MAKERERE  UNIVERSITY

A POLITICAL ECONOMY OF REVENUE REFORMS IN UGANDA: Business Interest Groups' Influence.

BY

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Declaration

This study is original and has not been submitted for any other degree award to any other University before.

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Dedication

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CASES

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Acronyms

BFP Budget Framework Paper

BLRC Business Licensing Reform Committee

DTS Digital Tax Stamps

EAC East African Community

EACJ East African Court of Justice

IMF International Monetary Fund

KACITA Kampala City Traders Association

MoFPED Ministry of Finance, Planning and Economic Development

PAYE Pay As You Earn

PSFU Private Sector Foundation of Uganda

PVoC Pre-Shipment Verification of Conformity

SEATINI Southern and Eastern Africa Trade Information and Negotiation Institute

CSBAG Civil Society Budget Advocacy Group

TPCA Tax Procedures Code Act

UBA Uganda Bankers' Association

UMA Uganda Manufacturers Association

UNCCI Uganda National Chamber of Commerce and Industry

UNM Uganda National Movement

UPC Uganda People's Congress

URA Uganda Revenue Authority

VAT Value Added Tax

Abstract

Taxation intrudes every home to the extent that it may cost one the loss of liberty and/or property. This begs the question, 'what happens when the state's appetite for revenue breeds unpopular revenue reforms or when members of a group are desirous of having their tax burden lessened by statute?' The current literature on taxation and governance addresses representation, accountability and expenditure priorities. This has left the issue of taxation and the rule of law understudied, especially within the context of the checks and balances. In this thesis I present an analytical framework that demonstrates the link between taxation and the rule of law and make the argument that taxation presents positive implications for the rule of law when firms act collectively and when the courts enjoy judicial independence. In short, the need for additional revenue leads to enactment of laws or enforcement of existing laws, which increases the tax burden. Consequently, contestation ensues between the State and business interest groups or firms which may seek the intervention of the executive or legislature (lobbying) or judiciary (litigation) or even stage protests. Conflict between business interest groups and the State is bound to emerge because the reforms tend to reduce profitability or undermine the cash flows of the enterprises. Ultimately, the arena and outcome of the contest over the revenue reforms has a bearing on the rule of law. Using case study approach, I analyse various cases of revenue reform which were carefully selected from a variety of Bills and Acts of Parliament, particular court decisions, and public discourse in a bid to demonstrate the diversity in revenue reform. I used facts from newspapers, debates in the parliamentary hansards, information from budget speeches, court decisions and interviews to analyse the interaction between business interest groups and the State. I find that the character of the State (from the colonial era to date) has changed, thus affecting the revenue bargaining environment (Chapter 3). Business interest groups influence revenue reforms by blocking or softening of them (Chapter 4 and 5) and do so through lobbying, protests and litigation (Chapter 6). I also find that firms set the revenue reform agenda when seeking tax exemptions from the State and sometimes cause reform by litigating against existing tax measures. The blocking or softening of a reform may not mark the end of the

bargaining process because a blocked reform can be reintroduced. These findings enrich political economy theories of democratic governance by demonstrating the role of business interest associations in the process of making policy and its implications for policy change. I draw the conclusion that, since taxation breeds contestation, it presents positive implications for the rule of law when firms act collectively and when the courts enjoy judicial independence. I make recommendations focused on the strengthening of the organizational capacity of business interest groups, increasing the independence of the judiciary and areas for further research i.e., the effect of oil revenue on democracy in Uganda and the influence of small-scale business interest groups on policy. My most significant contribution to the debate on taxation and governance is the discussion of courts of law as an arena for revenue bargaining and analysis of litigation as a revenue bargaining strategy.

CHAPTER ONE
INTRODUCTION

The behaviourist approach to psychology focuses on observable human behaviour and inducing behaviour change involves thought and emotion (Hemmings 2018), hence people's experience and understanding translate into actions (Mather 2009). As such, law is engineered to produce positive and negative actions to situations. The following dialogue that proceeded between Lord Stark of Winterfell, Warden of the North and his 10-year-old son, after the execution of a guard of the night's watch who had 'survived' being killed by a white walker, having witnessed it slaughter his colleagues, is telling of the nature of law and human behaviour:[1]

> *Stark: Do you understand why I did it?*
> *Bran: Jon said he was a deserter.*
> *Stark: But do you understand why I had to kill him?*
> *Bran: Our way is the old way?*
> *Stark: A Man who passes the sentence should swing the sword.*
> *Bran: Is it true he saw the white walkers?*
> *Stark: The white walkers have been gone for thousands of years.*
> *Bran: So, he was lying?*
> *Stark: A madman sees what he sees.*

Prior to his execution, the guard of the night's watch had mumbled the following words, "I saw what I saw, I saw the white walkers." This normative and factual use of language as a solvent of many puzzles and paradoxes is perplexing as the 10-year-old boy may be seen to represent, "unorganised coercion in the form of social morality" (Freeman 2014).

[1] Game of Thrones, Season One.

The attribution theory[2] may explain why law and morality are applied to find truth and define freedom but understanding the meaning of law is affected by factors such as context, social, political, historical and general theoretic questions (Freeman 2014). This thesis is an attempt to 're-unify' debates on taxation and governance as envisaged by the revenue bargaining theory, but whose discussions have been dominated by political scientists and economists at the expense and neglect of lawyers, yet the latter's participation is crucial to human progress.

Max Weber, a lawyer by training, is the unifying symbol of the foundations of sociology and his comment," Law is relatively autonomous. Though influenced by economic forces it also influenced economic and other processes in society…", shows that law is in reality constructed for social engineering (Freeman 2014). Law is intended to resolve conflict between social interests and individual selfish interests by prescribing a course of conduct in form of reinforcement[3] or punishment[4] on the basis that it is derived from a valid authority.

However, the notion of truth or falsity is inapplicable to normative rules hence the need for value judgements which consider what would be just even though not objective but corresponds to the existing moral standards of the community. Values may be categorised as "suspicious" and "not suspicious" and they are important in understanding the meaning conveyed by those decisions (Mather 2009).

Bertrand Russell once put it that science is what we know and philosophy what we don't know, but it could be rephrased, science is what we see but philosophy what we do not. The philosophical lessons to the guard of the night's watch are; the truth will set you free but perhaps not when winter is coming, how happy are those who believed white walker

[2] The theory that people are problem solvers attempting to understand their own behaviour and that of others drawing on assumptions about why things happen (Hemmings 2018).
[3] Giving a reward or removing something to encourage good behaviour.
[4] Doing something unpleasant or taking away something enjoyable to discourage bad behaviour.

narratives without seeing? Similarly, the question, 'what is meant by law and how far does it extend to fundamental values like rule of law which are embedded in the constitution principles of justice and fairness limits?' is difficult because it gets new meaning as society evolves.

Political economy underscores how individual and group interests influence economic outcomes and this behaviour pits business interest groups or its members against government when conflict over economic decisions arises. The current political economy literature that links taxation to governance pays limited attention to the doctrine of rule of law, at least within the context of checks and balances, yet it is also an important aspect of political development recognized in the political science definition of politics as the 'constrained use of social power', form and means of constraint notwithstanding (Gooding 2009). Using historical cases of socio-economic influence of various societal groups, modern cases of business interest groups' influence over revenue reforms and the relevant literature, I attempt to link taxation to rule of law in Uganda and by necessary implication the linkage among litigation, political order, and economic political change (Mather 2009). Therefore, in a bid to apply a political science approach to a legal doctrine, I make the argument that taxation presents positive implications for the rule of law when firms act collectively and when the courts enjoy judicial independence.

The current literature covers the impact of taxation on governance in terms of emergence of representative governments (Schumpeter 1954; Tilly 1975; Tilly 1992 Hopcroft 1999; Herb 2003), expenditure (Timmons 2004), accountability (Prichard 2015) and consent to be taxed (Schumpeter 1954; Moore 2004) but it pays limited attention to checks and balances (Fukuyama 2012) and the use of litigation as a strategy in revenue bargaining, hence my contribution. Litigation is used by business interest groups and or their members or proxies to block the implementation of undesirable revenue reforms or instigate reform by having existing undesirable provisions of the law nullified.

The central argument of this thesis is that the link between taxation and the rule of law in low-income economies[5] can be traced in the manner in which business interest associations/groups influence revenue reforms, considering that these are on one hand happier with reforms constituting incentives and exemptions but are opposed to burdensome revenue reforms. Consequently, the manner in which the varying state-business interests are reconciled has a bearing on rule of law and democracy in general. Thus, since taxation breeds contestation, it presents positive implications for the rule of law when firms act collectively and when the courts enjoy judicial independence.

In regard to the methodology, I selected and studied different cases of revenue reforms using data sourced from Bills and Acts of Parliament; Hansards; budget speeches; newspaper articles; court decisions; and interviews and observed the behaviour of business interest groups *viz a viz* the state. This data is appropriate because it provides answers to the research questions about the relationship between societal groups and the state through the objectives of the study.

Interpretation of observations from the cases selected by using political science literature within the context of checks and balances together with the legal and regulatory framework of taxation, in an attempt to link taxation and rule of law, is what constitutes my academic contribution. I also borrow arguments from literature on lobbying and reform litigation (judicialization of politics) to draw conclusions on the manner in which business interest groups influence revenue reform in the political and judicial arena.

[5] Many of the world's 30 or so poorest countries are in Sub-Saharan Africa. They struggle with per capita incomes and are characterized by poor health and illiteracy (Lipsey and Chrystal 2015).

1.1 Background to the Study

The idea that taxation yields representation continues to flourish among a distinguished body of scholarship. This idea is premised on Western Europe literature on state building. In this regard, Tilly (1975) argues that there is a close historical connection among increases in stateness, expansion of armed forces, rises in taxation and popular rebellion. That in England the need for taxation led to conflict between taxpayers and the monarch, eventually resulting in tax bargains, greater representation and legal protection in exchange for higher taxes. Attempts have been made to mirror this effect of taxation on state building in developing countries but this body of scholarship remains limited in scope. Moore (2008) assesses the relevance of the narrative that the taxpaying process contributes to political development by catalysing revenue bargaining in contemporary developing countries. Scholars have also explored aspects such as the link between taxation and public expenditure (Timmons 2005) taxation and accountability (Prichard 2015) but the facet of taxation and governance within the context of rule of law, particularly checks and balances in developing countries remains understudied.

The leading studies on the subject focus on data comprised in historical events (Tilly 1992), game theory (Bates & Lien 1985; Levi 1988), tax and expenditure statistics (Timmons 2005) and case studies (Prichard 2015), without particularly focusing on the influence of business interest groups on revenue reforms within the context of check and balances. Studies that focus on reforms (Brautigam, Rakner and Taylor 2002) are limited to macro-economic reforms with no particularity of taxation and do not focus on the laws pursuant to which the taxes are collected. Revenue reforms are comprised in tax enactments and as such Bills and Acts of Parliament are ideal data for identifying revenue bargains; hansards, newspapers, and interviews provide context while the literature on revenue bargaining, judicialization of politics and doctrine of rule of law help us draw the connection between taxation and governance within the context of checks and balances and revenue mobilization.

