instability and exacerbate inequality.

3. **Contemporary Land Injustices:** Land grabbing by foreign multinationals and governments (often affiliated to the ruling political elite), and local elites acquiring land for a multitude of reasons, such as mining,[20] large infrastructure projects,[21] oil exploration and large-scale irrigation.[22] Land grabbing has also been undertaken for speculative purposes, with corruption in land administration enabling elites to amass vast tracts for speculation[23] or political gain.[24] Informal settlements experience tenure insecurity, with over 60 percent of Nairobi's population residing in informal settlements that lack land titles, thereby limiting access to wealth-building tools.[25]

Other continuing land injustices include:[26]

a. Lack of access to land in terms of titling
b. The need for settlement of the landless, displaced persons, and squatters
c. Lack of access to land for women and youth
d. Slow registration of community lands
e. Insecure land tenure
f. Inefficient dispute resolution mechanisms in land cases
g. Land fragmentation and small landowners

19 CIPEV (2008). Commission of Inquiry into Post-Election Violence (Waki Report), https://www.knchr.org/Portals/0/Reports/Waki_Report.pdf

20 Odhiambo, L., "Relocated for a Mine Project, Kenyans say Compensation was Unfair or Missing", Global Press Journal, October 23, 2016, https://globalpressjournal.com/africa/kenya/many-kenyans-relocated-mine-project-say-compensation-unfair-missing/

21 Lwanga, C., "Kenya: Lamu island locals say LAPSSET port & transport mega-project negatively impacting livelihoods & cultural life", Daily Nation, May 24, 2017, https://www.business-humanrights.org/en/latest-news/kenya-lamu-island-locals-say-lapsset-port-transport-mega-project-negatively-impacting-livelihoods-cultural-life/

22 Otieno, J., "Designed to fail? Why Galana Kulalu project collapsed", July 18, 2019, The Star, https://www.the-star.co.ke/news/realtime/2019-07-09-designed-to-fail-why-galana-kulalu-project-collapsed

23 Cheruiyot, D., (April 12, 2012), "Why land speculation is a menace", Standard Digital, https://www.standardmedia.co.ke/real-estate/article/2000056053/why-land-speculation-is-a-menace

24 Transparency International Kenya, (2015), "Baseline Survey, Political Analysis and Risk Mapping in Kwale and Nairobi Counties", https://tikenya.org/wp-content/uploads/2023/07/Baseline-Survey-Political-Analysis-and-Risk-Mapping.pdf

25 UN-Habitat (2020). Nairobi City Profile and Syagga, P. M. (2012). Public Land, Historical Land Injustices and the New Constitution.

26 Milimo, D. and Randiek, K., "Enhancing Social Justice in Access to Land in Kenya,", June 30, 2024, KIPPRA, https://kippra.or.ke/enhancing-social-justice-in-access-to-land-in-kenya/#:~:text=The%20National%20Land%20Policy%20(2009,laws%2C%20customs%2C%20and%20practices.

Access to land and reparations for stolen wealth (including land and access to land) are essential to restoring dignity and securing an equitable future for all. Historical and contemporary land injustices in Kenya have therefore been central drivers of wealth inequality.

2. Wealth Inequality

The concept of wealth generally refers to economic resources in the form of assets and liabilities. In the modern economy, most people associate wealth with stocks and bonds, and "capital" is often equated with corporate ownership. However, land still represents a significant percentage of all wealth in the economy, and focusing solely on capital gains overlooks the fact that land generates income from rent and that the total return is higher than is recognized. Research shows that the return on residential real estate has been as high as or higher than the return on equity.[27] Reports show that Nairobi residential real estate yields (5–8 percent) are comparable to or slightly higher than average equity market returns (6–7 percent). In the highest-yielding suburban areas (10–15 percent), real estate returns exceeded typical equity returns—especially in years when equity markets underperformed.[28]

As modern economies have grown and developed, owners of the ground on which we live have been steadily enriched and the return to land is responsible for the lion's share of the increase in wealth inequality.[29]

A narrow interpretation of wealth, defined as privately owned and marketable assets, reveals that a significant portion of Africa's current private wealth can be traced back to the colonial period. The landscape of wealth in Africa underwent a considerable transformation during the colonial era. Investments made during this era in infrastructure, such as railways and roads, enhanced export production and increased the value of agricultural land and mineral resources.

The establishment of new colonial capitals and the expansion of urban centres facilitated the growth of markets for urban real estate. They provided locations for the development of businesses, factories, and, in some instances, stock exchanges. The impact of colonialism was particularly pronounced in settler colonies like South Africa, then Rhodesia (now Zambia and Zimbabwe), and Kenya, where extensive land areas were seized and allocated to non-indigenous settlers. This appropriation led to land shortages, which in turn stimulated the emergence of land and labour markets and heightened the demand for private land ownership.

27 Jorda, O. et al, "The Rate of Return on Everything, 1870 – 2015, (June 2017), http://conference.nber.org/confer/2017/SI2017/EFGs17/Jorda_Knoll_Kuvshinov_Schularick_Taylor.pdf

28 Cytonn Annual Markets Review - 2024, (January 5, 2025), https://www.cytonnreport.com/research/cytonn-annual-markets

29 Rognlie, M., "Deciphering the Fall and Rise in Net Capital Share: Accumulation or Scarcity?", (Spring, 2015), MIT, http://conference.nber.org/confer/2017/SI2017/EFGs17/Jorda_Knoll_Kuvshinov_Schularick_Taylor.pdf

Such property rights were unequally bestowed. Individual land and property tenure was often granted only to Europeans or other non-indigenous settlers. In colonies and regions where African peasant farming predominated, much of the agricultural land remained in African hands, but typically under customary land tenure regimes that prevented owners from selling or mortgaging their land. Colonialism also vested considerable wealth in the state by designating certain lands, forests, subsoil minerals, and infrastructure as state property.

At the time of independence, decolonization presented an opportunity to rectify the imbalanced distribution of wealth. Nevertheless, numerous studies have indicated that this inequality persisted from the colonial era into the post-colonial period. Political elites took over and claimed their portions of the resources left by departing Europeans, thereby establishing an economic elite invested in maintaining the property rights systems established during colonial times.[30]

The socio-economic inequalities among counties today evidence this, with the counties along the railway line, built by the British to secure Lake Victoria, the source of the Nile as well as the spice route to India from other European powers at the time, and those in high potential agricultural areas that were formerly occupied by White settlers have good infrastructure (roads, water and electricity).[31] These counties have relatively higher economic capacities to generate more revenue than counties (referred to as "non-taxable") that were in the formerly closed districts,[32] demonstrating the direct linkage between historical and continued present land dispossession and economic inequality.[33] Forced evictions of indigenous communities and human-wildlife conflict continue to be a mainstay of the typology of land injustices in Kenya.[34]

30 Simson, R., "Colonial legacies and wealth inequality in Kenya," Explorations in Economic History, Vol. 94, 2024, 101623, ISSN 0014-4983,

https://doi.org/10.1016/j.eeh.2024.101623. (https://www.sciencedirect.com/science/article/pii/S0014498324000494),

31 Waris, A., "Taxation without Principles: A Historical Analysis of the Kenyan Taxation System", Kenya Law Review, Vol. 1: 272 [2007], https://www.kenyalaw.org/kl/fileadmin/pdfdownloads/KLReviewJournal/Waris_Paper.pdf

32 Commission on Revenue Allocation, "State of Inequality in Kenya" (2022), https://cra.go.ke/wp-content/uploads/2022/08/State-of-Inequality-in-Kenya-Report.pdf

33 "African Socialism and its Application to Planning in Kenya", Government Printer, Kenya, 1965, https://repository.kippra.or.ke/items/372860ee-1750-4ae8-a137-201035446400

34 Truth, Justice and Reconciliation Commissions (TJRC) Report, Volume IIA and Volume IIC https://digitalcommons.law.seattleu.edu/tjrc-core/

Kenya presently holds the eighth position globally, contributing 12 percent to the total issuance of nature-based solution credits worldwide.[35] In an auction conducted in June 2023, 16 companies from Saudi Arabia acquired over 2.2 million tonnes of carbon credits, with 70 percent of these credits originating from projects in Africa, including those in Kenya.[36] These include the Northern Kenya Rangelands Carbon Project, the world's largest soil-carbon removal initiative by the Northern Rangeland Trust (NRT),[37] which is currently under review following legal concerns related to community consent and conservancy establishment.[38]

Carbon market projects in Kenya have raised concerns, particularly regarding land rights. Without robust community protections, carbon markets may replicate colonial-style extractive models, turning communal land into private carbon assets. The Ogiek community, for instance, was evicted from their ancestral land in 2023 to secure carbon credits. This eviction not only displaced the people but also stripped them of their rights to manage and benefit from their land.[39] Furthermore, in June 2023, the governor of Kajiado County issued a notice revoking all carbon credit contracts signed between private entities and local communities, after it became known that private entities were entering into opaque agreements with community group ranches and conservancies to trade carbon credits. These cases demonstrated some of the potential impacts on land rights, as free, prior, and informed consent was not obtained, and local communities were at risk of losing their ability to make effective decisions regarding the use of their land. As land use shifts towards carbon sequestration purposes, communities may be denied the opportunity to access and utilize land resources, such as grass for livestock or fuelwood, and, as a result, land use conflicts can emerge.[40]

In a report reviewing the evolution of Kenya's land and wildlife conservation laws, the history, structure, and functioning of "community" conservancy model of NRT, as well as land and human rights issues surrounding the privatised model of conservation in Kenya, it was found that NRT dispossesses communities, and pastoralists in particular, of their land and deploys armed security units which have been involved in serious human rights abuses. NRT is involved in security, management of pasture land, and livestock marketing, which, according to the impacted communities, gives it a level of control that surpasses even that of the Kenyan government.[41]

35 Climate Focus, Carbon Markets Dashboard, https://app.powerbi.com/view?r=eyJrIjoiMTQwMTBkZWEtOWVmZS00Y2I1LWE1OTktMDQ1MzFjMjU2MzVjIiwidCI6IjUzYTRjNzZkLWI2MjUtNGFhNi1hMTAzLWQ0M2MyYzIxYTMxMiIsImMiOjl9

36 Miriri, D., "Saudi companies buy 2.2 million tonnes of carbon credits in Kenya auction", (June 15, 2023), Reuters, https://www.reuters.com/sustainability/saudi-firms-bid-2-mln-tonnes-carbon-credits-kenya-auction-2023-06-14/

37 Northern Kenya Rangelands Carbon Project, The Project, https://www.northernkenyacommunitycarbon.org/

38 O'Connell, D., "Doubts over Kenya Carbon Credit Porject backed by Meta and Netflix", (May 27, 2025), The Times,

https://www.thetimes.com/business-money/companies/article/doubts-over-kenya-carbon-credit-project-backed-by-meta-and-netflix-hvk9kmgkn

39 Onura, W., et al, "Navigating carbon markets: implications for land rights and community empowerment in Kenya", (June 7, 2024), TMG-thinktank, https://www.tmg-thinktank.com/blog/navigating-carbon-markets-implications-for-land-rights-and-community

40 Onura, W. et al, "Navigating carbon markets: implications for land rights and community empowerment in Kenya", June 7, 2024, tmg-thinktank, https://www.tmg-thinktank.com/blog/navigating-carbon-markets-implications-for-land-rights-and-community

41 The Oakland Institute, STEALTH GAME: "COMMUNITY" CONSERVANCIES DEVASTATE LAND & LIVES IN NORTHERN KENYA (2021) oaklandinstitute.org/sites/oaklandinstitute.org/files/kenya-stealth-game-community-conservancies.pdf

As described above, land is a productive and speculative asset. Without access, many Kenyans are excluded from credit markets (lack of collateral), agricultural income, and inheritance of property wealth.[42] Reforms that strengthen property rights, respect for the rule of law, political goodwill in anti-corruption efforts, and political accountability are vital in supporting employment-generating growth, including addressing land and wealth inequality.

Land is a source of generating livelihood from agriculture, pastoralism, and tourism, among others, in Kenya. Agriculture, forestry, and fishing contribute the largest share to GDP at 21.8 percent.[43] Cash crops, including tea and horticulture, bring in the largest value of domestic exports. However, food insecurity in Kenya is a continuous and significant challenge, with approximately 2.2 million people facing high levels of acute food insecurity, classified in IPC Phase 3 or above (crisis or worse) between February and March 2025.[44] Kenya's score of 25 in the 2024 Global Hunger Index, as shown in Figure 2, is serious.[45] This highlights the importance of land as a source of livelihood for people in Kenya and underscores the need for an equitable distribution of its resources, including through fair taxation and equitable spending.

