



Tax Policymaking and Stakeholder Inclusion: A Governance Perspective on Fiscal Legitimacy in Kenya

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Abstract

This study examines the relationship between tax policy-making processes and stakeholder inclusion in Kenya, with a focus on fiscal legitimacy and taxpayer compliance. The analysis draws on a document corpus comprising national budget statements, Finance Acts, public participation reports, parliamentary committee proceedings, and policy briefs produced between 2013 and 2024, a period marked by significant fiscal reforms, including Value Added Tax (VAT) restructuring, digital service taxes, and the introduction of the iTax platform. Using an exploratory qualitative design, the study applies thematic document analysis, combining inductive and deductive coding to identify patterns in institutional frameworks, participation practices, and accountability mechanisms. The study utilises Governance Theory together with Public Choice Theory and Stakeholder Theory frameworks to explain how stakeholder inclusion in tax policy-making shapes fiscal legitimacy. Findings show that participation is largely procedural, with formal hearings and memoranda not consistently influencing final policy; representational disparities are significant, as 62% of submissions came from large corporations and professional bodies, while only 18% were from civil society and informal sector groups; and feedback opacity persists, with limited reporting on how inputs shape policy. Second, representational inequality is reflected in the disproportionate influence of large corporate actors and professional associations, compared to limited engagement with informal sector groups and marginalized taxpayers. Third, feedback opacity is observed in the absence of systematic reporting on how public inputs shape policy outcomes, weakening transparency and trust. The study finds that fiscal legitimacy is more likely to be strengthened where participation is early, inclusive, and accompanied by transparent feedback loops. It argues that the quality not merely the presence of stakeholder inclusion constitutes a key mechanism linking tax policy processes to compliance outcomes. By specifying how procedural design features of participation shape legitimacy, the study contributes to scholarship on governance and public finance by advancing a process-based explanation of fiscal legitimacy in developing country contexts.

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Introduction

Kenya's tax policy is an instrument tool in mobilizing resources for public goods, maintaining economic stability and equitable growth. Since independence, the government has introduced a variety of tax instruments and measures that include Value Added Tax (VAT) in 1990, taxation of income by amendments to the Income Tax Act, 1974 and the use of electronic system via an online system called iTax as (Oiro, 2019). However, Kenya still grapples with tax compliance and legitimacy challenges. In addition, issues of low voluntary compliance, tax evasion among others have been cited as the reasons for non-involvement of taxpayers in the design and implementation of tax policies by the Kenya Revenue Authority (KRA) in 2020. A legitimate system of taxation governance that increases taxpayer legitimacy of fiscal policy by involving taxpayers in the policy-making process and ensuring accountability is therefore necessary.

A key problem in Kenya's tax policy landscape is the gap between formal policy design and public trust. According to World Bank (2021) report, majority of tax policies or reforms are developed by technical people in the Ministry of Finance and Kenya Revenue Authority (KRA), without any consultation with other stakeholders such as the business community, Non-Governmental Organisations (NGOs) and the local community at large. This limited inclusion can result in policies that are misaligned with the needs of taxpayers, generating resistance and undermining compliance. For example, this was evident recently when businesses went on strike in December 2021, to protest against imposition of a digital service tax, as stakeholders felt excluded from meaningful consultations prior to its implementation (Ngugi, 2022). This huge disconnect between policy makers and taxpayers can be attributed to a huge participation gap between the two.

This study generally aimed at investigating the tax policy-making process and its linkages with stakeholders' involvement and fiscal legitimacy in Kenya. The study unit was tax policy making and the consultation process emanating from documents and records on Finance Bills and Finance Acts, Parliamentary Committee Hearings on finance as well as stakeholders reports of the Kenya Revenue Authority. These source materials revealed how participation was organised, who was consulted and how decisions were communicated to the public.

This study therefore investigates the nexus between inclusive policy-making process and fiscal legitimacy in Kenya. Inclusive policy-making process on the other hand refers to a process that is characterized by consultation, diverse communication channels and citizen participation to ensure that citizens engage in policy-making process. The participatory approaches to policy-making are associated with higher tax compliance and fiscal legitimacy as a result of citizens' trust in the government as highlighted by Fjeldstad & Heggstad (2012). This study therefore aims at establishing the linkages between inclusivity in the tax policy-making process and fiscal legitimacy. In this regard, the study will focus on the institutional frameworks that facilitate citizen participation in the tax policy-making process and the constraints that impede the participation of citizens. For instance, Chege (2018) highlights the case of budget hearing in counties in Kenya under the devolved system of government.

The significance of this study lies in its potential contribution to scholarship and practice in governance, public finance, and policy-making. Increasing fiscal legitimacy through citizens' participation can also help policy-makers and civil society organizations to improve citizens' trust and compliance in tax systems. It also adds to comparative studies on participatory governance in developing countries and draws lessons from the Kenyan case study that could be replicated in other African countries (OECD, 2015). The increasing number of studies on

accountability and democratic governance are highlighting the importance of participatory processes in policy-making, to achieve legitimacy in policy-making processes. Therefore, this study adds to the body of knowledge on how inclusive policy-making processes contribute to achieving legitimacy in policy-making processes.

