

Southern Africa Trust

Philanthropy and Development in Southern Africa

Tax (In)Justice and Philanthropy

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Executive Summary

In the Philanthropy & Development in Southern Africa series, three related research papers; on philanthropy and resource governance (Shauna Mottiar), on illicit flows and tax (Khadija Sharife), and on illicit flows and the potential and policy required to change economic structures (Sarah Bracking), all focus on the contemporary and enduring problem of economic injustice in Africa in the context of huge and increasing outflows of illegally transferred wealth. The three papers explore illicit financial flows as both cause and consequence of malign structures of political economy, and then ask what philanthropists can best do about the agenda of illicit flows and economic justice.

In the first paper, Mottiar considers the role of philanthropy in the resource governance debate by drawing on evidence from three examples of resource extraction in Africa. It begins by outlining the scope of resource governance and considering understandings of philanthropy, and argues that philanthropic practice has some way to go before reaching its optimal potential for catalysing change.

Most resource extraction initiatives in Africa occur in countries where there are severe development backlogs and socioeconomic deprivation. An obvious question raised by proponents of social justice is whether and how some of the profits accumulated by resource extraction find their way back to the countries of origin and specifically back to the communities they affect. Does philanthropy have a role to play in facilitating this process? Is there scope for philanthropic decisions to impact on socioeconomic transformation and on development? Mottiar examines these challenging questions and concludes that philanthropic initiatives – including Corporate Social Responsibility - should be required to uphold principles of social justice philanthropy. This includes supporting existing CSOs, networks and movements which focus on the root causes of social problems and commit to structural or systemic change. Clearly this would pose a significant challenge to CSR initiatives emanating from companies that are committed to ensuring the status quo in so far as it benefits the bottom line. It would however go some way to provide resources for social justice and build the capacity for human agency.

In the second paper, Sharife argues that not much has changed since the days of the Rosetta Stone, when it relates to 'governance' of what the paper terms the 'needs economy'. This 'needs economy' is a product of hyper-competitive economic systems that frame social welfare of the public (often falling into the needful or 'needy' category) as the voluntary responsibility of successful philanthropists, rather than governments elected by the people. Unlocking language – and definitions, is often key to unlocking economic policies. The 'needs economy' has allowed for the ordering and management of reality by experts who act within spaces of unaccountable wealth, with philanthro-capitalism framed as being without history and politics, despite monies generated through systems of inequality.

As an example, Transparency International (TI), a product of the World Bank, specialising in 'third worlds', has a definition of corruption which limits the geography to that of demand-side or political corruption 'abusing public office for private gain', resulting in African countries being placed at the top of the list. Ironically, the world's leading tax havens (facilitating legal and financial secrecy) are 'first world' countries such as the US's Delaware, Switzerland, Netherlands, or the UK's City of London which itself runs a significant portion of tax havens globally (such as British Virgin Islands). In fact, 80% of international financial activities take place through offshore markets. And Africa's biggest source of illicit flight is corporate tax avoidance, much of

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it facilitated offshore. Furthermore, initiatives such as the Extractive Industries Transparency Initiative (EITI) is supported by the World Bank and funded by the same multinational companies. Companies receive the 'purchase' of legitimacy from the organization on disclosing what has been paid to governments. Sharife explains in detail the problematic system which inherently misdiagnoses the problem of illicit financial flows, sighting various examples. The limitation of the EITI frame of reference to national boundaries instead of the actual functions of transnational corporate structures, critically excludes the role of transfer (mis)pricing, tax avoidance, and thin capitalisation. Rather than correcting systemic inequities, Sharife argues that governance acts as a glorified "band-aid" to ensure a continued management and stabilisation of poverty, which, prevents collapse or radical overhaul. Indeed, as famous philanthropist Carnegie notes, "Philanthropy is the true antidote for the reconciliation of rich and poor... in requiring only the further evolution of existing conditions, not the total overhaul of our civilization."

In the third research paper, Bracking begins with the problem that the scale of funds available to philanthropists to ameliorate poverty, inequality and social exclusion is far outweighed and offset by the much bigger outflow of illegally earned or transferred wealth that is illicit financial flows. While diligent philanthropic organisations can ensure their own independence from criminality at an organisational level, and can undertake due diligence on their partners and associates, it is the wider context of how to campaign for economic justice in an unjust economic system that vexes philanthropists, just as it has done for centuries. If merely palliative, philanthropy can even contribute to increasing the power of the organisations and persons causing harm. The desire to change the actual structures which generate illicit financial flows is therefore a strong one, because, if successful, it would release philanthropists from the thankless job of picking people up so they can be exploited and abjected all over again by the institutions and organisations of the extractive economy that is Africa's inheritance.

There are two main challenges to philanthropists wishing to reduce and stop IFFs: an economic policy one of what it is that could do this; and a political one of who would make that happen. This paper argues that the first challenge is relatively easily surmountable given that examples and exemplars already exist for the types of regulatory and policy changes required. The second, however, is a thornier issue, and requires political will. Without an obvious political elite prepared, willing or able to take up the challenge of sovereign economic development and economic justice the job falls to a new type of movement platform which can pull together the energies of what are, at present, quite disparate issue- and sector-based CSOs and philanthropic organisations. The challenge is to build strength in unity by respecting diversity, but can philanthropic organisations rise to this essentially political challenge?

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Section 1: Introduction

Tax is the foundation of all civilisations. The act of tracing tax policies and practices reveals the history of the relationship between the ruler and the ruled, state and citizen, and is inherent to the fiscal-social contract between these parties, mapping out rights and responsibilities at both ends (TJN-A, 2011). The story of tax, and the story of tax injustice, are both deeply embedded in history. In Africa this relationship can be traced back over millennia. For instance, Egypt's famed Rosetta Stone, created in 196 BC during the Ptolemaic era, was a virtual tax agreement granting exemptions to priests, and certain reductions to the military and other ruling classes, including traders approved by the king, shifting the tax burden to the poor and vulnerable. It is an early example of the special privileges that continue to proliferate across the continent, particularly as a consequence of neoliberalism (Ong, 2006).

Today, 80 per cent of Africa's exports consist of primary commodities (WTO, 2011; UNCTAD

2011). African political economies depend heavily on the resource rents from these commodities, particularly rents from oil, gold and diamonds. Yet many are exempt from taxation, and many others use strategies of legal and financial secrecy operating at a transnational level to avoid taxation in an illicit manner, that is, against the purpose of the law. Tax holidays and other known or hidden subsidies granted to multinationals in often secretive agreements deprive governments and their citizens of significant tax revenues. These perks are justified on the basis of providing

'incentives' for Foreign Direct Investment (FDI), creating job and growth within a market-based neoliberal narrative. Corporate social responsibility (CSR) is then framed as a substitute for fiscal responsibility, despite it normally representing only a small fraction of what would ordinarily be owed in taxes and royalties. CSR, in other words, neatly bypasses the needs, responsibilities and influence of the juristic and natural citizen-state contract, allowing for the impression of 'giving' to displace what is rightfully owed.

Similar exemptions to those that once governed trade along the Anu canal in ancient Egypt continue today, as foreign traders set up shop in the various free trade zones along Africa's coastlines where little or no tax is due, or Special economic zones and international financial centres along the trade routes that cross the continent, not to mention the virtual 'lax tax' zone that encompasses much of Africa's extractive industries.

Tax injustices undermine and deprive the realisation of human rights and the provision of public services such as health, education and waste sanitation. These tax injustices are facilitated by the structure of the global economy. In particular, secrecy jurisdictions ensure that confidentiality and opacity are provided to facilitate hiding taxable incomes and to shelter criminal activities. It is not without irony then that the Rosetta Stone is now housed in London, which is linked to more than a quarter of the world's secrecy jurisdictions. Secrecy jurisdictions here are defined as places that intentionally create regulation for the primary benefit and use of those not resident in their geographical domain, while giving opacity to the activities, including those illicit and illegal, of these non-residents (NOU, 2009). Thus secrecy jurisdiction regulation is designed to undermine the legislation or regulation of another sovereign jurisdiction, and actively protects the factors and actors involved in economic injustice.

The consequence of these secrecy jurisdiction structures is that the political role of governing extractive industries has now been effectively removed from the public mandate, via justification that African governments are too corrupt to actively participate in shaping accountability; their role is limited to passive compliance during integration. In this, civil society actors primarily funded by philanthropies and/or operating within the paradigm of philanthropy have become closely linked and implicated in natural resource governance through their legitimisation of codes of conduct and CSR, operating in the absence of public regulation. Ironically, tax justice – inherently underpinned by economic justice and immediately affected by corruption – has been diminished, confined or exempt from philanthropic-funded 'governance' programmes in substantial ways.

