Taxing the Indigent: A Socio-Legal Perspective to Taxation

Njaramba Gichuki
Lecturer
School of Law, University of Nairobi
P. O. Box 3695-00200
Nairobi, Kenya

Abstract

States levy taxes to raise revenue to enable them provide public services. All residents in a country are ordinarily subject to tax. This puts the indigent in a position whereby they have to pay taxes even though they have not met their basic needs. There is needed to come up with systems and mechanisms to shield the indigent from taxation so that they can first provide for themselves. Protection of the indigent against exploitative tax regimes should therefore be a frontier for social and economic rights activism.

Keywords: Tax, Indigent, Tax Reform, Socio-legal

Introduction

States or their functional equivalents levy taxes from their citizens (and other inhabitants) mainly to raise revenue needed to carry out the various functions of states such as law enforcement, infrastructure development, public order and protection, protection of property, social engineering, and waging war, among others. Economists define tax as a non-penal, yet compulsory transfer of resources from the private to the public sector. Tax can also be defined as unrequited payments to the government.

This is so because the benefits obtained by the taxpayers from the government are not proportional to their contributions through tax. It is important to note that there are many other sources of revenue besides tax. These include penalties, fees, grants, borrowing and confiscation of property among others.[1] Taxing people according to their income or financial status means that the citizens with the highest income pay the largest amount as tax whereas those with the lowest income pay the least amount.

This taxing system is referred to as progressive tax system. It involves an increase in the tax rate as the taxable base amount increases. This form of taxation is employed mainly to lower the tax incidence of the poor. It is important to note that not all countries use the progressive tax system. Some countries still apply the proportional tax system. This is a system that takes the same percentage of income from the taxpayers without putting into consideration how much an individual earns.[2] In Kenya, like many other countries, the progressive tax system is used but only as far as income tax is concerned.[3]

For Value Added Tax (VAT), all taxpayers are taxed at the same rate of tax on goods and services. This defeats the very purpose for which the progressive tax system was established – cushioning those with the least ability to pay tax. It should be noted that every person who purchases goods and services is subject to Value Added Tax – including those not subject to income tax.

[1] OECD (1996). Definition of Taxes. *Expert Group No.3 on Treatment of Tax Issues in the Multilateral Agreement on Investment (MAI)* Note by Chairman p.3.

[2] *Paul M. S. (1986). Measurement of Tax Progressivity: A Further Application Atlantic Economic Journal Volume 14, Issue 1, pp 59-62.* To be accessed at http://link.springer.com/article/10.1007%2FBF02303511#page-1 *;* Farlex Financial Dictionary (2012) "A Progressive Tax System" *Farlex Inc.* Accessed at http://financial-dictionary.thefreedictionary.com/Progressive+tax+system on 13th November, 2015, November 1

[3] PKF (2013) Kenya Tax Guide, 2013. Worldwide Tax Guide. PKF International Limited, p.4.

This means that the poorest members of the society, whose incomes are too low to be taxed under income tax, are subject to Value Added Tax, and they pay the same amount as the richest members of society.[4]

2. Historical Background

Taxation is as old as history itself. The levying of taxes dates back to the ancient kingdoms of Egypt, Persia and Babylon among others. The very first recorded system of taxation originated from Ancient Egypt. The taxes were levied either as tithe or *corvée* where tithe was paid by those who afforded to pay through the required means of taxation. On the other hand, *corvée* was a means of taxation used on the peasants who could not afford to pay tax in form of tithe. *Corvée* referred to the forced labour provided by the poor to the state. This shows that the poor were not shielded from taxation. There is no record of exemption from tax for the financially challenged in those ancient times. [5]

Other early forms of taxation also existed in the Persian Empire. The system of taxation was better organised as compared to Ancient Egypt. The empire was divided into provinces (Satrapy) whose heads collected tax based on the productivity of each province. This system is a development from the Egyptian one since tax was collected based on the productivity of each area. Despite the fact that a province could consist of both poor and rich people, at least there was an appreciation of the fact that different regions had different productivity levels. Besides, the fact that the head of the province was to determine how much an individual was to pay gives the impression that different financial capabilities of individuals were taken into consideration during tax collection.[6]

In Europe, taxation can be traced back to the medieval times when tax was introduced, first on the export of wool, then later on, on wine. In the seventeenth century (1601), there was an important development aimed at protecting the poor in respect of taxation. This was through the establishment of the Elizabethan Poor Law. This law was enacted by the Parliament of England and was referred to as The Poor Relief Act, 1601.[7] It brought to an end the crude methods of punishment that were meted on the poor under the Tudor system. It was also after the enactment of the Act that correctional centres where the lazy paupers could be taken were established. The strong ones were taken to work in factories while the weak and old were provided for.[8]

Later on, the United Kingdom introduced tax on land as well as income tax. This led to a development in the laws of taxation. It was at this point in time (1799) that the income tax in the United Kingdom was made progressive. The tax situation remained basically the same from this time through the early 19th century. The introduction of both the land tax and the income tax set the basis for the modern tax system in England. Unlike the Elizabethan Poor Tax Law which was abolished when the tax system was reformed in the 19th century, the land and income taxes have remained in the system and only appropriate modifications were made to make them adaptable to the changing times and economies.[9]

There were a number of other legislations that were made in later years to protect the poor against harsh taxation systems in England, for instance, the Workhouse Test Act, 1723. This legislation required all persons who needed poor relief to enter into a workhouse and undertake a specified amount of work.[10] The developments made in the history of taxation in England are a clear indication of how the indigent were considered and protected in as far as tax was concerned. As noted, those who were unable to pay were not brutally punished as was previously the case. Instead, they were either given jobs or subjected to correctional facilities depending on their reason for not paying tax.

