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Recent Revenue Bargains in Uganda, 2008-2018: Actors, Context and Trends

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Political Settlements and Revenue Bargains in Africa

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SUMMARY

In the past few years the government of Ugandan took measures aimed at casting the taxman's net wider to grow the country's revenue yields. This included the introduction of a series of new taxes and significant changes to existing tax laws. Uganda's rapidly changing social and demographic landscape necessitates increased government revenues to keep pace with the demand for critical public goods and services. Politically, the incumbent NRM regime increasingly needs more financial resources to oil its vast patronage machinery and shore up its support. This need for increased domestic revenue mobilisation became more urgent as western donors grew dissatisfied with the state of governance, thus the government sought to wean the country off donor dependence. However, rather than cast the net wide, recent revenue reforms have targeted the formal sector, including the nascent oil sector, with little focus on what is a very large informal sector. The recent revenue reforms and mobilisation have entailed negotiations and bargains, contests and controversies, demands and drivers, which this paper analyses. The paper provides a framework for understanding the underlying dynamics, the actors, the movers and the bargains in the revenue reforms. We show the nature of the changes and the political economy context in which they have unfolded and evolved, underscoring the processes and outcomes but also the actors and actions as well as the implications for Uganda's revenue terrain today and in going forward.

Keywords: Museveni, NRM, Revenue Bargains, Taxation, Uganda

1. INTRODUCTION

Uganda's economic and political landscape have undergone significant changes over the last three decades under the current government. Sweeping economic reforms that started with the 1987 currency reform and a package of neoliberal policies through the 1990s delivered a range of institutional as well as structural changes at the macro level, in the private sector's productive sectors, in state revenue and across a slew of sectors (Reinikka and Collier 2001; Kutesa et al 2010; Bakibinga and Khisa 2020). At the macro-level, in the 1990s Uganda emerged as a 'high-performer' in curbing inflation through a tight monetary policy approach by the Central Bank. At the sectoral level, there was economic diversification away from dependency on export revenue, collected on a single primary commodity (coffee), to more value-added production albeit with very limited growth in manufacturing (Muhumuza 2017; Byaruhanga, Henstridge and Kasekende 2010; Reinikka and Collier 2001). Consequently, the country sustained modest GDP growth averaging about six percent from the early 1990s through the 2000s. Although income inequality has been on the rise (Oxfam 2016), the country made significant progress in reducing poverty, with the rate of absolute poverty dropping from 66 to 19 percent between 1990 and 2015 (Muhumuza 2017: 7; Tangri & Mwenda 2013: 26).

Institutionally, there were several reform measures to reorganise and restructure public management and administrative systems. These included the merger of the ministry of Finance with that of Economic Planning, the establishment of the Uganda Revenue Authority (URA) as a semi-autonomous revenue agency and the introduction of new major revenue legislation, especially the Value Added Tax (VAT) Act 1996 and the Income Tax Act, 1997 (Cawley and Zake 2010; Kwagala-Igaga 2015; Chen, Matovu and Reinikka 2001). Taken together, these reforms brought about significant shifts in the country's revenue terrain. Owing to these and other reforms, while Uganda was heavily dependent on donor-funding for the national budget during the first two decades of the current government, this dependency declined as

government revenue yields improved with the tax-to-GDP ratio doubling from seven to more than13 percent between 1993 and 2015. This ratio though remained stagnant for many years, largely because of a rather narrow tax-base prompting calls by both foreign 'development partners' and private sector actors for the government to widen Uganda's tax base (Mawejje 2013; PSFU 2009).

In an attempt to expand the taxable base and cast the taxman's net wider, over the past decade and a half the government undertook measures including the introduction of new taxes and significant changes to the existing tax laws. These ranged from revisions to the Income Tax Act and introduction of presumptive taxes, specialised petroleum taxation regimes, various excise duties and most recently the controversial taxes on the use of social media, the internet and mobile money transactions. In all, the Ugandan government has tried to up the push for increased taxation and domestic revenue collection, largely targeting the formal economy, ostensibly to meet the ever-growing budgetary demands, especially to fund infrastructure projects but also a bloated public sector, the latter a major pillar of state patronage. Uganda's rapidly changing social and demographic landscape too has necessitated push for increased revenue and resource mobilisation to deal with supply of critical public goods and services.

In this paper, we argue that the recent changes and revenue reforms have entailed negotiations and bargains, contests and controversies, and there have been demands and drivers that need careful theoretical analysis and critical empirical investigation. This paper seeks to understand the underlying dynamics and the political economy context, the actors, the movers and the bargains. We investigate the nature of the changes and the underlying political context in which they have unfolded and evolved. Our focus is on the processes and outcomes but also the actors and actions, and the implications for Uganda's revenue terrain going forward.

This paper is part of the larger project on the politics of revenue bargains. The primary motivation is the empirical observation that Uganda introduced a series of tax reforms and new

policies in the past 15 years or so, thus the need for a rigorous analysis of their origins and outcomes as well as understanding the actors and players involved. Our main research focus is to account for the recent taxation changes and new developments on the revenue landscape: what are the origins and the bases for the recent tax measures and reforms? And what do they say about the shifting nature and structural composition of Uganda's political economy? Specifically, we ask: how does variation in holding power of both the revenue-providers and state actors affect bargains in revenue reforms?

This paper teases out the range of bargaining tactics employed by those who have pushed for new changes and the processes entailed in successfully bringing about new tax reforms. We also explain the strategies used by those who saw new tax legislation and polices as harmful to either their sectoral interests or the public good as a whole and who accordingly resisted them whether successfully or unsuccessfully. To what extent did the 'winners' who pushed for new taxes and revenue reforms, be they the government or organised groups in the private sector, draw on their **holding power** to realise policy and legislative changes in taxation? And why did those on the opposing side either record victory in their opposition to new taxes or get defeated via either legislation or litigation?

A close and critical analysis of Uganda's taxation dynamics and revenue landscape in the recent past is an important research endeavour for several reasons. First, the classical place of taxation in state-building remains of enduring relevance in understanding countries that are still grappling with building effective state systems (Moore, Prichard and Fjelstad 2018; Prichard 2015; Bates 2008; Levi 1988). We delve in more detail on this aspect in the next section. Suffice to note here that the extent to which tax measures, and revenue reforms generally, reflect 'the state of the state' in Uganda is pertinent and worth investigating. Second, by focusing on recent taxation changes and revenue reforms we are able to gain important insights into power distribution and the bargaining leverage among different sets of actors and

players both among the political class, the private sector and organised civil society. This is especially worthwhile as the country grapples with a fledgling multiparty system, wrought with contradictions, factional struggles and incessant realignments in the ruling coalition and opposition forces.

Theoretically and methodologically, this paper builds on a political settlements and revenue bargains framework (Kjaer et al. forthcoming). This framework seeks to understand the link between, on the one hand, institutional arrangements and political power distribution, otherwise referred to as political settlements and, on the other hand the, the revenue bargains, negotiations and changes both at the level of policy and praxis. That is, the link between political settlements and revenue bargains. This means we position our analytical lens to decipher the holding-power of actors, the institutional processes at play and the observed outcomes. To unravel the power dynamics at play and illuminate the bargaining processes, we draw largely on qualitative data from in-depth interviews with real actors and keen observers, critical analyses of relevant documents including legal texts, official government reports and news reports. Through sequencing and process-tracing, we attempt to map out the interactions between actors and institutional processes in accounting for the different revenue measures and changes that have happened in recent years.

2. REVISITING CLASSICAL DEBATES: POLITICS OF STATE REVENUE

2.1 Emergency of the modern state and the political economy arguments

'The history of state revenue production is the history of the evolution of the state' (Levi 1988: 1). This opening line in Margaret Levi's seminal book, *Of Rule and Revenue,* captures the overall scholarly lens and consensus that intimately ties state revenue to the essence of the

modern, bureaucratic state. Classical state building has been closely associated with revenue mobilisation, especially taxation.