Normalising natural resource governance

Expanding on Escobar's narrative on planning, big philanthropy can be seen as normalising a specific single story of corruption as an endemic social-cultural problem (ed, Sachs, 1992). Unchallenged, institutionalised and systematised as a specific realm of 'poverty management' intervention, the governance embedded in the virtue economy is held as the indubitable guarantor of anti-corruption through transparency, regularising selective transparency as the dominant norm. Ironically, the single story of corruption has invented the discipline through which Africa's actual revenue leakage is concealed, consolidating capitalism with a human face by ordering realities. Illich (ed, Sachs, 1992), speaking to the modern architecture and historicity of needs economy in the development discourse, cites the operationalising of poverty, a mandate formulated for, and by, experts to manage the phenomenon of 'needy' undeveloped societies, in which governance as an unquestionable science, plays a critical role.

Through the concept of governance as science, the single story of the world as it is, and is not, is institutionalised as the law of development – both hard or economic, and soft or social (Sharife, 2015). This significantly reduces the possibilities of tax justice.

Thus the Kimberley Process Certification Scheme (KPCS), for example, limits the focus to diamonds associated with 'conflict' with conflict itself limited to 'rebels or militia' at the expense of economic and other violence. This neatly excludes consideration of the corporate contexts where the bulk of economic injustice is generated, as recently illustrated in the case studies of trade mispricing of diamonds by De Beers (Bracking and Sharife, 2014;), part of Anglo-American. The KPCS also detracts attention from the close cross-connections of mineral companies and authoritarian states, including Angola, Lesotho, and Namibia. In Angola, DRC, South Africa and other countries, as the author will show, mispricing has been rampant and wrongdoers depend on the KPCS scheme to provide the 'laundromat' of legitimacy needed (Sharife, 2014). These fault-lines are embedded in the logic of KPCS because the key stakeholders (like De Beers) and founding governments (like South Africa) are involved or lack the political will to counter mispricing.

Tax justice has also been circumvented in other processes such as Extractive Industries Transparency Initiative (EITI), funded by oil, gas and mining companies – by almost 40 per cent, as well as interrelated investors such as the World Bank (EITI, 2013). The EITI focuses not on what companies ought to pay, but on whether governments have stolen from what companies did pay, via a structure that circumvents corporate accountability. In Zambia, we find an EITI discrepancy of US\$66 million from

State-led corruption (Sharife, 2011). But excluded is the US\$11 billion, in that same period, in under-priced copper exported from companies like Glencore, trading between subsidiaries (Sharife, 2011). Similarly, countries such as Nigeria, Gabon and others have managed to legitimise conduct through EITI, benefitting markets, regimes and corporate entity, while avoiding scrutiny of opacity underpinning oil and other economies. Thus, EITI excludes the role of tax avoidance, thin capitalisation, secrecy in beneficial ownership, banking secrecy, and more critically, the role of transnational illicit activities between subsidiaries of the same companies, amounting to more than 60 per cent of global trade.

Similarly, Transparency International's definition of corruption limits the geography to that of demand-side or political corruption, resulting in African countries being placed at the apex of

'corruption' via the Corruption Perception Index (CPI). This paper argues for a broadened geography of corruption – the key pillar behind tax injustice – to be defined as "the abuse of public interest and the undermining of public confidence in the integrity of rules, systems and institutions that are designed to promote the public interest" (TJN-A, 2011). This requires a further distinction constructed to allow for vertical or global opacity economies facilitating revenue leakage as legal and financial causes, and the horizontal 'tipping culture' corruption that embeds itself as an effect of the same.

This report aims to help philanthropy organisations understand the issues behind Africa's struggle for tax justice and the roles played by philanthropic-related organisations in helping to undermine or reinforce tax justice, through the 'virtue economy' run by a vanguard of interests framed as 'good'.

In section 2, the report begins by exploring the meaning of tax justice in the African context before examining some of the main channels for tax leakage from the continent and the impact of these leakages in terms of government revenues.

Section 3 sets out the key systemic causes of tax injustice in Africa, explaining firstly how decades of selective development or 'mal-development' in resource-rich states has left government funds depleted and many countries susceptible to conflict. The section goes on to examine the policies that have contributed to making taxes in Africa regressive.

Section 4 explores in more critical detail the nature of links between philanthropy and tax injustice modeled through the concept of a 'virtue economy'.

Section 2: What is tax?

Tax is a compulsory levy on privately held assets, work, transactions and other activities and flows as designated by the parliament and enacted by the government. The parliament designates taxes according to its understanding of equity, while following the prevailing constitution, which also prescribes the purpose of taxation and confirms that the rightful ownership of tax receipts ultimately lies with the citizens. Taxation allows us to link local solidarity to the national level, and to negotiate these ties through the social contract setting out the rights and responsibilities of citizens and the state. Tax is 'distributed wealth', not only 'government money'. Every constitution in Africa states that taxation ultimately belongs to the people, who elect their representatives, forming the basis of tax justice. But as with all rights, they only exist in letter unless defended. Thus tax advocacy is needed to maintain this link.

The essence of Zulu ubuntu and Ndobele unhu, both meaning 'humanness', is inextricably rooted in mutual co-dependence, prioritising the collective good as the way to realise social and economic justice. Ubuntu requires that all human beings have to be treated in a humane and decent manner, assigning social and economic duties designed to satisfy basic needs and foster climates leading to the development and evolution of society.

Revenue from taxation is required to enable the state to treat all its citizens, as well as foreigners such as refugees, in this way. Taxation is therefore needed to underpin the contemporary African version of ubuntu as one of the fundamental responsibilities of every citizen.

To guide tax policy towards the needs of taxpayers, and their better representation, we propose

the '4 Rs' of good taxes:

1. Raise revenues equitably
2. Redistribute income and wealth to address poverty and inequality
3. Re-price goods and services – especially critical in the context of health and climate problems
4. Representation of taxpayers as citizens

Raise revenues equitably: Tax systems should raise revenues from all sources. A broad-based tax system uses a variety of different types of taxes, including income taxes, capital gains, property taxes, sales taxes, royalties from extractive industries, and taxes on financial transactions. A good tax system should also treat taxpayers in the same situation equally, tax local and multinational enterprises according to similar rates, and tax all sources of income equally to create a level playing field.

Redistribute: Tax systems should redistribute income and wealth in at least three ways: (1) by progressive tax rates so the wealthier in society pay a higher percentage of their income in the form of taxes; (2) by, for example, universally accessible public services that mutualise the cost of health and education; and (3) through income grants to supplement low incomes. Redistribution is a cornerstone of a democratic state.

Re-price: Often the market price of goods is not the most desirable price in terms of cultural values, associated health benefits, or the social impact of certain goods and services. Cigarettes and alcohol are often taxed heavily as they damage health and can disrupt family and community life. Meanwhile, desirable goods and services can be encouraged by, for example, exempting basic foodstuffs from value-added tax (VAT), or by creating a tax credit scheme that encourages socially beneficial investments such as companies subsidising their workers' health, transport and pensions plans. As a specific element of the re-pricing role, tax systems should recognise through targeted tax and expenditure measures the typically neglected value of ecosystems.

Representation: Tax systems create interest groups that often advocate for their rights as taxpayers. Some examples would include bus operators who sometimes protest paying high petrol duties and road tolls, households paying taxes such as VAT, residents in rural communities and urban neighbourhoods paying local and municipal service taxes without receiving services, or investors feeling that they pay too much corporate tax. History has shown that unjust tax systems create tax resistance and non-compliance, and that equitable tax systems only emerge through tax bargaining between the concerned

parties. Representation and citizenship are often the missing ingredients in good tax policy.

Who bears the burden of taxation?

Tax incidence (that is, the ultimate bearer – or payer – of a given tax) has not been studied comprehensively in Africa, and thus policy is often guided by theoretical assumptions, rather than detailed data on the incidence of different taxes on the citizens and the environment. These theoretical assumptions often emanate from interested actors who can frame the burden of tax in particular ways to suit their associated interests, such as, for example, how the Bretton Woods Institutes framed the tax burden under structural adjustment programmes to give special exemptions to investments by multinational corporations and 'foreign direct investment'.

In the absence of carefully designed exemptions that recognise the consumption and production patterns of households in poverty, and the complex dynamics of the informal sector, VAT is likely to be largely paid by low-income households, as they consume a larger part of their disposable income in food, transport and communications. Wealthier households, on the other hand, tend to pay more for their housing, education, health and other social services. School fees and hospital charges are not always subject to VAT.

Another large part of government revenue in Africa comes from natural resource rents, especially in some of the oil and mineral rich countries. For example, in Libya natural resource rents represent 90 per cent of government revenue. As an example, the figure is 86 per cent in the Republic of the Congo, 81 per cent in Nigeria, 64 per cent in Gabon, and 37 per cent in Cameroon. This determines the structure of political economies, whether related to where and how populations live, or even national electricity grids. Presently, for example, 60 per cent of Africa is dependent on hydro-electric dams – 99 per cent in DRC, 80 per cent in Ghana via mega-dams primarily constructed to supply extractive industries with power (Sharife, 2009). China controls the bulk of the market and the costs of mega-dam development, often realised as payment via the barter exchange of resources for development. Transmission lines almost entirely exclude citizens from access and are rarely factored into the costs of development. The rights of often hollow (subsidiary, shell etc) juristic citizens involved in the extractive industries, frequently displace the rights of natural citizens in resource-rich countries. The question then must be asked: what is being developed for whom and why?