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[4] Classification of Taxes. *Kenya Law Resource Centre.* Available at www.kenyalawresourcecenter.org/2011/11/classification-of-taxes.html on 2015, November 13.

[5] Olmert M. (1996). *Milton's Teeth and Ovid's Umbrella: Curiouser & Curiouser Adventures in History*, Simon & New York, NY, Schuster p.41.

[6] History of Iran (Persia). *History World Website* Accessed at www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=aa65 on 2014, June 30.

[7] Marjie B. (2002) The 1601 Elizabethan Poor Law *The Elizabethan Web,* Accessed at http://www.victorianweb.org/history/poorlaw/elizpl.html on 2014, June 30.

[8] Paul S. (2013) An introduction to Social Policy. Accessed at http://www.spicker.uk/social-policy/history.htm on 2015, November 13.

[9]HM Revenues and Customs. A Tax to Beat Napoleon. *Available at* www.hmrc.gov.uk last accessed 2014, July 17.

[10] Marjie B. (2002) The 1601 Elizabethan Poor Law. *The Elizabethan Web,* Accessed at http://www.victorianweb.org/history/poorlaw/elizpl.html on 2014, June 30.

The 1601 Act also had its shortcomings, for instance, it only rated land and buildings but not personal and movable property. This exempted the rich in the commercial sector who ended up not paying the rates to support the poor unless they owned immovable property.[11] In the United States of America, taxation was introduced during the colonial era. After the colonial era, there were few taxes that supported the government. They included internal taxes on tobacco, distilled spirits, refined sugar, property sold at auctions, carriages, slaves and corporate bonds.

This trend changed after the 1812 war which was too costly, hence the introduction of tax on jewellery. Later on, the internal tax was done away with. The government turned to tariffs on imports to provide funds to run the government.[12] Income tax in the United States was introduced due to the civil war effort of 1862. The system used in the administration of income tax at this time was progressive, hence, serving as the forerunner to all modern income tax based on the progressive tax principle. This system had the highest income earners paying at the highest rates whereas those with the least incomes paid at the lowest rates. This system was introduced by the 16th Amendment which holds the principle that those who make more money should pay more tax, and vice versa. The United States federal government continue to use this system of taxation to date. The only problem is that the progressive tax system was only used in income tax administration. In the application of other taxes and customs, a flat rate was applied regardless of the economic status of a taxpayer.[13]

It is clear from the foregoing that over the years, different states have applied varying methods of taxation. It is also apparent that various steps were taken to protect the indigent from being exploited by the tax systems. For instance, in England, individuals with hardly any ability to pay tax are not only exempted from paying, but also given relief by the government from the tax paid by the rich. This creates a social aspect of the law where laws are geared towards the greater good of all the members of the society. In the early times, the effort to protect the poor on matters of taxation met diverse challenges. However, over the years, legislation and policies have made and created a well organised and regulated system of protection of the indigent. It is also noteworthy that the poor were not completely exempted from taxpaying. Instead, they were charged at a much lower rate as compared to their financially stable counterparts.[14]

In Kenya, the colonialists introduced a number of taxes on the natives in order to raise funds to run the colony. These included; poll tax, hut tax, etc. The natives could hardly afford to pay these taxes as all their arable land and resources had been grabbed by the settlers. To enable them to pay taxes, the colonial government forced the native Africans to work for the settlers.[15] In 1921 the Native Registration Ordinance was passed requiring all males over 16 years of apparent age to register at the district office and to bear an identification card around their necks (*kipande*) and a record of employment. The system had no respect for personhood, privacy and dignity. This was one of the reasons that led to the struggle for independence. The struggle for liberation in Kenya was in a way, therefore, a fight to protect the indigent against the harsh taxation system that was in place during the colonial era.[16] Whereas the role of patriotism in taxation has been recognized, in certain jurisdictions it has been observed to be a weak tax compliance factor. This is because of the relationship between challenging taxation and the clamour for freedom.[17]

3. Conceptual Framework

The socio-legal perspectives to tax look at the relationship between tax law, the state and society. The social dimension of taxation has remained essential over the years.

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[11] *Ibid.*

[12] Borgna B. (2015) History of the Income Tax in the United States, *InfoPlease Website, Sandbox Networks, Inc*. Accessed at www.infoplease.com last accessed 2015, November 13.