The extent to which government depends on tax revenue tell us a lot about the nature of the state but also the distribution of power among different actors and institutions. In the case of Africa, scholars have highlighted the centrality of revenue mobilisation to our understanding of the functioning of colonial states and the myriad postcolonial crises that have afflicted independent Africa (see Herbst 2000; Bates 1981, 2008; Young 2012). In his analysis of the key imperatives for state legitimation, Crawford Young, for example, noted that 'the revenue imperative is the most fundamental of all the components to the operational code of the [African] state' (Young 2012: 48). Studying the state, therefore, has entailed studying revenue politics and fiscal sociology – state-society relations at the financial level.

In this brief and in-exhaustive survey of the literature, we highlight the classic arguments that link revenue mobilisation to state building in the context of war-making in Europe, the social-structural conditions that underpinned revenue bargaining and lastly the extent to which strategic interactions informed by power distribution influence revenue dynamics. After this snapshot literature survey, we then turn to the focus on the African context and map out the theoretical framework for analysing revenue-reform bargains in Uganda.

The first body of work, the classic literature, on this topic highlighted the link between war-making, state-building and revenue mobilisation in medieval and early modern Europe. Political bargains and compromises between revenue-seeking political elites and revenue-providers, mainly merchants and landholders, were at the heart of the emergence of the modern European state. The literature on this is legion (E.g., Anderson 1974; Braun 1975; Tilly 1975, 1985, 1992; Levi 1988, Mann 1988, Ertman 1997; Fukuyama 2011). From these and other studies, we learn that state elites sought revenue to fund war budgets. On the other hand, economic elites, especially merchants and large agriculturalists, sought protection from the

state. There was a reciprocity of needs by both sets of actors. We should understand this dynamic within the context of the time. In medieval and early modern period, European states were engaged in incessant warfare. Success in war depended on many factors but, as scholars have pointed out, in the final analysis states that did not raise sufficient revenue for war perished (Herbst 2000: 113; Mann 1988: 109). States that were able to build the necessary administrative apparatus and attained efficiency in public management were then able to raise revenue and survive. Such states emerged out of the war-making experience as viable, sovereign and territorial delimited states (Spruyt 1994).

Therefore, war was a crucial catalyst for revenue mobilisation. This was for at least two major reasons. First, it compelled state-elites to undertake measures for revenue collection. Second, the environment of war forced the propertied and merchant classes to acquiescence to taxation (Herbst 1990: 120). Both state-elites and business actors had a similar incentive to seek and give revenue – self-preservation. The overarching driver was existential. The general trend across Europe, as Charles Tilly (1985) suggested, was that war making was intricately linked to state making: wars made states and states made war, in Tilly's seminal statement. In the course of making war, states had to put in place taxation policies and revenue regimes under a set of institutional apparatuses including a bureaucratic system, which remained in place and ratcheted up in peace time. Thus, taxation measures, fiscal policies and public finance mechanisms constituted the crucial foundation and the critical building blocks for the life, vitality and viability of the modern state in Europe. The consensus in the literature connects what Mick Moore (2004) calls the tax state to war activities and the rise of systems of public accountability (see Fukuyama 2011 for a recent comparative analysis).

The second strand of literature, outside of the *war-making state-making* canon, but within the political economy approach has looked at revenue mobilization as a function of the structure of the economy and the nature of social relations existing in a specific epoch. For

Marxist scholars like Perry Anderson, the transition from feudalism, for example, marked a change in class composition and social relations, which produced different variants of the *Absolutist State* in Europe. The extent of state taxation and revenue mobilization depended on the nature of class alliances, which in turn produced either absolutism or parliamentary democracy (B. Moore 1966; Anderson 1974). In predominantly agrarian economies, taxation was coercive and largely imposed on immovable property like land. Under agrarianism, the alliance between the rural landed gentry and the revenue-seeking monarchs produced an entrenched absolutism. By contrast, in countries like England where monarchs taxed trade, the business classes and urban industrialists, or where the major sources of state revenue were immobile assets and economic activities, parliamentary democracy was the predominant regime outcome (Bates and Lien 1985: 55-6; M. Moore 2004: 299). When monarchs were able to collect more taxes through expanding the tax base to include taxing trade and moveable property, it meant that they had to grant institutional concessions and influence over policy to merchants, capitalists and the business classes generally. This constituted the emergence of a system of public accountability built on revenue bargaining and the fiscal contract.

What the preceding analysis suggests is that the structure of the economy determined the nature of bargains between revenue providers and state-elites. This in turn shaped the resultant revenue regimes, policy outcomes, state capacity and political development. In countries whose economies were more capital-intensive and the business classes had wiggle room to resist or evade taxation, it was inevitable for monarchs to engage in revenue negotiations and bargains that were less coercive and more constructive. This was the precursor to democratic accountability. By contrast, in less capital-intensive and more agrarian settings, taxation was coercive. The central state was bureaucratically strong, less responsive, less accountable (Prichard 2015: 50-51). A largely coercive Leviathan was born in the context of such structural conditions (Ertman 1997).

The third, and last, strand of literature that departs from the war-making and structural (political economy) focus is the rational choice school. This work approaches the dynamics of revenue through the prism of the actors and their micro interests conditioned by power distribution (Bates and Lien 1985; Bates 1987; Levi 1988; Bakibinga et al. 2018). Anchored on methodological individualism, and drawing from neoclassical economic theory, this strand of literature positions revenue seekers and revenue providers as engaged in a strategic game, underpinned by the actors' relative bargaining power, transaction costs and discount rate (Levi 1998: 2). Rational choice theory assumes that actors, both in charge of the state and those from which the state seeks to collect revenue, are rational and self-interested (Ibid: 3). They engage in costs-benefit analysis and tend to pursue their own personal interests using state power and social institutions.

Thus, the institutional configurations and the policy landscape obtaining at a given time are reflective of the contending interests and the power distribution among actors. A key insight from this literature is that tax bargaining and revenue mobilization depends on the balance of power between taxpayers and tax-collectors. Rather than assuming a fiscal contract between taxpayers and state elites, it is important to understand the circumstances and conditions under which the state is responsive and accountable to the citizens or taxpayers. Prichard (2015) has shown that cross-national statistical and econometric analyses display a consistent positive relationship between reliance on tax revenue and democratic governance yet the actual mechanisms linking tax bargaining and governance are complex and contingent (Ibid: 28). This suggests that outcomes are tied to the rational and specific calculations of actors regardless of the structural conditions.

In studying the revenue terrain in Africa, the existing literature falls short on several accounts. First, the kind of warfare that fuelled state building and revenue mobilisation in

Europe did not take place on the African continent. Putting in place systems and mechanisms for revenue mobilization and extraction in Europe was in the context of preparing for inter-state war and fighting to fend off foreign invasion that posed an existential threat to both society and the state. Both state-elites and the business classes jointly faced external threats to their material interests and their sheer existence. But as scholars of state-building have noted, African conflicts have been intra and not inter, certainly not the kind of inter-state wars in Europe that involved mass nationwide mobilization (Herbst, 1990, 2000). So the European war-making state-making thesis is largely inapplicable albeit not entirely irrelevant to the African context.

Secondly, the African political economy landscape and social structure does not entail clear-cut class stratification and competing class interests from which alliances and coalitions can forge in the same way different classes in Europe coalesced as to influence relations between revenue seekers and revenue providers. Many African countries have had agrarian systems of production and social fragmentation that is at odds with class stratification. In the past, rural farmers and agricultural producers were subjected to unfair policies that included high taxation and below market prices for their produce. This in part was because governments were wary of the political threats from urban populations in case prices of food and other basic consumables went up (Bates 1981). In practice, neither rural farmers nor urban constituents constituted distinct and organized classes with group interests that would form the basis for engaging in bargains with state elites (Bates 1987).

Thirdly, for much of the post-independence era African states and governments relied on external sources to fund national budgets and implement development programs. Rather than taxation and other internal sources of revenue, governments predominantly depended on foreign aid, grants and loans from western governments and international financial institutions, primarily the International Monetary Fund and the World Bank. The exception to this are oil-

rich countries that extract hefty revenues from oil exports. In recent years China's Import-Export (EXIM) bank and the African Development Bank have been key sources for financing especially large infrastructure projects. This heavy reliance on foreign funding sources means that African governments and state-elites have had limited negotiations and bargains with citizens along the lines of the fiscal contract widely debated in the existing literature. This, though, has changed in recent years as African governments have moved towards reduced reliance on foreign sources and increased dependence on internally generated revenue.