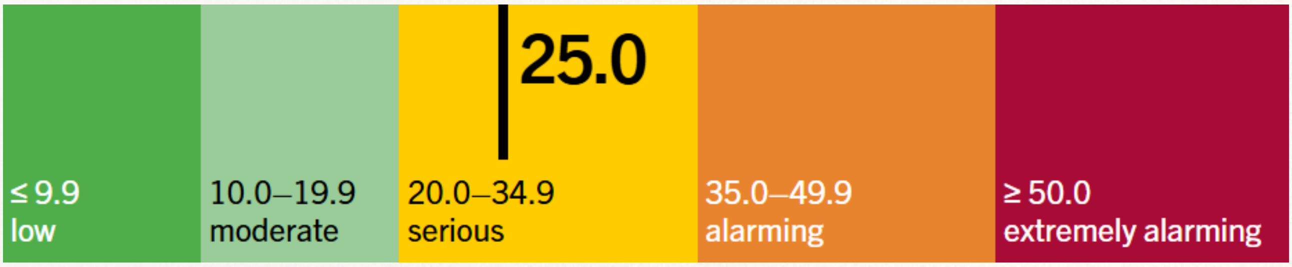


Figure 2: Kenya's Score in the Global Hunger Index

Source: Global Hunger Index, 2024, Kenya - Global Hunger Index (GHI) - peer-reviewed annual publication designed to comprehensively measure and track hunger at the global, regional, and country levels

The Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (2004), commonly known as the Ndung'u Land Report, details the methods by which government land, trust land, and private land have been grabbed, resulting in large-scale landlessness and land disputes among individuals and between communities. The Truth, Justice, and Reconciliation Commission (TJRC) identifies land disputes as Kenya's most pressing issue of historical injustice, with thousands of testimonies highlighting issues such as unfair distribution, tenure insecurity, and loss of land, making it the single most prioritized grievance.[46]

42 Kenya National Bureau of Statistics (KNBS) & Society for International Development (SID), 2013. Exploring Kenya's Inequality: Pulling Apart or Pooling Together?

43 KNBS, 2024, Economic Survey

44 IPC, Kenya: Acute Food Insecurity Situation for February - March 2025 and Projection for April - June 2025 (ASAL), Kenya: Acute Food Insecurity Situation for February - March 2025 and Projection for April - June 2025 (ASAL) | IPC - Integrated Food Security Phase Classification

45 Global Hunger Index, 2024, Kenya - Global Hunger Index (GHI) - peer-reviewed annual publication designed to comprehensively measure and track hunger at the global, regional, and country levels

46 Report of the Truth, Justice and Reconciliation Commission, Vol IIB

Despite being the backbone of agricultural production, women are disproportionately affected by landlessness. They comprise 70 percent of Kenya's agricultural labour force but only three percent of agricultural landowners—another 22 percent co-own land with their husbands, often without control over decision-making.[47] This glaring disparity limits women's ability to access credit, inherit wealth, and make a full contribution to economic development. True land justice must account for and correct these gender-based inequalities.

3. Fiscal Justice and Inequality

Kenya's fiscal policy plays a crucial role in shaping economic justice; however, the current tax system actually reinforces rather than reduces inequality. Kenya's tax gap in 2024 was estimated to be between two and four percent of GDP[48] (or USD120.9 billion)[49] for personal income tax (PIT) alone, demonstrating that the revenue potential is significant if several measures are effectively implemented. These measures include effective and efficient tax administration,[50] formalisation of the informal economy, expansion of the tax base, and taxing wealth, among others.

Kenya generates more revenue from indirect taxes compared to direct taxes, as demonstrated in Table 2 and Figure 3 below, which may be considered regressive. It has also consistently spent more on public debt transactions (interest) over the last five years than on public services, as demonstrated in Table 3 and Figure 4 below, which can also be considered to have a regressive effect.[51]

KES (millions)	FY 2020/2021	FY 2021/2022	FY 2022/2023	FY 2023/2024	FY 2024/2025
Total tax revenue	1,630,287.69	1,969,443.39	2,053,830.79	2,280,858.29	2,535,619.51
Total non-tax revenue	173,248.10	230,364.37	246,317.32	421,803.38	529,588.65
Total ordinary revenue	1,803,535.79	2,199,807.76	2,300,148.11	2,702,661.67	3,065,208.16
Direct taxes (income, profits, and capital gains)	694,052.52	876,707.22	941,575.75	1,096,916.99	1,229,869.97
Indirect taxes (VAT, taxes on other goods and services, taxes on international trade transactions)	1,109,483.27	1,323,100.54	1,358,572.36	1,605,744.68	1,835,338.19

Table 2: Revenues collected between FY 2020/2021 and FY 2024/2025

47 KNBS (2022) Kenya Demographic Health Survey, Kenya Demographic and Health Survey - 2022 - Kenya National Bureau of Statistics

48 Otindo, C., Reforming taxation in Kenya to reduce debt distress, February, 2024, https://www.wider.unu.edu/publication/reforming-taxation-kenya-reduce-debt-distress

49 Central Bank of Kenya, Annual GDP, https://www.centralbank.go.ke/annual-gdp/

50 Kenya Revenue Authority, Tax Gap Analyses in Kenya, https://www.addistaxinitiative.net/sites/default/files/resources/Day%203%20Kenya%20Revenue%20Authority.pdf

51 Republic of Kenya, The National Treasury And Economic Planning, Medium-Term Debt Management Strategy, JANUARY 2024, https://www.treasury.go.ke/wp-content/uploads/2024/02/2024-Medium-Term-Debt-Management-Strategy-14-2-2024-Final.pdf

Source: Table 5.4, Economic Survey, 2025

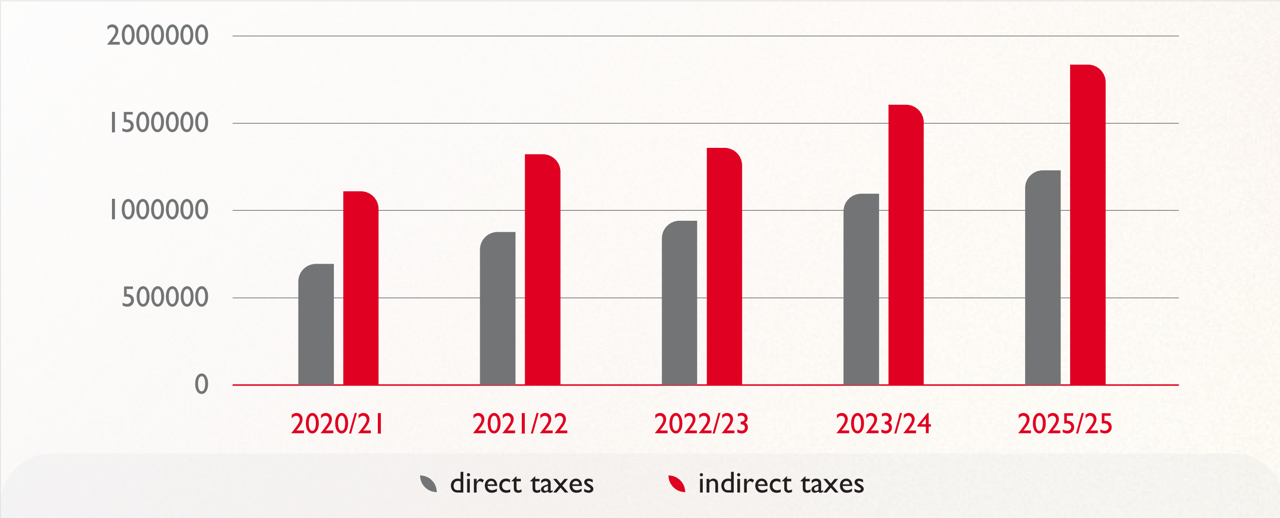


Figure 3: Comparison of revenues generated from direct taxes relative to indirect taxes in KES (millions) for FY 2020/21 – FY 2024/25

KES (millions)	2021/2022	2022/2023	2023/2024	2024/2025
Health	88,189.35	88,131.60	107,934.28	121,967.43
Education	474,054.17	580,058.09	713,534.56	703,387.97
Social protection	172,838.05	172,806.19	192,763.34	232,251.02
Public debt transactions (interest)	577,661.41	684,508.28	840,731.50	995,766.51
TOTAL Expenditure	**3,027,518.00**	**3,218,186.90**	**3,605,209.10**	**3,978,275.20**

Table 3: Expenditures for specific social sectors for FY 2021/2022 to FY 2024/2025 relative to debt and total expenditure
Source: Table 5.8 Economic Survey, 2025

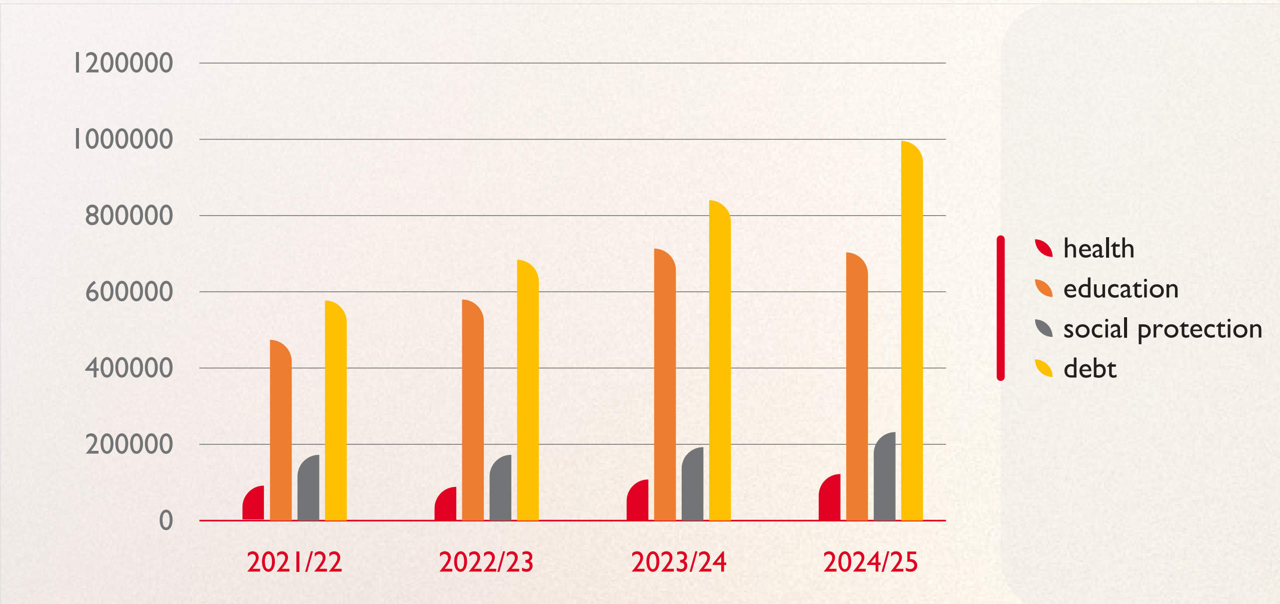


Figure 4: Expenditures in select social sectors relative to expenditures in public debt (interest) for FY 2021/22 – 2024/25

This imbalance in tax types and spending priorities means that those who can least afford it bear the burden of regressive taxation and the impact of regressive public spending relatively more than those who can better afford it.

The share of social spending (health, education, social protection, and water and sanitation) relative to total budget was 23.06 percent, and 6.06 percent of GDP for the fiscal year 2022/23, continuing a downward trend since 2019. This investment is relatively low compared to international and regional recommendations on minimum levels of social expenditure. While progressive strides have been made in public education spending, with Kenya allocating between 15 percent and 20 percent of its budget over the last five years, which aligns with the Incheon Declaration, the same cannot be said for health and social protection. Kenya has spent, on average, over the last five years, under seven percent and under two percent on health and social protection, respectively,[52] whereas the Abuja Declaration requires African states to spend at least 15 percent of their budgets on health[53] and the AU Social Protection Policy for Africa requires 4.5 percent for social protection.[54] Low investment in the social sectors is partly driven by the shrinking fiscal space resulting from increased debt servicing costs and reduced domestic revenues.[55]

This reduced fiscal space, as well as the reduced ability to generate Kenya's maximum available resources to realise human rights through public spending, has led to increased taxation and debt in general, which disproportionately impact sections of the population that are less able to bear these burdens. Moreover, the projects for which Kenya's debts are incurred also indicate that loans are not taken for the benefit of the majority of the population in Kenya. Yet, they are bearing the costs for these debts.[56]

Kenya's political and corporate elite have also captured fiscal policymaking, particularly by developing laws that exempt or reduce their tax liabilities.[57] Estate taxes in Kenya, for instance, exempted the first two presidents from payment before being abolished.[58] Before the taxation on allowances of members of parliament (MPs), MPs were previously exempt.[59] The year that personal income taxes were imposed on MPs, their allowances (which were then non-taxable)[60] were significantly increased.