[13] *Ibid.*

[14] Roberton W. (2011) Taxes and the Poor: How does the federal tax system affect low-income households? *The Tax Policy Briefing Book: A Citizens' Guide for the 2008 Election and Beyond, Tax Policy Centre,* Accessed at www.taxpolicycenter.org/briefingbook on 2014, July 4.

[15] Isaac K. (2005) *A History of the Direct Taxation of the African People of Kenya, 1895 – 1973.* PhD Thesis. Rhodes University (Abstract).

[16] Njaramba G. (2015) *Tax Administration Reforms in Kenya: Identifying Lessons to Model a Strategy for Sustainable Administration of County Taxes*, PhD Thesis, University of Nairobi, p.83.

[17] *Ibid* pp.59-60.

In his book, sociologist Tocqueville states that in the 18th century in England, it was the poor who had a tax ‘privilege’, whereas in France, it was the rich. He explains using the "relative frustration" theory that ‘prosperity raises the hatred of old institutions’. It brings about the issue of fairness. Tax inequalities therefore go down as a result. He explains the main reason for the French Revolution as being the replacement of the old feudal regimes with a new social and political order, based on the concepts of freedom and equity.[18]

Prebble attempts to relate income tax to public morality. The relationship is so strong that in 1891, the parliament in New Zealand opposed the new tax law based not on economic but moral grounds.[19] Mann discusses how tax has today become inseparable from the state. This is despite how it was, between the 16th and 18th century, considered a social injustice that was to be replaced after better ways of raising revenue were put in place. Taxation was accepted even in socialist states such as soviet Russia which admitted that taxation remained the best way through which compulsory contribution could be obtained.[20] He further maintains that taxation leaves the field of public finance to enter into the field of interventionist State sociology. Its fiscal function gets combined with a function of social control. He uses the notion of the social function of taxation as part of social reform.[21] These arguments brought forward by Mann necessitate the consideration of peoples’ social perspectives to law when formulating a tax system for them. It is impossible to separate tax from social perspectives. The Law and Development discourse is important in the consideration of the question of taxing the indigent. The discourse is taken to refer to the ‘organized efforts to transform legal systems in developing countries to foster economic, political and social development’. This would enable the policy makers to formulate laws that are sensitive to the needs of the indigent.[22]

4. Development of Special Taxation Mechanisms

All governments require money in order to run their affairs. The challenge most states and governments face is how, and from whom, to obtain the money to carry out their functions as governments. Governments use taxation as a way of ensuring the citizens contribute to the revenue of a country. There are certain mechanisms that are put in place to determine how much each member of a given society that is eligible for taxation is to pay as tax. In almost all cases, the low income individuals pay the least amount in terms of tax. This is aimed at ensuring an equitable tax system that is based on human rights.

It is important to note that that even though taxation is globally practised, there exists no general international law or policies on the same. Taxation has, over the years, remained national, exempting the few instances of double taxation agreements and other bilateral or multilateral arrangements. Intergovernmental organisations such as the United Nations do not have a legal framework to enable them levy taxes from its member states nor does it have a model system for the member states to adapt into their systems or to act as a benchmark to the internationally accepted tax system.[23]

The fact that there are no international laws and regulations on taxation leave the discretion to determine the rates of taxation and the tax base entirely on each individual state. The intergovernmental organisations have therefore failed in setting equitable standards of levying tax and protection of the poor from harsh tax regimes. This explains why, as most states move towards embracing progressive taxation, others still apply the regressive methods.[24] However, the United Nations has commenced plans to establish an international taxation body under it. This is to enable the organisation to raise revenue for international development programmes.

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[18] Alexis de Tocqueville (1955). *The Old Regime and the French Revolution*. Translated by Stuart Gilbert, New York, NY, Anchor Books, p.24.

[19] Prebble, J. (2011) Why is Tax Law Incomprehensible? 2 *Victoria University of Wellington Legal Research Papers, Vol 1 Issue No. 5.*

[20] Mann F.K. (1943). The Sociology of Taxation. *The Review of Politics Volume 5, Issue 2*, pp. 225-235.

[21] *Ibid p.*225.

[22] Trubek, D. M. (2012) Law and Development 50 Years On. *International Encyclopedia of Social and Behavioral Sciences (forthcoming)* University of Wisconsin Legal Studies Research Paper No. 1212, p.2.

[23] Section 41 (1) Income Tax Act, Chapter 470 of the Laws of Kenya.

[24] Katherine S. N.; Rourke O’Brien (2011) *Taxing the Poor: Doing Damage to the truly Disadvantaged*, The Wildavsky Forum Series. Los Angeles, CA, London, UK, University of California Press. p.1.

It is also aimed at helping the developing member states through imposition of tax on developed nations after which the proceeds are distributed amongst the poor countries. This move is however strongly objected to by the developed nations.[25]

The US tax system has been for a long time progressive in nature, meaning a decrease in the tax rate as the income of taxpayer's decreases. Over the years, it has arguably amended its laws and changed its tax policies in a bid to protect the paupers. For instance, the creation of the partially refundable Child Tax Credit (CTC) and the expansion of the totally refundable Earned Income Tax Credit (EITC) in the early 1980s led to a remarkable lowering of the effective tax rates on low income individuals. The individual tax rates were reduced from about 0.5 percent in the early 1980s to -0.5 in 2005.