In Africa the ecosystem also directly bears the burden of taxation in the form of natural resource depletion, and ecosystem services are diminished as a result of reduced forest coverage, while cyanide residues pollute agricultural areas close to gold mining areas. Oil and gas exploitation causes tremendous ecological harm in terms of destruction of mangrove fisheries and associated gas flaring. People dependent on the environment therefore also bear the damning direct and indirect effects for generations.

The problem in Africa is multi-fold, of which obvious problems include effectively administering tax. In Kenya, for example, it has been estimated that some 35 per cent of corporate income taxes are collected and 56 per cent of VAT (TJN-A, 2011). Second, tax evasion and avoidance undermines the entire tax system as it makes it harder to tax the profits of foreign investors, wealthy individuals and cross-border flows.

How Africa loses its wealth: channels for tax leakage

Tax leakages occur through a variety of channels including corruption, debt servicing, illicit outflows, tax incentives and informal economies.

Moving towards a new understanding of corruption would recognise that corruption harms three main sets of actors: businesses, governments and citizens, especially poor people. The corruption concerns of these different actors overlap significantly, but they are not identical. Business concerns tend to dominate thinking about corruption.

For example, Transparency International's Corruption Perceptions Index (CPI) draws heavily on opinion within the international business community, who first raised the alarm about the perils of corruption. While the CPI provides an invaluable ranking for investors trying to assess country risk, it is of little use to the citizens of oil-rich states such as Chad, Equatorial Guinea or Angola, to know their country ranks low.

The current tendency of the World Bank, Transparency International, the OECD, and many others is to restrict their definitions of corruption to the bribery of public officials. But corruption involves much more than this. As a starting point we can note that corruption always involves narrow interests abusing the common good. It also always involves insiders using guarded information operating with impunity. And it always corrodes institutions, worsens absolute poverty and inequality, and ultimately undermines faith in the rules and systems that are supposed to promote the public interest.

This mainstream definition of corruption is overwhelmingly guided by, and in turn, guides philanthropic systems of economic governance. However, there are good reasons to redefine the definition in order to broaden its capture of systemic structures. A more useful definition of corruption in our view would be that: "Corruption is the abuse of public interest and the undermining of public confidence in the integrity of rules, systems and institutions that are designed to promote the public interest." (TJN-A, 2011)

There are many consequences of redefining corruption. One would be that tax evasion would be more explicitly identified as a form of corruption. This is logical since evaded taxes are stolen public assets too. Tax evasion involves abusive activity at the intersection between the public and the private sectors. It allows sections of society to bypass accepted norms, and provides one set of rules for rich and well-connected people, and another set for everyone else. Furthermore, the proceeds of tax evasion use many of the same channels as other forms of corruption to move across borders: dummy corporations, shielded trusts, anonymous foundations, falsified pricing, fake documentation and so on, all supported by an army of bankers, lawyers and accountants.

The Tax Justice Network (TJN) has developed the Financial Secrecy Index (FSI) which complements the CPI in describing the anatomy of global corruption. It is composed of an opacity score applied to 60 financial centres categorised as secrecy jurisdictions which encourage and enable illicit financial flows and tax evasion (FSI, 2014). The opacity scores are weighted according to the scale of operation of the selected secrecy jurisdictions, arriving at a ranking which places the United States at the top (that is, the jurisdiction whose secrecy has the greatest global impact), followed by Luxembourg, Switzerland, the Cayman Islands and the City of London. Clearly this new index tells a very different story about how corruption thrives within globalised financial markets.

The FSI brings to the fore the supply-side infrastructure for

corruption. Countries such as the USA, Luxembourg and Switzerland, but also nations on the African shores such as Mauritius, Liberia and Seychelles legalise and legitimise corruption by allowing tax avoidance and tax evasion under a veil of secrecy.

Illicit financial flows

Illicit financial flows involve “money that is illegally earned, illegally transferred or illegally utilized. If it breaks laws in its origin, movement or use, then it qualifies for the label” (Baker, 2005) – in other words, against the purpose of the law, whether or not it falls within technically legal systems produced by lack of oversight or sovereign-backed tax haven activities. Furthermore, anti-money laundering expert Raymond Baker adds:

“Much attention has been focused on corruption in recent years, that is, the proceeds of bribery and theft by government officials. In the cross-border flow of illicit money, we find that funds generated by this means are about 3 percent of the global total. Criminal proceeds generated through drug trafficking, racketeering, counterfeiting and more are about 30 to 35 per cent of the total. The proceeds of commercial tax evasion, mainly through trade mispricing, are by far the largest component, at some 60 to 65 percent of the global total. While we have not attempted in this study to verify these approximate percentages for Africa, we believe that they are likely to be of roughly the same order of magnitude.” (Baker, 2005)

Global Financial integrity (GFI) has estimated that the cumulative stock of illicit financial flows from Africa amounted to US\$865 billion between 1970 to 2008, and that the figure could be as high as US\$1.8 trillion. Annual outflows from Africa have been estimated by the ECA at US\$148 billion (ECA, 2013). The World Bank and the International Monetary Fund do not provide estimates for these outflows. In an interview with Kirk Hamilton, an author behind the World Bank’s Where is the Wealth of Nations report (2005), this author was told that illicit flight is not really factored into figures of lost revenue leakage. “We are more concerned with how government invests the revenues it has,” he said. The report states that governments should be “taxing natural resources to the point where the private sector is just willing to risk capital”. (Sharife, 2009)

The question of why the official sources are silent about illicit financial flows is an interesting one. Global Financial integrity notes: “all currently existing economic models have a limited capacity to reflect the actual volume of illicit financial flows, as these flows are primarily generated through transactions that completely bypass statistical recording.” (GFI, 2008)

These transactions include underpricing, overpricing, mis-invoicing and making completely fake transactions, often between subsidiaries of the same multinational company, bank transfers to offshore accounts from high street banks

offering offshore accounts, and companies formed offshore to keep property out of the sight of the tax collectors.

According to a survey assessing the economic practices of 476 multinational corporations, 80 per cent acknowledge that transfer pricing remains central to their tax strategy (TJN-A, 2011). And a TJN study into the largest quoted companies in the Netherlands, France and the UK, notes that 99 per cent of those for which information was uncovered operate through secrecy jurisdictions (TJN- A, 2011).

Tax incentives

Many developing countries have used incentives to attract international companies, including in the extractive industries. These include tax exemptions and tax holidays, tax deferrals, de facto control of national infrastructure such as railways, ultra-low royalty rates and excessively generous access to water, timber and land. These incentives are often bundled-up with minimal regard for human and environmental standards. Many of these concessions are negotiated exclusively between multinationals and government ministers with little citizen or parliamentary consultation.

Tax holidays, which are frequently used to attract foreign direct investment (FDI), should be classified as ‘tax expenditure’. These holidays represent the state using public finance to attract businesses and individuals to its territory. This tax expenditure significantly reduces revenues available for public service provision.

For example, in 2012, tax incentives provided to mining companies such as African Minerals and London Mining in Sierra Leone, encouraged by the World Bank and other neoliberal bodies, generated a loss of over US\$224 million from customs duty and goods and services taxes alone, that could have been remitted by the mining industry (Christian Aid, 2014). This figure was more than half Sierra Leone’s total revenue budget. As the Christian Aid report notes, “The government will lose revenues of US 131m in three years from 2014-16 alone from corporate income tax incentives granted to five mining companies – an average of US\$43.7 million a year.” The report also stated, “If tax expenditure continues in its present trend, it is likely that Sierra Leone will lose more than US\$240 million a year from tax incentives in the coming years.”

The role of the World Bank is instrumental in shaping Africa as a ‘bargain bin’ for foreign investors through tax exemptions. The practice is justified on the grounds of a hypothetical high-risk premium incurred when investing in resource-rich African countries. Recent studies, however, reveal that FDI does not primarily flow where tax incentives are required. For example, a 2004 report by the global consulting firm McKinsey states: “popular incentives such as tax holidays, subsidized financing or free land, serve only to detract value from those investments that would likely be made in any case”. (McKinsey, 2003)

Economic globalisation has increased the pressures on governments to provide tax subsidies to inward investors. Powerful corporations have unashamedly lobbied impoverished governments for tax holidays and special tax treatments to exploit assets such as coltan, oil, gas, rutile, tea, coffee, cocoa, cotton and flowers. This has prompted a race to the bottom among many low-income countries, pitting ‘the poor against the poor’ and reducing the bargaining power of the state and citizens.

For example, even a recent IMF Working Paper revealed: “we

find evidence that lower corporate income tax rates and longer tax holidays are effective in attracting FDI but not in boosting... growth". On tax incentives, the same paper concludes that, "their ultimate benefits for the economy may be limited". (IMF, 2009)

Tax holidays are also a prime driver for the recent wave of land leasing – previously described as neocolonialism' by the former director general of the UN's Food and Agriculture Organization (FAO) Jacques Diouf. In countries like Mozambique, Ethiopia, South Sudan, Mali etc. (Oaklands Institute, 2011) tax holidays are institutionalized by the World Bank's International Finance Corporation (IFC) and others as a means of attracting foreign investment. Yet reports from the same edifices, such as the IMF, "show that tax incentives merely reduce much needed tax revenues without promoting growth." (IMF, 2009).