52 TJNA and Oxfam, The Kenya Fair Tax Monitor (2022), https://kenya.oxfam.org/latest/publications/kenya-fair-tax-monitor

53 African Summit on HIV/AIDS, Tuberculosis and other related Infections Diseases, Abuja, Nigeria, (The Abuja Declaration), (24-27 April 2001), https://au.int/sites/default/files/pages/32894-file-2001-abuja-declaration.pdf

54 First Session of The AU Conference of Ministers in Charge of Social Development, Windhoek, Namibia, 27 - 31 October 2008, SOCIAL POLICY FRAMEWORK FOR AFRICA, CAMSD/EXP/4(I), https://au.int/sites/default/files/documents/30218-doc-social_policy_framework_for_africa_-_final_-_18_nov_2008.pdf

55 OHCHR, Human Rights-Based Analysis of Kenya's Budget 2022/2023, https://www.ohchr.org/sites/default/files/2022-09/Human-Rights-Based-Analysis-of-Kenya-Budget-2022-23.pdf

56 TISA, The Impact of the IMF Fiscal Consolidations Programme on the Kenyan Economy, Impact of the IMF Fiscal Consolidation Programme on the Kenyan Economy, Livelihoods and Overall Accountability Framework, TISA, 2022,

57 Oxfam in Kenya, Analysis of Tax Incentives and Exemptions in the Finance Acts from 2009 – 2019, (2021), https://kenya.oxfam.org/latest/publications/analysis-tax-incentives-and-exemptions-finance-acts-2009-2019

58 Kamau, J., Kenyattas, Mois and the history of death tax — who said we can't tax the dead?, February 05, 2023, Daily Nation, https://nation.africa/kenya/news/kenyattas-mois-and-the-history-of-death-tax-who-said-we-can-t-tax-the-dead--4111474

59 KRA to rake in Sh800m as MPs start paying taxes, Thursday, March 14, 2013 — updated on December 24, 2020, https://www.businessdailyafrica.com/bd/economy/kra-to-rake-in-sh800m-as-mps-start-paying-taxes-2027474

60 Laws of Kenya, The Income Tax Act, Chapter 470, https://eregulations.invest.go.ke/media/Income%20Tax%20Act.pdf

In relation to corporate power, for example, the Kenya Bankers Association lobbied for a moratorium on capital gains tax, which remained in place for 20 years.[61] Companies offering betting, gambling, and lotteries have constantly lobbied for the reduction or removal of taxes on their activities. Developers of high-end real estate projects enjoyed tax incentives not available to developers of low-end housing, where there is much more need for investment.[62]

A fiscal system is considered just and equitable when it comprises progressive taxes and progressive spending.[63] This means that it imposes and collects more taxes on those who have more than those who have less, and spends adequately on public goods and services, such as public health, public education, and social protection, on which those who are less well-off depend.

Studies show that fiscal policy can reduce within-country income inequality by up to 40 percent. Opportunities for equitable economic growth include increasing the progressivity of income tax, improving the efficiency of consumption taxes, and removing inefficient subsidies and tax exemptions. They also indicate that the design and quality of social protection, as well as the delivery of public health and education services, are crucial to ensuring positive net returns from fiscal intervention.[64]

Case Studies of Tax Abuse by Large Landholdings

Large landholding owners have been seen to perpetuate not only human rights abuses but also tax abuses. The following examples of Delmonte Kenya and Kakuzi demonstrate this.

The Case of Del Monte

The Del Monte pineapple farm has long been a site of alleged human rights violations,[65] but it is also reported to be undertaking tax abuses. Del Monte Kenya Limited, a subsidiary of Del Monte International Inc., registered in Panama, was involved in a tax dispute with the Kenya Revenue Authority (KRA) regarding the deductibility of foreign exchange losses incurred during the conversion of foreign currency loans into equity. This case raised key issues in tax law involving related-party transactions, thin capitalisation, and foreign exchange loss treatment.

61 Oxfam in Kenya, Analysis of Tax Incentives and Exemptions in the Finance Acts from 2009 – 2019, (2021, https://kenya.oxfam.org/latest/publications/analysis-tax-incentives-and-exemptions-finance-acts-2009-2019

62 Ibid

63 Renzio, P., "Promoting equity through taxation in developing countries: What do we know? And what role can civil society play?" June 2020, International Budget Partnership, https://internationalbudget.org/wp-content/uploads/promoting-equity-thru-taxation-june-2020.pdf

64 Granger, H., et al, Fiscal policy and income inequality: The role of taxes and social spending, September 2022, ODI, https://media.odi.org/documents/ODI_Report_Fiscal_policy_and_income_inequality_the_role_of_taxes_and_social_sp_GwknCLd.pdf

65 Business & Human Rights Resource Centre, "Kenya: Morrisons suspends supply from Del Monte due to alleged human rights abuses", (June 27, 2024),

https://www.business-humanrights.org/en/latest-news/kenya-morrisons-suspends-suppliers-from-del-monte-due-to-alleged-human-rights-abuses/

Between 2001 and 2008, Del Monte Kenya Limited received interest-free, unsecured foreign currency loans (USD and GBP) from Del Monte International Inc., totalling USD 28.3 million and GBP 1.46 million, respectively. Due to currency fluctuations, unrealised foreign exchange losses accrued and amounted to KES 401 million by 2008. Del Monte Kenya Limited converted the loans into equity by issuing 41,625 ordinary shares to Del Monte Kenya Holdings. The exchange losses were claimed as a deduction in the 2009 tax computation.

The KRA audited Del Monte Kenya Limited for the period 2009–2011 and disallowed the exchange loss deduction, resulting in additional tax assessments totaling over KES 222 million for 2010 and 2011. The Tax Appeals Tribunal (TAT) allowed the offset of inter-company receivables (USD 31,891) as deductible but disallowed the foreign exchange losses from debt-to-equity conversion, ruling that losses are only deductible when realised; that debt settlement via share issue is realisation, but the exchange losses from such conversion are not tax-deductible, characterising such losses as capital in nature rather than revenue.

The Court of Appeal's 2017 ruling overturned the TAT's ruling on the main issue, holding that exchange losses realized upon settlement of debt (even through equity conversion) are deductible under Section 4A of the Income Tax Act (ITA). It confirmed that such deductions are not excluded under Section 4A, and provisions in Sections 15 and 16 of the ITA were misapplied by the TAT.

The Del Monte case has many of the hallmarks considered as tax abuse by tax justice activists, including:

- That it involved a tax haven – its subsidiary is in Panama, considered twenty-eighth in the world as a tax haven by the Corporate Tax Haven Index and eighteenth in the world in the Financial Secrecy Index.[66]
- That it involved thin capitalisation (a strategy where a company is financed with a higher proportion of debt relative to equity than is typical, often to reduce its tax burden. It is a form of financial structuring that can be exploited to shift profits and minimise tax liabilities, particularly in cross-border transactions).
- That it involved related party transactions for transfer pricing (the pricing of goods, services, or intangibles transferred between related parties, especially across international borders).

This case highlights how multinational corporations exploit weak tax laws to shift profits abroad while contributing minimally to local revenues.

66 Tax Justice Network, Country Profiles, Panama, (2024), https://taxjustice.net/country-profiles/panama/

The Case of Kakuzi Farm

Kakuzi Products, an agricultural company, has been involved in allegations of human rights abuses, including assault, killing, and rape.[67] It has also been embroiled in tax scandals[68] concerning the taxation of fees for marketing purposes to companies based in France. The Court of Appeal held that, due to the Double Taxation Agreement (DTA) between Kenya and France, as well as between Kenya and South Africa, where the marketing companies are based, the KRA had no taxing rights against these companies. Again, the particulars of this case have many of the traits of tax abuse, including:

- Abuse of DTAs – abuse of tax treaties to reduce the overall tax burden.
- Mis-invoicing of services (potential misrepresentation of the value of services related to intangible assets).
- Strategic location of intangibles (companies may locate their intangible assets in jurisdictions with favourable tax regimes, including where there is a DTA).
- Shell companies – a corporation or company that has no significant assets or active business operations. Shell companies are often formed for various purposes, including tax avoidance, hiding ownership, or facilitating financial transactions.

Taxing Wealth (and Property in Particular)

In Kenya, wealth is not only unequally distributed but also starkly concentrated in the hands of a tiny elite. Less than 0.1 percent of the population owns more wealth than the bottom 99.9 percent.[69] Households in rural areas spend more than half of their income (63.0 percent) on food, while expenditure in urban areas is 42.2 percent, which is almost half of their income.[70] Over 60 percent of people in Kenya are unable to afford a basic healthy food basket.[71] The poorest quintile accounts for 7.4 percent of total consumption, while the richest quintile accounts for 42.2 percent of consumption, implying significant disparities in welfare.[72] About 39.8 percent of the population, around 20.2 million, are unable to meet the overall poverty line threshold (the proportion of the population that is unable to meet the minimum overall basic consumption needs, i.e., the absolute poor).[73] Approximately

67 Leigh Day, "Camellia Plc – Kakuzi, Leigh Day secured a settlement on behalf of 85 victims of unlawful violence", (February 14, 2021), https://www.leighday.co.uk/news/cases-and-testimonials/cases/camellia-plc-kakuzi/#:~:text=To%20police%20its%20(%20Kakuzi%20Plc%20),guards%20against%20members%20of%20the%20local%20communities.

68 Kenya Law Reports, Kakuzi PLC v Commissioner for Domestic Taxes (Tax Appeal E674 of 2023) [2024] KETAT 1298 (KLR) (Civ) (30 August 2024) (Judgment), https://kenyalaw.org/caselaw/cases/view/299046/

69 Oxfam in Kenya, Kenya: extreme inequality in numbers, https://www.oxfam.org/en/kenya-extreme-inequality-numbers

70 KNBS, The Kenya Poverty Report, 2021, https://new.knbs.or.ke/wp-content/uploads/2023/09/The-Kenya-Poverty-Report-2021.pdf

71 Front. Sustain. Food Syst., 10 August 2023, Sec. Nutrition and Sustainable Diets, Volume 7 - 2023, https://doi.org/10.3389/fsufs.2023.1181683

72 KNBS, 2023, The Kenya Poverty Report, https://www.knbs.or.ke/wp-content/uploads/2024/10/The-Kenya-Poverty-Report-2022.pdf

73 KNBS, 2023, The Kenya Poverty Report, https://www.knbs.or.ke/wp-content/uploads/2024/10/The-Kenya-Poverty-Report-2022.pdf

60.8 percent of household heads have not received any formal education.[74] About 60.8 percent of household heads in Kenya have never received a formal education. Yet, at the same time, the country has more than 7,200 millionaires, each with a wealth of at least KES 129 million.[75]

A significant portion of this wealth is held in land and real estate, which often goes untaxed, underscoring the urgent need for stronger land and property taxation. According to Knight Frank's Attitudes Survey,[76] which draws on responses from over 600 wealth managers handling more than USD 3 trillion for ultra-high-net-worth clients (including 2,996 UHNWIs in Africa):

- **11%** of African clients invested directly in commercial property in 2023.
- **26%** of their total wealth is tied up in primary and secondary homes.
- On average, each client owns **4.49** homes.
- **49%** of them rent out their second homes.

The taxation of wealth has been advocated globally[77] and nationally[78] as a means by which more tax revenues can be raised nominally and more equitably to address wealth and income inequality.

It is estimated that imposing a wealth tax on Kenya's super-rich has the potential to earn the country up to KES 125 billion in additional revenue[79] – nearly double the current budget for Social Protection (KES 68.6 billion for FY 2023/24).[80]

Property taxation in Kenya, however, is marred by several difficulties. These include the need to improve the valuation (with many properties missing from the valuation rolls), the need to impose taxes on both unimproved and improved sites, adopting more frequent assessments, introducing technology to reduce the cost and enhance the accuracy of assessments, improving the administration of land titling, and improving collaboration between county governments and the KRA for enhanced enforcement, among others.[81] Closing wealth gaps must begin with taxing those holding untapped, high-value property assets.

74 Table 5.1, KNBS, Kenya Poverty Report, 2022, https://www.knbs.or.ke/wp-content/uploads/2024/10/The-Kenya-Poverty-Report-2022.pdf

75 USD: KES rate of 129.133 at August 1, 2025

76 Henley & Partners, The Africa Wealth Report 2024, https://content.knightfrank.com/resources/knightfrank.com/wealthreport/the-wealth-report-2024.pdf

77 Zucman, G., A blueprint for a coordinated minimum effective taxation standard for ultra-high-net-worth individuals, June 25, 2024, https://gabriel-zucman.eu/files/report-g20.pdf

78 Omondi, B., "Wealth Tax: A Solution to Inequality in Africa", KRA, https://www.kra.go.ke/news-center/blog/1892-wealth-tax-a-solution-to-inequality-in-africa

79 Oxfam International (2022). Survival of the Richest: How we must tax the super-rich now to fight inequality. https://policy-practice.oxfam.org/resources/survival-of-the-richest-how-we-must-tax-the-super-rich-now-to-fight-inequality-621477/

80 National Treasury and Economic Planning. The Mwananchi Guide – Financial Year 2023/24 Budget. https://www.treasury.go.ke/wp-content/uploads/2023/06/Budget-Highlights-The-Mwananchi-Guide-for-the-FY-2023-24-Budget.pdf

81 Enhancing Revenue Generation and Progressivity of Property Taxation in Kenya, December, 2023, IPF, https://ipfglobal.or.ke/wp-content/uploads/2024/01/Enhancing-Revenue-Generation-and-Progressivity-of-Property-Taxation-in-Kenya.pdf

The Intersection Between Tax and Land Justice – Taxation's Role in Addressing Land-Based Inequality

Land is a vital asset to individuals and communities worldwide. When land is threatened due to discriminatory practices, conflict, corruption, unsustainable and inequitable development, forced evictions or land confiscations, environmental degradation, or other factors, individuals and communities suffer. As documented by the TJRC and Ndung'u reports, this often manifests in violations of civil, political, economic, social, and cultural rights, and has distinctive impacts on different groups.

Land taxation holds significant potential as a transformative tool for promoting equitable development, sustainable growth, and addressing historical injustices, particularly in a country like Kenya, where deep-rooted land inequality exists.