Further, the creation of the temporary stimulus measures in 2010 to offset the adverse results of the rescission of 2008 lowered the tax-burden on the low income individuals. [26] Despite the remarkable steps taken by the United States federal government to protect the poor in matters of taxation, in practice the poor are still exploited. Statistics have shown that the individuals who earn between 200, 000 dollars and 500,000 dollars pay about 35 percent of their total income as tax. The same percentage is paid by mere millionaires. However, the richest people in the United States, who have an income of over 200 million dollars, pay less than 20 percent of what they earn as income. The percentage goes even lower to less than 15 percent for some of the top income earners (this was recorded in 2009).[27]

It is also noteworthy that there are cases in the southern states of the United States where regressive tax measures are applied. This means that in these states, the highest tax rates are applied on the poor. Income tax is applied to the poor and regressive sales tax is applied on food stuff.[28] States that apply this system of taxation include the North Carolina, South Carolina, California, Florida, Mississippi and Alabama. There is no single state in the south that provide tax credit refunds to its poor citizens regardless of how little their income is. This trend is contrary to the one applied by the federal government in a bid to protect the poor.[29]

In the United Kingdom, the tax system is progressive. This system, as noted hereinbefore, plays a big role in cushioning the poor. The system goes further to exempt the lowest income earners from paying any tax. As of 2009, all individuals earning below six thousand four hundred and seventy five Pounds (£6475) were exempted from paying tax. After this category of individuals exempt from tax, there are four other bands consisting of the 'low tax band', 'middle tax band' and the 'higher tax band'. The fourth band comprises of taxpayers with a very high income – higher than the higher tax band.[30]

The 'low tax band' taxpayers are those whose incomes are in the range of 6475 pounds and slightly over 9000 pounds. Their tax rate is 10 percent. The 'middle tax band' taxpayers are charged at the basic rate which as of 2009, stood at 22 percent. The individuals placed in the 'higher tax band' have their income taxed at a much higher rate of 40 percent whereas those in the fourth category pay income tax at the rate of 50 percent. It is evident that the system is structured to reduce the income gap, hence promote equality.[31] The United Kingdom government's efforts to protect the indigent have largely not achieved the expected results. For instance, according to a recent research, the 10 percent poorest households pay a higher percentage of their income on all taxes than the richest households. The poorest pay a rate of 43 percent of their income in all the taxes whereas the richest pay 35 percent.

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[25] Dr. S Spratt (2006) "A Sterling Solution" *Stamp Out Poverty Report, p.*19.

[26] Roberton W. (2011) Taxes and the Poor: How does the federal tax system affect low-income households? *The Tax Policy Briefing Book: A Citizens' Guide for the 2008 Election and Beyond, Tax Policy Centre,* Accessed at www.taxpolicycenter.org/briefingbook on 2014, July 4.

[27] Joseph E. S. (2013, April 14) A Tax System Stacked Against the 99 Percent. *The New York Times.*

[28] Katherine S. N.; Rourke O'Brien (2011) *Taxing the Poor: Doing Damage to the truly Disadvantaged,* The Wildavsky Forum Series. Los Angeles, CA, London, UK, University of California Press. p.1.

[29] Katherine S. N. (2013, March 9) In the South and West: A Tax on being Poor *New York Times,.* Accessed at http://opinionator.blogs.nytimes.com/2013/03/09/in-the-south-and-west-a-tax-on-being-poor/?_r=0 on 2015, November 13.

[30] Jones F., Annan D. and Shah S. (2009) The Redistribution of Household Income 1977 to 2006/07. *Economic and Labour Market Review Volume 3; No. 1, p.*37.

[31] Economics Online Website (2015) Policies to Reduce Inequality and Poverty Accessed at http://www.economicsonline.co.uk/index.html on 2014, July 4.

The moderate income earners pay the least rated at 33 percent. This clearly shows that the system is not progressive enough in practice. It shows that the policies to protect the poor are mainly based on bureaucratic and complex systems of tax credits which as evident are not efficient.[32] The Kenyan tax system is based on the English law. This is a result of the British setting the base for taxation in Kenya during the colonial era. Like any other former colony, its tax system is inherited. Therefore, the Kenyan tax system is progressive in nature. It is unfortunate though, that just as in the systems used in the United States and the United Kingdom, the progressive tax system in Kenya only applies to income tax. For indirect taxes such as Value Added Tax and other taxes such as property rates, all taxpayers pay at the same rate – no consideration of their financial status whatsoever.