The African Union is drafting its code of conduct for land acquisitions, including a requirement to pay local taxes. The Economic Community of West African states (ECOWAS) has worked on a mining code to establish minimum tax and royalty rates for extractive industries. Such standards should be agreed across the continent as a way to prevent the race to the bottom.

Tax revenues and the functioning state

Tax is the most important proportion of government revenues in most African countries, including those who depend more on hydrocarbon rents or aid grants for maintaining public finances. Though these countries cannot be considered as being democratic tax states, as they depend on foreign revenue sources, they do depend on a state of taxation to finance the tax base.

The importance of tax is a lesson in state formation that many rich countries have already mastered. The OECD member states generally collect tax revenues of around 35 per cent of gross domestic product (GDP), or even higher. Meanwhile, the figure for the 27 countries of the European Union (EU) stood at 39.8 per cent in 2007 (TJN-A 2011). This fiscal-social contract is the litmus test of representative government because tax connects rights to reality. Without sufficient funding, citizens' rights to things like housing, security, health and education remain mere aspirations.

In contrast, during the past 25 years, tax revenues in sub-Saharan Africa have largely stagnated at levels around 15 per cent of GDP. This is under half the equivalent collected in the OECD countries. Exceptions in sub-Saharan Africa occur mainly in resource-rich countries, where revenue growth is mainly attributable to governments capturing benefits from natural resources.

Similarly, work by academics McKinley and Kyrili examines revenue trends for 29 low-income countries in sub-Saharan Africa. It shows that total revenue in these countries only increased from 13.3 per cent of GDP during 1990 – 1994 to 15.6 per cent during 2000 – 2006 – or by 2.3 percentage points. Over the same time period, regressive indirect taxes, such as VAT, rose from 3.5 per cent of GDP to 5 per cent – by far the biggest leap (TJN-A 2011).

Section 3: Sources of tax injustice in Africa

Tax injustice happens for a number of reasons. Secrecy

jurisdictions provide high levels of confidentiality, to hide income from tax and shelter criminal practices. Autocratic governments are often helped by 'respectable' economic mercenaries who make use of regulatory gaps and loopholes. In such cases, the role of citizens as taxpayers and their right to hold governments to account are neglected.

In contrast, citizens in many developing countries are on the receiving end of policies often excessively and exclusively influenced by multinationals and international finance institutions. These policies include undermining domestic (taxable) industries providing income and employment, shrinking state budgets, and emphasising the importance of odious debt repayment.

Selective development or mal-development

"Africa is a geological scandal" declared a young Belgian geologist at the turn of the last century, referring to the abundance of resources in the DRC, presently valued at US\$24 trillion, twice the GDP of the world's leading economic power, the USA. It is this abundance that originally prompted the scramble for colonies, which four decades after independence have yet to diversify from the status of resource-dependent nations.

The African Union states that the continent holds 38 per cent of the world's uranium, as well as 42 per cent of gold, 73 per cent of platinum and 88 per cent of diamonds (TJN-A 2011). Other sources add that more than 80 per cent of the world's known reserves of coltan, 57 per cent of cobalt, 39 per cent of manganese, 31 per cent of phosphates and 9 per cent of bauxite, lie under African soils (TJN-A 2011). In terms of copper, the DRC has the second highest level of reserves (70 million tonnes) in the world after Chile (88 million tons).

This resource abundance intuitively gives the prospect of development. However, the structures described above facilitate cheapened access to these, and little income for governments and proximate populations, leading many to theorise Africa as having a 'resource curse'. However, this is not innate to Africa or inevitable, nor do resources actually comprise the problem as the same extends to the intangible capital industry – whether technology, pharmaceuticals, or even beverage trademarks. The continent's creativity and adaptability are not doomed to be 'cursed'; the root cause is elsewhere, in structures of 'mal-development', in little or no asset transformation, and illicit systems facilitating corruption in highly-protected sovereign 'tax havens'.

Mal-development comprises:

5. A narrow and distorted tax base vulnerable to the demands of large taxpayers, that is, 'legal' citizens and corporations, benefitting from export-oriented economies.
6. Little or no development of active (flesh and blood) taxpayer citizenry, leading to lack of political representation.
7. Failure to disclose, project, invest and redistribute revenue, income and wealth.
8. An over-valued currency making other export sectors less competitive, distorting the economic base towards investment in extractive industries.
9. Over-dependence on natural resource rents as a source of government revenue, resulting in rentier economies, and a failure to capture just portions of tax revenue due to

hidden subsidies such as low or zero tax and royalty rates, falsified profits and tax-exemptions.

10. Tax policies are seldom shaped through democratic processes and are often imposed as a result of external intervention by agencies such as the World Bank, IMF, and others, including powerful philanthropies. The various means by which tax policies in Africa have been transformed by 'neoliberal' capitalism, include the following points 7 to 11.
11. Trade and investment liberalisation programmes that have expedited the collapse of domestic (taxable) industries, often causing people and businesses to switch to the informal sector.
12. Phasing out trade taxes and tariffs, which comprised 30 to 50 per cent of tax revenues in many developing countries prior to trade liberalisation, which has again greatly reduced government revenues. IMF research shows that low-income countries have been able to recover less than a third of lost revenue, on average, by following the standard prescriptions around increasing VAT and other domestic taxes.
13. Phasing out wealth, property and capital gains taxes, and reducing the maximum rates and progressivity of other direct taxes such as corporate and personal income taxes.
14. Shifting the tax charge to consumption, in particular through the introduction of indirect taxes such as VAT, has made tax systems more regressive even with exemptions on some basic necessities.
15. Capital account liberalisation and the dismantling of monitoring mechanisms to measure inflows and outflows, vastly facilitating illicit flight of which a large component is tax loss via trade mispricing.

Many of these policies, typically included in IMF country papers, often run counter to the proposals for a fairer tax system outlined above. Some also directly hamper the introduction of progressive policies such as the basic income grant in Namibia, as fiscal tightening is prioritised over the development of a broad-based tax system.

Limited taxation undermines representation

Dependence on revenues from the extractive industries has created a situation in which many African governments are largely sustained by resource rents extracted from a very small number of powerful companies, who in return for tax paid have a high degree of influence over tax policy. The vast majority of citizens are excluded from the political process.

The process represents the interaction of:

1. Large transnational corporations or powerful governments, eager to secure preferential tax concessions for corporations or home country investors.
2. Rentier states financed by resource income that remain financially secure.
3. International finance institutions and bilateral donors, imposing their 'tax consensus' through loan and grant conditionalities.

Progressive tax systems mean the wealthy pay a higher proportion of their income in tax than the poor. This is usually achieved via progressive marginal rates of taxation, but it can also be achieved by special levies on goods and activities that are primarily consumed by high-income earners, such as luxuries and cars, as well as taxing banking and stock market transactions. Corporate taxes usually do not discriminate

between companies and variable corporate tax rates can also give rise to tax planning. This is why tax compliance is the best manner to achieve progressive corporate taxes, as the owners of capital are subsequently taxed in a progressive manner. Additionally, taxing natural resources with a sufficiently high level of royalties is an important part of a progressive tax system.

Ineffective tax and customs administrations

Tax administrations in most African countries have often been characterised as either corrupt or inefficient, hard to reach and unwelcoming places. One of the more efficient ones, the Kenyan Revenue Authority (KRA), employs approximately 3,000 tax and customs officers, to serve a population of 32 million. Meanwhile Nigeria, with its 5,000 tax officials, cannot engage in a meaningful tax dialogue with its 140 million citizens. The Netherlands, as an example of an OECD country, employs 30,000 tax and customs officials for a population of 10 million (IPS, 2011). Most of their time is spent in managing tax credits, and responding to taxpayer queries rather than simply extracting revenue. Clearly more tax officers need to be trained, hired and effectively compensated throughout Africa, with a public mandate to serve the interests of the citizens – and change the culture of taxation as politics, rather than simply extract revenue from vulnerable citizens.

This extraordinary lack of personnel is a product of decades of failed tax policy in Africa, where the role of tax administrations was squeezed as part of austerity programmes prescribed by the international finance institutions including the IMF. Tax authorities have had to focus on collecting revenue from easier sources, neglecting their wider public mandate. Large Taxpayer Units (LTUs) have been created across the developing world in order to give special treatment and quicker response and customer service to the large and rich taxpayers.

Decades of austerity, imposed by international governance institutions such as the World Bank and IMF, have undermined staff morale, reduced productivity within the revenue agencies and encouraged corrupt practices. As a result, revenue officials have increasingly:

- Become receptive to bribes;
- Been intimidated by vested interests of the state and other powerful interest groups;
- Had their staff poached by the private sector;
- Lacked recourse to strong laws to combat tax evasion and avoidance;
- Failed to coordinate provincially, nationally and internationally;
- Had limited access to information technology, and infrastructural and institutional capacity;
- Lacked automated facilities at customs points to monitor foreign trade.