Specifically, taxation has the potential to:

5. **Promote equitable development through the progressive redistribution of wealth**

Land taxes, especially land value taxes (LVT), can target unearned wealth from appreciating land values—usually held by the wealthiest individuals and corporations. LVT, as well as progressive property taxes, can be used to shift the tax burden away from labour and consumption (which disproportionately affects the poor) toward immobile and concentrated assets (for LVT) and high-value properties.

6. **Drive sustainable growth**

Taxing idle and speculative land encourages landholders to either develop or sell it, leading to more efficient land markets and reduced urban sprawl, and incentivising productive land use. This supports more compact, connected, and sustainable urban development.

A well-calibrated land tax discourages land hoarding, particularly in urban and peri-urban areas, thereby freeing up land for housing, agriculture, and infrastructure development. The OECD has repeatedly recommended land value taxation to reduce speculative bubbles and promote land efficiency.[82]

7. **Address historical injustices**

Land taxation can reassert state control over inequitable land concentrations, particularly where land was acquired through colonial dispossession or elite capture. By taxing extensive holdings more heavily, the state can indirectly redistribute land access or use the revenues to invest in landless communities. Revenues from land taxes can fund land restitution programmes, community trusts, or rural development initiatives that specifically target those excluded from past land allocations. Land taxes can act as fiscal tools of restorative justice if tied to land governance reforms.

82 OECD (2021), Brick by Brick: Building Better Housing Policies, OECD Publishing, Paris, https://doi.org/10.1787/b453b043-en.

8. **Enhance transparency and accountability**

Implementing land tax reforms typically requires land registration, valuation, and digitisation, which improves transparency in land ownership and reduces corruption. This lays the groundwork for broader land governance reforms, including resolving disputes and enforcing land rights. Formalising land tenure in informal settlements helps incorporate the poor into the tax base and improves access to financial systems.[83] While Kenya has an online public platform that provides information about land and the processes undertaken related to it, the consent of the landowners must be obtained before the information is revealed. Stakeholders claim that there is duplicity and inaccurate information. A system akin to beneficial ownership transparency for company ownership should also be applied to land ownership.

9. **Redistribute wealth through public services**

Properly managed tax revenue can fund schools, hospitals, and infrastructure in underserved areas.[84] Properly implemented land taxation can become a reliable source of local government revenue, funding public services (roads, schools, sanitation, etc) in underserved areas. This helps bridge the service delivery gaps between urban centers and historically marginalized counties. The World Bank notes that land taxation is one of the most efficient and fair ways to raise subnational revenue.[85]

Land taxation, therefore, is not merely a fiscal tool. It is a powerful instrument of structural transformation. In Kenya, it can rebalance the tax burden, unlock underutilised assets for growth, rectify historical and structural injustices, and strengthen the fiscal capacity of devolved governments.

There exist, however, several challenges to the taxation of land:

1. **Weak land value and property taxation**

Kenya imposes land rates based on unimproved site value, particularly in urban areas. However, implementation is inconsistent, especially in rural areas where most large landholdings are located. According to the Commission on Revenue Allocation, land-based taxes contribute less than 1% of total revenue in most counties.[86] The World Bank found that land taxation in Kenya is "grossly underutilised," and wealthy landowners face minimal pressure to develop or release idle land.[87] Land value taxation (LVT) is underutilised but could be used to promote equity and curb speculation.[88]

83 Republic of Kenya (2021). National Land Titling Programme.

84 Oxfam (2017), Taxing for a More Equal Kenya: A Five-Point Action Plan to Tackle Inequality, Taxing for a More Equal Kenya: A five-point action plan to tackle inequality - Oxfam Policy & Practice

85 Kelly, Roy; White, Roland; Anand, Aanchal. 2020. Property Tax Diagnostic Manual. Washington, D.C.: World Bank Group." © World Bank, https://documents1.worldbank.org/curated/en/822221593546147046/pdf/Property-Tax-Diagnostic-Manual.pdf

86 CRA, Report on County Assemblies Own Source Revenue Training (2019), Report-on-County-Assemblies-Own-Source-Revenue.pdf

87 World Bank. 2016. Kenya Urbanization Review. © World Bank. http://hdl.handle.net/10986/23753 License: CC BY 3.0 IGO."

88 Kenya Constitution (2010), Article 209 and World Bank (2019). Improving Property Tax in Kenya's Urban Areas.

Large landowners benefit from inadequate taxation of land, including because of under-assessment of land and property values for taxation purposes. County land valuation rolls are frequently outdated or manipulated, resulting in lower tax obligations for valuable land. Politically connected elites can influence land valuation boards to keep assessments low or delay updates.[89] This undermines the principle of taxing wealth equitably and shields valuable, idle, or speculative land from contributing fairly to public revenue. For example, in Nairobi, prime multi-acre properties in high-value areas, such as Karen and Muthaiga, were grossly undervalued for decades, resulting in disproportionately low land rates.[90] If implemented effectively in high-value areas like Diani, Mtwapa, or Watamu, it could discourage absentee landlords from hoarding land and generate revenue for public services in underserved coastal towns.[91]

Taxing idle land and extensive holdings would deter accumulation for speculative purposes and raise revenue.[92] With weak or non-existent taxation on idle land, large landholders are incentivised to hold land unproductively, waiting for prices to appreciate without facing tax penalties. This drives urban sprawl, informal settlements, and artificial land scarcity in areas of growing demand. It undermines land equity and access, particularly for young people, women, and small-scale farmers. Thousands of hectares in Laikipia, for instance, are owned by absentee landlords or corporate investors holding land purely for speculation.[93]

In Kenya, wealth is concentrated in land, particularly among elites and politically connected individuals. This form of wealth appreciates over time (especially in urban and peri-urban areas) but remains largely untaxed, unlike income or consumption. It is often inherited or acquired through opaque land allocation schemes, reinforcing intergenerational inequity. It serves as collateral for credit and business expansion, facilitating further wealth accumulation for those who already own large tracts of land. The failure to tax land wealth equitably means that wealth accumulates passively, while the state relies on regressive consumption taxes (such as VAT) that disproportionately affect the poor.[94]

89 Nyabwengi, L. et al, "An Evaluation of the Property Valuation Process for County Government Property Taxation, Nairobi County", (February 13, 2020), ISSN: 2524-1354 (Online), Africa Habitat Review Journal Volume 14 Issue 1 (May 2020)

http://uonjournals.uonbi.ac.ke/ojs/index.php/ahr

90 World Bank. 2016. Kenya Urbanization Review. © World Bank. http://hdl.handle.net/10986/23753 License: CC BY 3.0 IGO."

91 Bird & Slack (2004). Land Value Taxation: Theory, Evidence and Practice, https://econpapers.repec.org/bookchap/elgeebook/3304.htm

92 Ministry of Lands and Physical Planning (2016). National Land Policy Implementation Framework, Microsoft Word - SP 7108 Lands Sessional Paper 2017.docx

93 Letai, J., "Land Deals in Kenya: The Genesis of Land Deals in Kenya and its Implication on Pastoral Livelihoods – A Case Study of

Laikipia District,", (2011), Land Portal, https://landportal.org/sites/default/files/land_deals_in_kenya-initial_report_for_laikipia_district2.pdf

94 African Development Bank (AfDB), 2020. Kenya Economic Outlook, afdb20-04_aeo_supplement_full_report_for_web_0705.pdf

Although Kenya's 2010 Constitution mandates equitable land use and taxation, implementation has been slow. The National Land Policy (2009) and National Land Commission (NLC) reports have called for land tax reforms, but little progress has been made.[95] A 2018 World Bank review noted "insufficient capacity and political will" as key barriers.[96] The result of this is that wealth held in land escapes adequate taxation, allowing landowners, especially the elite, to preserve and grow their wealth without contributing proportionately to public finances.

II. Weak enforcement and low collection efficiency

Counties, especially those with extensive rural land areas, struggle with collecting adequate revenue. The Commission on Revenue Allocation (CRA), in conjunction with the World Bank, reports that counties are collecting only around 14–16 percent of their own-source revenue potential (KES 31 billion collected relative to a possible KES 216 billion), mainly due to outdated valuation rolls, manual revenue systems, weak enforcement, corruption and political interference, as well as inconsistent billing and collection practices—resulting in significant under-collection even where taxes are due.[97] This means that even when taxes are due, collection is minimal and landholders face no serious penalties for non-payment.

III. Legal exemptions and special treatment

Corporate landholders and elites often negotiate exemptions or favourable terms through their connections or influence. For instance, certain public-private partnerships (PPPs) and foreign agricultural investors are granted land tax exemptions as part of investment deals. Some land-rich parastatals or entities with political backing are exempt from paying rates entirely. Constitutional loopholes or ambiguous legal provisions are exploited to avoid compliance with land tax obligations. For example, in the Lamu Port-South Sudan-Ethiopia Transport (LAPSSET) corridor, significant land acquisitions by foreign and domestic investors were often accompanied by tax waivers or unclear compliance requirements.[98]

Forms of incentives include agricultural land use incentives such as exemptions from capital gains tax on transfers of rural land under 100 acres and subsidies and lower tax rates of large-scale farm investors (especially in cash crops like tea, sugar, and floriculture). In terms of investment promotion, landowners developing in Special Economic Zones (SEZs), Export Processing Zones (EPZs), and large-scale infrastructure projects often receive tax holidays and reduced property rates.[99]

95 Ministry of Lands (2009). National Land Policy, http://libraryir.parliament.go.ke/server/api/core/bitstreams/27f111b2-446e-40c4-b9b7-fadf1ba6561a/content

96 World Bank (2018). Devolution and Public Sector Performance in Kenya, https://documents1.worldbank.org/curated/en/520481645582955062/pdf/Making-Devolution-Work-for-Service-Delivery-in-Kenya.pdf

97 Ng'eno, R., "County Governments can collect 216 billion from local revenues", (October 6, 2022), CRA, https://cra.go.ke/2022/10/06/county-governments-can-collect-216-billion-from-local-revenues/

98 Large Scale Land Acquisition for Investments in Kenya, September 17, 2016, LDGI, https://www.ldgi.org/download/ldgi-research-large-scale-land-acquistiton-for-investments-in-kenya/

99 Laws of Kenya, Kenya Investment Promotion Act (2023), SEZ Act (2015), and EPZ Act (1990)

While there are justifications for these incentives, such as attracting foreign direct investment (FDI), enhancing agricultural exports, and encouraging formal land development and infrastructure in rural areas, they can also be inequitable, favouring wealthy landowners and corporations over smallholder farmers and local communities.[100] They can be inefficient, often leading to land hoarding, underutilization, and displacement of local populations, especially in cases where land is allocated to absentee investors. This results in revenue foregone with little or no return. The government, in its tax expenditures, does not yet evaluate the cost-benefit of such incentives in terms of actual job creation or economic upliftment.

IV. Political influence and loopholes

Large landowners number among Kenya's political elite, a factor that has slowed tax reform targeting wealth and land, as they often resist the implementation of progressive land or property taxes in Africa. Attempts to introduce wealth taxes or strengthen land tax enforcement face opposition from interest groups tied to land wealth.[101]

Elite capture refers to the ability of influential individuals and groups to influence or control policy decisions for their own benefit. In Kenya, this manifests as:

a. Direct political control: Many large landowners are current or former politicians, senior civil servants, or politically connected businesspeople
b. Resistance to reform: Elites lobby against reforms such as land value taxation, public land audits, or wealth disclosure requirements, and
c. Manipulation of public institutions: Key institutions (such as valuation boards, land registries, county governments) are influenced to favour elite interests through deliberate under-assessment or non-enforcement of land taxes.

The Ndung'u Report documented how elites used their political office to acquire public land illegally or irregularly, which remains untaxed to this day. As a result, the elite's capture of land and fiscal institutions leads to a dual system: one in which ordinary people are taxed and regulated, while elites accumulate wealth unencumbered. The 10 richest politicians, for instance, are reported to have wealth ranging from KES 500 million to KES 700 billion, including from extensive land holdings and real estate, with[102] the Kenyatta family reported to own over 500,000 acres.[103]

100 Kenya Land Alliance A Guide on Public Land Acquisition within Community Land, 2021, https://kenyalandalliance.or.ke/login/publications/images/Public_land_acquisition_Guide.pdf

101 Collier, P. et al, Land and property taxes for municipal finance, 2018, IGC, https://www.theigc.org/sites/default/files/2017/08/Land-and-Property-Taxes-for-Municipal-Finance-06.07.18.pdf

102 Merab, M., Top 10 Richest Politicians in Kenya: From Dynasties to Modern Tycoons, April, 2025, Humans, https://vocal.media/humans/top-10-richest-politicians-in-kenya-n31fgs0mtn

103 Kibii, E., "White Settlers, Black Colonialists and the Landless Majority", September 4, 2021, The Elephant https://www.theelephant.info/analysis/2021/09/04/white-settlers-black-colonialists-and-the-landless-majority/

V. Reliance on regressive taxes

Kenya heavily relies on taxes such as Value Added Tax (VAT) and Pay As You Earn (PAYE), which place a higher relative burden on lower- and middle-income earners. According to the OECD (2022) and the Kenya Economic Survey tables above, Kenya's tax structure relies more on indirect taxation than wealth or property taxes.[104] The Kenya Institute for Public Policy Research and Analysis (KIPPRA 2020) notes that tax policy rarely targets unearned income from land and property wealth.[105]

Land rates and property taxes are the most common forms of land taxation at the county level in Kenya. Land rates are levies imposed on leasehold land, especially in urban areas, calculated based on the unimproved site value of the land. Property tax typically includes land rates and rates on improvements (such as buildings and structures), although most counties primarily tax land value rather than improvements. In practice, these are regressive as flat rates or uniform percentage-based levies do not scale proportionally with the value or size of land held. Wealthy individuals with large landholdings often pay a smaller percentage of their assets' real value compared to smallholders. Informal and poor urban settlements are effectively undertaxed or not taxed, while middle-class and small urban landowners shoulder the formal tax burden.[106]

One method for estimating potential revenues from property taxes in 26 counties in Kenya revealed a revenue gap of between 91 percent and 94 percent, equivalent to between KES 66.2 billion and KES 108.3 billion, or between 1.01 percent and 1.65 percent of the country's GDP.[107] Capital gains tax (CGT)[108] is levied on the net gain from the transfer (sale or disposal) of property, including land. In Kenya, CGT was reintroduced in 2015 (after being suspended in 1985), and as of 2023, it stands at 15 percent. CGT is paid by individuals and corporations selling land at a profit, including speculative landowners and developers in rapidly appreciating areas (such as the Nairobi suburbs and the coastal regions). Exemptions (as per the Eighth Schedule of the Income Tax Act) include transfers of agricultural property outside urban areas below 100 acres, transfers between spouses or due to inheritance, transfers of private residences if the owner has occupied the property for at least three years, and government and charitable organisations in certain circumstances.[109]

In theory, CGT can be a progressive tool, as it targets speculative and high-value land transactions. However, in practice, many high-end transactions are under-declared or disguised, and exemptions, along with poor enforcement, limit their redistributive potential.