This is an important aspect of tax systems reforms which not only aim to increase tax revenues, but also contribute to better democratic governance and accountability. This paper argues that meaningful stakeholder participation in tax policy-making is not only a democratic imperative but also a practical strategy for enhancing compliance, fairness, and the perceived legitimacy of fiscal policies. By examining the structures and processes that facilitate or hinder such participation, the study provides evidence-based recommendations for improving inclusive governance. The following section, the literature review, explores key themes including the concept of tax policy, stakeholder inclusion in policy-making, fiscal legitimacy, tax policy and governance in Kenya, and empirical studies that highlight knowledge gaps in both national and international contexts.

The paper offers three main contributions. First, to the growing body of research on tax governance, it offers original empirical evidence on the effects of the design of stakeholder engagement in tax policy-making on tax and governance outcomes. While most of the literature focuses solely on tax revenue and barely considers governance indicators, here the analysis of tax compliance and governance indicators, as suggested by the OECD tax governance literature, aims at showing the impact of the design of participatory processes on tax compliance and better governance. Second, to participation and legitimacy theory, it offers a process-oriented perspective on inclusiveness, deviating from the conventional understanding of participation and representation as per se relevant for enhancing civic legitimacy. Following the stream of literature in political science that emphasizes the importance of input and representation for increasing citizen political connection and policy influence, the impact of participation on legitimacy is often considered self-evident and taken for granted. Thirdly, the study empirically investigates the relationship between institutionalised participation of citizens in taxation through the Finance Bills and parliamentary hearings on Finance Bills and the process of administration of taxation among other processes and power dynamics among the stakeholders which inform citizens' trust and tax compliance in Kenya, thereby bridging the gap between the formal institutions of citizen participation and their effects on fiscal legitimacy in developing countries.

Background

The Concept of Tax Policy

Tax policy consists of the legislation, administrative rules and procedures for levying taxes to finance the activities of the state as well as redistribute income and wealth (OECD, 2024). The key tax policy objectives are to raise revenue, enhance economic efficiency, achieve greater equity and realise social development. While the objectives of tax policy are meant to strike a balance between these competing ends, the balance depends on the specific economic, political and social circumstances in each country. For instance, in countries such as Sweden, Denmark and Norway, high rates of progressive income taxation are levied to raise revenue to finance their extensive system of social expenditure on healthcare, education and social insurance with the primary aim of achieving greater economic equality and social balance (OECD, 2015). In countries such as the US and Japan, the main aim is to realise higher economic efficiency and tax stability, by complementing their progressive personal income taxes with corporate taxes and other indirect taxes like consumption taxes. In low- and middle-income countries, the tax

systems are often narrow, with large shares of economic activities remaining in the informal sector, and with insufficient capacity in the public administration to ensure effective collection and enforcement of taxes (OECD/G20 Inclusive Framework, 2024).

Tax policy in Africa is replete with a myriad of structural and institutional challenges that impact both the effectiveness and legitimacy of the tax system. In Ghana, Uganda and Tanzania for example, direct taxes such as income tax and VAT are greatly supplemented by consumption taxes like VAT, as well as trade related taxes such as tariffs and levies. Fjeldstad & Heggstad, (2012) argues that, one of the challenges is the inefficient collection of direct taxes from the formal sector labour force, due to the informal nature of the labour market and an inefficient tax collection mechanism. The tax system inherited in post-colonial African states continues to bear a mark of the colonial system, where power was concentrated in the hands of the colonial administration and where taxation was an oppressive tool that suppressed the indigenous people. This has resulted in a top down, authoritarian and repressive system that lacks trust and legitimacy in the eyes of the citizenry (AUC, 2024). Although the structural and institutional challenges posed by the colonial legacy present a number of challenges to the modernisation of the tax system in Africa, it is still possible to initiate reforms that address the legacy of colonialism and post-colonial inequality. For example, in Uganda, participatory budgeting and the tax policy process has increased compliance and tax payers' awareness of their tax obligations, thereby increasing the legitimacy of the tax system.

In Kenya, the domestic tax policy is shaped by dynamics of the global and African fiscal landscape. On one side, the domestic tax policy must yield adequate domestic resources for national economic development while also ensuring fairness in taxation. The domestic tax policy in Kenya has undergone a series of developments. These include among others, the introduction of Value Added Tax (VAT) in 1990, adoption of an online automated system for the collection of taxes through the platform called "iTax" by the Kenya Revenue Authority (KRA), introduction of the digital service tax and environmental taxes (KRA, 2020). However, despite these innovations, challenges remain. They include; low levels of voluntary compliance, taxpayers' complaints about taxation being unfairly imposed as well as periodic resistance to new measures, as observed during the protests against the digital service tax in 2021 (Ngugi, 2022). The Kenyan situation demonstrates how a mix of systemic issues such as an informal economic sector and inadequate involvement of stakeholders can weaken the efficiency and credibility of fiscal regulations. Thus, it is important for Kenya and other countries to benefit and learn from international and regional experiences, in order to implement sound technical tax policies, institutions and systems that are socially owned, financially stable and effective.

Stakeholder Inclusion in Policy-Making

Participation of stakeholders is widely regarded as an essential ingredient of good governance. The idea that participation is good in itself is largely a hegemonic idea of participation prevailing in the literature on governance, particularly in the OECD context. The prevailing view is that participation, as such, has a number of beneficial effects, including greater transparency, accountability and therefore better policies. Consequently, participation is increasingly institutionalised through various mechanisms, such as public hearings, stakeholder conferences or participatory budgeting, in order to achieve policy legitimacy and, thereby, enhance citizen trust.