Kenya has taken a number of steps aimed at protecting the poor from overexploitation by the tax system, besides the principle of progressive taxation it inherited from the colonial masters. For instance, the lowest income earners are subject to the lowest tax rates. Individuals are taxed on an increasing tax rate as their income increase. According to statute, the tax rate of taxpayers with an annual income of 121,968 Kenya Shillings and below is 10 percent.[33] These rates are varied frequently depending on the changes in the economy of the country as well as changes in the minimum wage. This system was adapted from the United Kingdom for the same reason it was used there – to lower the income gap, hence, promote equality. There is also a personal relief that taxpayers deduct from payable tax to reduce their tax burden.[34] The reforms made in the tax sector in Kenya are mainly aimed at increasing the tax base and reducing the tax gap. This, as is the case in most of the African countries, has diverted the attention of the tax reforms from concentrating on protecting the poor.

5. The Legal Framework

The laws that regulate taxation are as old as taxation itself. Over the years, they have developed from their simplest original form to the modern system of tax laws and rules. There is a recent attempt in many jurisdictions to align taxation to human rights. During the ancient times, the tax system was not well developed. There were therefore no rules or laws that were set out in relation to the mode of charging tax. The poor were neither exempted nor cushioned from the harsh taxation systems. In the event that they were unable to pay, they were taken in as slaves to pay their taxes through forced labour. This was particularly the case in the Ancient Egyptian Kingdom.[35]

In later years, as in the case of the United Kingdom, legislations were passed not only to create an organised tax system, but also to shield the poor. One such law is the Elizabethan Poor Law enacted in the early 17th century. As earlier discussed, this legislation set the foundation for all the latter laws that were enacted in the United Kingdom in a bid to shield the indigent from heavy and unfair taxation. The later laws that were enacted to protect the poor include; the Poor Relief Act, 1662, and the Workhouse Test Act, 1723.[36] The English poor law's significance has gone far beyond the United Kingdom and Europe. This law has also been relevant in the formulation of modern social laws in the United States of America. It also influenced the framing of tax laws in a way to cushion the poor in African countries, particularly British colonies, Kenya included.[37] The modern laws of taxation in England were put in place in the 19th century. This was spearheaded by the enactment of the Income Tax Act in 1842.
This legislation was progressive in nature and was not to apply to individuals with incomes of less than 150 pounds (£ 150) – the current equivalent of this amount is 11956 pounds (£ 11956).

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[32] Katie Allen (16 June 2014) "British Public Wrongly Believes Rich Pay Most in Tax, New Research Shows" *The Guardian* www.theguardian.com last accessed 10/07/2014.

[33] Third Schedule Income Tax Act, Chapter 470.

[34] Kenya Revenue Authority (2011) Income Tax at a Glance. Accessed at www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCIQFjABahUKEwiIwY36zo3JAhXEDQ8KHQDyDdI&url=http%3A%2F%2Fwww.kra.go.ke%2Fnotices%2Fpdf2011%2FBrochures%2FINCOME-TAX-GLANCE.pdf&usg=AFQjCNFeHBs7bzNR0xgnAeg7oY9ZMpbduQ&sig2=x455CuENYe-IsyNI8Mz07w&cad=rja.pdf on 2015, Nivember 13. p4.

[35] Olmert M. (1996). *Milton's Teeth and Ovid's Umbrella: Curiouser & Curiouser Adventures in History*, Simon & New York, NY, Schuster p.41.

[36] Marjie B. (2002) The 1601 Elizabethan Poor Law. *The Elizabethan Web,* Accessed at http://www.victorianweb.org/history/poorlaw/elizpl.html on 2014, June 30.

[37] William P. Quigley (1996) "Five Hundred Years of English Poor Laws, 1349 – 1834: Regulating the Working and Non-working Poor" *Akron Law Review* 30(1) pp. 73-128. Accessed at www.uakron.edu/dotAsset/726694.pdf on 2014, July 5.

This is an indication that the laws still considered the shielding of the poor as an important aspect of any taxation system.[38] Currently, the taxation system in England has greatly developed in all ways. For instance, unlike in earlier years, today, a person pays tax on income on which he or she has beneficial entitlement. There has also been a gradual drop in the rates of income tax from about 90 percent during World War II to the current 20 percent. The only problem with the reduction of income tax rates is that it led to the increase in the Value Added Tax, which as a matter of course, charged at the same rate for all individuals. It also led to tax avoidance by the rich whose rates were higher – they disguised their income to go lower than the actual value.[39] Prime Minister Margaret Thatcher contributed a lot in the reduction of these rates during her tenure due to her preference of indirect tax as opposed to direct tax. She still maintained the progressive system with the highest income earners having higher rates as compared to the poor. This ensured equality and protection of the poor.[40]

The trends in the legal framework of the tax system of the United Kingdom is important to the Kenyan situation since the Kenyan tax system was by and large, inherited from the British. However, the tax base is narrower in Kenya.[41] The laws regulating taxation in Kenya are comprised in the Constitution, a number of Acts of Parliament, the Annual Financial Statement (Budget), and other regulations made by the Treasury. All these statutes, in one way or another, have made attempts to shield the poor from the heavy burden of taxation through creating an equitable method of taxation. For instance, the Constitution of Kenya, 2010 states that the burden of taxation shall be shared fairly.[42] This is an indication that the tax system is supposed to adhere to the principle of equity – one of the principles of taxation enunciated by Adam Smith.[43]

According to the Value Added Tax Act, VAT is charged only as provided for under the Act. The taxable value on all locally supplied goods and services as well as imported goods and services is to be at the rate of 16 percent.[44] The Act also provides that the supply of goods and services that are zero-rated is to be taxed at zero percent.[45] Most of the zero-rated commodities and services involve importation, exportation, supply of goods and services to diplomats and air travel.[46] The individuals who are involved here cannot, by any estimation, be the poor. The Value Added Tax Act has attempted to give some discretion as regards the rates of taxation.