104 OECD/AUC/ATAF (2024), Revenue Statistics in Africa 2024: Facilitation and Trust as Drivers of Voluntary Tax Compliance in Selected African Tax Administrations, OECD Publishing, Paris, https://doi.org/10.1787/78e9af3a-en.

105 KIPPRA (2020). Kenya Economic Report, kippra.or.ke/wp-content/uploads/2021/02/Kenya-Economic-Report-2020.pdf

106 Uri Raich and Dong Kyu Kwak. 2023. "The Use of Technologies to Enhance Own Source Revenue Mobilization: Applications to the Property Tax", World Bank, Washington, DC., https://documents1.worldbank.org/curated/en/099062724175528052/pdf/P176128-db08304b-130f-41b9-b46b-ffd446a3e38b.pdf

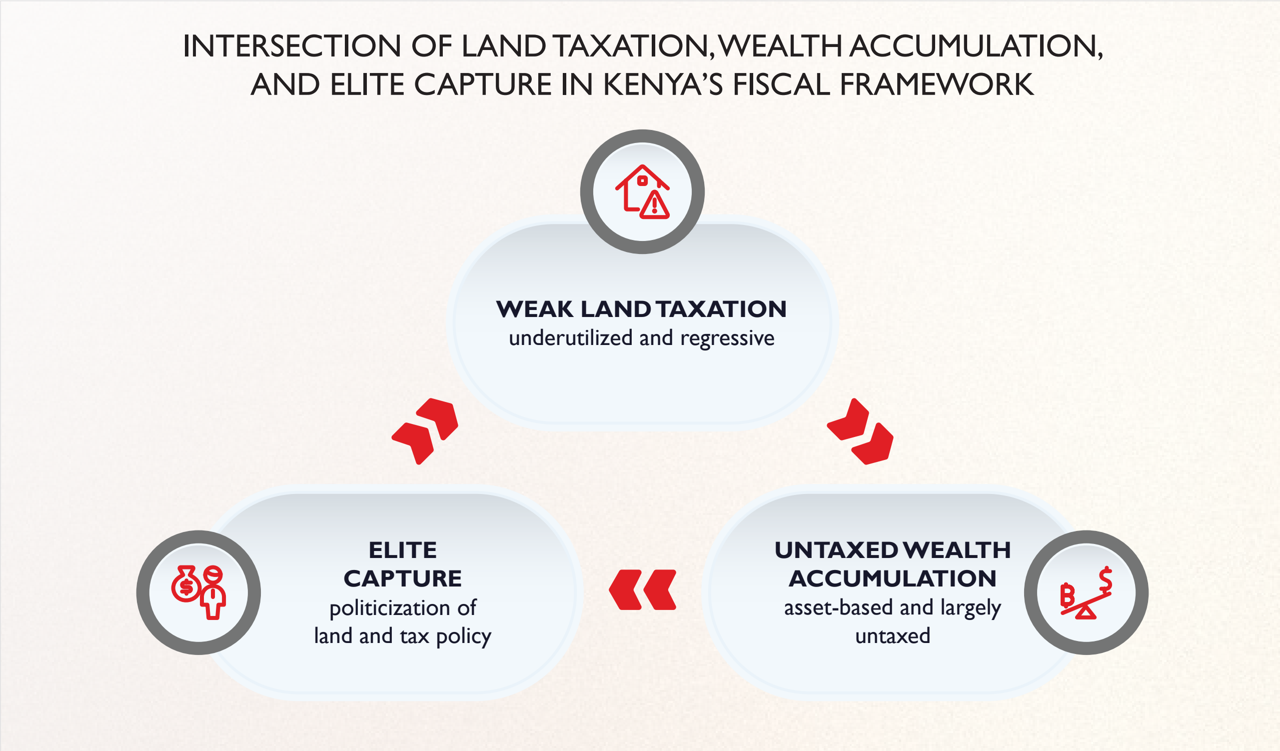
107 Adam Smith International, Own-Source Revenue Potential and Tax Gap Study of Kenya's County Governments, (2014), https://documents1.worldbank.org/curated/en/280021585886703203/pdf/Own-Source-Revenue-Potential-and-Tax-Gap-Study-of-Kenya-s-County-Governments-Final-Report.pdf?

108 Income Tax Act (Cap 470) – Section 34(1) & Eighth Schedule.

109 Kenya Revenue Authority (KRA) – Capital Gains Tax FAQs, https://www.kra.go.ke/helping-tax-payers/faqs/capital-gain-taxes#:~:text=CGT%20is%20tax%20levied%20on,effective%201st%20January%202023.

The Intersection of Land Taxation, Wealth Accumulation, and Elite Capture in Kenya's Fiscal Framework

Component	Function in the System	Interconnection
Land Taxation	Weak, underutilised, regressive	Enables land hoarding and protects elite land wealth from taxation
Wealth Accumulation	Centred on land; largely untaxed	Land becomes a vehicle for wealth that compounds over time, untaxed
Elite Capture	Politicisation of land, influence over tax policy	Prevents reforms to tax land/wealth; maintains fiscal status quo



This creates a self-reinforcing cycle:

Weak land tax → untaxed wealth accumulation → elite capture of fiscal policy → continued weak land tax

This intersection erodes revenue adequacy such that counties remain underfunded. It also diminishes equity – as poor households bear more of the tax burden via VAT and income tax – and trust in the state or fiscal legitimacy as citizens perceive tax policy as unjust and avoid compliance, resulting in low tax morale. Women and youth, despite playing a major role in agriculture, own disproportionately less titled land and land tax reform could significantly empower them if designed inclusively.

PART 2: THE LEGAL BASIS FOR ADDRESSING LAND INJUSTICE AND TAX INEQUALITY

Any attempt to rectify land-based inequality and fiscal injustice must be anchored in a clear human rights framework. Kenya's legal commitments, both national and international, demand a justice-oriented approach that recognises historical harm, promotes equitable development, and restores dignity to affected communities.

Key principles and considerations for tax justice, land justice, and human rights comprise the following:

1. **Civil and political rights**

» Equality and non-discrimination: the right to be treated equally and free from discrimination.

» Public participation and transparency: the right to participate in public affairs and to receive and impart information, including the provision for Free Prior and Informed Consent (FPIC).

» The right to self-determination: the rights of all peoples to pursue freely their economic, social, and cultural development without outside interference, and that governments are to represent the whole population without distinction as to race, colour, descent, or national or ethnic origin.[110]

» The right to remedy, including distributive justice, which requires that human beings in any society should have the exact initial expectations of basic goods—the bundle of material goods necessary to sustain a decent life. All social primary goods, such as liberty and opportunity, income and wealth, and the basis of self-respect, are to be distributed equally. However, if inequalities are to be permitted, they should be to the benefit of the least well-off in society.

2. **Social, economic, and cultural rights**

» Progressivity and the progressive realisation of human rights: using the maximum available resources to meet the state's minimum core obligations to realise human rights. This is closely linked to the principle of Common but Differentiated Responsibilities and Respective Capacities (CBDR-RC), which recognises that while climate action concerns everyone, some groups, in particular high-income and high-emitting countries, have more responsibilities than others.

110 UN Committee on the Elimination of Racial Discrimination, https://www.ohchr.org/en/treaty-bodies/cerd

3. **Solidarity rights**

» The right to development: the right of every human person and all peoples to participate in, contribute to, and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realised.[111]

4. **Human rights obligations and principles**

» Corporate accountability: the duty of corporates to respect human rights, including through the provision of remedy, and to conduct human rights due diligence for all their activities.

» International cooperation and extra-territorial obligations: the duty of states to cooperate and to abide by their obligations outside of their territories, including that they do not limit the ability of other states to generate their maximum available resources, such as taxation, through harmful tax competition or through the facilitation of illicit financial flows.

The section presents an outline of the legal and policy frameworks that provide for tax and land justice. The analysis examines how taxation can be utilized as a tool to rectify historical injustices and to integrate them into Kenya's tax and land reform strategies.

Governance Frameworks Concerning Land and Sustainable Development

The Constitution of Kenya, 2010, in its preamble, recognises those who heroically struggled to bring freedom and justice to Kenya, acknowledges Kenya's ethnic, cultural, and religious diversity, and the determination to live in peace and unity as one indivisible sovereign nation. It emphasizes the importance of respecting the environment and sustaining it for the benefit of future generations. It commits to nurturing and protecting the well-being of individuals, families, communities, and the nation, recognizing the aspirations of all Kenyans and the need for a government based on the essential values of human rights, equality, freedom, democracy, social justice, and the rule of law. This opening alone enshrines the international human rights laws, obligations, and principles described above, which relate to respecting all communities, promoting equality, and the well-being of the collective.

These commitments are further elaborated in Article 10(2) which provides for the national values and principles of governance including: … (a) the rule of law, democracy and participation of the people, (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised; (c) good governance, integrity, transparency and accountability; and (d) sustainable development.

111 OHCHR, Right to Development, https://www.ohchr.org/sites/default/files/Documents/Issues/Development/RTD_booklet_en.pdf

The Bill of Rights, as outlined in Article 19, ensures the preservation of individual and community dignity, promotes social justice, and fosters the realization of the potential of all human beings.

Article 21 provides for the general duty of the state and every state organ to observe, respect, protect, promote, and fulfil the rights and fundamental freedoms in the Bill of Rights, including the right to remedy, of which reparations are a part.

Sub-article 21(3) states that All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious, or cultural communities.

Article 27 provides for equality and freedom from discrimination including (1) equal benefit of the law, (4) non-discrimination directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth, and that the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

The Constitution provides for the protection of property rights (Article 40), the right to fair administrative action (Article 47), access to justice (Article 48), and principles of land policy (Article 60), which include equitable access to land and the security of land rights.

Chapter 12 provides for Principles of Public Finance, including in Article 201 (b) that the public finance system shall promote an equitable society, and in particular, that:

i. The burden of taxation shall be shared fairly;
ii. Revenue raised nationally shall be shared equitably among national and county governments;
iii. Expenditure shall promote the equitable development of the country, including by making special provision for marginalised groups and areas;
iv. The burden and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations;
v. Public money shall be used prudently and responsibly.

Despite these commitments and overarching principles, land governance and taxation reveal a deep-seated inequality rooted in Kenya's colonial and post-colonial land and tax policies, underscoring the need for urgent land reform and redistributive taxation and spending.

Enabling laws of the Constitution include the Public Finance Management (PFM) Act of 2012. This law facilitates the operationalization of the principles of public finance outlined in Chapter 12 of the Constitution, particularly through the delegation of responsibilities to government actors. The Public Finance Management (Reparations for Historical Injustices Fund) Regulations 2017 were developed but not passed. Consequently, the proposed Restorative Justice Fund remains unoperationalised, reflecting systemic resistance to meaningful redistribution and effectively inhibiting victims of historical injustices from accessing justice that is long overdue.

Vision 2030 is a Kenyan development programme aimed at raising the average standard of living in Kenya to a middle-income level by 2030. At the continental level, the African Charter on Human and Peoples' Rights also provides for the protection, promotion and respect for economic, social and cultural rights as well as people's rights including: the right to self-determination (Art. 20), the right to freely dispose of wealth and natural resources (Art. 21), the right to development (Art. 22), the right to peace and security (Art. 23) and right to a satisfactory environment (Art. 24); and the duties of individuals including to respect others without discrimination (Art. 27), duty to pay taxes (Art. 29) and the duty to preserve African cultural values and to contribute to the common good. As a policy document, Agenda 2063 is the African Union's strategic framework for inclusive and sustainable development, integration, peace, and security.

Laws and Policies Providing for Land-Related Protection and Redress

Article 67(e) of the Constitution requires the NLC to investigate contemporary and historical injustices and to recommend redress measures. Furthermore, Articles 2(6) and 21 (4) open the door to invoking the provisions of the African Charter on Human and Peoples' Rights in this regard.