Prichard (2015) focuses on accountability and not the groups of people that demand for accountability. Timmons (2005) argues that there is a strong relationship between the source of revenue and the nature of state output i.e., regressive taxes are consistently associated with higher social spending and human development indicators but not better property rights protection, while progressive taxes are consistently associated with better property rights protection but not higher human development indicators. Fukuyama (2012) describes the current literature as highly confused and inconsistent with regard to the definition of rule of law because it only focuses on modern property rights, contract enforcement, and accountability and as such it does not take into account checks and balances since it is dominated by political scientists and economist; but he does not explore the argument any further. It is also not clear how the particular groups of people in society bring about the said effects.

The implementation of the privatization policy in Uganda coincided with the formation of business interest associations such as Private Sector Foundation of Uganda. The motive of forming such peak associations was to facilitate the growth of the business community into a political settlement (Kalema 2008). PSFU is largely made up of business associations and corporate bodies and its mandate includes carrying out policy research and advocacy on behalf of the private sector; providing a forum for the discussion of policy issues and the impact of those policies on the private sector in Uganda; maintaining dialogue with the government on behalf of the private sector; and undertaking capacity building for the private sector through training and provision of business development services (PSFU 2017). PSFU's apparent influence on revenue is evident from the remarks of chairman (Hon. Gerald Sendawula), who during the 2012 post budget meeting opined that:

> A quick scan of the budget speech and H.E the President's Address reveals that most of the recommendations we put forward to Government have been incorporated in this Financial Year's Budgeting and Planning. For instance, this year I am advised that about

80% of our proposals have been taken care of.

However, this may not be an accurate estimate of the influence of the PSFU considering that business interest associations tend to overestimate their influence while firms understate theirs (Deng & Kennedy 2010) and the participation of other business interest groups cannot be ruled out. Thus, it is prudent to examine the manner in which the major business interest groups influence revenue reform.

Uganda largely relies on tax revenue to finance her expenditure but the capacity to collect the anticipated revenue is undermined by various factors. Taxes on income unlike customs revenue are harder to enforce and easier to avoid or evade. Enforcement is no different from audit and/or collection; it is dependent on information and expertise (Radian 1980). For instance, the administration of corporation tax under the Tax Procedure Code Act is structured in such a manner that a registered taxpayer makes a self-assessment and pays the tax due on the basis of the assessment. Uganda Revenue Authority (URA) is bound by the assessment if it does not make an additional assessment within three years and the taxpayer has a right dispute the additional assessment.

The additional assessment is based on an audit but frequent audits require significant resources yet the resource envelope of URA is limited. The revenue bargaining theory predicts that the high dependence on tax revenue in Uganda would deepen democracy by providing an environment within which revenue providers influence policy since enforcing tax compliance purely through force is costly. This prompts questions regarding state-business relations in Uganda and in particular the bargaining power of business interest groups, strategies employed to influence revenue reforms and the outcomes.

1.2 Statement of the Problem

Taxation has been suggested as a panacea for bad governance in developing countries because it galvanises interests. By supporting the growth of private capital through privatisation and limiting state revenue to taxation, the owners of private capital are in position to influence policy priorities. Uganda has the basic institutions of governance and business interest associations such as the Private Sector Foundation of Uganda and Uganda Manufacturers Association were established in anticipation that they would galvanise and effectively represent the views and interests of the private sector.

However, the effectiveness of the institutions of governance in creating checks and balances, especially during contestation over reform, may be questioned. This is premised on the narrative that the legislature and judiciary are overshadowed by the executive and it raises questions as to how these institutions can be leveraged by business interest groups in the contestation over revenue reforms.

The current state building literature focuses on the effect of taxation on governance in terms of the emergence of representative institutions, expenditure priorities and accountability but limited attention has been given to governance within the context of rule of law, particularly checks and balances. Rule of law is an important aspect of political development and as such it is worth discussing.

This study, therefore, presents a framework that links taxation and to rule of law within the context of checks and balances by focusing on the influence of business interest groups over revenue reforms in Uganda.

1.3 Research Objectives

1.3.1 General Objective

The purpose of this study is to examine how business interest groups in Uganda influence revenue reforms.

1.3.2 Specific objectives

i. To find out how the colonial and post-independence regimes responded to the different societal interests.
ii. To find out how business interest groups influence revenue reforms in the political arena.
iii. To find out how courts are used by business interest groups to influence revenue reforms.
iv. To identify the salient features of revenue bargaining between the state and business interest groups.

1.4 Research Questions

i) How did the colonial and post-colonial regimes respond to competing societal interests in Uganda?
ii) How do business interest associations influence revenue reforms?

1.5 Scope

The study uses the political science literature to examine how business interest associations influence revenue reforms in Uganda within the context of checks and balances. In so doing, the study discusses the responsiveness of the state to societal groups and individuals by reviewing the fiscal history of Uganda, analysing the legal and regulatory framework of taxation in Uganda, and examining how business interest associations influence domestic revenue mobilization reform, and the role of the courts of law in the process. The overall time scope of the study is 1956 to 2020 but greater focus is on the cases during the course of the study because of the need to follow the revenue bargaining processes in a bid to observe how business interest groups influence reform both as an academician and practitioner.

1.6 Significance of the Study

The current literature does not adequately cover contestation over the tax burden and its implications for governance. The study explores the micro foundations of the revenue bargaining theory using a political settlement approach and as such the findings enrich political economy theories of democratic governance by demonstrating the role of business interest associations in domestic revenue mobilization reform and its implications for the rule of law. The findings also provide business interest associations a basis for reviewing their capacities and how they can obtain desirable outcomes during revenue reform. The study is beneficial to academia, the private sector and it provides a basis for government to review governance policies in light of the discovery of oil in order to avoid a rentier state crisis.

1.7 Analytical Framework

Taxation precipitates bargaining between revenue providers and the state because of the varying interests of the parties. Government expenditure increases every year and this has to be matched with an increase in revenue. Since debt financing is limited by various factors, the state is consistently under pressure to raise additional tax revenue to finance domestic expenditure and to repay the loans as and when they become due.

Raising additional tax revenue implies that the state has to increase its tax effort by increasing its capacity to collect taxes and come up with new tax handles. These measures are comprised in tax amendments and their effect is such that they increase the tax burden on the firms and undermine their profits. Consequently, the firms contest or otherwise bargain over the reforms, through industry or peak associations, with the state by leveraging various institutions of governance. The outcome of the bargaining process is such that the associations succeed in blocking or softening revenue raising reforms.

Where they have not been successful, revenue bargaining may continue at the time when the reform is being implemented or may escalate to the courts of law or both. The business interest associations mobilise in opposition of the implementation of the reform (Thomas & Grindle 1990) by seeking the intervention of the minister responsible for the docket in which the reform lies or may seek the intervention of the president. In the alternative or in addition, the business interest groups may institute proceedings in the courts of law to have the revenue reform nullified.

However, this does not necessarily mark the end of the revenue bargaining process because the loser may take further action to have their way. This sparks off another cycle of revenue bargaining because government, having lost the contest in court may enact legislation to correct any illegalities identified by court or may present the reform in the

subsequent year or having lost the contest in parliament, the president may assent to the Act but refer particular reforms (provisions of the Bills) to parliament to be reconsidered. The new cycle of revenue bargaining can also be sparked off when business interest associations appeal to parliament having lost the court contest.

Figure 1: An Illustration of the analytical framework

The firms or business interest groups may also set the revenue bargaining agenda by proposing revenue reforms to the state. These often take the form of tax exemptions/waiver and tax incentives. Such reforms are successful when adopted by the executive, reduced into Bills and approved by parliament but are unsuccessful when they are rejected by the executive or when adopted by the latter but rejected by parliament. Thus, economic situations do not automatically give birth to legal forms but they merely provide opportunity for the for the spread of legal technique if it is invented (Freeman 2014).

1.8 Methodology

In order to find out how business interest associations influence revenue reforms, I used a qualitative approach and in particular case study by focusing on the collective influence

of the private sector. Yin (1984) defines case study research method as an empirical inquiry that investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident; and in which multiple sources of evidence are used. This approach facilitates the focus on the processes through which revenue reforms are influenced and the outcomes of the processes. Thus, providing an understanding of how things occur (Fraenkel & Wallen 1990; Merriam 1988).

I reviewed text data and observed the behaviour of business interest groups *viz a viz* the state, which explains why cases were selected during the course of research. This data is appropriate because it provides answers to the research questions about the relationship between societal groups and the state through the objectives of the study. Interpretation of observations from the cases selected was done by using political science literature within the context of checks and balances together with the legal and regulatory framework on taxation, in an attempt to link taxation and rule of law. I also borrow arguments from literature on lobbying and reform litigation (judicialization of politics) to draw conclusions on the manner in which business interest groups influence revenue reform in the political and judicial arena.

1.8.1 Data Collection

Data collection proceeded by means of a desk-based literature review of relevant peer-reviewed research, legal and regulatory framework, tax administrative data and examining key policy documents. I selected and studied different revenue reforms using data sourced from Bills and Acts of Parliament; Hansards; budget speeches; newspaper articles; court decisions; and interviews and also observed the behaviour of business interest groups *viz a viz* the state. I collected and reviewed budget speeches for the period 1959 to 2020, tax amendment Bills and Acts for the period 2000 to 2020 and obtained Hansards for the same period. I also collected newspaper articles and court decisions

relating to revenue reforms. This data is appropriate because it provides answers to the research questions particularly the relationship between societal groups and the state.

I categorized budget the speeches into five regimes i.e., Colonial, Obote, Amin and Museveni prior to 1995 and reviewed the same with particular focus on the responsiveness of the regimes to different groups in society. This was supplemented by data from texts on the political and economic reforms during the respective periods.

I made a comparison between tax amendment Bills and Acts in order to identify reforms which appear in the amendment Bills but were left out in the amendment Acts and perused the respective Hansards and newspaper articles to identify the deliberations on the same. Having identified the relevant revenue reforms, I categorise them into those that appear contentious within the business community and those that are favourable to the groups. The selection of the cases in Chapter 4 was informed by the need to demonstrate diversity in revenue reform in terms of tax exemptions, removal of incentives, 'burdensome' administrative measures, introduction of new tax handles and attempts by business interest groups in a bid to set the revenue reform agenda. These were categorised into blocked and softened reforms. Upon reviewing decisions of the various courts, I selected decisions that relate to the relevant reforms and those that are suggestive of revenue bargaining and categorised them into five themes.