In recent years, critical perspectives on participation have emerged, challenging the assumption that participation is inherently a good thing. Arnstein's 1969 paper, *The Ladder of Citizen Participation*, has been referenced countless times in critical discussions of participation.

Arnstein describes participation on a spectrum from very superficial to more meaningful forms of citizen engagement. At one end are the more superficial forms of participation, such as education, or giving the illusion of participation by allowing citizens to express their opinions. At the other end are the more meaningful forms, such as mutual planning or delegated power. More recently, Andrea Cornwall has drawn a distinction between “invited spaces” and “claimed spaces”. Invited spaces are state-sponsored participatory spaces, like a town hall meeting. Claimed spaces are civic spaces created by citizens themselves, like protests or an occupation. Invited spaces do not necessarily enable participation, due to the power dynamics inherent in the structure of the space.

This paper analyses the participatory dynamics observed in tax policy processes in Brazil. Weak substantive participation is formally assured by strong procedural participation. However, the analysis shows that the compliance with procedures such as public hearings and the submission of memoranda by important groups of the society does not necessarily imply real policy influence on the tax measures that are finally approved. Therefore, participation is formally but not substantially substantive. Substantive participation occurs when the opinions and preferences expressed by groups of society have an influence on the policy content in any of its moments – formulation, implementation or revision.

In power dynamics terminology, looking at structural ways in the relationship between participation and power in a system that can influence the extent to which various groups are included and their interests accounted for. In countries such as Kenya, where the current policy dialogue process is unfolding, a small circle of actors such as multinational corporations and business associations, benefit from the comparative advantages they possess and so have more opportunity to gain from the policy dialogue process while smaller businesses and the poor are excluded. These debates suggest that the mere presence of participatory mechanisms is insufficient. Instead, the effectiveness of stakeholder inclusion depends on the quality, inclusiveness, and influence of participation, reinforcing the need to distinguish between procedural compliance and substantive engagement in assessing fiscal legitimacy.

Fiscal Legitimacy

Fiscal legitimacy is the degree of public acceptance of the level and nature of taxation related to the citizens acceptance of the tax system as being just and equitable. Whilst traditional measures of the success of a tax system have tended to revolve around issues such as tax yields and the level of tax compliance, the importance of procedural justice is becoming increasingly highlighted in academic literature and in the practice of tax administration. In this context, procedural justice refers to the fairness of the procedure of making a decision, rather than to the decision itself. There is a considerable amount of research being carried out in the areas of public finance and governance which examine the relationship between tax payers’ compliance with the tax code and their attitudes to taxation and the fiscal administration. In general, this research points to a high degree of compliance by tax payers when they have a favourable view of the manner in which the tax authority carries out its business and to a lesser degree to the level of taxation. (Bird & Zolt, 2018). However, integrating insights from participation theory complicates this relationship. If participation is merely procedural or dominated by powerful actors, it may fail to generate legitimacy and may even deepen distrust. In this sense, fiscal legitimacy is not simply a function of participation, but of how participation is structured and experienced by different stakeholders. This underscores the importance of examining not only whether participation occurs, but whether it is timely, representative, and consequential in shaping tax policy outcomes.

Tax Policy and Governance in Kenya

The dynamic shift in the tax policy and its administration in Kenya is a phenomenon that has evolved significantly over recent decades. The 2010 Constitution, taxation reforms and global economic trends have led to a paradigm shift in taxation in Kenya. In addition to the Income Tax Act and the Value Added Tax Act, among other laws, the taxation laws are frequently amended to keep abreast of global and national economic developments as well as ensure that the tax base is broadened (Republic of Kenya, 2017). The collection and assessment of tax is carried out by the Kenya Revenue Authority (KRA), while the Parliamentary Budget Office together with other regulatory institutions reviews the finance bills after engaging members of the public during hearings, and also after perusing the memoranda received from members of the public. Besides, the use of modern communication and information technology such as the Electronic Tax Invoice Management System (eTIMS) and the online platform-iTax-has enhanced tax compliance, eliminated red tape and transparency (KRA, 2023). Nonetheless, achieving a balance between the increase in taxation and the public's expectation of fairness and justice, is one of the contemporary governance challenges in Kenya (OECD/ATAF/AUC, 2024). This is evident in the civil unrest that erupted in Kenya in 2024, when citizens took to the streets to express their dissatisfaction over an increase in the excise tax on petroleum products introduced in the Finance Bill 2024.

Theoretical Basis

This study employs the Governance Theory which provides a foundational lens for comprehending how participatory, accountable and transparent processes of decision making increase the legitimacy of policies. Governance theory generally refers to a political system where the state is not the sole actor but where a number of different actors from civil society, the private sector and government are involved in the policy process. Bevir (2010) for example, describes governance as a mode of governance in which governments collaborate with others (including businesses and NGOs) to make collective decisions. Proponents like Rhodes (1996), describes governance as an activity which takes place in networks of public and private actors rather than in the state. Policy legitimacy can be built from governance theory by recognising that the state does not build legitimacy through the rule of law alone, but also through justice, transparency and citizen participation in policy-making processes that affectively impacting on citizens. For example, participatory budgeting processes implemented in a number of municipal districts in Africa, were intended to achieve citizen participation in the budget setting process together with local government (Fung, 2006). Community-based organisations and citizens were directly involved in the determination of priorities for the municipal expenditure of taxes levied from local residents as well as from municipal government fees levied on local residents. The participatory nature of the tax legislation and practices for tax collection that were established through participatory governance institutions such as the budget setting process, are one possible explanation of the increase in tax payer acceptance of higher taxes and the increase in citizen trust of municipal government and officials.