In addition to this lack of resources, the effectiveness of revenue agencies has been further undermined by the lack of co-operation between local authorities, states and central government tax authorities.

In federal states like Nigeria and Ethiopia, lack of interaction between the revenue agencies is a recipe for non-compliance. And in a world of increasing cross-border trade and capital flows, the work of African revenue agencies is made even more difficult by weak regional and international tax co-operation. As a result there is no effective exchange of information on taxes in or between most African countries, let alone with the wider international community. Those with the means to negotiate

their tax affairs, such as wealthy individuals and multinational corporations, often play off the different layers of government and agencies against each other. Ordinary taxpayers are not able to do this.

What role then, does philanthropy play in economic development and justice, specifically related to taxation in Africa, and accompanying tax leakage?

Section 4: The right to govern

Africa derives the bulk of non-donor revenues from extractive industries. The continent also loses over 60 per cent of illicit flows, mainly from extractive industry revenues, to corporate tax avoidance. Ironically, when corruption and illicit flight is framed by most corruption and governance institutions, such as Transparency International (TI), the issue of tax justice is largely elided. Instead, the geography of corruption facilitating illicit flows is limited to demand-side or political corruption, responsible for just 5 per cent of the same 'illicit' economy. The kind of capitalism supported by corporate philanthropy, directly or indirectly, enables a version of economic development constructed at the expense of tax, and more broadly, economic justice. Thus this section argues that the 'virtue economy', falling squarely into the industry of development, need and so forth, was founded, funded and facilitated by big philanthropy (or operating within the paradigm of philanthropic spaces). It is often inherently problematic and contradictory not merely in terms of execution, but in essence, because privately accumulated wealth is being associated with gifting, even when it derives from still operating private corporates, or private foundations funded by the same. The effect is that public policy and perception then tends to view corporates or private foundations as transformative agents of the public good correcting economic injustice (that the corporates largely cause), specifically tax and resource governance. Logically it is hard to see how the same agent can essentially act coevally to produce two contradictory objectives – profit and social justice.

In this model, the virtue economy is also synergistic to aspects of the profit economy in that its performance of both need and care displaces understanding of its more substantive exploitation. Thus the virtue economy – delinked from the politics and history of the accumulated capital – is often used for the appearance of adding ameliorative correctives to the effect of market systems that are conceived as inevitable and 'natural' and external to the production of poverty. The 'virtue economy' in which corporate philanthropists play a large role is thus not engaged with producing structural change, or to correcting the causes of socio-economic and political ills, particularly where it relates to tax and resource-related governance. Corporate entities and private foundations, for instance, those funding the Extractive Industries Transparency Initiative (EITI) are able to fund the governance programme that removes political and other accountability from the public to the private sector. Also, the EITI, and other similar governance structures, directly allows for the purchase of legitimacy from the same public system – what I call the boomerang effect.

Yet academics, such as sociologists, appear to have circumvented the analytical gap inherent to the structural role played by the virtue, or care, economy, within their narratives of capitalism and poverty. Despite this blind spot, the second largest source of international NGO funding is derived from Western, particularly US, private foundations. In fact, the role of

private redistribution of wealth embeds a certain voluntarism that rationalises the stewarding of care as well as the needs economy by the wealthy. In this, financial aid meets symbolism at the level of international economic development, and promotes the US's particular view of neoliberalism. This latter is characterised by limited government and individualistic 'rise' through highly competitive markets, as opposed to general welfare. In the process, the care and needs economy exports understandings, real and symbolic, of democracy, corruption, and economic justice, fields that are intimately intertwined with one another. These understandings deepen the current status quo by shifting from wealth accountability to poverty management, from massive tax leakage through corporate avoidance, over US\$100 billion annually from Africa, to a partial transparency that shines a light on symptoms, not causes.

The perception of philanthropy as a primary source of transformative public change allows for 'good' to be interpreted and implemented, via small groups of powerful elites, in the pursuit of profit, and the market, despite all mutually reinforcing the root causes of economic injustice. This management includes no accountability or genuine ties to those who are governed. Though philanthropic governance is understood as depoliticised and technocratic, the interpretation of 'needs' is inherently political: it allows for investors to control and confine the diagnosis of the problem. In this case, the care economy frames the governance systems that capture economic regulatory activity from resource extraction. This regulatory capture in turn allows for tax justice to be excluded and corporate tax avoidance to continue. Thus the governance programmes are often divorced of real context even as it is presented as contextual.

Easy virtue

This section considers the tensions and contradictions inherent to the role and context of tax and resource-related governance. Rather than focus on specific philanthropists and philanthropies, I will instead focus on key systems encompassing the bulk of Africa's extractive industries, including diamonds via the Kimberley Process (KP) and fossil fuels as well as other minerals via EITI. These governance institutions are prevalent in Africa as the legitimate doorway to international markets, failing which the domestic industries are held as suspect. Though neither governance system actually considers the critical issue of illicit flows through tax avoidance, they are held as 'true' and 'relevant' as concerns the governance logic applied to African countries.

The virtue economy trades in commoditised elements of the public good, such as welfare, poverty and health. It seeks to attract money by its promise to alleviate harm, while its systems may, or may not, include the provision of a good or service related to the problem that is being ameliorated or solved. The characteristics of the institutions of the virtue economy are typically neoliberal in that they promise to be apolitical, technology and expert based, with regular recourse to technologies of new public management such as monitoring and evaluation and evidence-based policy.

The economy is not dissimilar from cause-related marketing ('Buy to Save') in that it promises extra social worth over and above the use value provided for in the object that is being traded or provided. Both rely on the 'values for money' generated from conscience but whereas socially-minded goods are directly intended for 'consumers' transacting money for ease, the virtue economy itself embeds the provision of an intangible service, such as 'advocacy'. The virtue economy

may have as its outputs that which are impossible to measure or detect. It can also provide legitimacy to principles of social care that appear deeply problematic on closer analysis, such as when pharmaceutical companies provide donated patented medicines to developing countries that cannot afford patents but which are blocked from receiving cheap generics by virtue of the same established order. Given that some aspects and (non) products of the virtue economy only have to be believed in, rather than be materially apparent, it requires and depends on a credible vanguard advancing the rhetoric of governance or the purchase of political and economic legitimacy in fields traditionally believed to be corrupt, such as in oil, for the global audience of consumer-citizens.

Cause-marketing has catalysed a shift in the psychology of consumers. For example, university studies have found that consumers believe 'good purchases' act as donations, and no longer feel the need to give to charities. The 'real' is co-opted, legitimated by the appearance of 'good' even where it may exacerbate the problem or fuel the same system. In other words, the act of consuming has been framed as conferring other benefits such as contributing to conservation, development or environmental protection. Product Red, for instance, part of the ONE campaign and branded as ethical consumerism specifically focuses on tackling poverty in developing countries. Yet partners include companies renowned for sweatshop labour like the Gap and Nike who then remit revenue to care programmes despite generating profits from exploitation, selling exploitatively made products under the guise of charity, and re-investing profits back into the same system. Others like Apple, also part of Product Red, comprise some of the world's biggest corporate tax avoiders.

Unsurprisingly, many NGOs feel conflicted in legitimating the economic system, aware that commodification, whether materially or intangibly, is transformed into passive consumption through capitalist values for money. Not only does this legitimate the system, but as Oscar Wilde stated, "charity does not cure the disease, it merely prolongs it." Here, "global capitalism with a human face", as Zizek argues, has become the basic constituent of our economy blurring the boundaries between consumerism and conscientised anti-consumerism (Zizek, 1999).

But more predatory than easy virtue consumption is the logic of civil society resource governance shaped by the language of corporate capital. This allows for the substitution of the regulatory function from the public to the private sector.

The rise of governance

'Governance' has gradually come to substitute part of the role of governments in developing countries. The existence of adopted 'governance' initiatives has eliminated the need for questions into the cause of the problem, whether the initiatives are really suitable, and what must be corrected at the level of political and financial architecture, outside of private benevolence that may or may not reflect the vested interests of private capital. This vacating of government and the substitution of private and civic organisations to perform what were once the core functions of government has been occurring since the late 1970s' hegemonic turn to neoliberalism. But in Africa it has taken an extreme and pernicious form, as the corruption campaigns served to pathologise the African state and move even core government functions into the private sector.

This trend has in turn generated, and been reinforced by, the growth of the virtue economy which is incubated from acts

of 'politics' and 'corruption' and is framed as a 'private' and 'international' space presented as non-governmental, and therefore, outside of the realm of 'poor country' politics and corruption. While exempt from association with 'corrupting' politics, the virtue economy is also exempt, in terms of international 'visibility' from criticism and accountability by citizens of countries where such programmes are implemented. The virtue economy is explained and legitimated by the dominant discourse and through social and political power at a global scale. Because of this it is rarely independently audited or evaluated. This aspect of philanthropy's ability to interpret and institutionalise 'need' at a global level has yet to be properly investigated.