I also conducted unstructured/semi structured interviews by asking officials in the Ministry of Finance, Uganda Revenue Authority, Uganda Manufacturers Association (UMA), Ministry of Trade, Kampala City Traders Association (KACITA), Private Sector Foundation of Uganda (PSFU), Uganda Bankers Association, Southern and Eastern Africa Trade Information and Negotiation Institute (SEATINI), and the Civil Society Budget Advocacy Group (CSBAG), unstructured and generally open ended questions (Creswell & Creswell 2018) in relation to the reforms selected in order to gain further understanding the influence of business interest groups.

The various newspaper articles provide facts regarding the interaction between the state and business interest associations in respect to the selected reforms considering that a majority of the cases developed during the course of the study. The interviews provided supplementary information regarding the views an opinion of the participants on the selected reforms and the involvement of different business interest groups in the selected reforms since political settlement analysis requires the sort of information that is deep, qualitative and sometimes quite sensitive (Kjaer 2004). My preference for unstructured/semi structured to structured interviews is attributed to my skills and experience as a litigation lawyer and also because semi structured interviews allow greater control over the line of questioning and flexibility (Creswell & Creswell 2018) due to the sensitivity of the information. The risk of relying on uncorroborated evidence is minimal if not negligible because the data sought was largely in form of clarifications on and confirmation of facts obtained from reliable sources. Public documents such as tax amendment Bills and Acts, parliamentary Hansards and budget speeches were used to identify cases of revenue reform although some of the cases were selected from public debates.

The criteria for selecting cases from the statistical point of view was representativeness and diversity-variation (Goertz 2012). The cases were also selected on the basis that they matched the analytical framework and the fact that the revenue reform has an effect on business, as opposed to reforms that affect consumers. As a result, reforms such as imposition of excise duty on mobile money transfers and over the top taxes were left out. Similarly, the court cases were selected on the basis they were a product of a reform or were instituted to challenge the status quo. This implies that court cases that result from audits were not included. Some reforms were also left out because they fall outside the time scope of the study e.g., cases instituted against the electronic fiscal receipting and invoicing system and those instituted against the collection of advertising fees.

1.8.2 Data Analysis

Data analysis was simultaneous in that it proceeded hand-in-hand with data collection and writing of the findings. Inductive analysis was used to identify key issues around revenue bargaining from the text data while deductive analysis was used to interrogate the main issues identified. I reviewed the dataset and used a political settlement approach to winnow the data (Guest, Macqueen & Namey 2012) by focusing on the relationship between the state and the major business interest groups as revenue providers in instances of tax reform and the chronology of particular events.

These include events leading to the drafting of the tax amendment Bills, the passing of the Bills into Acts, and those that occur after the enactment focusing on the state business interactions. The data from interviews was analysed by corroborating the information with the primary data and seeking further and better particulars regarding the participation of particular business interest groups in specific reforms. I rely on the political settlement approach (power and interests of the business interest groups and firms) and the rule of law doctrine (checks and balances) to interpret of the events and outcomes.

Interpretation of observations from the cases selected by using political science literature within the context of checks and balances together with the legal and regulatory framework of taxation, in an attempt to link taxation and rule of law. I also borrow arguments from literature on lobbying and reform litigation (judicialization of politics) to draw conclusions on the manner in which business interest groups influence revenue reform in the political and judicial arena.

Validity was ensured by use of authentic sources of data such as Acts of parliament, Hansards and text data from leading authors. This is in addition to the reflexivity of the

researcher owing to 10 years of tax experience.

1.8.3 Limitations

The study covers the colonial period, the data available in terms of budget speeches begins from 1956 but this was overcome by relying on texts by leading authors on the history of Uganda. Arranging some of the interviews was cumbersome considering that some of the potential interviewees could not be accessed at the agreed dates and time while some of the responses were biased and unhelpful. I attempted to conduct some of the interviews by telephone but the interviewees were suspicious and unwilling to entertain this mode of interviews. The process of accessing some of the public documents was bureaucratic and frustrating since they were not available online. I searched for alternative sources of information to bridge this gap since the primary data set is reliable.

1.9 Chapter Synopsis

1.9.1 Chapter 1

Chapter one is an introductory chapter consisting of the thesis, background to the study, research questions, statement of the problem, analytical framework and the methodology used to conduct the study. The study was informed by the need to emphasize the link between taxation and the rule of law particularly checks and balances because not much attention has been paid to it yet it is an important aspect political development. The analytical framework is such that revenue pressure leads to revenue reforms which in turn leads to revenue bargaining between the state and business interest groups. This often results into softening or blocking of revenue reforms. However, bargaining continues when the losers seek other means of achieving their interests in a reform. This is a qualitative study conducted using a case study approach.

1.9.2 Chapter 2

Chapter 2 reviews the literature relevant to the study. This is categorised into taxation and representation; revenue bargaining perspective; taxation and governance in developing countries; political settlement theory; business interest associations; and reform litigation. The gap in the main body of the literature (revenue bargaining/ state building) is that whereas it discusses aspects of governance such as representation and accountability it does not adequately address the aspect of rule of law within the context of check and balances, and in particular courts as an arena for revenue bargaining. I borrow arguments from literature on business interest associations and reform litigation to buttress the argument. The current literature uses surveys, theoretical frameworks, anecdotal evidence but there is limited use of case study. As such academia is deprived of link between processes and outcomes in revenue bargaining in developing countries (Kjaer, Ane and Marianne 2019).

1.9.3 Chapter 3

Chapter 3 attempts to construct the historical perspective of influence over economic reforms by different groups of people during the respective regimes. It demonstrates the distribution of power among the different groups of people and the variations that resulted from the change in regimes. The chapter shows that under colonial rule, the policy upon introduction of cotton and coffee was that Africans were the primary producers while the European and Asian firms handled the processing and marketing. Africans attempted to reverse this status through protests but made little progress. At the dawn of independence, the Obote I government increased African's participation in the economy by facilitating the cooperative movement, creating statutory bodies and nationalising private enterprises while the Amin regime expelled the Asians and British in a bid to Africanise the economy. President Museveni having taken a socialist approach at the commencement of his regime resisted the Structural Adjustment Programmes from

World Bank and IMF but later accepted them. It is some of these programmes that have enabled business interest groups gain influence in the contestation over revenue reforms.

1.9.4 Chapter 4

Chapter 4 discusses how business interest groups influence domestic revenue mobilization reform in the political arena, it analyses the budget cycle as a framework for revenue bargaining and some of the cases that constitute revenue bargaining. The successful bargains often involve the cooperation of other business interest groups save for waivers while the partly successful bargains occur where the State is unwilling to do away with the entire reform and can only compromise on particular aspects of the reform. The unsuccessful attempts to set the revenue reform agenda tend to have the effect of costing the State revenue and there is little effort invested in pushing for them. The chapter also shows that bargaining may continue even after a law has been passed as was the case for withholding VAT and that the reforms are largely administrative in nature.

1.9.5 Chapter 5

Chapter 5 reviews the court system in Uganda, it discusses reforms linked to the judicial process (revenue reform litigation cases) and considers the judicial process both as an extension of the revenue bargaining process and an arena for setting the revenue reform agenda. Revenue reform litigation cases emerge from the failure by political actors to listen to the 'voice of reason' or an attempt to change the status quo and they are commenced in the Constitutional Court and the East African Court of Justice. The trade licence and excise duty reform cases resulted from the failure of business interest groups to achieve desirable outcomes in the political arena which is attributable to revenue pressure, lack of meaningful participation in the political process and limited use of collective action. These factors weaken the bargaining power of business interest groups and as a result their 'voice of reason' may not be heard. However, there are instances

where business interest groups succeeded in court. Their success can be attributed to judicial independence, availability of judicial review procedure, judicial activism and *locus standi*. These factors recalibrate the scales of power because the courts 'are concerned' with the facts and the law, hence justice.

1.9.6 Chapter 6

Chapter 6 identifies and analyses some of the salient features of revenue bargaining i.e., bargaining power of business interest groups, arenas where revenue bargaining takes place and strategies employed by business interest groups. The chapter is intended to highlight the political economy context of the preceding chapters and as such it analyses bargaining in terms of factors that facilitate revenue bargaining and the different shapes it takes. In regard to bargaining power, the chapter considers tax contributions, government's appetite for additional revenue, mobility of capital and contributions to the NRM party as some of the determinants of the bargaining power of business interest groups. It not only contextualizes Chapter 3, 4 and 5 into arenas of revenue bargaining but also analyses the use of collective action, litigation, demonstrations/protests and lobbying as strategies employed by business interest groups in the revenue bargaining process.

1.9.7 Chapter 7

This is the ultimate chapter and it demonstrates the application of a political economy approach to the doctrine of rule of law by relating checks and balances to revenue bargaining. This then forms the basis for the argument that taxation presents positive implications for the rule of law when firms act collectively and when the courts enjoy judicial independence. The observation is that contestation between business interest groups and the State over revenue reforms is a recent development in Uganda but one that is expected to continue for a foreseeable future. This is attributable to the narrow tax

base, capacity constraints of the URA and the ever-increasing financial needs of the State. Since the tax handles are limited and URA's capacity to effectively tax the informal sector is constrained, and the State is always in need for additional revenue, recourse is made to the formal sector. These coupled with access to information challenges, formal and informal institutions make revenue bargaining imminent. The ultimate conclusion is that, since taxation breeds contestation, it presents positive implications for the rule of law when firms act collectively and when the courts enjoy judicial independence. It is recommended that business interest groups should increase their capacity to credibly engage the state in technical policy discussions and the Government should make proposals informed by sufficient research which considers the impact of reforms on the business community and the economy at large. There is also need to study the impact of oil revenue on the rule of law in Uganda in light of the fear that rentier states are repressive.

CHAPTER TWO
LITERATURE REVIEW

2.1 Introduction

The current political economy literature is dominated by political scientists and economist which may explain the glaring gap (Fukuyama 2012) yet the first dissertations in political science and most of whose students had first passed through the law school were dominated by constitutional and legal history (Whittington, Kelemen & Caldeira 2009). The current political economy literature that links taxation to governance pays limited attention to the doctrine of rule of law, at least within the context of checks and balances, yet it is also an important aspect of political development.

The literature currently covers how taxation led to the emergence of states and representative institutions; the link between tax compliance and governance/influence over policy; the link between taxation and expenditure; and that between taxation and accountability. The focus has since shifted from the link between taxation and democracy in Europe to Sub Saharan Africa i.e., Moore (2008) argues that governance in Africa is poor because the people are not taxed enough.

This literature does not pay considerable attention to revenue bargaining processes and outcomes (Kjaer, Ane and Marianne 2019) especially among revenue providers such as business interest groups. Consequently, I rely on literature on state-business relations and reform litigation (judicialization of politics) to address some of the gaps in the fiscal contract and political settlement literature in a bid to demonstrate how business interest groups influence revenue reform in Uganda and its implications for the rule of law.