In light of the above, this paper adopts the political settlements framework utilising the conceptual tools and insights developed by Kjaer et al (forthcoming). In the next section, we outline a political settlement and revenue bargains theoretical framework for understanding revenue reforms in Uganda. Under this framework, revenue reforms sit at the intersection of "triggers", bargains and holding power between state actors, revenue providers and the public/civil society.

3. THEORETICAL FRAMING

While it may be true that African governments have not had to deal with the kinds of class alliances and coalitions of revenue providers as happened in Europe, it is nevertheless true that certain types of negotiations and bargains take place in the realm of revenue strategies, taxation policy and related public policy outcomes. In Uganda, similar to other African countries, reforms and changes in the area of revenue mobilisation have taken place from time to time. It is important to understand the motivations and drivers but also the actual contestation and compromises, the successes and failures as well and the winners and losers. In the past few years, the Ugandan government instituted a slew of new taxes and made several changes to the existing laws and provisions. Before we turn to a detailed analysis of selected cases to uncover

the underlying bargains, strategies, struggles and compromises, we need an outline of the drivers and triggers behind changes and reforms in revenue policies and practices.

First, President Museveni has been operating under increased demand for revenue to fund his own patronage network and development projects especially road construction so as to shore up support for his otherwise waning public appeal after more than 30 years in power. Museveni's long stay in power has meant that his initial appeal as a reformist president no longer guarantees him support, so he has to rely on state patronage and financial handouts especially during election time. Oiling the patronage machinery and working to deliver on critical infrastructure development, primarily roads construction, are crucial to Museveni's political survival. Over the past ten years, Museveni has made road construction and hydropower generation among his leading pet-subjects and the key talking points during political campaigns and regular public statements. In that regard, the budget allocations to the ministry of works (which includes roads) and the Uganda National Roads Authority have grown exponentially. In the same vain, direct presidential expenditure by way of gifts and donations by the president, state house operational budgets and other national budget lines connected to the presidency, including classified security expenditures, have risen substantially relative to budgets for other departments and ministries. To fund these expenditures, Museveni and his government have sought to devise ways of increasing revenue yields and, accordingly, they have had to introduce new taxes from which to extract more revenue. The converse to this is the political calculation to refrain from pursuing certain taxation policies or to abolish some existing taxes to placate the public as happened with graduated tax, or as we show later in the case of exemptions to emoluments of Members of Parliament.

Second, while in its first two decades (from 1986 to roughly around the mid-2000s) the NRM government enjoyed vast good will and often unqualified approval from western donors and international financial institutions, in the past decade relations between Museveni and

foreign funders have been, to say the least, problematic. At different times, donors moved to cut aid to Uganda citing corruption scandals or human rights abuses. On his part, Museveni has often castigated western-funders for being 'arrogant' and 'disrespectful,' accusing them of lecturing him on governance and human rights issues when they should be respecting Uganda's status as a sovereign state. Western powers still consider Museveni a critical strategic and security ally in the region given the volatility in the Great Lakes and the Horn of Africa, but relations have at times been frosty. In reaction, Museveni has sought to work towards increasing domestic revenue collections to be less dependent on external donors and more reliant on domestic revenue sources. Related, in recent years western donors departed from previous practice and embraced support for efforts aimed at growing taxation capacity and reforms to enhance and assure efficiency in domestic revenue mobilisation. This would ostensibly gradually reduce their financing commitments to Uganda. As part of this new approach of foreign funders, International financial institutions, chiefly the IMF and the World Bank, have criticised the government policy of granting tax exemptions and holidays, which are associated with revenue losses.

Third, actors in the business sector especially those in the formal and organised economy have repeatedly urged the Ugandan government to spread its revenue net wider and expand the taxable base so as to attain fairness in taxation by having everyone pay their share of tax and reduce the tax burden on the relatively small formal sector base currently being taxed. The Private Sector Foundation Uganda (PSFU), for one, has been vocal in pushing government to cast wider the taxman's reach. In 2009, for example, the PSFU published a report that outlined proposals for expanding the tax-base some of which the government subsequently adopted and implemented (PSFU 2009).[1] The extent to which PSFU and other

[1] However, the government did not adopt the bulk of that report, which had wide-ranging suggestions on expanding the tax-base.

private sector actors like Uganda Manufacturers Association (UMA), Kampala City Traders Association (KACITA) have influenced recent tax reforms and changes will be analysed later in this paper.

Drawing on debates in the existing literature, and considering the above set of factors in the case of Uganda, our overall theoretical proposition is that *the holding power of revenue providers and civil society relative to state actors shapes revenue bargaining and policy outcomes*. This is located in the broader political economy context. With mounting financial demands, due to both economic and political forces, the thirst for increased revenue-yields has made the Uganda government more aggressive in exploring and opening up new avenues for taxation but also making concessions in order to make revenue collection easier and manageable. As Wilson Prichard pointed out, 'tax bargaining has been more likely where governments have faced urgent revenue needs and lacked access to alternative revenue sources' (Prichard 2015: 30). The urgency for revenue contributes to shaping the contours of coercion and concession in tax enforcement and administration generally. The extent to which governments are in desperate need of revenue, which they must mobilise from domestic sources, in the context of limited alternatives, affects how they coerce taxpayers but also the concessions they are willing to make in bargaining for increased revenue. Finally, in an environment of rapid demographic changes, political realignments, shifts in social structures and overall macroeconomic situation, all feed into the distribution of holding-power among the key sectoral-actors and state-elites.

In the next section, we analyse cases that underscore the kind of reforms the government has pursued in the past decade and the corresponding bargains and negotiations involving different actors. These cases are neither exhaustive nor comprehensive, but they provide a window into grasping Uganda's evolving revenue landscape as government seeks to increase revenue collections but also has to contend with pushback from prospective revenue-providers.

The empirical cases we selected are in three categories. First, in the oil and gas sector where the government has targeted as a key source of revenue. Here, we are able to gauge the balance of bargaining power between the government and multinational companies in what is a nascent sector for Uganda's economy. Second, in the area of income taxation where the government unsuccessfully attempted to tax emoluments of members of parliament. This underscores the government's ability to collect more income revenue from a powerful group – legislators. Third is the area of presumptive tax. The fourth category is in financial services and use of digital technology, primarily social media, mobile money, and internet use. This is a critical area that has both economic and political implications and the government has set its eyes on these services where there are new innovations and products.

4. SELECT TAX REFORMS AND REVENUE BARGAINS

4.1 Exemption of Emoluments of Members of Parliament's (MPs) from Taxation

In the course of debating the Income Tax (Amendment) Bill of 2016, a section of Members of Parliament (MPs) led by Henry Musasizi tabled a proposal to exempt part of their emoluments from the payment of taxes under the Income Tax Act. While this proposal was not contained in the original draft of the Bill presented to Parliament for debate, it was hurriedly sneaked in, debated and quickly embraced by all Members of Parliament who acting in concert, except for one, went ahead to pass it into law on April 14, 2016 (The *Observer*, April 15, 2016). Consequently, with the exception of salaries, all other forms of employment income of MPs are presently exempt from taxation under Uganda's income tax law.[2]

The background to this move was that for a number of years, the Parliamentary Commission had failed to exercise its statutory duty to withhold, collect and remit taxes due

[2] See Section 21(qa), Income Tax Act cap 340 (as amended)

on MPs salaries to Uganda Revenue Authority (URA). A concerned citizen, Francis Byamugisha, challenged this omission in a suit filed against the Parliamentary Commission and the URA.[3] In the course of determining the suit, the petitioner successfully argued that the salaries and emoluments of MPs constituted employment income under the Income Tax Act and for this reason was taxable. On this basis then, the petitioner further argued that the failure of the Commission to withhold and remit the tax due on MPs emoluments amounted to a breach of its statutory duty. In response to these arguments, the URA admitted that the emoluments of the MPs were subject to tax under the law and that being the case the Commission was under obligation to withhold Pay As You Earn (PAYE) on all such emoluments. Based on this admission, the court directed the Commission to collect any taxes owing and due to the government of Uganda with immediate effect and remit the same to the URA.