Like cause-marketing, governance initiatives are created through circumstances 'authored', factually or otherwise, by the philanthropists. Most governance initiatives, where related to tax justice, and funded by corporate capital or private foundations, construct solutions on the basis of problems identifying that developing governments alone, for instance, must be monitored for revenue leakage. Conversely, corporate entities are given an opportunity to 'participate' in order to avoid reputational risks, such as within EITI, which enables them to choose their position within the self-authored context of problem analysis. Companies are both 'consumers' of legitimacy through participation and the vanguard, restating the 'need' for governance as defined by themselves. The inclusion of actors in certain roles is therefore allocated before the instance of potential wrongdoing.

The problem analysis selectively diagnoses 'theft' and 'corruption' to exclude the possibilities of wrongdoing from all non-governmental actors. For example from resource-seeking multinationals; resource-monitoring multinationals such as accounting and law firms, and so forth. Not all governmental actors are assigned wrongdoing: TI ranks leading tax havens, such as the UK, Switzerland, Netherlands, and others, as 'clean' countries. TI, an example of an organisation shaped by the logic of the World Bank and its longtime Africa-based economic development managers such as Peter Elgen, rank the continent's developing governments as inevitably corrupt via selective indicators such as the TI's Corruption Perception Index (CPI). This diagnosis deliberately avoids scrutiny of the role played by tax havens, the majority of whom comprise power players in the OECD bloc, a global financial 'regulator'. TI is an example of a key – and respected – 'secretariat' shaping the imagination of global civil society, which marginalises the question of what is included and excluded, and why.

The exceptional space inhabited by the virtue economy is legitimated by consumers and, vanguards, on the basis of two critical pillars: the power of parachuted money to save (or private wealth for the public good) and the need to act around 'politics', that is, developing governments. This role facilitates the embedding of philanthropic virtue – often with budgets or influence larger than some developing countries, in critical political domains: for developing governments, philanthropic money represents donors or revenue streams; for virtue consumers, a source of the uncorrupted good. Here, philanthropic-funded civil society legitimates governance systems, such as TI and EITI, as symbolic of 'good' actors.

Philanthropy and the virtue economy

As with Dorian Gray, philanthropy is taken as good on face value, because it looks good and deploys the rhetoric of good. But, is it really good? Have philanthropic institutions (or just tropes of the commodification of 'need' or 'care') become embedded in the assemblage of market capitalism to give the

appearance, and part reality, of benevolence?

Philanthropy's role in modern resource governance uses monied power to depoliticise and render invisible the so-called 'natural' role of the market. But all markets are a consequence of government extended formal privileges (Foucault), facilitating impoverishment for some and accumulation for others. The delivery mechanism related to anti-corruption and economic justice – EITI, TI and KPCS – is intended to provide a balancing effect as opposed to correcting inequity. This is done to hide possibilities for the 'poor' marginalised majority by the 'rich' dominant minority within the current system; staying the course with one hand, and providing benevolence with the other.

All money is not equal: accumulated capital as history and politics

We saw in the last section how tax and resource-related governance are framed in the virtue economy as apolitical and policy-based. These have then been increasingly substituted for the roles and places previously reserved for governments. Given the a priori poverty of sovereign actors, or the incapacity which is eventually generated by this process of substitution, donors and philanthropists in the virtue economy are then able to promote themselves to significant roles as 'architects' of policy in international institutions and spaces, ranging from the World Health Organisation (WHO) to government budgets. Yet the imagined market of the 'poor' or 'impoverished' as presented by virtue vanguards, do not have 'voice' and are often unable to be authors of their own reality. The real market then emerges: using poverty and the 'poor' as underlying assets to marketise care, rather than to be actual recipients of care.

Thus "assume," wrote Fraser,

"that the politics of needs concerns only whether various predefined needs will or will not be provided for. As a result, they deflect attention from a number of important political questions... they take the interpretation of people's needs as simply given and unproblematic... they assume that it doesn't matter who interprets the needs in question and from what perspective and in the light of what interests; they thus overlook the fact that who gets to establish authoritative thick definitions of people's needs is itself a political stake" (Fraser, 2013).

As Escobar and Illich have written elsewhere, the formulation and operationalisation of poverty through systems of planning and need have allowed for the ordering and management of reality by experts who act within spaces of unaccountable wealth.

This merging of private interest and wealth, known as 'philanthro-capitalism' is characterised by those monies in the virtue economy that are capable of authoring spaces in which public policy can be captured on the basis of private wealth.

- It is accountable only to the elites who steward the system.

- Philanthro-capitalism is framed as being without history and politics.

However, all money is not equal: the narrative of excess wealth is not without origin or naturally generated. This is thus vastly different from the political mandate inherent to the fiscal-social contract of tax. At a national level, for instance, government policy is – or should be – directly connected to elected representatives acting within the fiscal-social contract constructed around taxation. This is, by contrast, inherently political, responsive to citizens, and operating within constitutional rights and responsibilities at domestic and international levels. Thus, not only do philanthropic-funded entities exclude the primary need for resource governance, but they also circumvents the structures behind the political significance of tax as a tool of political engagement.

It therefore lends to the privatisation of politics into governance which has undermined territorially based democratic structures. Philanthropic-funded policy represents the right of, and action by, self-identified benevolent individuals to create policies that seem (to do) good, legitimated by nothing more than the presence of accumulated wealth.

Nickel and Eikenberry summarise that "The social significance of philanthropy has ceased to be a political issue." In this:

"We are focused not on the significance of the existence of social problems, but how the policies that disguise them are delivered. This is problematic because the social problems that act as an impetus for philanthropy – poverty and marginality in particular – are not only personal issues, they are distinctly political."

That is, marginality for the masses is created by the same mechanism that allows for wealth creation for a few.

Philanthropists are able to bypass citizens and the state even as they impact both for better or worse, reallocating profit at their discretion. This profit, it is claimed, is made by those meritorious enough to compete within the system and is viewed as a product of hard work, skill and choice. However, the flipside, is that those who do not make it, are framed as somehow less skilled, lazy and 'choosing' poverty instead of wealth. As Nickel and Eikenberry note:

"In practice, philanthropy is frequently constructed and supported by the very thing that it claims to end... Philanthropy is dependent upon the existence of marginal groups in need of assistance and a more powerful group in a position to offer this assistance." (Nickel and Eikenberry)

The ideology of philanthropy, the authors go on to state, is lost in the medium of money as text, "and the reified social relationship embedded in money, which makes social policy".

Philanthro-capitalism

Philanthro-capitalism then, is politically significant in that the 'winners' are not to be held accountable for how wealth was generated, nor to what extent they are responsible for the impoverishment of the 'losers' – only that they are to be

celebrated for excelling and seeking to redistribute. Yet the redistribution itself is indicative of a system that is not capable of serving those in need through formal public mechanisms. Rather than alleviating inequity by correcting the system, such governance acts as a Band-Aid to ensure that stabilisation and balance prevents collapse, or worse, radical overhaul. Indeed, Carnegie notes, "Philanthropy is the true antidote for the reconciliation of rich and poor... different from that of the Communist, in requiring only the further evolution of existing conditions, not the total overhaul of our civilization." (Taylor, 2010).

This detail informs us that philanthropy's capacity to act is derived from impoverishment, and requires that the system remain the same. Those who derived the most from poverty, ironically, have the most influence on how poverty is considered and reformed.

The rules of the game

Landmark tax and resource-related governance initiatives in Africa, constructed as transparent reporting standards, are overwhelmingly characterised by the lack of identification of economic injustice, particularly where it relates to the role of multinationals, the primary cause of the continent's illicit flows, largely from tax avoidance. The question is critical as more than 85 per cent of asset portfolios for sub-Saharan Africa pass through tax havens, via subsidiaries of multinationals based in one or more tax havens (Christian Aid, 2010). Yet tax and resource-related governance has been limited to 'transparency' designed to resolve political 'corruption', excluding the fault-lines intrinsic to the impoverishment of tax justice in Africa's resource-rich countries. Here I consider two initiatives: KPCS and EITI.

KPCS

Where it relates to African resources, 'governance' initiatives such as the KPCS assist in facilitating revenue leakage from tax and natural governance.

The KPCS was designed in 2003 to "keep rough diamonds tainted with violence out of the international trade." The definition entirely elided all violence or conflict outside of 'rebel activities', including that which originates or is implemented by diamond-producing or trading states and multinationals. In Africa, both state and corporation are usually involved in extractive partnerships, accounting for the bulk of diamonds produced.

The existence of the KPCS, is considered to have generated 99 per cent of rough diamonds as 'conflict free' and is held as the model for replication across the natural resources industry. According to De Beers, one of the world's largest diamond companies, at one stage, holding the global monopoly"

"The Kimberley Process Certification Scheme (KPCS), was formally adopted in November 2002, and came into operation on January 1, 2003. De Beers, with the World Diamond Council, has helped spearhead this initiative on behalf of the diamond industry... This stringent conflict diamond policy and its certification is our confident declaration that every single piece of De Beers jewelry is ethically

produced and 100 per cent conflict free." *(De Beers Bridal Brochure)*

Other NGOs involved with the founding of the process, such as Global Witness, would eventually pull out of the KP.