Literature on state business relations is useful in showing how state-business relations are forged, their effect, endogenous and exogenous factors that determine the strength of business interest associations, and strategies employed in pursuit of their policy preferences. Reform litigation literature on the other hand, is elaborate on the choice

between litigation and lobbying, conditions under which courts produce significant social reform, effectiveness of reform litigation, and the ability of judges to exercise political power. I knit these sets of literature into a coherent argument on how business interest groups influence revenue reforms and its implications for the rule of law.

2.2 Taxation and Representation

Arguments regarding the link between taxation and representation have been advanced by several scholars in various forms. These can be described as variants or facets of the core argument that taxation yields good governance. Initial arguments are largely to the effect that taxation led to the emergence of the state (Schumpeter 1954; Tilly 1975; Tilly 1992 Hopcroft 1999; Herb 2003). In his seminal work, Schumpeter (1954) posits that taxes not only helped to create the state but also helped to form it. This is said to have happened when the prince could not borrow anymore to finance the Turkish wars, and he turned to the estates which admitted that wars were a matter of 'common exigency'.

In so doing, a state of affairs which was bound to wipe out all paper guarantees against tax demands was acknowledged. As such a state was born as a result of the concession on taxes. Tilly (1975) supports this proposition by attributing tax to state building in Western Europe. He argues that there is a close historical connection among increases in stateness, expansion of armed forces, rises in taxation and popular rebellion. He further argues that the most influential forms of popular resistance centred on taxation because it was the chief means by which builders of states supported their expanding armies which were in turn their principal means of establishing control.

In his later works, Tilly (1992) argues that in England the need for taxation led to conflicts between taxpayers and the monarchy, eventually resulting in tax bargains that granted taxpayers greater representation and legal protection in exchange for higher taxes. In North and Weingast's account of the Glorious Revolution, for example, the rich cut a deal

with the crown in which they agreed to provide revenue in return for more secure property rights and influence over policy. In regard to taxation and democracy, Hopcroft (1999), upon comparing taxation in France and England during the period 1380 and 1688, draws the conclusion that the English monarchy's dependence on income from indirect taxation helped to maintain the balance of power between monarch and parliament in the crucial centuries while the French monarchy's dependence on income from direct taxes led to absolutism.

This variance is attributable to the English monarchy's inability to impose direct taxes due to the restraint from parliament as compared to France where the king's evasion of central representative bodies was the opportunity the new tax system gave for the co-optation of the nobility, and hence the buying off of the greatest threat to the rise of absolutism. Herb (2003) emphasises that the relationship between taxation and representation in European history is premised on the fact that pre-modern assemblies, or their members, typically had a deep involvement in the mechanics of tax collection, and it was primarily through this that taxation promoted the emergence, strength, and longevity of representative institutions.

Subsequent variants of the argument have linked taxation to representation in terms of policy influence (Bates & Lien 1985), compliance (Levi 1988), governance (Moore 2004), public expenditure (Timmons 2005) and accountability (Prichard 2015). Bates & Lien (1985) posit that asset owning elites can wrest control over public policy from revenue seeking monarchs by threatening market defection, thereby securing triumph of democracy.

This is argument is in part rooted in events in Europe, where footloose traders who could equally locate their business elsewhere which led rulers to adopt a consensual path of sharing authority with representatives of taxpayers (Moore 2004). Bates & Lien (1985) construct an algebraic model premised on the proposition that the state and citizenry

conflict over policy but depend on each other to the extent that government determines the policies which the citizens care about while the latter determine the former's tax base. As such, an asset owner under adverse economic conditions may exit from the market or remain but alter conditions within it through political action.[6]

In regard to compliance, Levi (1988) constructs a theory of predatory rule pursuant to which she argues that rulers always seek to extract as much revenue as possible to fulfil their idiosyncratic personal desires, but are constrained by their relative bargaining power *vis-a-vis* other social actors and the transaction costs incurred by monitoring agents and constituents and punishing non-compliance. Consequently, quasi-voluntary compliance occurs when citizens are willing to voluntarily pay their taxes only on the condition that both rulers and other taxpayers cooperate.

Rulers' cooperation is by establishing institutions or provision of public goods. Thus, coercion and ideological compliance do not adequately explain compliance by taxpayers hence quasi voluntary compliance i.e., unless they are coerced, induced, or otherwise motivated to pay, constituents will minimize their tax payments or, should the circumstances permit, try to get out of paying them altogether.

Levi also argues that since large taxpayers offer the largest potential of revenue gains, governments are likely to make targeted concessions with large taxpayers. It is on the basis of these arguments that Timmons (2005) postulates the fiscal contract theory by demonstrating that there is a strong relationship between the source of revenue and the nature of state output i.e., regressive taxes are consistently associated with higher social spending and human development indicators but not better property rights protection, while progressive taxes are consistently associated with better property rights protection but not higher human development indicators.

[6] Hirschman A.O. (1970). *Exit, Voice and Loyalty: Response to Decline in Firm's Organizations, and State*. Harvard University Press.

Similar arguments about governance and tax compliance have been made in tax morale literature (Schnellenbach, Feld and Schaltegger 2010; Heinemann & Kocher 2012; Alm et al., 1992; Doerrenberg 2015; Torgler & Schaltegger 2005; and Fochmann & Kroll 2016). Schnellenbach, Feld and Schaltegger (2010) argue that taxpayers evade taxes to retaliate against a non-cooperative and unfair government. Heinemann & Kocher (2012) argue that *ceteris paribus* reform losers tend to evade more taxes after the reform and that a reform from a proportionate to a progressive system decreases compliance compared to a switch in the reverse direction.

However, they argue that the level of compliance is generally higher under the progressive than under the proportionate regime. Alm et al., (1992) and Doerrenberg (2015) argue that taxpayers who have input in the decision to allocate government expenditures will be more likely to comply than individuals who are not involved in the allocation process that is, compliance will be higher when individuals vote on what will be provided with their tax payments than when the decision is imposed upon them, even if the outcome is identical. In particular, when participation goes along with a process of public discussion, a sense of civic duty seems to be fostered by the awareness of contributing to the public goods (Torgler & Schaltegger 2005).

Fochmann & Kroll (2016) conducted an experiment which proved that if the redistribution mechanism is perceived as positive by the taxpayers, it leads them to comply with the tax laws more truthfully. Thomas and Grindle (1990) make similar arguments in regard to the need for consensus among powerful interests as a necessary political resource for introducing and sustaining a reform. Similarly, I show that when taxpayers do not effectively participate in bringing about an undesirable revenue reform, they oppose its implementation and at times even petition the courts of law to nullify the

reform.

Moore (2004) argues that taxation should yield a governance dividend and perhaps the quality of governance in contemporary developing countries might improve if states were more dependent on domestic taxpayers for their financial resources. He posits that increased dependence by governments on taxation generates a more negotiated relationship between the state apparatus and the society, involving an exchange of greater institutionalised societal influence over revenue raising and expenditure.

The argument is founded on the role of taxation in state building in Western Europe and a comparison of rentier states and those that depend largely on taxes. Rentier states live largely off an unearned income i.e., the revenue is sourced with little such effort in relation to their domestic population. These may be natural resource rents or strategic rents. Natural resource rents include minerals, diamonds, tropical timber and oil which tends to yield very large surpluses (in relation to the production costs) which tend to be concentrated in the hands of big oil companies and central states (Moore 2004).

Strategic rents on the other hand, include military assistance and development aid and confer surpluses to governments or other organizations exercising authority or the fact the that other states treat them as legitimate territorial authorities. Rents undermine democratic governance because they engender autonomy from citizens, absence of incentives for civic politics, non-transparent public expenditure, and ineffective public bureaucracy (Ross 2014) yet taxes place considerable organizational, bureaucratic and political demands on the state apparatus (Moore 2004).

The final variant of taxation and governance is responsiveness and accountability. Prichard (2015) presents cases that provide insights into how and when connections

between taxation, responsiveness and accountability have emerged in practice in contemporary developing countries. His model shows that the need for taxation can contribute to the expansion of responsiveness and accountability by increasing the bargaining power of taxpayers *vis-à-vis* the government through the potential for tax resistance and by encouraging political engagement and collective action. These result into responsiveness and accountability or lead to direct tax bargaining which in turn leads to responsiveness and accountability.

Responsiveness is taken to refer to the substance of government action while accountability is taken to refer to institutionalised processes that shape government action and state-society relations. Prichard argues that these outcomes are influenced by the level or revenue pressure facing government, scope and potential for tax resistance, taxpayer capacity for collective action, existence of institutions that facilitate bargaining and the political salience of taxation.

2.3 Bargaining Perspective

Unlike the previous section that highlights the variants of the argument that taxation breeds good governance, this section attempts to review the interaction between the state and citizens within the revenue bargaining context. Moore (2004) opines that the general consensus among political scientists is that effective states[7] are to a large degree the product of processes of interaction and (implicit) bargaining and exchange between the state apparatuses on one hand, and, on the other, societal groups that are more or less organised, more or less encompassing, more or less self-conscious.

Timmons (2005) argues that the protection of property rights rests on a bargain between

[7] He notes that there may be a lack of consensus on what constitutes a "good state" hence substituting "good state" for "effective state"

holders of capital and the state, whereby the former turns over some of their money to the latter return for policies that allow them to make more money. The dynamic model of tax bargaining proposes that the need for taxation can contribute to the expansion of responsiveness and accountability by increasing the bargaining power of taxpayers *vis-à-vis* the government (Prichard 2015).

He further argues that the bargaining power of taxpayers may be increased through the potential for tax resistance and by encouraging political engagement and collective action. Since taxes are so consequential to every business decision, overtime the tax system reflects a large number of political bargains made by the state with different interest groups (Herbst 2000).

Taxpayers who believe that their interests are represented in a democracy may be more willing to pay taxes, but they also begin to believe that their payment of taxes gives them the right to representation (Brautigam et al 2008). Boucoyannis (2015) argues that the bargaining logic to the emergence of institutions and rights is misguided and emergence remains crucial for developing countries, where institutional capacity cannot be taken for granted.

As developing countries progress towards the rule of law, the desires of interest groups do not change, but their approach is directed to influencing policy. The literature seems to assume that the large taxpayers act as individuals and not groups. Moore (2004) recognizes that bargaining occurs between the state apparatuses and societal groups that are more or less organised and self-conscious, but does not clearly demonstrate how the different societal groups influence policy.

Regressive taxes are largely collected in an indirect manner and cover a wider base compared to progressive taxes which are largely direct and cover a narrow base. Consequently, regressive taxes constitute a greater proportion of taxes in developing

democracies and are administered through large taxpayers hence the need to draw more focus on a societal group of large taxpayers. The literature argues that states strike bargains to maximize their revenue and as such state responsiveness yields tax compliance. However, less attention has been paid to the link between taxation and governance within the context of checks and balances.