On March 3 2016, the URA made a formal demand to the Parliamentary Commission to pay all taxes due as per the orders of the Court. Instead of complying with the court order, the Commission instituted an appeal. In the interim, the Commission also applied to Court for an order of stay of execution, which was granted in May 2016. Pending the determination of the appeal filed by the Commission, the MPs rushed to amend the law to exempt their emoluments from taxation under the Income Tax Act. This move attracted wide criticism from members of the public and civil society. The Civil Society Budget Action Group (CSBAG) published a list of nine reasons as to why MPs should pay income tax.[4] The CSBAG contended among others that the action of MPs was discriminatory, unfair and would worsen the already existing funding gaps.[5] A number of other actors including the outspoken Kampala City

[3] See *Francis Byamugisha v. Parliamentary Commission and Uganda Revenue Authority* (URA), HCCS No. 745 of 2013.

[4] Civil Society Budget Action Group, 9 Reasons Why MPs should pay Taxes on their Allowance, Available on http://csbag.org/wp-content/uploads/2016/04/09-Reasons-why-MPs-should-pay-taxes-on-their-allowances.pdf (accessed on August 1, 2019)

[5] *Id.* See also MPs Allowances Must Be Taxed, CSOs Insist, Available on http://csbag.org/wp-content/uploads/2016/11/CSBAG-BUDGET-NEWS.220.pdf

Traders Association (KACITA) embraced the views of CSBAG. In a joint statement, CSOs stated that the move by MPs to exempt their income from taxes would directly result in a revenue shortfall of UGX 41.58billion.[6]

As part of their campaign against the move by Parliamentarians to exempt their emoluments from taxation, CSOs also appealed to the President to withhold his assent to the Bill.[7] This strategy succeeded in part as the President sent back the Bill to Parliament for reconsideration. In doing this the President reasoned that not only was the exemption injurious to revenue mobilization efforts but that it was also 'politically and morally incorrect.'[8] In total disregard of the President's advice and amidst the growing public criticism, Parliament still went ahead to pass the Bill, basing on the findings and recommendations of the Finance Committee that had been directed to re-examine the Bill and the proposals contained therein. The President sent the Bill back to parliament a second time. Ultimately, the President assented to the Bill on November 19, 2016.[9]

While it is not very clear why the President assented to the Bill on the third presentation, in his earlier reluctance to assent he said there was no justification for the exemption whatsoever. The report of the Committee appointed to re-examine the Bill did not equally provide sufficient rationale for the exemption. Moreover, the move by Parliament to enact a law whose sole purpose was to defeat the decision of Court in the *Francis Byamugisha* case amounted to an abuse of its law-making mandate. This is so because under the Constitution,

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[6] CSOs -KACITA Rap MPs Over Tax Exemption, Available on CSOs -KACITA Rap MPs Over Tax Exemption, Available on https://csbag.org/?p=2692 , accessed August 1, 2019.
[7] *Id.*
[8] See President Rejects Income Tax Amendment Bill, Statement Issued by the State House Department of Press and Public Relations, May 10, 2016. See also Moses Mulondo, "Museveni Rejects Bill Exempting MPs from Paying Taxes", *New Vision,* May 10, 2016. Available on https://www.newvision.co.ug/new_vision/news/1424220/museveni-refuses-sign-exempting-mps-paying-taxes
[9] Uganda Radio Network, 'Income Amendment Bill Becomes Law,' December 21, 2016. https://ugandaradionetwork.com/story/income-tax-amendment-bill-becomes-legislation

Parliament is expressly forbidden from passing any law for the purpose of altering the decision or judgement of any court as between the parties to the decision or judgement.[10]

The success of MPs in having part of their income exempted in a sea of political and legal adversity is a very powerful illustration of their political and legislative influence on the politics of revenue bargaining. They succeeded in obtaining a huge revenue bargain from the state but most importantly from President Museveni who initially publicly opposed the exemption. The President's change of heart is partly attributed to the fear of a political backlash from charged MPs from both sides of the political divide.

It should be recalled that President Museveni and his NRM government have had to fall back to Parliament and especially to their party leaning MPs during critical moments of his rule. The constitution and influence of Parliament has, therefore, become central in maintaining the ruling NRM in power and for this reason is too important to ignore. In 2005, for instance, Parliament was critical in lifting Presidential term limits to allow President Museveni run for a office beyond the constitutionally mandated two terms. (Tripp 2010a). Most recently in 2017, Parliament voted to amend the Constitution to remove the presidential age limit of 75 for the sole benefit of President Museveni (Biryabarema 2017). This is not to mention other political pandering roles that Parliament has offered to the President and his NRM party over the years such as passing opposition targeted restrictive laws and granting questionable supplementary budgets during campaign seasons (Goodfellow, 2014; Bakibinga and Khisa 2020).

In light of the above, President Museveni could not afford to antagonise MPs by denying them exemption from taxing their income. Moreover, as seen above, the timing of yielding to the MPs move to exempt themselves from taxation was quite conveniently linked to Museveni's quest for an extended stay in office beyond the mandatory 75 year cap, which parliament gave him in December 2017.

[10] See Article 92, Constitution of the Republic of Uganda, 1995 (as amended)

4.2 Petroleum taxation

In 2006, Uganda announced the confirmation of the presence of commercially viable amounts of petroleum in the western part of the country also referred to as the Albertine region. At the time of this announcement, the country's oil production potential was estimated at just about 2.5billion barrels. Later, this was revised upwards to 6.5billion barrels of which between 1.2 and 1.5billion barrels are recoverable. When commercial oil was struck, Uganda did not have a specialized petroleum income taxation regime but rather such income was taxed in accordance with the provisions of the Production Sharing Agreements (PSA) signed with the international oil companies and the domestic income tax law. Income derived from petroleum activity was thus treated in the same manner as that derived from other businesses for tax purposes.[11] This is a rare result since it is common for international oil companies to insist on more favourable and often exclusive taxation terms especially when dealing with countries like Uganda that are still in their early stages of oil development. In effect the Uganda government obtained a better part of the bargain from the oil companies (Global Witness, 2014). As of 2016, natural resource payments, a significant fraction of which were earned from petroleum, accounted for an estimated 15% of Uganda's GDP. This is a remarkable achievement when compared to the world average of 1.3% (Global Finance Integrity 2018). Needless to note, all the earnings and revenues have accrued before commercial production, which by itself is anticipated to raise to USD 50billion.

The NRM government has been very careful and strategic when it comes to the petroleum industry. This is attributed to the grand plan of the regime to extract maximum revenues from oil in order to utilise the same to further its patronage schemes and stay in power especially

[11] Under Section 18 of the Income Tax Act business income is defined to mean income derived from carrying on a business. The term business is further defined to include any trade, profession, vocation or adventure in the nature of trade. Petroleum activity falls into the category of business by virtue of being trade.

amidst declining foreign funding (Ngabirano, 2019). This claim is partly validated by the way oil revenues realised so far have been spent in furtherance of the ruling regimes agenda. In 2011, the country's foreign reserves were nearly depleted in order to purchase fighter jets from Russia when the country was under no eminent security threat. It was later reported that President Museveni had directed the Governor Bank of Uganda to make the expenditure on the promise that oil revenues would be used to replenish the reserves (Bariyo 2011). Oil revenues have also been utilised to deliver campaign promises under the guise of funding the national budget but in a manner inconsistent with public finance management laws. This spending behaviour of oil monies is clearly calculated to further the regimes stay in power and may explain why the government insisted on a hard bargain in negotiating the PSAs.