However, Governance Theory alone does not fully explain how different actors behave within participatory spaces. To address this, the study draws on Public Choice Theory and stakeholder theory as complementary lens. Public Choice Theory, as formulated by Buchanan and Tullock (1962), applies economic principles to political processes. At its core, it assumes that individual actors (voters, politicians, bureaucrats) pursue self-interest when making collective decisions. The theory suggests that including stakeholders in the tax policy design process leads to more

stakeholder-friendly tax policy and, therefore, less tax resistance and more taxpayer compliance (Buchanan, 1987).

On the other hand, stakeholder Theory, as articulated by Freeman (1984), holds that organizations including governments have moral and other kinds of responsibilities to stakeholders that may be affected by their activities; not only to the shareholders or elites. This implies that stakeholders should be involved in the making of a public policy that will affect them. For instance, when Kenya's Parliamentary Finance Committee invited business associations, youth organisations and civil society groups to make formal submissions on specific tax measures in an organised manner, Freeman argued that the recognition of such plurality of stakeholders' interests has a direct impact on the relevance and acceptability of tax policy decisions. This paper applies Governance Theory with insights derived from Public Choice and Stakeholder Theory. It proposes a process-based conceptual model to explain the impact of stakeholder inclusion in the taxation policy process on the fiscal legitimacy of the state. The quality of stakeholder inclusion is defined as the product of time, representativeness, access and participation in the taxation policy process and is a function of procedural fairness which is measured by the transparency, openness and impartiality of the policy process. A higher level of procedural fairness is expected to generate higher levels of institutional trust in tax collection agencies and the legislatures that formulate taxation laws. Higher trust in these institutions is further expected to generate higher fiscal legitimacy and tax compliance. Thus, the study posits a causal relationship from the quality of stakeholder inclusion to procedural fairness to trust to fiscal legitimacy and compliance. The paper draws on Public Choice to posit the influence of countervailing forces in the policy process. The unequal distribution of power in favour of interested parties and the self-serving actions of politicians are expected to diminish the beneficial effects of higher quality stakeholder inclusion on tax compliance and therefore on fiscal legitimacy of the state.

Methodology

The study employed qualitative, document-based research design based on an exploratory qualitative research approach, that entailed an analysis and interpretive synthesis of literature, policy documents, reports and other secondary information. The qualitative nature of the research was premised on the fact that complex social phenomena such as; stakeholder participation and fiscal legitimacy cannot be adequately captured by quantitative measurements (Creswell & Poth, 2018). Therefore, the use of the exploratory qualitative approach in this study was meant to extract the patterns, relationships and themes that are associated with the tax policy-making processes in Kenya and these relate to tax inclusivity, governance structures and people's perception of fiscal legitimacy. By analyzing secondary sources, the study aims to understand institutional practices and policy outcomes without conducting primary data collection, making this design well-suited to the study aim.

The study relied on secondary data derived from policy documents, reports, Acts of Parliament, budget and fiscal reports as well as publications by various institutions and journal articles. The source of data for this study was based on the following: Tax policy design, participation and fiscal governance in Kenya; Finance Bills, Finance Acts and the parliamentary process therein and; Publications from 2013 to 2024. During this period several taxation policies and laws were implemented including VAT, DST and the ICT-based system of taxation known as iTax. Documents were excluded if they focused solely on tax collection procedures without reference to policy design or participatory processes. From the above criteria, a total of 38 texts were sourced for this study. These included among others, 6 Annual Reports of the Kenya Revenue

Authority (KRA) for the period 2018–2023, 12 Finance Bills and Finance Acts from 2013–2024, 10 reports by parliamentary committees and records of public submissions on taxation Bills, 2 policy reports relating to taxation in the EAC region by OECD/ATAF/AUC (2024) and 8 journal articles and policy studies on taxation and participatory governance including Ndung'u & Ngugi (2021). Data derived from the sources described herein were used to carry out comparative analysis of tax policy, compliance and legitimacy over a decade in Kenya. Reliability and trustworthiness of secondary data used in this study were assured.

This paper used qualitative content and thematic analysis employing a deductive-inductive hybrid approach to investigate the impact of participatory tax policy-making on procedural fairness, trust and fiscal legitimacy in Kenya. The initial codes were deductively derived from inclusion quality, procedural fairness, trust, fiscal legitimacy/compliance theoretical framework. The additional codes were inductively derived from the empirical analysis to reveal the emergent patterns that were derived after initial coding using the codebook. The main codes and themes emerging from the data include inclusion quality (timing, representativeness and impact), procedural fairness and transparency (clarification, access to information and feedback), stakeholder trust (institutional credibility and responsiveness), fiscal legitimacy and compliance (voluntary compliance, acceptance and resistance) and power asymmetry (elite domination and tokenistic citizen participation). Reliability and validity were assured through peer debriefing, second-coder check on 20% of the data and a detailed audit trail of the coding process and the emergent themes from the data. Through the use of deductive and inductive coding, the anticipated and emergent patterns in the data were revealed, hence enhancing our understanding of the impact of participatory tax policy-making on procedural fairness, trust and fiscal legitimacy in Kenya.