2.4 Tax and Governance in Developing Countries

Research has extended to the link between taxation and governance to developing countries (Jamal 1978; Gloppen and Rakner 2002; Fjeldstad and Rakner 2003; Moore 2008; Fjeldstad and Thilkersen 2008; Prichard 2009; Eubank 2011; Timmons and Garfias 2015). Jamal (1978) demonstrates the link between the burden of taxation on Uganda's Africans and the distribution of government expenditure in the colonial period. He focuses on farmers and argues that African farmers paid a much higher proportion of their income in taxes than non- Africans yet expenditure on social services was low and its distribution was lopsided, with Africans getting the short end of the stick.

Gloppen and Rakner (2002) explain the circumstances under which taxation provides for more democratically accountable governments. They do so by focusing on the effect of revenue reforms on efficiency and transparency, whether revenue reforms have created closer links between African governments and their citizens and thereby increased democratic accountability, and the extent to which external accountability relations between the governments and international donors affect domestic accountability relations.

They argue that the revenue reforms of 1990s appear only to a limited degree to have resulted in closer links between government and citizens and that the reforms did not provide the basis for more democratically accountable governments in Zambia, Tanzania and Uganda. This is attributable to the fact that the revenue reforms were not focused on

the forms of taxation most profoundly affecting the relationship between governments and citizens (direct taxes) and large sectors of the economy, most notably agriculture and the informal sector, remained outside the tax system. Similar arguments are advanced by Kwagala-Igaga (2016) in regard to Uganda.

Fjeldstad and Rakner (2003) further argue that a voice and an organised response to new revenue policies are emerging in Tanzania, Zambia and Uganda. Prichard (2010) looks into whether the evolution of the tax system in Ghana provides evidence that government efforts to raise taxes have given rise to successful demands for greater accountability. He finds that there is significant evidence that taxation has often been a catalyst for demands for greater accountability, but the nature of this relationship has varied dramatically across time, context and tax types.

Moore (2008) assess the relevance of the narrative that the taxpaying process contributes to political development by helping to catalyse revenue bargaining to contemporary developing countries. He argues that democracy increases the potential rate of turnover of governing elites, but increases the chances that a particular group, once displaced, will have the opportunity to return to power in the future.

This is contrary to the argument that in the contemporary developing world, many governments seem insecure and as such they are unlikely to raise taxes or to engage in revenue bargaining (Levi 1999a). Other contextual factors influencing revenue bargaining in contemporary developing countries include the influence of IMF over tax policy and emergence of large economic rents (Moore 2008).

Fjeldstad and Therkildsen (2008) postulate that insofar as poll taxes in Uganda and Tanzania contributed to democratisation, this was not through revenue bargaining, in

which the state provides representation for taxpayers in exchange for tax revenues but the taxes instead mobilised rural people politically to combat a practice that they experienced as repressive. Thus, the introduction of competitive political systems turned the coercive collection of poll taxes into a national political issue and people used their voting power to get rid of them.

In specific regard to the informal sector, Joshi and Ayee (2008) posit that effective taxation of the informal sector is more feasible when two main sets of factors are in place: (a) strong fiscal pressure on governments to increase revenues, and (b) the existence of collective actors in the informal sector who have institutionalised channels for negotiation with the state.

Timmons and Garfias (2015) find that taxation led to accountability in Brazil on the basis that property tax revenue rises with clean audit reports and falls as revealed corruption increases. Similarly, Eubank (2011) finds that the government of Somaliland's dependency on local tax revenues (resulting from its ineligibility for foreign assistance) provided those outside the government with the leverage needed to force the development of inclusive, representative and accountable political institutions.

The literature largely focuses on macro reforms yet micro reforms also have a significant impact on governance. The current literature is largely rooted in political science and as such it does not look at governance within the context of the rule of law. By focusing on reforms comprised in legislation and the interaction between revenue providers and different organs of the state, this research provides a basis for analysing the link between taxation and the rule of law.

2.5 Political Settlement Theory

Khan (1995) developed the concept 'political settlement' in reference the interdependent arrangement of political power and institutions on which a regime is based. Khan (2010) defines political settlement as a term often loosely used to describe the 'social order' based on political compromises between powerful groups in society that sets the context for institutional and other policies. The term is further defined to mean an interdependent combination of a structure of power and institutions at the level of a society that is mutually 'compatible' and also 'sustainable' in terms of economic and political viability.

Political settlement also refers to the expression of a common understanding, usually forged among elites, about how political power is to be organised and exercised, and about how the nature of the relationship between state and society is to be articulated (Menocal 2011). Putzel and Di John (2012) refer to political settlement as 'bargaining outcomes among contending elites', producing the distribution of power on which any state is based and expressed through the prevailing institutions. Laws (2012) refers to political settlement as a 'two-level game' of interactions between key elites, and between those elites and their respective followers; and a 'combination of horizontal and vertical relations that should be at the centre of the definition of political settlements'.

Political settlement analysis offers deeper explanation that opens up the black box of political will in order to explain what policies are politically feasible by focusing on the underlying power arrangements that underpin the emergence and performance of institutions (Kjaer 2015). Khan (2010) argues that the net effects of an institution depends not just on the institution and the production technologies it coordinates but also and critically on the balance of power between the classes and groups affected by that institution, that is, on the political settlement. Similarly, he argues that the most important institutional changes are politically resisted by the losers because compensation is either not offered or, if offered, is not accepted.

Khan posits that a political settlement emerges when the distribution of benefits supported by its institutions is consistent with the distribution of power in society, and the economic and political outcomes of these institutions are sustainable over time. In regard to developing countries, he argues that political settlements are 'clientelist' to the extent that they are characterized by the significant exercise of power based on informal organizations, typically patron-client organizations of different types and that some patron-client networks can operate through formal organizations like political parties.

When Thailand's ruling coalition from the late 1950s was a military-led authoritarian one, business interests were politically weak and only moderately capable of influencing policy. However, around 1977 the political power of business interests came into their own, with powerful business interests operating through the competitive clientelism that emerged. In particular regard to East Africa, Khan argues that Tanzania's endowment of black African capitalists is significantly more adverse compared to say Kenya and as such the ruling coalition in Tanzania is relatively forthcoming in supporting a small number of high-rent foreign investments in minerals, but not very forthcoming about supporting institutional changes which would assist the development of broad-based capitalism in industry or agriculture.

Di John and Putzel (2012) argue that the idea of political settlement as a balance of power that represents a bargaining outcome has important implications for the idea of the 'social contract'. This idea is applicable to state-business relations and the relationship between the ruling elite and relevant industry actors has a bearing on the implementation of policies (Thomas & Grindle 1990). Kjaer (2015) demonstrates how the implementation of reforms in Uganda's fish export and diary sector were affected by interest relevant industry actors.

This literature is instructive on conceptualization of political settlements and the potential

impact on reforms. The literature is cognisant of the fact that powerful groups of people and the state need to make compromises in the course of implementing reforms. Khan (2010) uses a case study approach and also pays attention to developing countries like Tanzania and the need for such countries to have strong indigenous capitalists in order register improvement in governance. However, without the benefit of knowing how business interest groups influence revenue reforms, we are unable to draw conclusions on how powerful business interest groups influence revenue reform in developing countries or at least the outcome of their attempts and the implications for the rule of law.

2.6 Business Interest Associations

The current research on state business interest associations discusses how state-business relations are forged, their effect, endogenous and exogenous factors that determine their strength and strategies employed in pursuit of their policy preferences. However, the link between the processes and outcomes in developing countries remains understudied. In that regard, this thesis demonstrates how business interest associations influence revenue reforms by linking the revenue bargaining processes and outcomes.

Business interest associations are beneficial to individual firms because they enable businesses to be represented as a whole; compensate for the economic weakness of the individual firms (Durand 1992) and make it easier for the firms to coordinate policy between the government and business (Weiss 1998). Qureshi and Willem et Velde (2007) argue that being a member of a business association improves firm performance in form of total factor productivity. Such benefits attract most potential members and give the association a high density of membership and significant material resources (Doner and Schneider 2000).

The formation of business interest associations is incentivised by political and economic

crises since these tend to affect vested interests and threaten property rights (Durand 1992; Kjaer 2015). Durand further argues that states provide unintended incentives for collective action, mostly through threats to business as exclusion of business from policy making. However, Schneider (1998) postulates that state actors organise businesses in the pursuit of their statist interests which is done by granting associations selective benefits such as institutionalised access to policy deliberations.

Rueschemeyer, Stephens and Stephens (1999) argue that democracy cannot be consolidated without effective representation of capitalists through their business associations while Schimitter (1992) argues that strong business associations expand opportunities for representation and governance which can enhance the 'concertation regime' and consequently improve the quality of emerging democracies. Harris (2006) suggests that good state-business relations are based on benign collaboration between business and the state with positive mechanisms that enable transparency, that is, the accurate and reliable information flow between business and government; the likelihood of reciprocity; increase credibility of the state among the capitalists, and establishment of high levels of trust between public and private agents.

Handley (2010) posits that constructive contestation is more likely to produce policy that serves the interests of a wider slice of the population than neo-patrimonial collusion. Thus, formal and informal exchanges between business and the state were useful for formulating the basis for a growth-oriented policy regime in Zimbabwe and as a result difficulties associated with economic reforms can be avoided if state-business consultations are maintained (Brautigam, Rakner and Taylor 2002).

In regard to economic growth, Sen and Willem et Velde (2007) argue that business interest associations provide a check and balance function on government fiscal policies thereby ensuring appropriate infrastructure. This is premised on the evidence to the effect that countries which have shown improvements in state-business relations have witnessed

higher economic growth, controlling for other determinants of economic growth. Doner & Schneider (2010) argue that activities of business interest associations also yield unintended but desirable consequences such as reducing inflation, setting standards for agricultural exports, promoting training, and reconciling differences between upstream and downstream parts of value chains. Capitalist business interests can therefore promote the kinds of growth–oriented policies despite the fact that state business relations in Africa are characterised by patrimonialism (Kjaer 2015; Tangri & Mwenda 2019).

There are exogenous and endogenous factors that create a conducive environment for policy influence by business interest associations. Democracy is the cardinal exogenous factor that favours the ability of business interest associations to influence policy or reforms. It is manifested in form of institutionalised public-private sector meetings (Killick 1998; Schneider 1998; Brautigam, Rakner and Taylor 2002; Willem et Velde 2008; Ngwafu & Dibie 2016). Killick (1998) and Willem et Velde (2008) argue that collaboration and consultation through high level institutionalised public-private sector meetings is capable of yielding structural adjustments.

Similarly, institutionalised structures offer regular opportunities for important stakeholders to meet with government officials to discuss and debate economic policies, and to develop a 'shared project' in promoting growth (Brautigam, Rakner and Taylor 2002). Institutionalised public-private sector dialogue can be guaranteed by enacting legislation that requires consultation as part of the policy making process (Ngwafu & Dibie 2016).