Unfortunately, as my colleague Sarah Bracking and I found earlier in this year, in a study funded by Oxfam and published by the Leverhulme Center for the Study of Value, De Beers under-valued South African diamonds by more than US\$2.7 billion over a period of several years (2004-2012) through mispricing KP-certified rough diamonds for export. This allowed for the private company to effectively set its own tax rate in a technically legal manner by controlling the valuation process, with pricing formula held confidential even from government (Bracking and Sharife, 2014).

Yet the claims of 'conflict-free' and 'ethical' so proudly touted by De Beers on its website, evidences that governance has been divorced from a relevant context and benefits only multinationals keen on sales and corrupt governments, for it entirely elides the role played by authoritarian, undemocratic and other rent-seeking regimes – the source of most conflict in Angola, Zimbabwe, Namibia and so on.

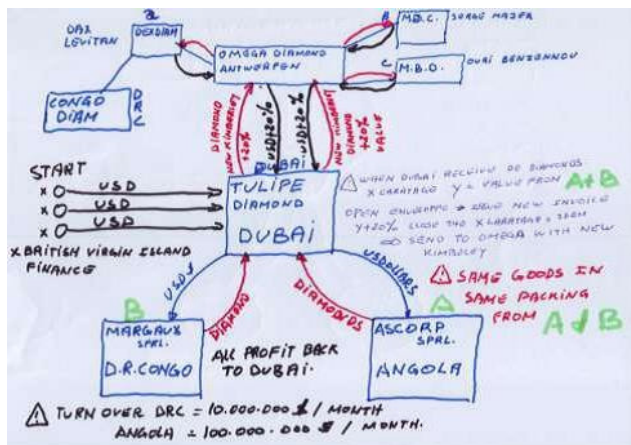
The KPCS, while providing a clean bill of health to the diamond industry, relies on the integrity of the diamond entities exporting 'value', allows for tax havens like Switzerland and Dubai to re-export diamonds with KP certificates, and enables secrecy as pricing policies are kept confidential by large corporate players.

Multiple other investigations produced in the past year, have revealed the same systemic pattern of events. For example, from 2001 to 2008, a Belgian company, Omega, systemically under-invoiced the value of Angolan and DRC diamonds, using KP-certified tax havens, such as Dubai (Sharife and Grobler, 2014). There, diamond parcel invoices would be swapped and a new KP certificate of mixed origin attached. From Dubai, the diamonds would be sent to Antwerp, with the correct pricing value, facilitating profit shifting and tax avoidance. The mispriced value of diamonds, via this 'tax optimisation' was estimated at around 30 to 50 per cent of total value. The company exported around US\$100 million of diamonds from Angola every month and US\$10 million from the DRC (Sharife and Grobler, 2014).

According to a South African court document:

"Omega imported diamonds from Angola and Congo through an associated company in Dubai into Belgium. Omega ordered the shipment of diamonds purchased in Angola and Congo in accordance with the legally required Kimberley certificates, for delivery... in Dubai. The diamonds were packed in small parcels. Upon arrival in Dubai the small parcels were retained but repacked into larger parcels, containing diamonds from both Angola and Congo, without physically mixing the stones. Thereafter the new shipment of diamonds was

provided with a new Kimberley Certificate indicating that the shipment emanated from the United Arab Emirates and marked 'diamonds of mixed origin.' The new shipment was issued with a new invoice... addressed to Omega wherein the value of the diamonds was increased." (South African Supreme Court, 2012)



The use of Dubai – which neither extracts, cuts nor polishes diamonds – for illicit mispricing is the primary reason why the tax haven has gone from diamond trade valued at US\$5 million per annum in 2001, to US\$39 billion in 2011 – rising to become the world’s third largest diamond trader (Sharife and Grobler, 2014). In 2003, KPCS was inaugurated in the UAE by the ministry of economy, naming the Dubai Multi Commodities Center Authority (DMCC) the sole point of entry and exit for diamonds in the country. The Financial Secrecy Index (FSI), produced by the Tax Justice Network, assessing the UAE’s opacity, ranks it at 80 percent, or “the top end of the secrecy scale.”

When the author contacted the Kimberley Process office in Dubai, and its listed head Mariam al- Hashemi, the request was forwarded to the DMCC’s public relations office. Jade Mamabachi, director of the public relations consultants Brunswick group, responded only by inquiring about the nature of the story, including “who else [we] were interviewing.” Following several email exchanges, interview requests with the DMCC were denied. In Dubai, even the KP was not autonomous from the broader political structures. This view is supported by a US Embassy cable from Brussels, released through WikiLeaks, which quoted an investigator as stating, “It’s like our fax line was directly connected to their shredder [in Dubai].”

Senior sources in the Belgian government revealed:

“Because of the Kimberley Process certificates, the diamond dealers did not want to ship the diamonds directly from their African buying offices to the market. The shipments were diverted to the UAE (Dubai). The certificate and invoice was then changed to a desired price and then shipped to a trading center. This way the evaluation office in the trading

center received a shipment of rough diamonds with a UAE Kimberley Process certificate “origin: mixed or unknown”, and with a value close to the market price. The full purchase amount, as mentioned on the invoice, is transferred and diverted to different accounts all over the world, private accounts or accounts of individuals. In the bookkeeping, all transfers are attributed to the UAE supplier. It may be clear that the UAE as a transit point was only created to produce ‘new’ documents in order to mask the origin of the diamonds and to create a possibility to divert the payments.” (Source, 2013; Sharife and Grobler, 2014)

The same was found in investigations related to then-sanctioned Zimbabwean diamonds: Chindori Chininga, chair of the Zimbabwean Parliamentary Portfolio Committee on Mines, who investigated the diamond companies operating in Marange, confirmed that Dubai was used to under-value diamond exports from Marange, the beneficial ownership in related companies, banking and other forms of secrecy, and that KP-certified tax havens were being used to hide the origins of diamonds. “What is the value of the KP certificate if it comes from places that are also tax havens?” he asked. Chininga, a moderate Zimbabwe politician and member of the ruling ZANU party, died in a car accident several days after the interview with the author.

Chininga’s claims were confirmed in cables originating at the American Embassy in Belgium and disclosed by WikiLeaks:

“Belgium very recently has begun to take steps to monitor the flow of Zimbabwe-sourced diamonds through Antwerp’s Diamond Office... but those involved in the Zimbabwean illicit trade were savvy enough to mingle diamonds with those from other countries such as the DR-Congo, and then send them to other diamond trading centers in... Dubai where they could receive legitimately-issued Kimberley certificates that indicated the source was ‘mixed,’ and then be sent on to Antwerp.”

Thus the KPCS, so widely effected in Africa, emerges in essence and delivery, as a system that excludes tax, resource and broadly, economic justice, producing the wrong kind of results. Yet the idea of KPCS as ‘good’ due to technocratic regulation, such as ‘certification’, co-opts virtue consumers in transactional purchases of legitimacy.

Are other critical governance initiatives fundamentally different?

EITI

Despite the UK's City of London's status as the world's preeminent tax haven, (acting as the 'head office', according to the UK's Serious Fraud Office, to a large portion of global tax havens from British Virgin Islands to the Cayman Islands) the UK, like Switzerland and the US, has always been a leader in defining 'transparency' initiatives. In 2002, then-Prime Minister Tony Blair outlined the concept behind EITI at a Johannesburg Summit as a joint project with the World Bank.

This was followed by a conference in 2003, held in London, outlining the principles required for 'transparency in natural resource development'. The EITI was initially pegged as a standard of disclosure that would be voluntarily released by companies involved in extractive industries, but it soon evolved into a reporting standard of payments and revenues from governments. In 2005, the UK Secretary of State for International Development highlighted, "different approaches to the principles were boiled down to... EITI Criteria, which sought to establish 'the rules of the game' " (EITI) – phrases that offer the marginalisation of anything that questions the rules or norms. These would constitute:

"Regular publication of all material oil, gas and mining payments by companies to governments and all material revenues received by governments from oil, gas and mining companies to a wide audience in a publicly accessible, comprehensive and comprehensible manner."

What is left out? Why? In whose benefit? The EITI system claims that reduced reputational risk is a tremendous upside for foreign investors and corporate entities.

The EITI is backed by many of the world's major extractive or resource-seeking multinationals including Shell, Chevron, Vale, BHP Billiton, Anglo-American and others, and claims to eliminate corruption by shining a light on the flow of revenue. It is funded primarily by fossil fuels and extractive industry entities, private investors, the World Bank and other philanthropic-related sources.

The approach to transparency and corruption, led by EITI's Chair Peter Eigen, former head of World Bank's economic development programmes in Africa and Latin America, and founder of Transparency International, is critical to the diagnosis of problems and solutions, as discussed in Section 2. This approach exposes tensions between the included and excluded (Zizek, 2009) because the geography of corruption is narrowed to consider only what corrupt developing governments may steal from what companies have paid, in a limited national context, ignoring the transnational nature of corporate activities, and more critically, what companies 'ought' to have paid.