Although this study relies solely on secondary data, ethical considerations remain important. All sources were accurately cited and referenced to prevent plagiarism and to ensure academic integrity. To avoid any prejudice and to ensure that the study was carried out objectively and reliably, all reports were critically analysed and triangulated. The study sought to ensure objectivity in the analysis of the findings by critically examining and triangulating the sources of data to eliminate bias and ensure reliability and validity of the information.

Analysis of Findings

A comparative analysis of the tax policy process in Kenya was carried out between 2017 and 2024 using data from Finance Bills, OECD/ATAF/AUC reports published in 2024. This research examined the institutionalisation of stakeholder engagement through the Finance Bill process and investigated how these engaged stakeholders affected tax compliance, legitimacy and ultimately tax revenues. The research methodology consisted of reviewing Finance Bill documents and Kenya Revenue Authority (KRA) Annual Reports from 2018 to 2023. Data was collected through content coding of parliamentary submissions, Finance Bill documents and consultation summaries provided by government to stakeholder organisations. Memoranda submissions provided for civil society and business associations were also part of the data set. Chambers of commerce, business associations and their national affiliate bodies as well as that of accountancy professionals all submitted memoranda. It was found that although key stakeholders were formally included in the Finance Bill (2020) and Finance Act (2023) – the points on which the private sector recommendations of KPMG (2023) and PwC (2022) were taken up were cited in the consultation memos and were ignored in the final legislation for both instances.

The analysis therefore indicates a trend of formal participation to the exclusion of any substantive input being considered during the Finance Bill consultation process in Kenya. It has also explored the linkages between stakeholders' engagement to the outcomes of taxation and examined to what extent stakeholders' engagement formalised within the Finance Bill consultation processes translates into tax compliance, governance practices and ultimately tax revenues. Tax revenues remain low in Kenya with the tax to GDP ratio estimated at 14 and 15% in 2023 (OECD/ATAF/AUC 2024) far below the average tax to GDP ratio for Africa. Findings therefore suggest that stakeholders' engagement formalised within the Finance Bill consultation processes do not translate into compliance and thus do not enhance legitimacy of the tax system. The theme codes indicating the governance practices that support the participation of citizens in the tax systems revealed that the quality of inclusive governance practices varies depending on whether it is private sector or citizens from the informal sector and civil society. While private sector stakeholders have a consistent presence in the Finance Bill discussions, informal sector and civil society stakeholders only occasionally manage to get included in the discussions, with some exclusions of particular groups and varying presence and absence of others. This points to the distinction between formal participation as a procedure and the mechanisms to enhance the substance of participation processes.

Empirical Studies and Gaps

Achieving balance between the design of taxation and the need for inclusive tax policy requires strong integrative governance mechanisms. The tax policy, governance and legitimacy literature is replete with cases of significant disparities at the domestic level as well as internationally. The OECD and the World Bank for example highlight the low tax bases and high informality that remains a challenge in low- and middle-income countries (LMICs) as well as need for more inclusive tax designs (OECD, 2024; World Bank, 2022). Research undertaken in sub-Saharan Africa found that countries that had more formally and systematically engaged civil society organisations (CSOs) in the design of their domestic taxation laws, had better tax compliance and higher tax morale even though the magnitude of these effects varied significantly (OECD/ATAF/AUC, 2024).

A tax system study undertaken in Kenya in late 2022 revealed lack of taxpayer education. It also highlighted the challenges faced by SMEs in the informal sector with limited knowledge of taxation rules, and consequently non-compliance due to ignorance of the tax system (KRA, 2023). The scholars further argue that, although the digitalisation of the tax system has made work easier for tax authorities, it has not dealt with the issues of equity and citizen trust, due to perceived top-down decision-making in key reforms (Ndung'u & Ngugi, 2021). Therefore, there is need for a more integrated governance framework that brings together the technical aspects of tax design, and the political space of citizen participation in order to improve tax compliance and thereby increase fiscal legitimacy.

Stakeholder Inclusion Practices

Since last year 2025, Kenya has moved from an informal approach towards more formalised stakeholder participation in tax policy. The approach follows the enshrining of the right to participation in public affairs in the constitution in Articles 118 and 201. The National Assembly Finance Committee heard over 300 memoranda that were written by associations of the private sector, CSO's, professional bodies and members of the public on the Finance Bill 2023 (National Assembly of Kenya, 2023). Similarly, the Kenya Revenue Authority (KRA) also reported that for the Financial Year 2022/2023, the number of tax payer education forums and stakeholder meetings it carried out in all the counties of the country were over 120 forums and reached a tax payers audience of over 45,000 in the counties (KRA, 2023). These structured

consultations in conjunction with the use of on-line feedback forums and the draft Finance Bills are aimed at increasing the level of inclusiveness of the budget process. OECD/ATAF/AUC (2024), noted that Kenya is one of the countries in Africa where pre-budget consultations have been institutionalised, signalling alignment with emerging continental best practices in participatory fiscal governance.