The discretion can be seen as an attempt to protect the poor by allowing the Cabinet Secretary to lower the rates of tax of the basic goods and services used by them.[47] However, any changes would apply across the board without regard to the economic status of individuals. The Income Tax Act lays out the rates of charge to tax in Kenya. The tax system, as mentioned earlier, is progressive. This enables cushioning of those who have little incomes by the rich. The Act has placed taxpayers into categories in accordance with their incomes.[48] These categories are an indication that income tax law is framed in a way that makes an attempt at equity in the taxation system. Having individuals pay tax at a rate that puts into consideration their income facilitates the cushioning of the paupers by the rich as regards taxation.

[38] Tom C. and Andrew D. (2002) Long Term Trends in British Taxation and Spending. *The Institute for Fiscal Studies; Briefing Note No. 25.*

[39] Robert W. (2012, December12) Two-thirds of Millionaires Disappeared from Official Statistics to Avoid 50 Percent Tax Rate. *The Daily Telegraph,* London.

[40] *Ibid.*

[41] Mike P. (2009) Taxation for Investment and Development: An Overview of Policy Challenges in Africa. *Ministerial Meeting and Expert Roundtable of the NEPAD-OECD Africa Investment Initiative p.*8. Accessed at www.oecd.org/investment/investmentfordevelopment on 2015, March 15.

[42] Article 201 (b) (i) of the Constitution of Kenya, 2010.

[43] Adam s. (2007) (Digital Edition) *An Inquiry into the Nature and Causes of the Wealth of Nations,* edited by S.M. Soares , Amsterdam, UK, MetaLibri Digital Library, p.639.

[44] Section 5 (1) of the Value Added Tax Act No. 35 of 2013.

[45] Section 5 (2) (a) of the Value Added Tax Act No. 35 of 2013.

[46] Second Schedule Part B, Value Added Tax Act, 2013.

[47] Section 6 Value Added Tax Act, No. 35 of 2013.

[48] Third Schedule Head B – Rates of Tax, Income Tax Act, Chapter 470; Tax, Kenya Fiscal Guide, 2012/2013. *A Report by KPMG.*

6. The Reform Agenda

The introduction of the progressive tax system in most parts of the world, including Kenya, is a step towards protection of the poor as well as achieving the principle of equity in taxation. However, the introduction of progressive taxation solved the social aspect of protecting the poor and created an economical problem of tax evasion. This system has led to individuals, particularly the wealthy, declaring a false figure as their income (less than the actual figure) in order to pay tax at a lower rate. This was witnessed in the United Kingdom where the number of millionaires significantly dropped as a result of the introduction of the progressive tax system.[49] This problem can be addressed by ensuring that the taxing authority has a way of verifying each taxpayer's income. This can be achieved through regular monitoring of taxpayers' incomes.

The exclusion of very low income earners from taxation is a way of protecting the indigent. However, it has been argued that this measure comes with the risk of leaving the poor at the mercy of the well-of members of society. Exclusion from tax means exclusion from participation in the development of a country. This leaves the poor powerless and prone to discrimination, stigmatisation, and deprivation by those who participate.[50] It is therefore important that the rates are lowered for the poor rather than complete exclusion. That way, they will have a sense of belonging and independence. However, there is no evidence to prove that this risk exists. Educating the public on the importance of taxation to the taxpayers in order to counter the general belief that taxation is meant to rob them of their hard earned income will serve a big role in ensuring compliance – especially by the rich who disguise their income to appear lower than it actually is all in a bid to avoid taxation. Civic education on the importance of taxation is also necessary particularly for the Kenyan case where colonialism created a negative attitude towards tax compliance.

Use of initiatives such as CTC and EITC would play a big role in the protection of the poor taxpayers in Kenya. This will be useful especially because the Kenyan tax system protects the poor only as far as income tax is concerned. The flat rate applied on VAT and other taxes beats the very purpose that progressive system applied on income tax is supposed to serve – a clear indication that the government needs to come up with another plan to solve the stalemate.[51] Redistribution of income and capital to the poor through tax provisions and targeted government spending is another way through which the poor may be protected. This is achieved through direct financial assistance, provision of basic social services, as well as investment in the assets of the poor. Financial assistance benefits the poor by increasing the incomes available for their disposal while free social services work towards raising and improvement of their living conditions.[52] These measures should not be seen as a waste of resources as the economic development of every individual and their attainment of economic freedom are key factors in the development of the country as a whole.[53] The economic status of Kenya may not allow it to implement this redistribution of income and capital at once. However, the government may implement it in stages – one at a time until the adverse effects of taxation are countered by improvement of the living standards of the poor.