Moreover, while the PSAs had the effect of placing international oil companies at par with corporations engaged in other businesses, this position slowly began to change following the confirmation of the existence of commercial oil in 2006. Looking at the changes, it is apparent that they were geared towards taxing the petroleum sector in a more efficient and effective manner. The changes also confirm a deliberate intention to tax the sector in a more rigorous manner. Lastly, looking at the spirit and impact of the amendments, it is quite clear that they were aimed at improving revenue opportunities for the government while reducing profit margins of companies. The law was severally amended in 2006, 2008, 2015, 2016, 2017 and 2018. Consequently, the provisions relating to the taxation of petroleum income have been the most amended since 2006.

4.2.1 Limitation on allowable deductions in respect to petroleum income

In 2006, the Income Tax Act was amended to limit the amount of expenses and losses that petroleum companies were allowed to claim as deductions in the computation of their income for tax obligations (Income Tax Act 2006). Under the amendment, oil companies could only

claim costs and expenses incurred in the exploration, development and production activities undertaken in a specific contract area only as against the income derived from that contract area.[12] In the event that the allowed deductions exceeded the gross income derived in the contract area for that year, the excess was required to be carried forward to the next year until it is cleared or until petroleum operations in the contract area cease.[13]

The rationale for this provision was to prevent oil companies from using costs incurred elsewhere outside a particular contract area to unjustifiably reduce their tax liability. In the absence of the amendment, therefore, there was a real risk of oil companies using profitable ventures to continuously offset all costs and expenditures incurred in other ventures outside the contract area. This if not checked would create a continuous cycle and result into loss of revenue to government. In this respect, the amendment was reasonable and justified despite having an effect of introducing a differential approach in as far as the taxation of petroleum income is concerned.

4.2.2 Introduction of part IXA and confirmation of supremacy of the taxing statute

In 2008, the law was amended again to introduce special provisions for the taxation of petroleum operations contained under a newly introduced Part IX A of the Income Tax Act (Income Tax Act 2008). Of importance to note is that although the amendments were first introduced in 2008, they were made to apply with effect from July 1, 1997. There are two major highlights in respect to the provisions introduced by Part IX A of the law. First, is the supremacy of the introduced special provisions as regards the taxation of petroleum licensees.

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[12] *Id.* See also Section 89C1 Income Tax (Amendment) Act, 2008.Under the law, contract area was defined to mean “an exploration area which is subject of a petroleum agreement, or a development area as the case may be.” Effective 2015, the term contract area is defined to mean “the area described and shown in a petroleum agreement on the effective date of the agreement; and where any part of the area is relinquished under the petroleum agreement, the whole or any part of such area which at any particular time remains subject to the petroleum agreement.” See the Income Tax (Amendment) Act, 2017

[13] See Section 89C2

It is stated that in the event of any inconsistency between Part IX A and in other parts of the law (Income Tax Act) or petroleum agreement, the special provisions contained in Part IX A are to prevail (Section 89g [2]). The effect of this provision is that it sought to modify existing taxation laws and Production Sharing Agreements (PSA) between International Oil Companies (IOCs) and the government of Uganda. This was the interpretation in the matter brought before the Tax Appeals Tribunal (TAT) involving Tullow Oil and the Uganda Revenue Authority (URA).[14] In that case, Tullow sold part of its interests in one of the petroleum blocks to CNOOC and Total after which they were assessed a capital gains tax equivalent to USD 472 million. They sought to rely on provisions of the PSA with the Government of Uganda to make a claim for an exemption.

In particular, Tullow sought to rely on Article 23.5 of the PSA, which purported to grant an exemption in respect to a transfer or assignment of a petroleum interest under the agreement. In the course of determination of the dispute, the TAT appraised the powers of Parliament to, among others, impose taxes by way of legislation. Flowing from this, it was stated that only Parliament and not any other organ had the mandate to grant tax exemptions. For this reason, the exemption contained in Article 23.5 of the PSA executed by the Minister of Energy on behalf of the Government was found to be *ultra vires* and Tullow could therefore not rely on that provision to claim an exemption.

The decision of the TAT is a strong validation of the supremacy of Part IX A of the Income Tax Act containing special provisions relating to the taxation of petroleum licensees since the same was enacted by Parliament. In the same way, the ruling set an important precedent in respect to cases where there is inconsistency between the law and provisions contained in PSAs in respect to the taxation of petroleum licensees. This is in tandem with the

[14] See *Tullow Uganda Ltd & Tullow Operational Pty Ltd v. Uganda Revenue Authority* TAT Application No. 4 of 2011. Available on

2008 and 2015 amendments of the Income Tax Act to the effect that where in taxation of petroleum revenue there is inconsistency between provisions of the statute and those contained in production sharing agreements, the former shall prevail.

Perhaps more fundamentally, the decision of the TAT is a reflection of the use of litigation as a bargaining tool in the taxation of petroleum revenues. Upon realising that the government of Uganda was adamant on exempting Tullow from payment of capital gains tax on the basis of Article 23.5 of the PSA, the company sought the intervention of the TAT. While Tullow did not succeed in its claim, it managed to get the TAT to reduce the sum assessed from USD 472million to USD 407million.[15] This effort in itself saved the company USD 65million.

More importantly, following the decision of the TAT, Tullow opted to institute arbitration proceedings in the United Kingdom in accordance with the terms of the PSA. After a spirited battle, Tullow and the government of Uganda agreed to settle the dispute for USD 250 million (Irish Times 2015). The settlement allowed Tullow to further reduce its tax liability by USD 150 million.

The case before the TAT and the arbitration proceedings in London show the determination of both the government of Uganda and Tullow to protect their share of oil revenues. In the TATs decision, the Minister's power to grant the oil company an exemption in respect to capital gains was overturned. This altered the provisions of the PSA in favour of the government of Uganda. Tullow, however, managed to balance this out with arbitration proceedings in London after which a settlement was reached. As part of this settlement the government got a lesser amount of USD 256 million which was still very significant considering that for some of the earlier sales no capital gains tax had been obtained. Tullow on the other hand managed to save a total of USD 216 million.

[15] *Id.*

4.2.3 Introduction of petroleum sector specific deductions

The 2008 amendment also introduced a number of sector specific deductions for the benefit of petroleum licensees and promotion of environmental sustainability. The allowed deductions include: depreciation costs in respect of assets acquired as part of petroleum exploration expenditure, depreciation costs in respect to intangible assets acquired as part of petroleum development expenditure and decommissioning expenditure (Sections 89GB, GC and GD). The first two in respect to depreciation costs are majorly market driven and not exactly specific to the petroleum industry. That said, in 2015 provisions relating to depreciation allowances were further amended to enable oil companies recover 100% of the cost of depreciable assets (Section 89GB (1) [b]). This is peculiar to the petroleum sector since ordinarily depreciation costs are recovered over a period of time (Section 22 (2) [b]). Setting a depreciation rate of 100% allowed petroleum licensees (oil companies) to offset their expenditure on depreciable assets all at once. This exception may be seen as an effort on the part of government to encourage investment of oil companies in depreciable assets.

The specific provision as to the deduction of decommissioning costs is also quite unique to the petroleum sector. Decommissioning was introduced by the upstream petroleum law as practice for sustainable environmental management. Pursuant to the provisions of that law, licensees are required to develop decommissioning plans and to contribute to a decommissioning fund (Petroleum Act, 2013: sections 112 and 113). The special provisions introduced to the Income Tax Act provide an extra incentive for petroleum companies to comply with these requirements. Under the 2008 and 2015 amendments, contributions made by petroleum licensees to an approved decommissioning plan are allowed as a deduction in the year in which the contribution was made (Section 89D [1]). In addition, the law also allows a deduction in respect to expenditure incurred in carrying out works under an approved

decommissioning plan provided that the such works are not paid for either directly or indirectly with money made available from the licensee's decommissioning fund (Section 89D [2]).

The other changes introduced by the 2008 amendments relate to: farm-outs, indirect transfers, taxation of contractors, withholding taxes, accounting principles, allocation of costs and expenses, valuation and measurement of petroleum, filing of returns, collection and recovery and the application of the Tax Procedures Code Act to petroleum activities.[16]

For the most part, the 2008 amendments some of which were subsequently revised in 2015 appear quite well balanced and grant oil companies a favourable revenue bargain. This result is notwithstanding the fact that they were introduced by the government of Uganda. As seen above, the introduction of generous depreciation allowances was a deliberate effort to encourage investment in depreciable assets. Secondly, the introduction of a specific decommissioning allowance is part of the effort to encourage oil companies to adhere to principles of environmental sustainability in their operations. In effect, the amendments represent the attempt by government to balance its petroleum revenue appetite with broader investment and environmental protection concerns.