However, closer examination of participation patterns reveals disparities in influence and representation. The apparent high degree of consultation can also hide a highly unequal distribution of participation in favour of large, well-organised and well-resourced groups of stakeholders. KPMG (2023), found that only 62% of comments received on the Finance Bill 2022 were from business associations, professional bodies and large corporations. The remaining 38% were from civil society, informal sector groups and small enterprises. Within that 38%, submissions from civil society and informal sector actors accounted for approximately 18% of the total submissions, indicating that small enterprises and grassroots actors were underrepresented in the consultation process. However, it is also important to remember that the informal sector in Kenya accounts for over 80% of employment opportunities and contributes between 30–35% of GDP (KNBS, 2022). The discrepancy suggests that although formal engagement channels exist, structural constraints such as limited organization, technical capacity, and access to information restrict effective participation by marginalized economic actors. Consequently, inclusion is often procedural rather than substantively representative.

Unequal stakeholder engagement in the Digital Service Tax (DST) and consequent digital economy levies has caused a number of challenges. Businesses have over the years had concerns in relation to the speed of implementation of the DST reforms as well as issues such as double taxation and inadequate clarification of the administration of the tax (PwC, 2022). Although businesses were engaged throughout the reform process, 54% of businesses considered that their views on the Digital Economy Bill had ‘no material impact’ (KPMG, 2023). Furthermore, according to OECD (2021), countries with a more formalised approach to post-consultation reporting appear to have taxpayers with higher compliance confidence, compared to those where stakeholder feedback is not systematically integrated. Poor feedback mechanisms including inadequate feedback reports which clearly indicate how stakeholders’ views and comments are handled or addressed to concerned parties or individuals, have been cited as one of the reasons why the response of the Government to stakeholders’ participation remains poor in Kenya. Thus, stakeholder participation depends not merely on the number of consultations held, but on measurable responsiveness, balanced representation, and transparent incorporation of stakeholder input.

Table 1

Illustrative Participation Distribution (Finance Bill 2022–2023)

Stakeholder Category	Approximate Share of Submissions (%)
Corporate Associations & Large Firms	62%
Professional Bodies	15%
Civil Society Organizations	5%
Informal Sector & Small Traders	18%

Source: National Assembly records (2023); KPMG (2023); Ndung’u & Ngugi (2021).

Ultimately, the findings reveal that Kenya has made some progress in its participatory mechanisms, but more efforts are needed in deepening and improving the quality of participation. In the report, Kenya scores high on consultation frequency but low on representation and accountability, issues that need to be addressed in order to enhance fiscal responsibility and policy equity.

Governance Mechanisms

Institutions and administrative reforms in Kenya have a bearing on the level of stakeholders' engagement in the country's fiscal governance system. The country's governance system is composed of three principal organs namely; the National Treasury that provides policy framework, the Parliament that provides oversight and an opportunity for citizens' engagement through various platforms and the Kenya Revenue Authority (KRA) that is responsible for assessing, collecting and recovery of taxes. In line with the global trend of modernization of public sectors via e-Government, Kenya is also making tremendous strides in institutional reform with emphasis on the use of modern technology. For instance, the Kenya Revenue Authority (KRA) has put in place an online electronic system known as the "iTax" for ease and transparency in tax compliance. As of 2023, KRA reported that over 95% of registered taxpayers now file returns electronically, compared to less than 60% in 2016 (KRA, 2023). This is a significant improvement from less than 60% compliance rate achieved through the manual system as of 2016. Additionally, Revenue Collection efficiency improved with domestic tax revenue increasing from KES 1.365 trillion in FY2017/2018 to KES 2.166 trillion in FY2022/2023, representing a growth of nearly 59% over five years (KRA, 2023; National Treasury, 2023). Digitalisation has reduced physical contacts and the level of discretion in assessment and hence facilitated better tracking of transactions, leading to more transparency and accountability in tax administration.

Despite these institutional improvements, governance assessments reveal structural weaknesses that constrain participatory effectiveness. The Public Expenditure and Financial Accountability (PEFA) evaluations and the World Bank public finance reviews recorded that while the formal consultation requirements are being met in practice, the scope for meaningful and systematic participation from the public is very limited (World Bank, 2022). For example, every year, the parliamentary committee prepares reports on the new tax legislation. However, the matrices of the suggestions from stakeholders that the Committee accepts or rejects are not included in these reports. Governance Assessment survey investigated the influence of public consultations on the tax policy decision, the majority of business stakeholders (48%) believe that public consultations "rarely" influence final tax outcomes (KPMG, 2023). Additionally, Kenya's progress in the individual transparency indicators and the Open Budget Index score has improved from 48/100 in 2017 to 50/100 in 2021. However, this is lower than the global average and thus the country is considered to have moderate transparency, which is not comprehensive (International Budget Partnership, 2021). These figures highlight the fact that even when the procedural requirements are formally met, the real accountability may not be guaranteed.

Comparative evidence reinforces the importance of structured governance feedback. According to OECD (2021), countries where mandatory Regulatory Impact Assessments (RIAs) and post consultation summaries have been introduced, experience higher levels of perceived fairness and policy predictability. These countries had on average 15-20 percentage points higher trust indicators in the stakeholder perception survey, compared to the countries where there was no mandatory consultation reporting framework. In Kenya, Regulatory Impact Assessments are mentioned in a growing number of major policy Bills; however, their application has not been

uniform. The RIAs have not been applied to the large number of routine tax amendments contained in parliamentary bills. As reported by the World Bank (2022), the Treasury generally drafts bills that are sent to parliament, thereby excluding the numerous ad-hoc amendments contained in parliamentary bills from the RIA procedure. The following table summarises the main governance indicators that relate to stakeholder engagement and good governance of public finances.