Democracy provides an environment more adequate for and tolerant of organizational

initiatives and offers the opportunity for business people to freely organize, voice their policy preferences (Weymouth 2012) and to bargain more safely than under a military regime (Durand 1992). It offers greater space for interest group contestation, interaction and influence over government decision making processes; and may reduce state autonomy (from politically motivated pressures to distribute the resources needed for effective policy-making and implementation), which is presumed to be important in order for the state to avoid 'capture' (Brautigam, Rakner and Taylor 2002). As such, the erosion of democracy reduces business access to state elites, breaking up business interest associations.

However, because businessmen in general, and peak associations in particular, are not 'that important' for the state, it is always more interested in 'powerful investors' (Durand 1992; Tangri & Mwenda 2019).

The endogenous factors that account for the strength of business interest associations is largely pegged on the capacity of the associations to engage in a robust and sustained set of exchanges concerning policy. The organizational capacity of business interest groups is determined by the ability to generate and pursue pan-business positions and the ability to resolve conflicts within their own ranks (Handley 2010).

According to Doner and Schneider (2000), the underlying causes of institutional strength in associations include high member density, valuable selective incentives, and effective internal procedures for mediating member interests. The selective incentives envisaged include export and import quotas, training programs, and institutionalized access to policy deliberations in the government.

The more representative an association is, encompassing a wide range of businesses, the

more likely it is to support policies that are generally good for economic stability and growth rather than narrower, rent-seeking goals (Maxfield and Schneider 1997). In addition to the need for technically trained staff, Brautigam, Rakner and Taylor (2002) explain that capacity gives business interest associations credibility in negotiating with government over economic policies while organisational and political resources are important both for reaching consensus among the membership, and for lobbying the highest levels of government.

However, the capacity of business interest associations is undermined by large firms which use informal ways of accessing the state. Foreign owned firms, especially those in developing countries, are often accused of influencing the governments through their powerful economic positions and connections, as well as through the extensive resources available for effective lobbying (Sen and Willem et Velde 2007).
Business interest associations often devise strategies such as lobbying, confronting the state, publicity and supporting scholarly research in a bid to influence policy. Lobbying is the process of offering campaign contributions, bribes, or information to policymakers for the purpose of achieving favourable policy outcomes (Denzau and Munger 1986; Grossman and Helpman 1994; Hall and Deardorff 2006).

Larrain and Prufer (2014) distinguish between good and bad lobbying. Good lobbying is characterized by a free-riding problem because all firms in the economy, not only association members, benefit from more secure property rights, for instance, in the form of less banditry, safer roads, or a less corrupt bureaucracy, which allows firms to retain more of their business profits. Bad lobbying, in turn, is characterized by negative externalities because funds are diverted from the public to the association's members. The firms' participation in business associations help explain lobbying and its effectiveness (Weymouth 2012).

In terms of lobbying strategies, Saha (2017) argues that the likelihood of lobbying

collectively is higher in sectors characterised by low concentration such that the competition effect is clearly dominating any free-riding effects. Thus, firms are most likely to use a collective lobbying strategy when targeting sector-wide trade policy in the nature of public goods while they are likely to lobby individually when lobbying for more product-specific outcomes.

Castaneda (2017), emphasizes that highly centralized, and well-integrated business interest groups are more successful in blocking or softening revenue-raising reforms, or simply transferring tax burdens to consumers or non-organized citizens. That revenue-raising reforms are most likely to occur if there is discord between business and agenda setters' preferences, and the resulting tax policy will depend on business groups' organizational capacity to curtail the effect of the agenda-setters' policy preferences.

Deng and Kennedy (2010) emphasize the importance of personal connections and trust building by hosting banquets as lobbying strategies while Hall and Deardorf (2006) consider lobbying to be a legislative subsidy especially where lobbyists lobby legislators who are their allies by arming them with the necessary information.

Business interest associations also use public relations and supporting scholarly research in pursuit of their policy goals (Deng and Kennedy 2010). Using cases in China, they show that engaging the media involves much more than providing 'red envelopes' to generate good attendance at press conferences and positive stories and as such articles are frequently submitted to the media.

Demil and Bensedrine (2005) argue that legitimization and pressure constitute strategies used by business interest associations in pursuit of their policy goals. Legitimization is the way an organization makes its decisions, behaviours, or structures congruent with the norms of other actors, while legitimacy describes the observed congruence.

Organizations use legitimacy and pressure jointly both to gain access to the political arena and to influence other stakeholders.

In order to influence a regulatory process, an organization must first be accepted at the negotiation table; consequently, gaining access to the political arena can be considered a strategic goal (Hillman, Zardkoohi, and Bierman 1999; Schuler, Rehbein, and Cramer 2002). To gain access, the organization needs to appear as a legitimate actor (Demil and Bensedrine 2005) and to appear as a legitimate actor economic clout and broader representation are relevant (Deng and Kennedy 2010). Explained differently, to be considered legitimate private sector's actual weight in the economy should be felt as an 'independent economic base' (Handley 2010).

Pressure on the other hand, can be exerted through confrontations with the state as seen in Mexico (Heredia 1992) and Zambia (Brautigam, Rakner and Taylor 2002). That notwithstanding, business interest groups have yet to establish themselves as strong advocates of growth-oriented policies, even when policy changes would clearly advance their interests as a group (Brautigam et al., 2002).

This group of literature is helpful in as far as it demonstrates the importance of state-business relations, factors (endogenous and exogenous) that explain the bargaining power of business interest groups, the manner in which lobbying is employed and its effectiveness. However, the setting is largely Latin America and as such does not take into account the uniqueness of certain economies and little is said about contestation over revenue raising reforms. Although the influence of business interest groups on revenue reform in Uganda has been documented by Kangave and Katusiime (2015) and Kangave (2015), little said in regard to contestation over reform. Focusing on contestation over reform underscores the rule of law and also provides a better understanding of the power of business interest groups as a political settlement, hence the significance of this study.

2.7 Reform Litigation

Reform litigation/judicialization of politics is the reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies and it is largely based on experiences in the United States of America (Hirschl 2009). Law is deeply embedded within society and as such it reflects and impacts culture, hence the use of courts as an agent of social reform (Mather 2009). The literature cover judicial behaviour (Segal 2009) and it stretches to determination of the choice between litigation and lobbying (Rubin, Curan & Curan 2001; De Figueiredo & De Figueiredo 2002) conditions under which courts produce significant social reform (Rosenberg 2008), effectiveness of reform litigation (Gambita 1981; Schuckt 1986) and the ability of judges to exercise political power (Mason 1969; Pepper 1972; Smithey and Ishiyama 2002; Nunes 2010).

Mather (2009) discusses how disputes become court cases and how and what occurs to cases once they are in court. He concludes that most of the trial cases are settled through settlement talks without trial and as such lawyers play an important part in dispute settlement. Hirschl (2009) recognises the expansion of the province of courts and judges in determining policy outcomes and argues that courts oversee and enforce the application of due process, accountability, and reasonableness in public policy making judicialization of politics and that this has extended to other process-heavy policy areas such as taxation.

The extent to which judges choose to move beyond their policy preferences is what divides the field of law and politics (Segal 2009). Judicial activism is viewed as the ability of judges to exercise political power (Smithey & Ishiyama 2002). It is also defined as the control or influence by the judiciary over political or administrative institutions, processes and outcomes (Galligan 1991). Smithey & Ishiyama (2002) argue that through

judicial review, judges may substitute their judgment for that of other policy makers and as such power looms particularly large because judicial decisions concerning constitutionality are very difficult to overturn thus making them more permanent as well as more dramatic. Judicial independence certainly increases the potential for judicial activism but it does not assure it since judicial power is highly contingent on the acceptance of other policy makers as judges lack the power to fund or enforce their decisions.

Judicial activism may be limited by what is feasible for judges to do (Segal 2009). Rosenberg (2008) argues that these constraints can be overcome, when there is ample legal precedent for change; support for change from substantial numbers of congressional and executive officials; and support from some citizens, or at least low levels of opposition from all citizens, plus at least one of four other conditions: (a) positive incentives for compliance; (b) costs for noncompliance; (c) court decisions allowing market implementation; or (d) the presence of crucial implementation officials who "are willing to act and see court orders as a tool for leveraging additional resources or for hiding behind. Rosenberg's measure of court effectiveness appears to give excessive weight to whether litigation advances the avowed agenda of public interest litigators and too little weight to more modest, but still significant, reform goals and to the substantive merits of the policies at stake in the litigation (Schuckt 1986).

Horowitz (2010) attributes the limited effectiveness of courts to bring about social change to the inherent weaknesses of adjudication and these are: focus on rights and remedies; it is piecemeal; lack of initiative but must respond when litigants call; its being ill adapted to ascertaining 'behavioural facts' relevant to broad social problems; and the lack of provision for continuous policy review.

Rubin, Curan & Curan (2001) argue that the choice between lobbying and litigation may be determined by the costs involved, reliance on precedents by court and the strength of

business interest groups. Litigating becomes more likely as trial costs fall, as the relative benefits from rule change become greater, as the inclination of courts to change existing precedents increases, and as the interest group is involved in more trials while lobbying becomes more likely as the relative benefits from rule change become greater, as the costs of lobbying become smaller and as the voting strength of the interest groups becomes larger. Cortner (1968) argues that smaller groups "are highly dependent upon the judicial process as a means of pursuing their policy interests, usually because they are temporarily, or even permanently, disadvantaged in terms of their abilities to attain successfully their goals in the electoral process, within the elected political institutions or in the bureaucracy.

De Figueiredo & De Figueiredo (2002) posit that as courts become more biased toward the status quo, interest group lobbying investments become smaller, and may be eliminated altogether, as interest groups become wealthier, they spend more on lobbying, and as the responsiveness of courts to resources decreases, the effect it has on lobbying investments depends on the underlying ideology of the court. Once American blacks achieved sufficient political power through voting reforms, they began using the political process rather than litigation to achieve further goals (Rubin, Curan & Curan 1999). It is likely that the litigation strategy was initially most efficient for this group because the disenfranchisement of blacks gave them relatively little lobbying power until the law regarding voting rights changed.

However, institutional reform lawsuits are also a component of the continuous political bargaining process that determines the shape and content of public policy (Diver 1979) and judicial ideology in itself affects bureaucratic decision-making independently of litigation (Canes-Wrone 2003).

Reform litigation literature is largely premised on advocacy for rights and as such little is known in regard to its relevance in revenue reform. The use of litigation as a strategy

by business interest groups, although evident in Europe and America, its application in developing countries still remains understudied, perhaps due to the apprehension of the independence of the judiciary in developing countries. Unlike the literature above, this study discusses the outcomes of referring revenue bargaining to an arena such as the courts of law.