4.2.4 Limitations on petroleum related deductions

In 2017, the government introduced additional amendments in respect to the provisions relating to the taxation of petroleum licensees. The most critical of these is the one to do with imposition of limitations on the amount of deductions relating to petroleum operations.[17] Under Section 89GA1, a licensee cannot deduct an amount in excess of the cost oil derived in the contract area in the year that they seek to make the deduction. Where the amount of deductions exceeds the cost oil derived, the excess is carried forward to the next year and deducted from the cost

[16] See Sections 89GF, 89GG, 89H, 89I, 89J,89KA, 89MA, 89O.89P and 89QA.
[17] See Section 89GA

oil derived in that year (Section 89GA [2]). Cost oil is defined to mean 'a licensee's entitlement to production as cost recovery under a petroleum agreement' (Section 89GA [1]).

The effect of this provision is that it imposes a ceiling on the amount of deduction allowances (operational expenses) that oil companies can recover annually i.e. they can only recover an amount equivalent to the cost oil. Previously oil companies licenced after 31, December 2015 were entitled to recover costs up to the limits set in production sharing agreements signed with the government (Income Tax Act, 2016: Section 7). Moreover, the capping of costs recoverable on the basis of the amount of cost oil is distinct to the oil sector. Businesses other than those involved in the petroleum sector are allowed to claim costs up to the amount of their gross income and only the excess is carried forward. The approach taken in respect to oil companies is a reflection of the determination of the Ugandan government to tax as much revenue of the oil companies as possible. It also shows the continued use of legislation to impose a hard revenue bargain on the oil companies.

Lastly, the 2018 amendment contains specific provisions in respect to farm-outs. In cases of a farm-out, the value of any work undertaken by the transferee in relation to part of the interest retained by the transferor is required to be included in either the consideration received by the transferor in respect to the transferred interest or the gross income of the transferor (Section 89GE [2]). Additionally and in accordance with Section 62 of the Act, the amount received by the transferor is treated as income being recoupment of deductions allowed for expenditure by the transferor in respect to the transferred interest.[18] In the event that this amount of money exceeds the amount of deducted expenditure, the excess is to be treated as consideration received for the transferred interest.[19]

[18] See Section 89GE (2) (b) (i)
[19] See Section 89E (2) (b) (ii)

On the whole, the approach taken by the government of Uganda in respect to oil revenues demonstrates a clear intention to tax petroleum incomes in a more aggressive manner compared to other sectors. It also shows that in respect to oil, there have been extra-ordinary efforts to maximally tax petroleum activities while at the same time restricting the amount of deduction allowances available to oil companies in respect to expenditures and losses incurred in their operations. Secondly, through legislation the government of Uganda has been able to initiate and impose a one sided bargain on international oil companies. In some cases, the newly introduced provisions have altered terms of the PSAs previously negotiated with the oil companies. All this points towards the determination of the ruling regime to extract as much revenues from the oil companies as possible. This underscores a deliberate strategy to mobilise and utilise oil revenues to extend patronage and to deliver on campaign promises as part of winning the electorate. By generating and relying on petroleum revenue payments, the ruling NRM can afford to deliberately shield a greater portion of their supporters from the tax burden while at the same time managing to deliver basic goods and services. In effect the revenues collected from oil companies can be utilised to subsidize local tax revenue collections. This is a form of an indirect revenue bargain between the NRM and its supporters (Ngabirano, 2019)

The point as to the determination of the NRM to generate maximum revenues from the petroleum sector can be further understood by comparing Uganda's approach with that of other equally natural resource endowed countries in the region. For example, Tanzania, which is the pioneer in the oil and gas sector in the East African region, has a relatively relaxed petroleum tax regime. Importantly, under Tanzania's taxation regime, petroleum revenues are not treated differently from incomes from other sectors for tax purposes. This is different from Uganda where income from the sector is selectively targeted and taxed more rigorously with less benefits to the oil companies when compared to those in other sectors. On the other hand, Kenya just like Uganda has a specialized petroleum revenues taxation regime. In fact, a

majority of the tax provisions are in *pari materia* (a mirror) of those found in Uganda's petroleum taxation laws. On this basis, it is probable that Uganda's laws inspired Kenya's petroleum/revenues tax laws. That said, unlike Uganda, Kenya is a middle-income country with direct access to the sea. Uganda on the other hand is landlocked and less wealthy as a nation. Given all these factors, Kenya enjoys greater holding power when negotiating with international oil companies but it settled for terms similar to those of Uganda despite its comparative advantage. Uganda's can be explained from the point of view that right from the beginning, the ruling NRM regime attached specific importance to oil as a tool for regime sustenance, thus the bold approach (Izama and Hickey 2017). For this reason President Museveni and the NRM were willing to invest in the capacity of their technocrats and to insist on a better revenue bargain. President Museveni and the NRM's vision to utilise oil as a strategic resource for their stay in power greatly motivated the strategy to design and enforce a more rigorous petroleum taxation legislation (Ngabirano 2019).

4.3 Presumptive Taxation

Presumptive taxation involves "the use of indirect means to ascertain tax liability, which differ from the usual rules based on the taxpayer's accounts" (Thuronyi 1996: 1). Presumptive taxes have also been described as "procedures under which the 'desired' base for taxation (direct or indirect) is not itself measured but is inferred from some simple indicators which are more easily measured than the base itself" (Ahmand & Stern 1991: 276). According to Thuronyi, presumptive taxes are preferred for a number of reasons including simplicity, ability to combat tax evasion and avoidance, capacity to achieve equitable distribution of the tax burden. Presumptive taxation is also favoured for reducing the costs of both tax compliance and tax administration (Joshi 2014; Loeprick 2009). In some cases, presumptive taxes may also encourage taxpayers to keep proper records, which ultimately enables them to transition to

formal taxation (Thuronyi 1996). For these benefits, a number of countries around the world rely on presumptive taxation methods to tax mainly the informal sector (Thuronyi 2003). This comprises largely small business taxpayers who are hard to reach and whose tax liability is often very difficult to ascertain using contemporary tax rules.

Uganda is one of the countries with a very large informal sector in Africa. As of 2009, micro, small and medium enterprises accounted for 90% of all businesses. Of these, an estimated 60% operated without any form of registration hence forming part of the informal sector (PSFU 2009: 68). The sector also had a substantial contribution to the country's GDP at 43.1% (Ibid). Given its magnitude and historical role, the informal sector is a huge potential source of tax revenue. At the same time, it is also hard to reach using formal taxation approaches. For this reason, Uganda adopted a presumptive tax regime for taxation of its small businesses under its income tax law. Under Section 4(5) of the Uganda Income Tax Act, all resident small business taxpayers with a gross turnover of less than UGX 150 million (one hundred and fifty million Uganda shillings) are liable to pay a presumptive tax. There are only two categories of small businesses that are excluded from payment of presumptive taxes. The first category includes those who elect to be taxed under the formal rules by way of a written notice to the Commissioner (Section 4[5], Income Tax Act cap 340). The second category involves businesses engaged in the provision of professional services such as medical, dental, architectural, engineering, accounting, legal and other professional services (Section 4[7]). In practice thus, presumptive taxes are only imposed on those taxpayers involved in informal and less professional businesses. These include garages, beauty salons, metal and wood workshops, general merchandise, restaurants, bars and other such small businesses (Schedule 2).

As stated above, presumptive taxes are deemed suitable and effective in the taxation of small businesses. The major concern with Uganda's presumptive tax regime, however, is that it is more regressive than progressive. At the time of enacting the Income Tax statute in 1997,

presumptive taxes were only applicable to those small business taxpayers whose gross turnover in a particular year of income was less than UGX50,000,000 (approx. USD 12,988). In 2015, the provisions relating to presumptive taxation were amended to among others increase the upper limit of the threshold to UGX 150,000,000 (approx. USD 38,961). The major effect of this amendment was that it expanded the bracket of small businesses subject to the presumptive tax regime.