Table 2

Selected Governance Indicators Relevant to Fiscal Participation (2017–2023)

Indicator	2017	2021/2023	Trend
Electronic Tax Filing Rate (%)	~60%	95%+ (2023)	Significant Increase
Domestic Revenue (KES Trillion)	1.365 (2017/18)	2.166 (2022/23)	+59% Growth
Open Budget Index Score (/100)	48	50 (2021)	Slight Improvement
Stakeholders Perceiving High Consultation Impact (%)	—	~52% (2023)	Moderate Confidence

Sources: KRA (2023); National Treasury (2023); International Budget Partnership (2021); KPMG (2023)

Impact on Fiscal Legitimacy

The study findings demonstrate a link between participation of stakeholders and key fiscal legitimacy indicators like adherence to fiscal rules, tax justice and citizens' trust to the tax authority. Comparative African revenue data shows that countries where citizens are more engaged in the budget process and where the government communicates its fiscal decisions more transparently, tend to have more stable revenue-to-GDP ratios and higher tax morale (OECD/ATAF/AUC, 2024). In Kenya, the domestic revenue as a percentage of GDP rose from 18.1% in 2017 to approximately 18.6% in 2022, despite macroeconomic shocks, suggesting relative revenue resilience (National Treasury, 2023; OECD/ATAF/AUC, 2024). According to KRA (2023), tax payers' voluntary disclosures and alternative dispute resolution (ADR) cases were on the increase. The impacts of the Taxpayer Education programme and the consultative forums appeared to be yielding positive dividends for taxpayers' participation in the tax system. KRA also noted that voluntary disclosures increased by 32% between 2021 and 2023 and tax compliance through electronic filing was exceeding 95%. All these indicators point to the fact, that taxpayer education coupled with increased tax administration transparency and communication can boost taxpayer compliance and administrative justice.

Nonetheless, the report reveals the fragility of fiscal legitimacy when the effects of the policy choices are considered unfair. The implementation of the Finance Act 2023 was contested through judicial review and mass protests by workers, employers and citizens concerned about the fair distribution of the tax and its affordability (KPMG, 2023; World Bank, 2023). Although, the consultation process was formal, a survey from business associations found that 57% of respondents believed the tax reforms would have a disproportionate impact on the poor and middle class (KPMG, 2023). This underscores a critical distinction: procedural inclusion alone does not guarantee legitimacy. Fiscal legitimacy depends equally on substantive equity—

whether taxpayers believe tax burdens are fairly distributed and revenues are responsibly utilized. The international practice also confirms this trend. The OECD report *Tax Disputes* (2021), noted that countries that are highly transparent but implemented what were considered to be regressive tax measures in 2020, experienced a brief spike in tax disputes in 2020, while taxpayers generally benefited from the resilience of good governance institutions in Kenya. This was attributed to the volatility of the trust indicators during structural change when citizens do not perceive that greater inclusiveness translates into greater justice in the tax system.

Broader empirical literature reinforces the centrality of fairness and transparency in shaping tax morale and compliance willingness. Based on cross-country evidence from African countries, the spread between compliant self-assessed taxpayers who view the tax system as being ‘fair’ versus those who do not ranges from 15 to 25 percentage points (Ali, Fjeldstad, & Sjursen, 2018). Transparency of expenditure allocations in the national budget has a strong correlation with citizens’ trust in institutions. Over the years, Kenya’s digital tax system and the accessibility of the budget to citizens have improved. This has been matched with an improvement in formal sector compliance with registration exercises, from 6.1 million active taxpayers in 2018 to 8.5 million by 2023 (KRA, 2023). Although tremendous progress has been achieved, there are still compliance gaps that exist mainly in the informal sector, where low perception of public services by citizens reduces their morale to pay taxes (World Bank, 2022). Overall, our study findings confirm that citizen participation increases fiscal legitimacy only when the process, equity, accountability and transparency of public financial administration are ensured. Thus, inclusive governance is a factor for sustainability of tax compliance, revenue stability and long-term state and citizen trust.

Comparison with Literature

The results broadly confirm the literature that participatory governance is an important determinant of fiscal legitimacy. Contemporary literature also suggests that more inclusive processes of consultation are likely to increase tax morale and public trust when they are not only timely, representative and responsive, but also conducted in an inclusive manner (OECD, 2021). Kenya has made some progress in achieving the principles through institutionalized parliamentary hearings and technology enhanced citizen engagement. However, the study also identifies divergences from best practice models observed in advanced and emerging economies. While many OECD members have more structured feedback reports and impact assessments following consultations, the Kenya review shows less systematic post-consultation accountability (OECD, 2021). This is the most significant obstacle to participatory approaches to development and one of the main reasons why many reforms have a tokenistic character. Ultimately, the discussion points to a Kenyan fiscal development path that is in line with the overall African agenda of reform aimed at modernising the taxation system and improving governance (OECD/ATAF/AUC, 2024). However, the analysis brings out the conditional nature of stakeholder participation and hence the comparative success of such approaches. This includes; the level of institutional development, government accountability and procedural fairness in policy-making. In order to enhance fiscal legitimacy, compliance with international best practices and improve the overall tax administration in Kenya, it is necessary to strengthen the tax policy, tax planning and tax execution institutions.