The National Land Policy (2009), which is currently being revised, acknowledged that the land question was beleaguered by fragmentation, breakdown in land administration, social, economic, and political problems, including deterioration in land quality, squatting and landlessness, disinheritance of some groups and individuals, urban squalor, under-utilisation and abandonment of agricultural land, tenure insecurity and conflict.[112]

The policy's vision is to "guide the country towards efficient, sustainable and equitable use of land for prosperity and posterity". It provides for principles that aim to promote social justice. It provides for land rights by eradicating ethnic and gender discriminatory laws, customs, and practices, allowing people to secure land rights tailored to their specific needs and socio-economic status.

The policy aims to secure land tenure, encourage landowners to invest their labor in it, and promote and facilitate the use of alternative dispute settlement processes in land conflicts. This enables everyone to express their ideas and concerns and participate in any decision-making process that directly impacts their livelihood. Ultimately, it seeks to eliminate self-interest and power imbalances by offering transparent and cost-effective land administration, while upholding human rights.

112 Executive Summary, National Land Policy, https://repository.kippra.or.ke/bitstreams/b5fd02b7-074d-4960-b604-77a45b34285d/download

The Land Act of 2012 also provides for the operationalization of Chapter 5 of the Constitution in relation to the management of public land, private land, community land, and other land rights, as well as the National Land Policy of 2009. Section 134 of the Act prescribes a remedy to bridge the divide by establishing a framework and mechanism for the settlement of landless, displaced persons, and squatters. Institutional weakness and coordination gaps have hindered implementation, however. The NLC powers concerning settlement schemes, for instance, have been curtailed by later amendments that shifted control to the executive (Cabinet Secretaries), weakening its lead role.[113] Furthermore, coordination challenges persist between ministries, county governments, and the NLC, resulting in bureaucratic paralysis.[114]

The Victim Protection Act, 2014, gives effect to Article 50(9) of the Constitution by providing for the protection of victims of crime, reparation, compensation, special protection for vulnerable victims, and the development of mechanisms for the dissemination of information and the provision of victim support services. While it does not cover historical injustices and is confined to criminal acts, it may still provide for reparations for ongoing forced evictions.

The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012 (IDP Act)[115] provides for the prevention, protection, and provision of assistance to internally displaced persons and affected communities, and gives effect to the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons[116] and the United Nations Guiding Principles on Internal Displacement, and for connected purposes.[117]

The Community Land Act, 2016[118] provides for the recognition, protection, and registration of community land rights; management and administration of community land; the role of county governments in relation to unregistered community land; and connected purposes.

The Mining Act, 2016, repealed the Trading in Unwrought Precious Metals Act and the Diamond Industry Protection Act, consolidating issues related to prospecting, mining, processing, refining, treatment, transport, and any dealings

113 Bassett EM. The challenge of reforming land governance in Kenya under the 2010 Constitution. The Journal of Modern African Studies. 2017;55(4):537-566. https://www.cambridge.org/core/journals/journal-of-modern-african-studies/article/abs/challenge-of-reforming-land-governance-in-kenya-under-the-2010-constitution/F286E4A05A7B8EA459357ED0DE2B6ABC

114 Mwathane, I., "Challenges that stall Kenya's bid for land reforms," (October 1, 2020), Business Daily Africa, https://www.businessdailyafrica.com/bd/opinion-analysis/columnists/challenges-that-stall-kenya-s-bid-for-land-reforms-2454682?

115 Laws of Kenya, The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, CAP 134A, http://kenyalaw.org:8181/exist/rest//db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/P/Prevention,%20Protection%20and%20Assistance%20to%20Internally%20Displaced%20Persons%20and%20Affected%20Communities%20Act%20-%20No.%2056%20of%202012/docs/Prevention,ProtectionandAssistancetoInternallyDisplacedPersonsandAffectedCommunitiesAct56of2012.pdf

116 International Conference on the Great Lakes Region, Protocol on the Protection and Assistance to Internally Displaced Persons, 30 November 2006, https://emergency.unhcr.org/sites/default/files/2024-06/International%20Conference%20on%20the%20Great%20Lakes%20Region%20Protocol%20on%20the%20Protection%20and%20Assistance%20to%20Internally%20Displaced%20Persons.pdf

117 UN Refugee Agency, Guiding Principles on Internal Displacement, (September 2004), https://www.unhcr.org/media/guiding-principles-internal-displacement

118 Community Land Act, Chapter 27 of 2016, https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/CommunityLandAct_27of2016.pdf

in minerals in Kenya. According to the law, all minerals, including those on land, in lakes, rivers, streams, or watercourses, in exclusive economic zones, and on the continental shelf, are the property of the Republic of Kenya and are vested in the national government in trust for the benefit of the people. It aims to promote sustainable exploitation, benefit sharing, and formalisation of the sector.[119]

The Natural Resources (Classes of Transactions Subject to Ratification) Act, 2016, gives effect to Article 71 of the Constitution, mandating parliamentary ratification of specific transactions involving the exploitation of natural resources. It applies to transactions involving national and county governments, state organs, and private entities that grant rights or concessions for the exploitation of natural resources.[120] The Natural Resources (Benefit Sharing) Bill, 2022, aims to establish a comprehensive system for sharing benefits from the exploitation of natural resources.[121]

The National Land Use Policy, 2017, provides a legal, administrative, institutional, and technological framework for optimal utilisation and productivity of land-related resources sustainably and desirably at national, county, and community levels. The Policy is premised on the philosophy of economic productivity, social responsibility, environmental sustainability, and cultural conservation. Key principles informing it include efficiency, access to land-use information, equity, the elimination of discrimination, and the sharing of public benefits.[122]

The Land Value (Amendment) Act, 2019, establishes the Land Value Index, which provides a basis for valuing land in compulsory acquisitions and other purposes. It amended the Land Act, Land Registration Act, and the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, outlining criteria for assessing land value and impacting compensation processes. While this promotes transparency in land valuation, some critics argue that it negatively impacts community rights by adopting a market value approach to community land.[123]

The Climate Change Act, 2023, establishes a regulatory framework for an enhanced response to climate change, including mechanisms and measures to achieve low-carbon climate development, as well as related purposes. The Climate Change Act (Carbon Markets) Regulations define a Carbon Market as "a mechanism that allows public and private entities to transfer and transact emission reduction units, mitigation outcomes or offsets generated through carbon initiatives, products, programmes and projects subject to compliance with national and international laws".[124]

119 Laws of Kenya, Kenya Mining Act (2016), Cap 306, https://new.kenyalaw.org/akn/ke/act/2016/12/eng@2022-12-31

120 Laws of Kenya, The Natural Resources (Classes of Transactions Subject to Ratification) Act, Cap 387B, http://kenyalaw.org:8181/exist/rest//db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/N/Natural%20Resources%20(Classes%20of%20Transactions%20Subject%20to%20Ratification)%20Act%20-%20No.%2041%20of%202016/docs/NaturalResources(ClassesofTransactionsSubjecttoRatification)Act41of2016.pdf

121 Laws of Kenya, The Natural Resources (Benefit Sharing) Bill, 2022, parliament.go.ke/sites/default/files/2023-08/Senate Bill no6 on the Natural resources benefit sharing bill 2022.pdf

122 Sessional Paper no. 1 of 2017 on National Land Use Policy, https://repository.kippra.or.ke/items/f9ecca8c-d5d7-4932-8792-5d7fd2358cb9

123 Natural Justice, Land Value (Amendment) Act, 2019, https://naturaljustice.org/wp-content/uploads/2019/11/LVA-fact-sheet-1.pdf

124 Laws of Kenya, Climate Change Act, (2023), Cap. 387A, https://new.kenyalaw.org/akn/ke/act/2016/11/eng@2023-09-15

The Ethics and Anti-Corruption Commission (EACC) Act, 2011[125] provides for the establishment of the Ethics and Anti-Corruption Commission pursuant to Article 79 of the Constitution, to provide for the functions and powers of the Commission, to provide for the qualifications and procedures for the appointment of the chairperson and members of the Commission, and for connected purposes. The related Anti-Corruption and Economic Crimes Act, 2003[126] provides for the prevention, investigation, and punishment of corruption, economic crime, and related offences and related matters. The EACC has made some concrete gains related to land. For example, it recently recovered six parcels of grabbed land worth over KES 300 million, including school premises and road reserves.[127] It also publishes annual reports documenting the same, though stakeholders allege that it is not doing enough.

The Truth, Justice and Reconciliation (TJRC) Commission investigated, analyzed, and reported on human rights abuses that occurred between 1963 and 2008. Among other findings, the TJRC report documented for the coast region long-standing alienation of indigenous land, irregular elite allocations, forced evictions, and suppression of community land rights, leading to the emergence of secession movements like the Mombasa Republican Council. For the Rift Valley, it documented colonially driven displacement, misuse of settlement schemes for political patronage, manipulation of ethnic tensions, and weak enforcement by land institutions.[128] Despite a Framework for Implementation, however, it remains largely unimplemented because the TJRC report was never formally adopted by Parliament.

Several key reparative justice mechanisms remain missing or underutilised in Kenya. These include:

1. **Comprehensive land restitution framework**

There is currently no fully functional mechanism to restore land to communities dispossessed through historical injustices, despite the Constitution (Article 67(2)(e)) giving the National Land Commission (NLC) the mandate. The NLC's historical land injustice (HLI) process (2016–2021) received thousands of claims, but few were resolved due to political pushback, lack of enforcement powers, lack of funds,[129] and expiry of the claims period.[130] As a result, many indigenous, pastoralist and coastal communities (such as the Maasai, Ogiek and Mijikenda) remain uncompensated or unsettled.[131]

125 Laws of Kenya, Ethics and Anti-Corruption Commission Act (2011), https://eacc.go.ke/en/default/wp-content/uploads/2018/06/eacc.pdf

126 Laws of Kenya, Anti-Corruption and Economic Crimes Act (2003), Cap. 65, https://new.kenyalaw.org/akn/ke/act/2003/3/eng@2023-12-11

127 Obota, E., "EACC recovers grabbed public land worth over Ksh.300M in Kisumu," (December 11, 2024), Citizen Digital, https://www.citizen.digital/news/eacc-recovers-grabbed-public-land-worth-over-ksh300m-in-kisumu-n354364

128 Truth, Justice and Reconciliation Commissions (TJRC) Report, https://digitalcommons.law.seattleu.edu/tjrc-core/

129 The Star, "NLC slowed by lack of funds to resolve historical land injustices", November 16, 2023, https://www.the-star.co.ke/counties/nyanza/2023-11-17-nlc-slowed-by-lack-of-funds-to-resolve-historical-land-injustices?

130 KN Law, "The National Land Commission Amendment Bill, 2022" (May 12, 2022), https://kn.co.ke/the-national-land-commission-amendment-bill-2022/?

131 National Land Commission, "Ogiek Community Calls for Speedy Resettlement and Compensation", https://landcommission.

2. **Reparations policy and fund**

It remains to be established a dedicated reparations policy and a national reparations fund, as recommended by the TJRC. This is because Parliament has not enacted a Reparations Act, and there is no stand-alone budget line for victims of historical injustices, state violence, or land grabs. Victims of post-election violence, torture, and evictions, therefore, must rely on slow, expensive court cases.

3. **Restorative justice courts or tribunals**

There do not yet exist specialised bodies to mediate reparations, land restitution, and inter-community reconciliation outside adversarial court systems. As a result, current courts are overloaded, there is a lack of cultural sensitivity, and narrow legal remedies are often applied that are unsuited to reparative processes. Many disputes, therefore, escalate into cycles of violence rather than healing.

4. **Community-driven truth-telling platforms**

There are no grassroots or county-level truth commissions to complement the national TJRC process. Kenya's transitional justice framework ended with the TJRC report (2013), which has not been fully implemented. Local histories of dispossession, marginalisation, and political violence, therefore, remain unacknowledged and provide the seeds for future potential unrest.

5. **Inclusive compensation schemes**

Transparent, criteria-based programmes for compensating displaced persons, squatters, and pastoralists affected by infrastructure projects, conservation, or insecurity remain wanting. Current resettlement schemes (such as under Section 134 of the Land Act) are sporadic, poorly funded, and vulnerable to elite capture. Thus, displacement without adequate compensation continues to fuel grievances in Lamu, Turkana, Narok, and coastal regions.[132]

6. **Legal aid for reparations claims**

State-funded legal aid programmes specifically for reparative justice claims are required. The Legal Aid Act, 2016, covers general civil and criminal matters, but not targeted support for victims of historical or structural injustices—vulnerable communities, therefore, face prohibitive legal costs to pursue redress.

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go.ke/portfolio/historical-building-copy/?

132 Warah, R., "Squatters on their own land: Why calls for secession are likely to intensify in the coast region" (November 9, 2017), https://www.theelephant.info/analysis/2017/11/09/squatters-on-their-own-land-why-calls-for-secession-are-likely-to-intensify-in-the-coast-region/?

7. **Memorialisation and public apologies**

Systematic memorials, public acknowledgment, and state-led apologies for atrocities such as colonial abuses, massacres, and political detentions are needed. Though there are occasional apologies, such as the Mau Mau settlement with the UK,[133] these are selective and often externally driven. Lack of symbolic justice deepens feelings of exclusion and denial.