The move to expand the presumptive tax threshold was not only regressive but also defeated the whole essence of presumptive taxation whose main objective is to tax small businesses that would otherwise be difficult to tax using conventional methods. Presumptive taxation is usually intended to facilitate a transition of small businesses into more formal structures especially as their gross turnover increases and record keeping improves (Getachew 2019). Thus, the adjustment of the tax upper threshold limit upwards from UGX 50million to UGX 150million undermines that goal. In particular, it expanded the category of businesses subject to presumptive taxation by including even those that would ordinarily have been formally taxed at the time.

It follows that the move to adjust presumptive tax thresholds was based on other considerations other than the mere realisation of more tax revenue from the informal sector which is the major objective of presumptive taxation. From a political point of view, it is in the interest of the ruling NRM to keep the tax burden of the informal sector very minimal. Since peasants and those employed in the informal sector form the biggest political support base of the NRM, it would be politically costly to subject them to a more strict taxation regime. In the event, the presumptive tax system is much more ideal as it allows some flexibility. Most importantly, the system ensures that the informal sector, which is an important constituency, is less taxed or even untaxed. On the other hand, professionals and other formal businesses are subject to a higher tax rates and bear the greatest tax burden. The presumptive tax regime and

recent efforts to expand the bracket of taxpayers to which it is applied are part of the larger NRM strategy to keep power. This view finds support in the work of several other scholars who have observed that the NRM relies on political patronage and in some cases co-option of critical groups and individuals as a strategy to remain in power (Tangri 2013; Tripp 2010b; Yadav 2016).

Moreover it should be noted that prior to the threshold adjustment, the Private Sector Foundation of Uganda (PSFU) offered government various proposals to consider as part of widening the tax base (PSFU 2009). In respect to presumptive taxation, PSFU recommended for the law to impose a minimum of at least UGX 100,000 on all informal businesses whose income was below the minimum presumptive tax threshold. At the time of making this recommendation, the minimum threshold was UGX 5million and all businesses earning less than this were expressly exempted. According to the PSFU, this exemption left a number of small businesses including bars, restaurants, washing bays, day/night parking bays, guest houses, small hotels and traders in agricultural products untaxed. It was also the recommendation of the PSFU for Kampala based small businesses to be treated differently since they were bigger and with large taxable surpluses (Ibid: 18).

These proposals were largely ignored in the process of reviewing the provisions of the law relating to presumptive taxation. Instead of lowering or even getting rid of the minimum threshold below which small businesses would be exempted, the amendment revised this upwards to UGX 10million from the original UGX 5million.[20] The effect of this amendment is that it left small businesses with a gross turnover of less than UGX 10million untaxed contrary to the PSFU's recommendation of a minimum UGX 100,000 in presumptive tax.

The only recommendation of the PSFU that seems to have found its way in the amendment relates to the distinction between Kampala based businesses and those located

[20] Section 4 (5) and Part II of Schedule 2, Income Tax Act cap 340 (as amended)

outside the city. Under the current provisions of the law, where the gross turnover of the business is less than UGX 50million, the amount of presumptive tax payable varies in accordance with the location of the business. Different rates apply to businesses located in Kampala and those operational in municipalities and in other towns or trading centres outside the city.[21] Under the law, it is immaterial whether the businesses are similar in nature and only the location matters.

Nevertheless, Uganda is not the only country in the region with a high presumptive tax threshold. In January 2019, Kenya amended its law to replace the 3% turnover tax with a presumptive tax of 15% on amounts in excess of KSH 5 million (Approx. USD 50,000). More recently in July 2019, Tanzania also revised its presumptive tax threshold from TSH 20 million (Approx. USD 8,750) to TSH 100 million (Approx. USD 43,750). Rwanda imposes a 3% rate as presumptive taxes on small enterprises whose turnover is RF 20 million and below (Approx. USD 18,500 and below). A flat rate is also imposed on micro business enterprises with a gross turnover of up to RF 12 million (Approx. USD 13,000).

Uganda's vast presumptive tax thresholds are thus not isolated. However, up until January 2019, Uganda had the highest presumptive tax thresholds in the region. As observed above, this had the implication of expanding the scope of businesses subject to presumptive taxation and indirectly delaying the transition of small businesses to more formal organisations. Moreover, the revision of thresholds in Kenya and Tanzania may be justified by the fact that they have a significantly higher GDP. From a geopolitical point of view, recent political developments in the region show the increasing influence of politics of regime survival in taxation. Given its size and significance, the informal sector is a powerful and important constituency for ruling regimes. This partly explains the motivation to either exempt small

[21] *Id.*

business taxpayers or to subject them to a lesser tax burden when compared to other formal businesses.

4.4 Taxing Financial and Tech Services Sectors

Starting in 2018, the Government of Uganda has undertaken measures to tax and collect more revenue from the financial sector and the tech industry, imposing new taxes on use of social media and mobile money services and increasing excise duty on banking. In these two sectors, financial and digital technology, the government was able to push through new taxes without much consultation and limited backlash from the public.

4.4.1 Over the Top Tax (OTT)

With effect from 1st July 2018, the Government of Uganda introduced the Over the Top (OTT) tax. This is an excise duty on over the top services amounting to UGX200 levy per day of access through a mobile device: smartphone, tablets, iPads, etc. Examples of OTT sites/services include Facebook, WhatsApp, Twitter, Instagram, SnapChat, iMessenger, Skype, TextMe, among others (Kisekka 2018; Akumu 2018).

The imposition of OTT was justified by President Museveni as aimed at controlling *lugambo* (gossip) on the social media and to raise "resources to cope with the consequences of their *lugambo"* (Mayambala & Rukundo 2018: 147). Consequently, gossip was perceived to be a harmful use of the social media. Such misuse has been described to include three manifestations (Ibid 2018: 152-157). First, misinformation, including false stories or "fake news," mundane medical prescriptions and scams such as the use of images of a burnt girl on Facebook to solicit funds. Second, mal-information, including online harassment and abuse of people. Third, addiction, leading to anxiety, depression, poor sleep, narcissism depression, marriage break-up and motor accidents. However, in reaction to government intervention in this regard it has been stated, thus:

> …the government use of taxes to influence behaviour has been condemned as counterproductive as it tends to shift perceived responsibility from individual's own sphere to the public realm. Excise duty denies the individual agency replacing their intrinsic motivation to engage in a particular transaction with prohibitions based on high prices (Mayambala & Rukundo, 2018, 157).

In tandem with this reasoning are arguments which extol the positive aspects of social media, including the building of social capital, described as "networks based on the existence a certain set of informal values or norms which facilitate cooperation within or among groups" (Fukuyama 1997: 5; Mayambala & Rukundo 2018: 157). The benefits of social capital include flow of information, influencing decision-making organs, certification of competence and credibility of individuals participating in social media discourse and reinforcement of a social media participant's identity and entitlement to certain resources (Mayambala & Rukundo 2018: 158). Practically, social media has facilitated linkages between young people, job searches, access to better healthcare, accessing credit for entrepreneurs, crowd fund raising and share of security tips and information (*Ibid*: 158-160).

There was no consultation with the stakeholders prior to the introduction of the OTT tax. The decision to impose this tax was a unilateral policy choice by the government and strenuously defended by President Museveni. The public reacted to the new tax imposition through a public demonstration organised and led by Robert Kyagulanyi, Member of Parliament for Kyadondo East in Kampala in July, 2018. This was one of the issues that put Kyagulanyi in the limelight and he went on to emerge as the main opposition challenger to the incumbent in the January 2021 elections. Kyagulanyi was subsequently, on 29 April 2019, charged in court for the offence of disobedience of statutory duty and holding an illegal protest contrary to Section 116 of the Penal Code Act (Lubowa & Wesaka 2019). The case took another turn with an application to the magistrate to refer the case to the Constitutional Court for interpretation of the Public Order Management Act sections 5 and 6 in light of Article 29

of the Constitution providing for freedom of expression, assembly and movement (*Daily Monitor*, February 25, 2020: 3). Similarly, the OTT tax was perceived as “an attempt to suppress political dissent ahead of the upcoming elections…” (Boxell & Steinhert-Threlkeld 2019: 2).