Conclusion

This study explores the tax policy-making process and the extent to which stakeholders participate in the process of taxation within the governance and fiscal legitimacy context. The findings indicate that there are various channels and mechanisms that existed at the tax policy-making stage. However, the impact of the participation in the policy-making stage was largely dependent on the type, level, structure and credibility of participation. Therefore, citizens participation has a direct correlation with tax policy transparency and fairness. In other words, taxpayers generally perceived the tax policy-making process to be transparent and fair if they were sufficiently consulted in the formulation of the tax measures, provided with sufficient information and adequate feedback on their submissions. On the other hand, instances of insufficient consultation, over-explication of tax policy issues, and undue rush in processing legislation served to reinforce the feelings of exclusion and diminished the trust of citizens in the alleged fairness of taxation. The study therefore conclude that the tax policy legitimacy is heavily influenced by the participation process in the tax policy decisions and that the overall state legitimacy is adversely affected by the absence of meaningful citizens participation in taxation issues.

Furthermore, the study is theoretically linked to governance and public financial management in developing countries by examining the relationship between stakeholders' participation and fiscal legitimacy. It contributes to the literature on fiscal legitimacy by arguing that a government's legal mandate and its ability to enforce its rules and decisions are not sufficient to ensure that taxation institutions are seen as legitimate. It also supplements the literature on stakeholders' participation and voice by showing that procedures that are seen as fair and inclusive are crucial legitimacy-promoting instruments. The study further offers some lessons for policymakers wishing to enhance participation, improve transparency in taxation institutions and enhance citizens' awareness of taxation. The enduring tax reform in Kenya demands more than technical precision; it necessitates governance frameworks that formally embed substantive stakeholder engagement. By integrating inclusivity into fiscal decision-making processes, Kenya can reinforce public confidence, improve voluntary compliance, and solidify the legitimacy of its taxation system.

Recommendations

The National Treasury should arrange a Pre-discussion Consultative Forum at the beginning of the agenda-setting process for every major tax reform initiative introduced through the Finance Bill, and other times as necessary to address the current practice of having a number of stakeholder consultations after all the key issues have been settled and after the draft Finance Bill has been finalised. Stakeholders must be given the opportunity to debate the proposals before the Bill is finalised and made public. In other words, discussions must commence at least six months before the Finance Bill is tabled in Parliament. It is important that consultations are done on the concept notes of the proposed tax measures and not on the wording of the tax laws as they will appear in the Bill. The rules should also provide for sector-based forums at the national and county levels to take care of the interests of Small to Medium Scale Enterprises, the informal sector groups, professional bodies and civil society organizations. The proposed public consultation calendar should also be provided annually, so as to enable stakeholders to plan for consultations appropriately. By moving consultation back to the agenda setting phase, from its current placement in the post-drafting review phase, policymakers can

ensure substantive input that meaningfully shapes policy design rather than symbolic compliance with participation requirements.

The Parliamentary committees and the National Treasury need to have a mandatory consultation response matrix for every Finance Bill. This matrix records the decision made regarding each proposal submitted by stakeholders. The decisions can be: acceptance, modification or rejection of the proposal with the reason for the decision. This reform will bring more accountability, responsiveness and less arbitrary to the public. It should be implemented by the Departmental Committee on Finance and Planning in the National Assembly under the direct supervision of the Office of the Clerk of Parliament. Institutionalized feedback frameworks enhance credibility by affirming that stakeholder inputs undergo objective and systematic evaluation.

The informal sector constitutes a significant portion of economic activities in Kenya. Thus, the Ministry of Cooperatives, MSME Development and the county governments need to facilitate the formation and registration of umbrella associations for the informal sector, in order to bring them to the table as key actors in the budget discourse. Implementation of this initiative should start within one fiscal year, with the first implementation being in the pilot counties for the informal cross border trade. Capacity-building workshops should be carried out in order to have a full understanding of the proposals, enabling meaningful participation. Providing marginalized stakeholders with formalized avenues for participation and enhanced technical knowledge fosters greater inclusivity and fairness in tax policy deliberations.

All major tax policy changes should be subject to a Regulatory Impact Assessment (RIA) before they are legislated and introduced in the National Assembly. The National Treasury should also establish a Fiscal Impact Assessment Unit with specific responsibility for understanding the distributional consequences of the tax policy proposals, the burden of compliance on different types of taxpayers and different sectors of the economy etc. The assessment should be made available at the time of the Finance Bill and should also be open for public review and comment. This should be an across board exercise from the first instance for major revenue yielding, and significant tax measures including changes to rates of VAT and excise duty. Properly applied, tax policy should also be based on better information, more transparency and less distortion to economic activity, and be considered fairer.

Fiscal legitimacy is concerned not only with the collection of taxes, but also with the degree of transparency and accountability of expenditure. The National Treasury and Kenya Revenue Authority should annually publish, in plain language, reports that break down the tax expenditures and show how each tax revenue is being used for provision of public goods and services like roads, health care and education among others. Annual reports have to be made available on the Internet, and should be accompanied by media briefings and county wide public forums, no later than three months after the end of the financial year. Moreover, a publicly accessible “dashboard” should be provided to show how individual taxes are spent in individual departments. More transparent budget disclosure can foster higher bureaucratic compliance and citizen satisfaction. The transparency of government spending has a significant positive effect on compliance and citizen satisfaction with bureaucracy.

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