7. Conclusion

The poor members of the society have always felt exploited by the tax regimes. This is more so in the early times of civilisation, for instance, in Ancient Egypt where those who could not afford tithes were forced into slavery so as to pay their taxes. This was replicated in Africa during the colonial era, whereby African natives were compelled to provide labour for white settlers through the imposition of taxes.

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[49] Robert W. (2012, December 12). "Two-thirds of Millionaires Disappeared from Official Statistics to Avoid 50 Percent Tax Rate". *The Daily Telegraph*, London.

[50] Magdalena S.C. (2013) Report of the Special Rapporteur on Extreme Poverty and Human Rights. *United Nations General Assembly 23rd Session*.

[51] Roberton W. (2011) "Taxes and the Poor: How does the federal tax system affect low-income households?" *The Tax Policy Briefing Book: A Citizens' Guide for the 2008 Election and Beyond, Tax Policy Centre,* Accessed at www.taxpolicycenter.org/briefingbook on 2014, July 4.

[52] Arne B. and Augustin K.F. (2004), Growth and Poverty in Africa: An Overview. *Supplement 1 Journal of African Economics*, pp. 11-115.

[53] Richard A.P. (1974) Theories of Economic Regulation. *The Bell Journal of Economics and Management Science, Vol. 5, No. 2*, pp.335-336.

Such oppressive tax measures that were taken against the poor affected the general attitude towards taxation ever since. Despite the extensive measures that have been taken to create an equitable tax system, many Kenyans still view taxation as a form of oppression. Most taxpayers, especially the poor, do not view tax compliance as patriotic duty nor do they see it as a display of sovereignty. This has in turn affected compliance levels drastically hence slowing down economic development of the society as whole including the indigent who would benefit from social services provided through public revenue. There are a number of measures that have been taken over time to protect the poor from the harsh tax regimes throughout the world. These took place at different times in different places including developing countries in Africa. It is noteworthy that shielding the indigent from exploitative taxation has only achieved notable success as far income tax is concerned. VAT, for instance, is charged at the same rate hence still oppressive on the poor.

The principle of horizontal and vertical equity is completely disregarded in the imposition of VAT.[54] This is largely so basically because of how technically impossible it is to sell the same commodities and services at different prices to different people. Zero rating of some basic commodities is the best that has so far been done to shield the indigent from VAT.[55] The various reforms made in the tax system through legislation and policies have attempted to protect the poor. The reforms are not satisfactory as they are mainly aimed at increasing revenue and widening the tax base as opposed to protection of the poor. Protection of the poor against exploitative tax regimes should therefore be a frontier for social and economic rights activism. It is important that the indigent and socially needy members of the society are given tax credits to shield them from taxation. This would require at the onset that a register is compiled with particulars of the indigent. There would be incidences of corruption and falsifying of records to make otherwise able individuals to appear indigent. It is therefore of necessity that tough penalties are set for such offences.

8. References

8.1 Books and Articles

Allen K. (2014) British Public Wrongly Believes Rich Pay Most in Tax, New Research Shows, *The Guardian.* [Online] Available: www.theguardian.com

Bigsten A.; and Augustin K.F. (2004) Growth and Poverty in Africa: An Overview *Supplement 1 Journal of African Economics*, pp. 11-115.

Carmona M.S. (2013). Report of the Special Rapporteur on Extreme Poverty and Human Rights. *United Nations General Assembly 23rd Session.*

Clark T.; Andrew D. (2002) Long Term Trends in British Taxation and Spending. *The Institute for Fiscal Studies; Briefing Note No. 25.*

Clark T.; Dilnot A. (2002) Long Term Trends in British Taxation and Spending *The Institute for Fiscal Studies; Briefing Note No. 25.*

Gichuki N. (2015) Tax Administration Reforms in Kenya: Identifying Lessons to Model a Strategy for Sustainable Administration of County Taxes. PhD Thesis. University of Nairobi.

Howell H. Z. (2005) "Personal Income Tax Reform: Concepts, Issues, and Comparative Country Developments" *IMF Working Paper Fiscal Affairs Department.* Accessed at http://pcsi.pa.go.kr/files/wp0587.pdf on 2015, March 15.

Jones F.; Annan D.; and Shah S. (2009) The Redistribution of Household Income 1977 to 2006/07. *Economic and Labour Market Review Volume 3; No. 1*.

Kenya Revenue Authority: Department of Domestic Tax (2011). Income Tax at a Glance. Available at www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCIQFjABahUKEwiIwY36zo3JAhXEDQ8KHQDyDdI&url=http%3A%2F%2Fwww.kra.go.ke%2Fnotices%2Fpdf2011%2FBrochures%2FINCOME-TAX-GLANCE.pdf&usg=AFQjCNFeHBs7bzNR0xgnAeg7oY9ZMpbduQ&sig2=x455CuENYe-IsyNI8Mz07w&cad=rja.pdf on 2015, November 13.