2.8 Conclusion

Revenue bargaining literature explains the link between taxation and governance as expressed in the variants of the argument. However, the extension of judicialization of politics contestation over tax reform is fairly new and as such the literature is limited. However, this does not in any way negate the value of the current literature save for context and empirical data how disputes turn into court cases and what occurs to the cases once they are in court. As seen in Figure 1, when an undesirable revenue reform is introduced by the state, business interest groups lobby the executive and parliament in a bid to block or soften the reform. However, when this fails and the revenue reform is being implemented, business interest groups lobby the executive or seek legal redress in the courts of law or both simultaneously. Revenue reform litigation also occurs where business interest groups or firms attempt to cause reform by seeking the nullification of existing provisions of tax laws. Consequently, it is the contextualisation of governance and focus on the use of litigation in revenue reform that constitutes my contribution to the revenue bargaining theory. The following chapter is an attempt to answer the research question 'How did the colonial and post-colonial regimes respond to competing societal interests?' and it makes better sense when read with a revenue bargaining lens.

CHAPTER THREE
HISTORICAL MAPPING OF REVENUE BARGAINS AND POLITICAL SETTLEMENTS

3.1 Introduction

British rule not only exploited the socio-economic structural defects of a 'backward' economy using its existing monarchical institutions and local administrations (Mukasa-Mutiibwa 2016) but also laid fertile ground for its future exploitation by rent seekers. Colonial intellectualism deliberately denigrated Indigenous oral traditions and wisdom as illegitimate methodologies and tools of storing records (Tamale 2020). This chapter examines historical cases of socio-economic influence of various societal groups and the responsiveness of the different regimes using the revenue bargaining theory. Under the colonial regime, the chapter reviews the political environment, Africans' attempts to influence cotton and coffee prices and efforts to bring about increase in social expenditure.

The Obote I regime seemed to be on a mission to reverse the social and economic injustices occasioned on the Africans by the colonial regime. His government embarked on increased social expenditure, supporting the cooperative movement and increasing state participation in business by nationalising private enterprises and the creation of state enterprises. Amin's regime was characterised by the economic war which was also intended to increase the participation of Africans in the economy i.e., promote African capitalism.

Obote's second regime was characterised by the efforts to undo the damage caused by the economic war especially by allowing the return of expropriated properties of departed Asians and reforms aimed at the implementation of structural adjustment programmes which extended to the first ten years of President Museveni in the form of trade liberalization, civil service and revenue reforms. The chapter focuses on bargaining power among different interest groups in relation to the various outcomes.

3.2 Colonial Rule

In 1920 a new Order in Council was promulgated for Uganda. The Order established the new office of Governor[8] and Commander-in–Chief, the Executive Council and Legislative Council. The Legislative Council was established pursuant to the request of the Uganda Chamber of Commerce to the chief secretary (Mutibwa 2016) and it was empowered to make Ordinances and to constitute such courts and officers to make regulations for the administration of justice, as would be necessary for the peace, order and good governance of Uganda. All members of the Legislative Council were Europeans and there was great opposition to the Council by Africans and Indians (Kanyeihamba 2010).

In 1926 an Indian was nominated as an unofficial member of the Legislative Council. This could be attributable to the fact Indians were engaged in commercial enterprises since revenues from customs and excise duty formed a significant proportion of the total revenue of the protectorate.[9] The official colonial attitude was that a closer understanding between the European community and Indian commercial community would maintain stability in the country (Kanyeihamba 2010). This relationship was largely reflected in the political, social and economic policies.

It was not until 1945 that Africans were appointed to the Legislative Council. From this period until independence, African matters received more attention than had been the practice. By 1955 the Legislative Council had increased to 61 members and it is said that the duties of the representatives included checking the government and keep it up to

[8] This replaced the office of the Commissioner, through which the Ugandan Protectorate was ruled.
[9] According to Jamal (1978) in 1927 customs and excise duty contributed 348,000 pounds out of 1,292,000 pounds and in 1947 the said taxes contributed 1,827,000 pounds out of 5,331,000 pounds raised. Customs and excise duty ordinarily arise from trade and it is the Indians that largely participated in trade

mark and voicing the needs of the people but the Colonial Government always maintained a majority vote in the Legislative Council (Kanyeihamba 2010).

However, Karugire (1980) argues that Africans were less concerned about representation at the Legislative Council but more concerned with their local governments. He states that:

> So far as Africans were concerned, the Legislative Council had little or nothing to do with them while their local government had everything to do with their political aspirations and ambitions.

He explains that in 1949 there were disturbances (in Buganda) by a small group of people whose demands *inter alia* were that the Kabaka should open the rule of democracy to start giving the people power to choose their own chiefs. However, these disturbances were unsuccessful and the demands were not met.

3.2.1 Cotton and Coffee Prices

The expenses of occupying Uganda had caused Parliamentary concern in Britain and as such it was important that the Protectorate financed its own administration. Consequently, cotton was chosen as the source of revenue (Karugire 1980). The British administration introduced poll tax and by forcefully encouraging the planting of cotton, ensured that there was no excuse for failing to pay it. As late as 1936 the Government Treasurer was able to say that taxation was the principal incentive to labour and production (Jamal 1978). However, farmers in Buganda, Bukedi, and Lango cultivated no more than that much cotton, so that most of their cash income went to pay poll tax (Karugire 1980).

In the 1940s marketing boards were established and at the time of high export prices, large sums of money were withheld from farmers on the promise that part of the surplus would be used to finance projects beneficial to cotton and coffee growing areas and the

rest to shore up low prices (Jamal 1978). The budget speech of 1959 shows that cotton tax had fallen from about 36 cents per bale of lint to 26 cents while coffee tax had dropped from Ushs. 60 per cwt to about Ushs. 26. In response to the said fluctuations, growers' prices were subsidised and cotton prices in particular were heavily subsidised (Ministry of Finance 1959). It was estimated that the sums paid from the Price Assistance Funds in 1959 would exceed the total revenue from export taxes. However, in the subsequent financial year the minister announced that export duty collections were expected to exceed the original estimates (Ministry of Finance 1960).

Any discouragement of African farming would have an adverse effect on government revenue since African farming had proved its viability just as plantation agriculture had failed to do so (Karugire 1980). That notwithstanding, growers had limited bargaining power since the growing and sale of cotton and coffee was tightly controlled by the colonial state. For instance, section 4 (1) of the Coffee Act (which was similar to section 4(1) of the Cotton Act) provided that:

> Before the beginning of every buying season the Minister may fix the actual prices or minimum prices to be paid to growers for coffee delivered to and purchased at any licenced processing factory (other than an estate coffee factory) or at any licenced hullery during such buying season.

The coffee and cotton buyers were required to obtain licences and it was unlawful to buy coffee on dates other than those prescribed by the state. This meant that the traders were unable to engage in hoarding in anticipation of higher prices. The coffee and cotton prices were often revised but this was never to the satisfaction of the growers.

3.2.2 Bargain over processing and marketing of coffee and cotton

The British policy in regard to cotton and coffee was that the Africans were the primary producers while it was the European and Asian firms were to handle the processing and marketing of those crops (Karugire 1980). The cotton ginneries and coffee curing works

were owned almost entirely by Asian companies and it was virtually impossible for Africans to break into this sector of cash crop production. This state of affairs was facilitated by Protectorate legislation which was applied to the detriment of Africans. Africans were dissatisfied with the policy and wanted to participate in the more lucrative activities in the economy such as cotton ginning and coffee curing. Associations such as the Uganda Farmers Union and the Bataka Party became vehicles for the fight against the Asian monopoly in the processing and marketing of cotton and coffee (Karugire 1980).

The struggle by Africans to participate in the more lucrative sectors of the economy escalated into a trade boycott. The boycott was declared by the Uganda National Movement (UNM) under the leadership of Augustine Kamya and it was a boycott of non-African goods which was enforced through intimidation and actual violence against persons and property (Karugire 1980). Although African representation on the Legislative Council had increased, it appears that this was not sufficient to change the British policy of relegating Africans to the bottom of the value chain in agriculture and hence the boycott.

Although the boycott did not last long enough to make any significant impact on the Asian monopoly of commerce (Karugire 1980), it seems to have had a toll on the economy. It resulted into capital being withdrawn from the country, loss of employment and increase of prices (Ministry of Finance 1959). It was also estimated that customs revenue would fall short of the estimate by 500,000 pounds partly due to the boycott while excise duty would fall short by 250,000 pounds entirely due to the boycott (Ministry of Finance 1960). Thus, the ability to maintain confrontation with the state increases bargaining power.

3.2.3 Bargain over expenditure

African discontent in respect of Government expenditure is further reflected in the budget speech of the Minister of Finance in 1959, in which he stated that:

> It so happens that an inquiry was undertaken last year, arising from criticisms that some parts of the country were not getting an adequate share of the tax revenues spent on them.

The Minister's rebuttal was that an analysis of revenue and expenditure in 1956/57 revealed that in each of the provinces the revenue collected from Africans, including export duties, had to be supplemented by allocations from reserves and from taxation paid by non-Africans and corporations, to meet the cost of the services provided by the Government in the provinces concerned. However, this not only contradicts the fact that cotton and coffee formed the backbone of the economy which were primarily produced by Africans but also lends credence to the proposition that the colonial regime was exploitative of Africans.

It seems that the British policy to favour non-Africans was partly premised on the latter's perceived contribution to the economy. This is further reflected in the budget speech of the Minister of Finance in 1959 in which he stated that:

> I can only assume, therefore, that it is not understood by those who have so misguidedly launched a partial boycott of non-African trade in Buganda, how certain it is that the greatest sufferers from their action will be the African people of this country…although non-Africans living here represent only a little more than one percent of the total population, they make contribution to the development of the economy of the country quite disproportionate to their numbers, as I believe many Africans readily acknowledge. It may surprise some Members to know that this one percent of the population and the companies they operate will next year provide more than 40 per cent of the total revenue from taxation.

However, Karugire (1980) argues that wherever European settlers existed, they always demanded far too much in the way of social services although they were usually unwilling to be taxed in order to meet the cost of those services. It is, therefore, not plausible that one percent of the population was able to provide more than 40 percent of the total revenue from taxation because the economic policy was skewed towards the one percent as against the 99 percent.

It is important to note that the colonial government had surplus revenues but it chose to reserve the same for an unknown purpose. Honourable C.G.F.F Melmoth while delivering Budget Speech delivered to the Legislative Council on 27th April 1960 stated:

> It became inevitable, in view of our deficit budget position that ordinary expenditure in the area of the boycott had to be curtailed. It must be remembered that although temporary difficulties can be met for a time by drawing on our surplus balances, in the long run we can spend on the basic services no more than the sums of taxes paid by the people.