8. **Environmental reparations**

Mechanisms to restore ecosystems degraded by land grabs, extractive activities, or forced resettlement are lacking. Kenya has strong environmental laws, but no dedicated framework for ecological restoration as part of reparations. Consequently, communities like those in the Mau Forest or the Lake Turkana Basin lose both their livelihoods and cultural heritage.

International Human Rights Law and Development

The following international human rights frameworks oblige Kenya to promote sustainable development, realise economic, social, and cultural rights, and redress historical and present injustices. They mandate states to use their maximum available resources, including through progressive taxation and spending, to achieve rights realisation, which includes land reform and equitable taxation.

The Right to Development

"Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom."[134]

Development has been framed in terms of being process or outcome-based. In terms of process, this involves economic, social, and political restructuring, increased financial integration, formalization, and enhanced productivity, as well as production and consumption. In terms of outcomes, this has involved addressing poverty, inequality, and promoting economic growth, including considerations such as human development, capabilities (or the freedom that a person has to be or do something), happiness, and wellbeing. Development has also been framed as meeting more than just basic needs. It encompasses social norms, improving the standard of living, societal participation, the importance of resilience, and addressing poverty within the context of inequality.[135]

133 Statement to Parliament on settlement of Mau Mau claims, (June 6, 2013), https://www.gov.uk/government/news/statement-to-parliament-on-settlement-of-mau-mau-claims?

134 Preamble, Declaration on the Right to Development, General Assembly resolution 41/128, 4 December 1986, https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-development#:~:text=Recognizing%20that%20development%20is%20a,Declaration%20can%20be%20fully%20realized%2C

135 Marks, S., "Basic Concepts of Human Rights and Development", Summer School on Human Rights and Development, Har-

Human rights (including access to justice) and development must thus encompass and reconcile these interacting forms of processes and outcomes. The African Charter on Human and Peoples' Rights provides for equality in this regard (Art. 19), the right to development (Art. 22), and the utility of natural resources and remedies to affected communities (Art. 21).

Economic, Social, and Cultural Rights

The Covenant on Economic, Social and Cultural Rights (CESCR) states that:

1. The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising, to this effect, the essential importance of international cooperation based on free consent.
2. The States Parties to the present Covenant, recognising the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed:
   a. To improve methods of production, conservation, and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition, and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources;
   b. Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.[136]

Access to Justice and Socio-Economic Development

Under international human rights law, reparative justice concerns the centrality of those who have been harmed, focusing on repairing past harms, stopping present harm, and preventing the recurrence of harm.[137] The intention is to repair, in some way, the harm done to victims as a result of human rights violations committed against them. This means that by their very nature, such measures must be responsive to both the context in question and the lived reality of victims.

vard School of Public Health, July 5, 2018, https://www.hsph.harvard.edu/wp-content/uploads/sites/134/2018/06/Marks-and-Henson-Human-Rights-and-Development_July-5-2018.pdf

136 UN, International Covenant on Economic, Social and Cultural Rights, 1967, https://treaties.un.org/doc/treaties/1976/01/19760103%2009-57%20pm/ch_iv_03.pdf

137 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Resolution adopted by the General Assembly on 16 December 2005, A/RES/60/147. https://documents.un.org/doc/undoc/gen/n05/496/42/pdf/n0549642.pdf

The development of human rights norms and standards, however, has been largely separate from the development agenda. Whereas the 1974 Declaration on the Establishment of a New International Economic Order (NIEO) aimed to institute natural resource sovereignty, regulate transnational corporations, establish preferential and non-reciprocal trade agreements for developing countries, and facilitate technology transfers, the dialogue eventually stalled. The NIEO had intended to address not only inequality between states but also inequality within states.[138] Although there is a 1986 Declaration on the Right to Development, consensus on what development entails, including through a Covenant on the Right to Development, remains contested, particularly between the Global North and the Global South.

The effects of historical wrongs at both the global and domestic levels continue to infringe on human rights, prompting us to consider reparative justice as an integral part of the development paradigm.

Coloniality and the effects of colonialism persist today in the form of neocolonialism and neoliberalism. Instead of providing redress to displaced and disenfranchised communities as a result of colonialism in Kenya, newly independent governments perpetuated these injustices by laying personal claim to these properties, and by making use of ethno-political power to benefit themselves[139] and entrench a system that continues to do so.

Applying Reparative Justice to Sustainable Development

Reparation must meet three ends – acknowledgement, redressal, and closure. Thus, it not only entails making financial compensations but also emphasises the moral and ethical obligation of the oppressors to meet the demands of the oppressed, which stem from the horrific legacy of racial systems and colonial processes. These demands are proportional to the extent of losses faced by victims and their descendants in the colonised countries. Financial reparations could be complemented by symbolic measures, such as formal apologies, the establishment of truth commissions, the return of artifacts, and the sharing of scholarly literature that highlights the truth of the colonial era.[140] The African Union Transitional Justice Policy, and specifically paragraphs 67-70, addresses redistributive justice. Paragraph 69 (i) addresses the standards for land reform, while paragraph 69(ii) speaks to affirmative measures for marginalised groups (which may include taxation towards funding reparations).

138 A New International Economic Order from Below, 1 May 2024, https://www.tni.org/en/article/a-new-international-economic-order-from-below

139 Shilaho, W., Kenya's politicians continue to use ethnicity to divide and rule – 60 years after independence, July 19, 2023, The Conversation, Kenya's politicians continue to use ethnicity to divide and rule – 60 years after independence (theconversation.com)

140 Gulati, S., "Payback time, a case for reparations", May 16, 2023, LSE, https://blogs.lse.ac.uk/internationaldevelopment/2023/05/16/payback-time-a-case-for-reparations/,

Reparation measures include:[141]

1. Restitution, which should restore the victim to their original situation before the violation occurred. For example, the restoration of liberty, reinstatement of employment, return of property, or return to one's place of residence.
2. Compensation, which should provide for any economically assessable damage, loss of earnings, loss of property, loss of economic opportunities, and moral damages.
3. Rehabilitation, which should include medical and psychological care, legal and social services.
4. Satisfaction, which should include the cessation of continuing violations, truth-seeking, search for disappeared person or their remains, recovery and reburial of remains, public apologies, judicial and administrative sanctions, memorials and commemorations.

The ACHPR has provided instructive guidance on reparations and the right to development in cases, including in the case of the Endorois[142] and Ogiek communities.[143]

The current climate crisis has accelerated debate on the meaning of sustainable development and what a just transition entails, with the demand for critical (also known as "green") minerals growing increasingly urgent. Similarly, with the need for increased climate finance, communities are turning to carbon markets to generate income by trading carbon credits from their land. Without proper regulation, however, market forces may dominate these initiatives and further disenfranchise already disenfranchised communities. Greenhouse gas emission reduction and the well-being of land-holding or land-dwelling communities must be primary considerations of any carbon market initiative.

Case Studies on Land Value Taxation

Land and tax justice reforms can serve multiple goals, including fostering equitable ownership, enhancing fiscal capacity, curbing speculation, and unlocking development. The following are examples of country-specific land tax reforms, where policies have been implemented or proposed to promote equitable land use, curb speculation, and enhance fiscal fairness. While not entirely panaceas for land and tax justice, LVT has been shown to promote the objectives mentioned above.

141 OHCHR, https://www.ohchr.org/en/transitional-justice/reparations

142 Cambridge University Press, 978-0-521-19005-3 - International Law Reports: Volume 142, Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee, https://assets.cambridge.org/97805211/90053/excerpt/9780521190053_excerpt.pdf

143 AU, African Court on Human and Peoples' Rights, African Commission on Human and Peoples' Rights v Republic of Kenya, APPLICATION No. 006/2012

JUDGMENT (REPARATIONS), 23 JUNE 2022, https://www.african-court.org/cpmt/storage/app/uploads/public/62b/aba/fd8/62babafd8d467689318212.pdf

1. Liberia: Real Property Tax and Revenue Administration Reform144

Before reforms, Liberia's tax-to-GDP ratio was among the lowest in sub-Saharan Africa. Property taxes were underutilised due to outdated valuation rolls, poor enforcement, and widespread non-compliance. From 2011, reforms included the establishment of the Liberia Revenue Authority (LRA). The LRA replaced the previous Department of Revenue. Liberia computerised its tax administration, introducing e-filing and mobile payments for property tax. It undertook public awareness campaigns to improve compliance and strengthened its legal framework for enforcing arrears. As a result of these reforms, the revenue-to-GDP ratio rose by about four percentage points between 2011 and 2020. It also broadened the taxpayer base, especially in urban Monrovia, through updated cadastral surveys. However, challenges remain in rural areas due to incomplete land records and informal tenure systems.

2. Chile: Agrarian Land Reform (1962–1973) [145]

Chile's rural economy was historically dominated by *latifundios* (large estates), with underemployed labourers living in semi-feudal conditions. Between 1962 and 1973, it instituted several laws, including Law 15.020 (1962), which initiated slow redistribution, and Law 16.640 (1967), which expanded expropriation power, targeting estates exceeding 80 basic irrigated hectares. Between 1970 and 1973, reform accelerated dramatically, with the expropriation of over six million hectares of land and its redistribution to more than 100,000 families. Land was allocated to cooperatives or directly to farmers, along with technical assistance and credit, through the Agrarian Reform Corporation. As a result, short-term agricultural productivity rose in the late 1960s. However, political backlash and administrative inefficiencies emerged, and the post-1973 Pinochet government reversed much of the reform, returning approximately 30 percent of the land to its former owners and selling off the rest.[146]

144 IMF, Capacity Development, Establishing a Modern Tax Administration in Liberia, https://www.imf.org/external/np/ins/english/capacity_countries_pf_liberia.htm

145 Challies, E., Agri-food Globalisation and Rural Transformation in Chile: Smallholder Livelihoods in the Global Value Chain for Raspberries, https://1library.net/document/zk05ld4y-globalisation-rural-transformation-chile-smallholder-livelihoods-global-raspberries.html

146 Ibid

3. Venezuela: Mission Zamora (2001–Present) [147]

Land in Venezuela was highly concentrated, with millions of hectares idle while rural poverty persisted. In 2001, the Ley de Tierras y Desarrollo Agrario (2001) (Land and Agrarian Development Law) was enacted. It targeted underutilised or illegally held land for redistribution. It established the Instituto Nacional de Tierras (INTI) to identify, expropriate, and reallocate land; introduced an idle land tax to encourage owners to put their land to productive use; and granted heritable but non-transferable land-use rights to beneficiaries, thereby discouraging speculation. By 2010, the government had reportedly redistributed over two million hectares to small farmers and cooperatives. While some communities improved their food security, others struggled due to a lack of inputs, credit, and infrastructure. There remain political tensions with landowners and accusations of politicization in the selection of beneficiaries.

4. Somaliland: Proposed Land Value Tax Reform[148]

Urban land values in Hargeisa have skyrocketed from approximately USD 1,000 per plot in the early 2000s to as much as USD 100,000 today, despite a lack of matching infrastructure improvements. Civil society groups, including the Sahamiye Foundation, have been pushing for land value taxation (LVT). LVT would tax only the unimproved land value, encourage productive use while discouraging speculation and hoarding. Revenue would be earmarked for roads, sanitation, water supply, and urban planning. Public land records digitisation has been proposed to improve transparency and tax enforcement. These measures are intended to curb speculative landholding, make land more affordable, provide a stable and non-distortionary revenue base for local governments, and avoid penalizing building improvements, thereby encouraging development.

147 Delong, S., "Venezuela's Agrarian Land Reform: More like Lincoln than Lenin," (February 25, 2005), https://venezuelanalysis.com/analysis/963/?

148 Samayiye Foundation, "Reforming Land Value Tax to Drive Economic Growth," https://sahamiyefoundation.org/ideas/articles/reforming-land-value-tax-to-drive-economic-growth/?

The following case studies are used to highlight specific instances of land injustice and their socio-economic consequences for disenfranchised communities. These are analysed in terms of showing the broader economic impacts of land dispossession on national development and to demonstrate the reparative justice potential for land and tax reform. In Kenya, these would have significant transformation outcomes for the following:

Disenfranchisement in the Coast Region

In the coast region, a few elite families and companies, many with colonial-era title deeds or land acquired through state-sanctioned allocations, own vast tracts of prime land. Meanwhile, hundreds of thousands of residents are squatters on ancestral land.[149] The result of elite land capture has been widespread landlessness, particularly affecting coastal communities such as the Mijikenda, Boni, and Swahili. Key consequences include generational squatting, characterized by limited legal tenure or documentation, ineligibility for formal credit due to the lack of title deeds, exposure to evictions, often in the name of development or conservation, and entrapment in low-productivity livelihoods and cyclical poverty.

"We are squatters on land our grandfathers were born on," is a common refrain in the counties of Kilifi, Kwale, and Lamu,[150] where over 65 percent of residents lack formal land titles. Coastal counties consistently score below the national average in health, education, and income indicators.[151] Systemic issues include slow, politicized, or manipulated land adjudication processes. Efforts like settlement schemes (such as the Shimoni and Kaya Forests) often ended up benefiting elites rather than landless locals.