Kipsang T.I. (2005) *A History of the Direct Taxation of the African People of Kenya, 1895 – 1973.* PhD Thesis. Rhodes University (Abstract).

Mann, F.K. (1943). The Sociology of Taxation. *The Review of Politics Volume 5, Issue 2*, pp. 225-235.

[54] Howell H. Zee (2005) Personal Income Tax Reform: Concepts, Issues, and Comparative Country Developments *IMF Working Paper Fiscal Affairs Department.* Accessed at http://pcsi.pa.go.kr/files/wp0587.pdf on 15/03/2015, p.4.

[55] Section 5 (2) (a) of the Value Added Tax Act No. 35 of 2013.

Newman K.S. (2013) "In the South and West: A Tax on being Poor" *New York Times*. Accessed at http://opinionator.blogs.nytimes.com/2013/03/09/in-the-south-and-west-a-tax-on-being-poor/?_r=0 on 2015, November 13.

Newman K.S.; Rourke O'Brien (2011) *Taxing the Poor: Doing Damage to the truly Disadvantaged,* The Wildavsky Forum Series. Los Angeles, CA, London, UK, University of California Press.

OECD (1996) Definition of Taxes. *Expert Group No.3 on Treatment of Tax Issues in the Multilateral Agreement on Investment (MAI).*

Olmert, Michael (1996). *Milton's Teeth and Ovid's Umbrella: Curiouser & Curiouser Adventures in History,* New York, NY, Simon & Schuster.

Pfister M. (2009) Taxation for Investment and Development: An Overview of Policy Challenges in Africa. *Ministerial Meeting and Expert Roundtable of the NEPAD-OECD Africa Investment Initiative.* Accessed at www.oecd.org/investment/investmentfordevelopment on 2015, March 15

PKF (2013) Kenya Tax Guide, 2013. *Worldwide Tax Guide* PKF International Limited.

Posner, Richard A (1974) Theories of Economic Regulation. *The Bell Journal of Economics and Management Science, Vol. 5, No. 2,* pp.335-336.

Prebble J. (2011) Why is Tax Law Incomprehensible? 2 *Victoria University of Wellington Legal Research Papers, Vol 1 Issue No. 5.*

Quigley W.P. (1996) Five Hundred Years of English Poor Laws, 1349 – 1834: Regulating the Working and Non-working Poor. *Akron Law Review* 30(1) pp. 73-128. Accessed at www.uakron.edu/dotAsset/726694.pdf on 2014, July 5.

Smith A. (2007) (Digital Edition) *An Inquiry into the Nature and Causes of the Wealth of Nations,* edited by S.M. Soares , Amsterdam, UK, *MetaLibri Digital Library*.

Sommers P.M. (1986). Measurement of Tax Progressivity: A Further Application. *Atlantic Economic Journal Volume 14, Issue 1, pp 59-62.* Accessed at http://link.springer.com/article/10.1007%2FBF02303511#page-1.

Spratt, S. (2006) A Sterling Solution. *Stamp Out Poverty Report*.

Stiglitz J.E. (2013, April 14) A Tax System Stacked Against the 99 Percent. *The New York Times.*

Tocqueville A. (1955). *The Old Regime and the French Revolution.* Translated by Stuart Gilbert, New York, NY, Anchor Books.

Williams R. (2011) Taxes and the Poor: How does the federal tax system affect low-income households? *The Tax Policy Briefing Book: A Citizens' Guide for the 2008 Election and Beyond, Tax Policy Centre,* Accessed at www.taxpolicycenter.org/briefingbook on 2015, July 4.

Winnett, Robert (2012) Two-thirds of Millionaires Disappeared from Official Statistics to Avoid 50 Percent Tax Rate. *The Daily Telegraph,* London.

8.2 Websites

A Report by KPMG. (2013) "Tax, Kenya Fiscal Guide, 2012/2013". Accessed at http://kpmg.com on 2015, November 13.

Policies to Reduce Inequality and Poverty. (2015) Accessed at http://www.economicsonline.co.uk/index.html on 2014, July 4.

Brunner B. (2015) History of the Income Tax in the United States *InfoPlease Website, Sandbox Networks, Inc*. Accessed at www.infoplease.com last accessed on 2015, November 13.

HM Revenues and Customs. A Tax to Beat Napoleon. *Website* www.hmrc.gov.uk last accessed on 2014, July 17.

Spicker P. (2015) An introduction to Social Policy. Accessed at http://www.spicker.uk/social-policy/history.htm on 2015, November 13.

Bloy M. (2002) "The 1601 Elizabethan Poor Law" *The Elizabethan Web,* Accessed at http://www.victorianweb.org/history/poorlaw/elizpl.html on 2014, June 30.

History of Iran (Persia). Accessed at www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=aa65 on 2014, June 30.

Kenya Law Resource Centre "Classification of Taxes" Accessed at www.kenyalawresourcecenter.org/2011/11/classification-of-taxes.html on 2015, November Farlex Financial Dictionary (2012) A Progressive Tax System. *Farlex Inc.* Accessed at http://financial-dictionary.thefreedictionary.com/Progressive+tax+system on 2015, November 13.