Additionally, data released by the Uganda Communications Commission (UCC) indicated a drop of 3 million internet users over a 3-month period following the imposition of OTT. The data also indicated that about 50% of the internet users were actually paying the OTT tax, indicating a shortfall in the revenue projection by the Government (the nextweb.com accessed 11/11/2019). It has also been observed that “the prevailing sentiment among most Ugandans since the tax was launched has been the single aim of the tax is to inhibit people’s freedom of speech by introducing an extra fee they must pay in order to use social media, as well as paying for their smartphones and internet access (Ibid). Other studies, Boxell & Steinert-Threlkeld (2019, 1-3) examined the effect of the OTT tax on social media use, using synthetic control framework and concluded thus:

> …we estimate that the tax reduces the number of georeferenced Twitter users in Uganda by 13 percent. The estimated treatment effects are larger for the poorer and less frequent users. Despite the overall decline in Twitter Use, tweets referencing collective action increased by 31 percent and observed protests increased by 47 percent. These results suggest that taxing social media use may not be an effective tool for reducing political dissent.

The effect of OTT on internet use has been threefold. First, some people simply chose to cut their use of social media, reflected in the drop of 5 million internet subscribers. Second, others chose to pay the tax while, thirdly, others continued using social media but bypassing the need to pay for the tax by using Virtual Private Network (VPN) apps (Tobor, 2019). Those with access to Wi-Fi can also access the social media services affected by the OTT tax without having to pay the tax.

In this vein, a Uganda Revenue Authority (URA) report released in July 2019 indicated that Ugandans continued to avoid paying the OTT tax with URA collecting “a mere Shs.49.5 billion” out of the projected Shs.284 billion. The URA also reported that it registered a shortfall of 83 percent as only 17.4 percent of internet subscriber were able to pay the tax. This was attributed to the use of VPN and wireless networks in offices and restaurants (*The Observer*, 15 July 2019, accessed 11/11/2019).

Subsequent developments indicate that the URA proposed a policy shift for government to tax internet use directly instead of charging OTT. This approach arose from the failure by URA to meet the revenue targets from OTT (*Daily Monitor*, 14 January 2020). This is attributed to evasions, necessitating a policy shift to directly charge internet data aimed at reducing the loss in revenue.

4.4.2 *Mobile money tax*

Government initially imposed 1%, then later 0.5%, fees on mobile money transactions with effect from July 2018 (Background to Budget 2018/19). Similar to OTT, there was very little consultation between government and the stakeholders/taxpayers, apart from the post-tax engagement between the URA and the public on the incidence of the tax and the rate of the tax, which was adjusted from 1% to 0.5%. Instead of any bargaining and consultation, the tax was unilaterally imposed at the instigation of the President (*softpower.ug*, accessed 11/11/2019).

In terms of performance, in June 2019 the URA reported that the tax on mobile money transactions registered a surplus. According to the URA Commissioner General, “mobile money performed at 136.7%. We expected to collect Shs.115 billion, we collected Shs.157.23 billion from mobile money. A surplus of 42.23%” (*softpower.ug*, accessed 11/11/2019). But the tax triggered criticism from the public and was generally seen as a wrong policy move by the government.

The levy on mobile money transactions was criticised on two grounds (SEATINI 2018: 9). First, that it increases the cost of transaction, contradicting the principle of having all citizens included in the access to financial services. In other words, the tax undermined the government's efforts of enhancing financial inclusion and bringing more Ugandans into the money economy. Similarly, critics observed in relation to Kenya that while phone-based transactions are easy to tax, this does not significantly increase revenue yields but rather undermines financial inclusion made possible by electronic payments through mobile phone transactions with people reverting back to cash transactions to escape higher transactions cots resulting from taxation (Ndung'u 2019: 1,12). Second, the tax was criticised as regressive in that it does not consider the different income differences in the population and will hinder financial inclusion. These criticisms highlight the failure by Government to consult stakeholders prior to the imposition of the tax and is indicative of lack of revenue bargains.

On its part, the Ugandan government saw a ripe revenue source in the rapidly growing mobile money sector where huge sums are transacted on a daily basis. Mobile money has increasingly become a strong rival to traditional banking and increasingly many Ugandans receive and save their funds in form of mobile money. The mobile money industry is more of the most revolutionary financial innovations on the African continent, made possible by advances in information technology and the rapid spread of mobile phone usage that has penetrated in deep rural areas of a country like Uganda.

4.4.3 Excise duty on bank and mobile money charges

During the Fiscal Year 2018/19, excise duty on bank and mobile money charges was increased from 10% to 15% (*Background to the Budget* 2018/19: 53). Over the years, Uganda's banking sector has experienced tremendous growth seen in the number of major commercial banks most of them foreign owned. The government has sought to target revenue collections from the

banking sector in the same way it recently turned to taxing mobile money transactions discussed above. Critics have pointed out that the continuous yearly increments on duties and taxes on basic goods and services, of which banking is one, places a heavier tax burden on low income earners who form the biggest proportion of consumers (SEATINI 2018: 7, Kangave et al. 2016). In the context of revenue bargains, this undue burden on low-income earners disregards "research which has unearthed revenue potentials that exist among High Net Worth Individuals," HNWIs (Kangave et al. 2016: 3). It is noted in this regard, that no specific regime has been constitutionalised to guide taxation of their wealth. As a result, HNWIs are not paying their fair portion of taxes (SEATINI 2018: 7).

What is more, the increase of excise duty from 10% to 15% on bank and mobile money charges inevitably adds to the cost of transacting through financial institutions. This could potentially discourage people from using mobile money and, therefore, turn them away from joining the formal finance system (SEATINI 2018: 9). An interesting development along these lines is the revelation by the Commissioner General, Uganda Revenue Authority (URA), that URA could not collect UGX 30.5 billion in taxes as a result of rich individuals switching to using agency banking instead of mobile money (*The Independent*, February 10, 2020, accessed 16 March, 2020).

5. Conclusion

In this paper, we have tried to accomplish two goals. First, building on debates in the literature on state-building and political development, we illuminated the political settlements framework in understanding changes in revenue bargains, mobilisation and the socio-political drivers behind extraction through taxation. Applied to Uganda, this framework underscores the relationship and balance of power between revenue needs on the part of state elites and

the holding power of revenue providers, revealing the different dimensions and contours of bargaining and negotiations that play out.

Second, this paper has provided empirical narratives of *some* of the major recent revenue reforms and changes in Uganda, outlining the actors, actions and outcomes. The case of granting taxation exemptions to emoluments for members of parliament underscores the political compromises and quid-pro-quo that the incumbent President Museveni and his NRM party have to navigate as he delicately negotiates his hold onto power. Similarly, the observed "hard bargain" with respect to taxing the nascent oil and gas sector bespeaks of the government's determination to aggressively extract revenue from a natural resource and tax foreign multinational corporations, a move that does not have direct domestic political implications. In other reforms, the excise duty imposed on mobile money transactions, data and bank charges came largely through unilateral actions by government without consulting taxpayers, thus the dynamic and process of bargaining was absent.

At another level, we have noted that most of the major attempts at growing Uganda's revenue yields through diversifying taxable sectors and expanding the tax base remain confined to the formal economy with little effort directed at taxing the vast informal sector. We attribute this to political calculations in the context of a competitive clientelist political settlement. Increasing the presumptive tax threshold, both the lower and upper limits, which we analyse as one of the case studies of recent reforms, rather than expand the tax base, quite to the contrary contributed to increasing the chunk of the economy that is beyond the reach of the taxman. Taken together, both the theoretical framing and the empirical analyses in this paper contribute insights to our understanding of the intersection of Uganda's political economy, anchored on state-society relations, on the one hand, and the imperatives of revenue bargains on the other.

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