Wealth taxation, including progressive property taxes on large, idle land, has the potential to redress land injustices in the coastal region. Efforts towards this end in Kilifi, for example, have been initiated but met resistance from powerful landowners despite overwhelming public support.[152]

149 Kenya Land Alliance and KHRC, Righting The Wrongs: Historical Injustices and Land Reforms In Kenya, https://kenyaland-alliance.or.ke/login/publications/images/kla_historical_injustices_brief.pdf

150 Kenya National Commission on Human Rights (KNCHR) (2006). Unjust Enrichment: The Making of Land Grabbing Million-aires, https://www.knchr.org/Portals/0/EcosocReports/Unjust%20Enrichment%20Volume%201.pdf

151 KNBS & SID, (November 6, 2014), 'Exploring Kenya's Inequality: Pulling Apart or Pooling Together?', https://www.knbs.or.ke/exploring-kenya-s-inequality-pulling-apart-or-pooling-together/

152 National Land Commission, Devolving Land Governance, 2015/2016 Annual Report, https://land.igad.int/index.php/documents-1/countries/kenya/conflict-3/549-devolving-land-governance-report-of-the-national-land-commission-2016/file#:~:text=We%20also%20made%20great%20progress,to%20best%20serve%20Kenyan%20communities.

Reparations for Internally Displaced Persons following the Kenya Post-Election Violence of 2007-2008

The 2007 general election in Kenya was followed by violence, which included the displacement of over 300,000 people. The then Ministry for Special Programmes was responsible for addressing the problem of displacement. Several thousand were forcibly returned[153] and about 10,000 shelters were built by the government in collaboration with development partners,[154] among other reparative and restitutive measures. The Internally Displaced Persons (IDP) and Affected Communities Act, 2012, was developed as a means to provide clear responses to internal displacement situations.

Despite multiple interventions, a significant number of IDPs remain landless or insecure, particularly because the resettlement programmes were inadequate and because of persisting structural land tenure issues. In particular, the "Operation Rudi Nyumbani" (2008) and the "Resettlement Fund" provided cash payments (ranging from KES 10,000 to KES 25,000) and, in some cases, land parcels. However, these interventions were poorly coordinated and politicised, lacked transparency in beneficiary selection, and failed to reach integrated IDPs (those living with host communities) and coastal squatters.[155] Many IDPs had settled on untitled or informal lands before displacement. Even after resettlement, most were not issued title deeds, rendering them vulnerable to future evictions and unable to access credit.[156]

153 Human Rights Watch, Kenya: Stop Forcing Displaced People to Return Home, 22 May 2008, https://www.refworld.org/docid/483a7586c.html

154 IOM, Agreement Will See Construction of New Shelters for Displaced in Rift Valley, 21 December 2009, https://www.iom.int/news/agreement-will-see-construction-new-shelters-displaced-rift-valley

155 Human Rights Watch, "Hold Your Heart": Waiting for Justice in Kenya's Mt. Elgon Region, October 27, 2011, https://www.hrw.org/report/2011/10/27/hold-your-heart/waiting-justice-kenyas-mt-elgon-region

156 Ministry of Devolution and Planning (2014). National Policy on Peacebuilding and Conflict Management, Sessional Paper No. 05 of 2014 on National Policy for Peacebuilding and Conflict Management

PART 3: CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Redressing Kenya's historical land injustices is not only a matter of moral obligation. It is the cornerstone of equitable and sustainable development. By integrating reparative land justice with land and wealth taxation, Kenya can directly confront entrenched inequality while unlocking resources for inclusive growth.

Kenya's land taxation framework has the potential to reduce inequality. However, the system currently suffers from regressive implementation, weak enforcement, and exemptions and tax breaks that favour wealthy landowners, among other issues. A more progressive, transparent, and enforceable land tax system paired with land reform could help reduce both poverty and inequality.

Wealth taxes, particularly on land, could be a powerful tool for redistribution, ensuring that those who have historically benefited from unjust systems contribute their fair share to national development. In turn, land justice, grounded in the principles of reparations, redistribution, and human rights, has the potential to promote greater equity in wealth distribution and foster sustainable development in Kenya. However, political will, institutional reform, backed by anti-corruption reforms and the enforcement of land regulations, as well as public trust, are essential to make these measures effective.

To make the historical land injustices a success in redressing, there must be complementary infrastructural development. Successful land reform also requires reforming the tenure system so that new landholders will be better positioned to access the credit necessary for diversification of production, the creation of new markets, the growth of rural economies, the narrowing of the current income gap, and improved environmental protection. The redress of historical injustices must be linked to a comprehensive and radical rethinking of development that transcends the current predominant subsistence framework in land use in Kenya.[157]

157 Bond, "Decolonising economic development: the role of development sector", October, 2024, Bond_DecolonisationReport2024.pdf

Proposed Reforms and Policy Recommendations for Kenya's Land and Tax Systems

IMMEDIATE-TERM

V. Geo-map, register, and classify all land to adequately and appropriately tax it

Despite being constitutionally supported under Article 209(3), property taxes remain grossly underutilised due to outdated valuation rolls, lack of enforcement, and weak county-level capacity. To close this implementation gap, county governments must urgently reform and digitise their valuation systems, including by integrating a national Geographic Information System (GIS) to standardise data and enhance transparency,[158] and by integrating land registration with the tax system. Geo-mapping, registering, and classifying all land enables the levying of up-to-date property taxes based on size and value.

Improved rating assessments and enforcement mechanisms would enable LVT and property taxation to serve not just as revenue streams but also as a catalyst for equitable transformation. They would help correct historical injustices by ensuring that elites who benefited from unfair land acquisitions contribute fairly to national development and fund redistributive programs, such as land titling for squatters, infrastructure in marginalized areas, and legal aid for community land claims.

LVT provides a steady revenue stream without discouraging productive improvements, as it taxes the unimproved value of land, not the structures or improvements on it. And since it targets land value irrespective of usage, it discourages land hoarding and speculation, and encourages efficient land use. Economists argue that LVT is the most efficient and equitable form of land taxation.[159] Studies show that where LVT is implemented effectively, it reduces land speculation and promotes development.[160] With cities like Nairobi experiencing skyrocketing land prices driven by speculation and land hoarding, LVT offers a strategic tool to unlock underutilised urban land for affordable housing,[161] infrastructure development, public services, and to fund land redistribution and community development. For example, in Estonia, the implementation of LVT has significantly increased land use efficiency while generating stable municipal revenues for local development.[162]

158 Dillinger, W., Urban property tax reform guidelines and recommendations (English). Urban management program tool; UMPP no. 1 Washington, D.C.: The World Bank. http://documents.worldbank.org/curated/en/666401468740971048

159 Henry George Foundation, Economic Justice, https://henrygeorgefoundation.org/economic-justice

160 Shata, Bedane & Abebe, Birhanu & Eckardt, F., (2019). Urban land speculation; failure of land market. Survey Review. 53. 1-7. 10.1080/00396265.2019.1661165. https://www.researchgate.net/publication/335701997_Urban_land_speculation_failure_of_land_market

161 Kenya faces the challenge of affordable housing with the Centre for Affordable Housing Finance in Africa 2023's Yearbook showing 46.5% of the urban population residing in slums, double the global average of 24.2%. While the government has attempted to address the situation including through the Big Four Agenda and the current Bottom-Up Plan which envisioned the current Housing Levy, among other initiatives there is need for coherent policy and budget making, monitoring and evaluation frameworks to ensure that the policy objectives are actually realised and that further disenfranchisement does not take place. Centre for Affordable Housing in Africa (2023), https://housingfinanceafrica.org/library/2023-housing-finance-in-africa-yearbook-14th-edition/#:~:text=Amidst%20a%20crisis%20of%20affordable,areas%20of%20the%20value%20chain.

162 Otto, A., "Land Reform and Taxation in Estonia", (July 1, 1997), Lincoln Institute of Land Policy, https://www.lincolninst.edu/publications/articles/land-reform-taxation-estonia

The Ndung'u Report (2004) recommended taxes on idle and speculative landholdings; this is long overdue. Political resistance from powerful landowners, as well as implementation capacity and valuation challenges, are to be expected and should be addressed.

VI. Redistributive justice mechanisms

Land-based reparations are a political necessity, not a policy afterthought. When well designed, they can restore dignity and agency to victims of historical and ongoing land injustices, reduce the risk of future conflict, and serve as a catalyst for inclusive economic development. By expanding access to land for marginalised communities, reparations not only address past harm but also unlock new opportunities for resilience, food sovereignty, and local investment.

To this end, Kenya must urgently establish a Land Justice Fund, financed through land taxes, to support secure land titling, rehabilitate landless families, and resource community-driven land use planning. A national reparations mechanism should also be created to recognise and address colonial and post-colonial land dispossession formally. This must go hand in hand with strengthening the National Land Commission's capacity and independence to adjudicate historical claims transparently, and pairing land restitution with economic support such as credit, extension services, and farm inputs to ensure long-term livelihoods for beneficiaries. To enable this, it is necessary to enact the National Land Commission Amendment Bill, 2022, which would extend the NLC's mandate to address historical land injustices.

Crucially, the government must move to enact the long-delayed Public Finance Management (Reparations for Historical Injustices Fund) Regulations, 2017, to operationalise these commitments and give legal teeth to reparative justice. State-funded legal aid programs specifically for reparative justice claims are also required, and the Legal Aid Act, 2016, may be expanded to cover support for victims of historical or structural injustices, enabling them to pursue legal redress. There is also a need for mechanisms to restore ecosystems degraded by land grabs, extractives, or forced resettlement, which are missing, through a dedicated framework for ecological restoration as part of reparations.

MEDIUM-TERM

VII. Address elite capture, unequal land ownership, and dispossession

Kenya's land question is not merely about economics; it is a matter of entrenched political power, historical theft, and institutionalised inequality. A small class of politically connected elites and corporations continues to control vast tracts of land, much of it acquired through colonial dispossession, post-independence patronage, and outright fraud. These powerful actors benefit not only from speculative increases in land value, especially in urban and peri-urban zones, but also from tax exemptions, undervaluation, and evasion, all of which are enabled by their influence over land administration and fiscal institutions.

Despite holding large parcels of valuable land, many elites and corporate landowners evade or minimise their tax obligations through the underreporting of land value, using shell companies to obscure ownership and negotiating favourable tax treatment with counties or the national government. In contrast, urban middle-class Kenyans and smallholders face aggressive taxation through consumption taxes (such as VAT) and PAYE, among other taxes. The poor, therefore, pay disproportionately more of their income in taxes than the rich. This represents a regressive tax system, where untaxed land wealth protects privilege, while the poor subsidise public spending from which they benefit less.

LONG-TERM

VIII. Strengthen community land rights

Expedite the implementation of the Community Land Act, 2016. Across the Coast in particular, provide state-supported titling for ancestral and communal lands, and establish land tribunals to address historic claims fairly and transparently. Fast-track community land registration and titling under the Community Land Act, 2016. Provide stronger legal protections against illegal dispossession and eviction, particularly for pastoralists and marginalised groups. Support capacity building and legal aid for communities to defend land rights and recognise customary land rights within formal legal frameworks. Additionally, inclusive governance can be promoted by establishing county-level land boards with community representation to enhance public oversight and accountability.

IX. Address with more emphasis, the role of corruption

Corruption, including fraudulent titling and land grabbing through illegal allocation, widens inequality. Corruption enables illegal or fraudulent allocation of public and community lands to elites and private interests, thereby deepening the dispossession of marginalised groups and entrenching wealth concentration. Corruption erodes public trust in land institutions and deters legitimate investment by smallholders. The elite capture of land reform bodies, such as the National Land Commission, results in biased policies that favour large landowners. Cartels manipulate land administration systems for personal gain, hindering reforms like redistribution and titling for the poor. Enhanced transparency of land ownership and tax compliance is necessary, as well as the protection of institutions such as the NLC and EACC from elite capture. Urgent asset recovery needs to be instituted for fraudulently acquired land. Digital transparency measures, such as adopting blockchain-based land registries, can help curb title deed duplication and fraud.

X. Address poverty

Tackling poverty in Kenya requires fundamentally challenging the structures that entrench inequality, landlessness, and exclusion. This involves ending the involuntary dispossession of farmers, pastoralists, and urban informal settlers (especially where alternative livelihoods are lacking), and advancing pro-poor land tenure reforms. It also means promoting equitable models of ownership and governance, such as community land trusts, public ownership, and cooperatives. These approaches should be anchored in Article 43 of the Constitution, which guarantees the right to food, housing, and livelihood, and actualised through full implementation of the Community Land Act, 2016. By securing communal tenure and supporting local economic activities, Kenya can unlock the productive potential of marginalised areas and drive more inclusive development.

XI. Climate change and sustainability

Climate action must be just, inclusive, and sensitive to historical injustices. Kenya's green transition will only be sustainable if it is rooted in equity, ensuring that climate policies do not further marginalize land-dependent communities. This demands a fundamental restructuring of both global and domestic production systems: phasing out fossil fuels, promoting renewable energy, and scaling up community-led, ecologically sound practices such as agroecology and regenerative farming. To this end, Kenya's Just Transition Framework must prioritise land tenure security, protect the rights of indigenous and local communities, and embed livelihood resilience into climate policy. Moreover, the Climate Change Act, 2023, and its Carbon Markets Regulations must be strengthened to guard against speculative green grabbing, uphold Free, Prior and Informed Consent, and ensure equitable distribution of climate finance. Sustainable land use planning, community forestry, and participatory governance should be central to the green economy.

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