A case study will illuminate these tension. Thus for example, Zambia became the 26th country to publish the EITI report, and disclosed payments from mining companies for the year 2008. The report revealed that mining companies remitted US\$463 million in payments to the government in 2008. It claims "significant discrepancies" noting a net total of "unresolved discrepancies" of US\$66 million (Sharife, 2011). However, in that same year of 2008, much of Zambia's exported copper, almost half of which was earmarked for Switzerland, never arrived at its destination, apparently disappearing into thin air. Moreover, the pricing structure for Swiss copper – remarkably

similar to Zambia's exported copper – was six times higher than the funds Zambia received, facilitating a potential loss of some US\$11.4 billion. This is especially interesting when taking into account that Zambia's entire GDP for 2008 was US\$14.3 billion. This consequence of illicit pricing is not picked up by the EITI methodology.

This source of illicit flows through transfer mispricing, made headlines when a leaked report authored by Grant Thornton at the request of the Zambia Revenue Agency (ZRA) unpacked how the Glencore-controlled lucrative Mopani Copper Mines (MCM), a company which declared no profits, was cheating the country's tax base of copper revenue. The auditors disclosed that MCM tried "resisting the pilot audit at every stage", rendering them unable to access crucial data in many instances. MCM's chief executive, Emmanuel Mutati, claimed that the audit was not accurate, precisely because data was inaccurate. Yet Glencore, the world's largest commodity trader, controlling 50 per cent of the global copper market, was confident that MCM would be "exonerated" (Sharife, 2011).

This was done by Glencore in a strategy that was illicit, or against the purpose of the law, but totally legal via self-regulated "arms-length transfer pricing" allowing multinationals to internally impute values on trade. The current deregulated global financial architecture, comprised of voluntary and opaque reporting standards, has effectively allowed as much as 60 per cent of global trade, occurring within different subsidiaries of the same multinationals, rather than between corporations, to rest on the integrity of profit-seeking entities.

In this case, Glencore allegedly purchased grade +1 copper at well below the market prices from its subsidiary MCM – a classic mispricing transaction between subsidiaries of the same multinational, allowing for Glencore, based in another export destination Switzerland, the world's leading secrecy jurisdiction, to re-export at higher prices, while also enabling the company to take advantage of little or no taxation, among other legal and financial secrecy measures.

The result of this and similar transactions is that mining companies generate just 2.2 per cent of revenue collected by Zambian authorities. This is despite the public discourse that the extractive industry provides the primary vehicle to kick-start Zambia's real economy. However, in 2008 the biggest percentage of tax in mining was derived from withheld taxes paid by workers. In total, just 4.4 per cent of actual taxes remitted from the already minute sum paid by mining houses comprised corporate tax. This is a particularly nifty boutique tax product called Total Tax Contribution, created by auditing firm PricewaterhouseCoopers, which helps corporations avoid taxation.

Thus despite as much as 60 per cent of non-grant revenue being generated by resource rents, constituting a main source of income for African nations, many of them are still dependent on the small contributions actually made in respect of those resources for their tax base. Despite this injustice and the need for change, the OECD has not implemented Corporate Country by Country reporting standards, preferring the "arms-length system" created by the International Accounting Standards Board (IASB) – itself operating from a tax haven, founded and financed by the world's leading accounting firms, such as PwC. These firms then compete with one another to create the best tax avoidance products for corporations.

According to Nick Shaxson from the Tax Justice Network (TJN),

"The role of the OECD is particularly strange in this respect.

It jealously guards some of the main mechanisms and models for transparency and information exchange with respect to international financial flows, and with respect to international tax. And yet these models all, in important ways, significantly disadvantage developing countries.” (Sharife, 2011)

Thus, catching revenue leakage through EITI – off the mark by billions – is impossible because it does not focus on what multinationals ought to have paid, only what they have paid, and it never investigates the means through which corporations were able to circumvent taxation. The current direction of EITI, such as identifying beneficial owners, is once again mooted.

There are several reasons for this: EITI allows inconsistent standards, limited to national boundaries, despite the international nature of multinational economic activity. And the EITI system, for instance, provides national governments with choices that fragment the legitimacy and accuracy of conclusions – even insofar as they attempt to track cash payments, including whether reporting is mandatory, whether auditing is required, what should be published and the accounting policies used, and materiality levels.

Aggregated templates used by multinationals, and even the EITI system, prevent scrutiny, for example, of where problems are arising, where they are replicated, and how they are realised. It is also obscure on whether, once a problem has been identified, it is subsequently sorted out and how. Many EITI reports contain recommendations that governments and companies subsequently do not act upon. Also, the EITI system would easily allow another subsidiary of the same mining company, based in another jurisdiction, to make a corrupt payment to a politician in Zambia or elsewhere. It would allow a company within Zambia, created for shell purposes, to be paid for “services rendered”, and thus serve to diminish tax. Thin capitalisation would allow for one subsidiary of the same parent company to make high-interest loans to the host country subsidiary, again diminishing taxable profits.

The conclusion of investigations into Zambia’s extractive industry, as well as others such as Nigeria and Gabon, expose contradictions between claims of good and the substance of the transactions. Like KPCS, the role of tax and economic justice is elided where it relates to the relevance of the country in which it is being implemented. Instead, it acts as a balancing mechanism to provide the appearance of transparency in governance, under the guise that transparency alone is enough to resolve the root causes of corruption.

Section 5: Conclusion and recommendations

The primary cause of tax injustice in Africa occurs through secrecy jurisdictions facilitating illicit and illegal activity, such as corporate tax avoidance, accounting for over 60 per cent of the continent’s illicit flows (Global Financial Integrity, 2012). Many of these companies are resource-seeking involved in the fossil fuels or mineral extractive industry. Intimately connected to this corporate structure are philanthropists who are participating in governance initiatives which attempt to reduce corruption, the key facilitator of illicit financial flows (UNECA, 2012). Private foundations also sometimes act to channel monies for the same purposes, enjoying the opacity and low tax exemptions applying to ‘charities’.

Philanthropy entities, and related NGO actors, who commit to engaging economic justice, which includes tax justice, must ensure that when they receive monies from private foundations or corporate entities, that these funders’ are not themselves engaged in tax avoidance and tax evasion, whether from intangible or tangible capital industries. This means that philanthropic organisations of good integrity must act to identify and actively resist the root cause of Africa’s tax leakage problem, even if this involves some base-line cost to themselves.

These problems include use of tax havens for legal and financial opacity divorced from real economic activity; and intra-company activity aimed at tax avoidance, thin capitalisation or other strategies designed to avoid or evade taxes. Globally, over 60 per cent of multinational trade is transacted within subsidiaries of the parent company, as opposed to between companies, and is primarily self-regulated through arms-length-transfer-pricing (TJN).

It is usually impossible for citizens to know the identities of the largest companies in their country. Data collected by national bodies like stock exchanges, chambers of commerce or global institutions such as UNCTAD and the World Bank, often fail to give a clear picture of companies’ revenues, employment or profits. They certainly rarely mention tax due or paid, although paying taxes should be a primary corporate responsibility.

At present, multinational companies are not required to break their reporting down between each country in which they operate. If companies were required to report their activities on a ‘country- by-country’ basis in their annual accounts, all stakeholders would know where they are, what they are called there, what trade they undertake there, and how much tax they pay in each place in which they trade. This would highlight the use of secrecy jurisdictions by large companies. Country-by-country reporting would use data already possessed by multinationals for internal accounting purposes. This means it would impose little or no cost burden on multinational corporations.

Country-by-country reporting would involve a multinational corporation reporting in its accounts:

- Which countries it operates in;
- What name it trades under in each country; and

- Its financial performance in the countries where it operates, including: sales, both within the group and outside the group; purchases, split the same way; financing costs, split the same way; labour costs and employee numbers; tangible and intangible assets; pre-tax profit; tax payments to the government of the location where it is trading community payments and charitable spending.

This form of reporting would highlight where companies are operating in politically unstable regimes, war zones and other sensitive areas. The use of secrecy jurisdictions would also be highlighted both by the country listing and by data showing that intra-group trading in these places is particularly heavy.

Country-by-country reporting could be introduced by the IASB, which sets accounting rules for most multinationals. While the IASB has shown resistance in the past – it is itself based in a tax haven – in 2007 the EU Parliament said that it wanted the IASB to develop country-by-country reporting for the extractive industries. This could be extended to multinational corporations in all sectors and should inform the geography of corruption where it relates to demand-side actors that are not politicians.

By law, companies should have to publish which subsidiaries they own in which countries. The publishing of beneficial ownership in every jurisdiction should be a legal requirement to operate in Africa, a requirement monitored by the African Union, central banks of the continent, financial regulators, and all regional cooperation organisations.

The tax avoidance industry likes to make a clear distinction between tax evasion, which is illegal in most countries though not in all secrecy jurisdictions, and tax avoidance, which typically involves exploiting legal loopholes that are not explicitly illegal. The distinction is not always clear cut and the tax avoidance industry often hides transactions in offshore structures to reduce the risk of disclosure to tax authorities.

Speaking in the UK parliament in November 2009, South African finance minister Pravin Gordhan noted that: “We have allowed the word avoidance to gain too much respectability. It is just a smarter form of evasion”.

Failure to benchmark the integrity of philanthropists, particularly those involved in governance or economic justice-related initiatives, signifies legitimisation of the same by recipients.

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