Africans had limited influence over policy although attempts were made to bargain for higher prices and favourable expenditure policies. Price Assistance Funds were established to cushion against the fall in cotton and coffee prices but the funds were often appropriated to the budget. For instance, in the 1959/60 fiscal year the colonial government borrowed 2,500,000 pounds from the Coffee Price Assistance Fund to finance the Capital Budget Expenditure (Ministry of Finance 1959) which was more beneficial to the non-African sector. The cooperative movement was launched in a bid to give common voice, purpose and strong bargaining power to the Africans but the movement was looked at as subversive by the colonial government and hence banned until 1947 (Mukasa 1997) but little success was registered from its actions. The trade boycott was employed as a strategy for bargaining for greater involvement in the economy but its success was dismal. This is because the boycott failed to gain widespread support and the Colonial Government dedicated resources to ensure that it was crashed.

3.3 Obote I Period

Prime Minister Obote's first regime started in 1962 and ended in 1971. He is described as a leader of the party of leaders because the strength of Uganda People's Congress (UPC) did not lie in the coherence of its organs but most of its leaders had also been leaders of their districts (Karugire 1980). In Obote's view (as construed from his communication to

the National Assembly on 9th June 1967), the relationship between the leaders and the people is similar to that between the hunter and a faithful dog. He explained it thus:

> In this respect I liken leaders, not in a disparaging sense, to a good faithful dog and the people we lead, a hunter. A hunter goes out to kill either for the purpose of getting meat or other necessities of life and he goes with his dog to assist him in this task. First it helps him discover where the hunted animal is and since the animal runs faster than the hunter, the dog is supposed to run after it and constantly keep the hunter informed of its whereabouts. When the animal is shot or speared it is the duty of the dog to chase it and after it has caught it, hold it until the hunter comes. The hunter does not expect a good dog, having caught the animal, to start eating it; he expects it to hold onto the animal until he arrives and kills it, if it is not dead already, after which he will carry it home and decide on which piece of the meat to give the dog. Very often it is the bone and very often the dog is satisfied with the bone. That is the meaning of leadership. Good leadership should be satisfied with the bone if given, and should not look for the fattest or the most delicious part of the animal.

This notion appears to have been manifested in his leadership and policies which were focused on the populace. Prime Minister Obote launched the First Five Year Development Plan aimed at ensuring that political independence of Uganda was matched as soon as possible with economic independence.[10]

The 1963/4 budget speech delivered by Honourable Kalule Sempa shows that Obote's government chartered a new path in the course of government expenditure since there were gains for different sectors of the economy. Bigsten and Mugerwa (1999) describe the 1960s as a period characterised by government attempts at responding to the increasingly complex political and economic demands of the post-independence era. These demands included incorporating the peasants and rural sector in the development process, reducing inequalities and incomes, and bridging the regional economic gaps among others.

[10] Jorgensen 1981 cited in D. Kwagala-Igaga, *Tax Reform in Uganda: A Case Study if the Reform of Direct Taxation of Business Profits in the Formal and Informal Sector*.

3.3.1 Reversal of Buganda's Deal

Owing to the initial relationship between Buganda and the British Government, Buganda was able to secure a favourable bargain from the London Conference of 1961. The London Conference was attended by political parties, non-kingdom delegates and delegates of other kingdoms (Kanyeihamba 2010). Buganda was able to secure a federal status while rest of the kingdom although pressed for a similar status, only obtained semi federal status.

These bargains were later incorporated in the 1962 Constitution. Section 107 (1) of the Constitution 1962 provided that the Government of Uganda would make payments to the Kabaka's Government in accordance with the terms of the agreement set out in the 9th schedule.[11] The 9th Schedule to the Constitution 1962 consists of an agreement between Uganda and Buganda government delegations on the financial relationships between the government of Uganda and the Kabaka's government. Buganda was entitled to fifty percent of revenues raised in Buganda from duties on petrol, diesel, stamp duty on milo transfers and licenses on powered two wheeled vehicles. It was also entitled to raise additional sums of revenue by increasing the amount of statutory contribution.

The rest of the states were entitled to undefined contributions and to this end section 108 of the Constitution provided that:

> Subject to such terms and conditions as may be prescribed by parliament, the Government of Uganda shall pay to each Federal State (other than the Kabaka's Government) an annual contribution towards the cost of services administered by the Government of that Federal State in pursuance to the arrangements entered into under section 79 of this Constitution

[11] The 1963 budget speech indicates that monies were appropriated for the in fulfilment of the new statutory obligations.

> of such amount as the Government of Uganda, after consultation with that Government, may determine.

However, where any provision of the law in force immediately before 9th October 1962 a Federal State had power to collect and retain proceeds of any tax, that provision would not be altered by or under any Act of Parliament to the disadvantage of that Federal State without the concurrence of the Government of that Federal State.[12]

The government had the right to terminate arrangements entered into with a federal state upon the recommendation of a commission appointed under the provisions of the Commissions of Inquiry Ordinance but the agreement entered into with the kingdom of Buganda was exempted.[13] The constitution guaranteed Buganda a federal status and as such the status could only be abolished by changing the constitution. And, it was not long before the relationship between Obote and Buganda resulted into the change of the constitution.

The 1962 Constitution was abrogated and in September 1966 a new constitution was promulgated. Under article 118 (1) of the Constitution 1966 the institution of kingship was abolished. The Article provided that:

> The institution of King or Ruler of a Kingdom or Constitutional Head of a District, by whatever name called, existing immediately before the commencement of this Constitution under the law then in force, is hereby abolished.

In respect of Buganda, the effective date of abolition was 24th May 1966[14] and King of Buganda was reduced to an allowance earner.[15] No action could be instituted in any court of law in respect of any matter or claim by any person to challenge the abolition of kingdoms.[16] This marked the end of federal status of Buganda and the semi federal status

[12] Section 108 of the 1962 Constitution
[13] Section 79(3) of the Constitution 1962
[14] Article 118 (2) of the Constitution 1966.
[15] Article 118(3) of the Republican Constitution
[16] Article 118 (5) of the Republican Constitution

of the rest of the kingdoms. The kingdom of Buganda that had bargained for its own police at the London Conference but only to settle for a "guaranteed" federal status had been reduced to a common state.

3.3.2 Co-operative Movement

The co-operative movement consisted of cooperative unions which were in turn made of cooperative societies and it is the latter to which individuals belonged. This composition not only provided the appropriate infrastructure for incorporating peasants and the rural sector in the development process but also provided the appropriate tool for negotiating with government. The Government went on to vigorously promote the establishment and diversification of the cooperative movement in the country on the basis that 'the cooperative sector of the economy should attain a position of prominence', agricultural cooperatives that engaged in marketing, processing and export of cash crops became prominent (Kyamulesire 1988).

In 1966 it was estimated that the Co-operative movement[17] was handling approximately 60% and 75% of the coffee and cotton processing respectively thereby displacing private ginners and curers. The displacement of private ginners and curers by the co-operative movement propelled government to enforce corporation tax on the profits of societies and unions. Government did not enforce the payment of tax by cooperatives since it had been argued that they needed an income tax exemption to encourage the growth of the movement. Consequently, the taxes owed by the cooperative societies and unions for the years 1961, 1962, 1963 and 1964 and 1965 were waived. Bonuses and rebates payable to members were not taxable while still in the hands of societies and unions but were subject to income tax and surtax when they got in the hands of the individual members (Ministry of Finance 1965).

[17] The estimated membership of the Co-operative movement in 1966 was 450000 while its share capital and reserves were estimated to be three million pounds (Kyamulesire 1988).

In addition to the monopoly, it had gained in the processing of cotton and coffee, the cooperative movement extended to industry and plantations (Ministry of Finance 1970). A Ministry of Marketing and Cooperatives was created in 1970 thus upgrading the Department of Cooperatives to a ministry. As such, matters of the Cooperative Movement gained greater attention from the state.

3.3.3 Wage Increase

There was the need to demonstrate that the new government was capable of rapidly providing redress against the colonial legacy by creating modern employment in the urban areas. There was a sharp increase in average wage as a result of the implementation of the successive minimum wages legislation in accordance with the government's declared wages policy i.e., the lowest paid workers enjoyed very substantial increases (Ministry of Finance 1966). In 1966 wages and salaries went up by about 7% and 27% in the public and private sectors respectively and it is reported that for the first time in the distribution of income was weighted in favour of the employed rather than enterprise. In 1968 there was growth of both the labour force and earnings.

Having invested heavily in creating jobs, the Government introduced a Pay as You Earn System in 1966.[18] In 1970 the scope of P.A.Y.E was extended to cover the whole range of tax on income from employment. This included the restoration of surtax on the value of quarters provided by employers such that there would be no inequity between those who received housing allowances in lieu of quarters and those to whom quarters were provided by employers.

3.3.4 State Participation in Business

In 1966 the private sector was accused of not playing as active a role as it could have done

[18] This was at a rate of shs. 2/50 in the pound.

since savings and investments in the private sector remained low. According to the budget speech of 1966, Minister of Finance stated that:

> There was too much indecision or "sitting on the fence" by private investors here at home despite the fact that they reaped substantial profits particularly in the commerce sector which profits could well have been used to diversify their risks and extend their activities in new fields…Government has paid a lot of money to many private cotton ginners and curers; all that money should have been used to develop new industries. Instead, much of it was taken out of the country.

This could have prompted increased participation of the state in business through statutory boards and corporations. The Government's policy was that statutory boards and corporations should operate on commercial lines under effective government control and direction. In 1967 the National Trading Corporation was given sole authority to distribute imported and locally manufactured goods such as salt, rice, shirts, wine, cement and hoes (Schultheis 1975).

In 1968 fifteen statutory boards and corporations were set up and it was the state's view that the establishment of parastatal bodies amounted to giving more control of the respective sectors to the people. Thus, the rationale for the establishment of the parastatals was that the productive activities of millions of citizens was the strength of the country, and the control of the economy by the citizens is the cornerstone for stability and prosperity. In 1969 the government announced that it had injected 52 million shillings in statutory boards and corporations as new capital and that a further sum of 26 million was advanced by way of grants, loans and advances from the consolidated fund.

The control of the economy by the state culminated into the nationalisation of private companies pursuant to the Common Man's Charter. The Common Man's Charter was an 'all embracing' socialistic strategy for economic and social development. The nationalisation of private companies was done pursuant to the Companies (Government and Public Bodies Participation) Act, 1970. Section 2 of the Act provided that:

> As from the close of business on the 30th day of April, 1970, the Government or other public body declared by the Minister as such for the purposes of this Act by statutory instrument shall be deemed to have acquired such number of shares, not exceeding 60 percent of each class of shares issued by the companies specified in the First Schedule to this Act.

The Companies specified in the schedule included Bank of Baroda Ltd; Barclays Bank of Uganda Ltd; East African General Insurance Co. Ltd; Madhvani Sugar Works Ltd; Standard Bank (Uganda) Ltd; Steel Corporation of E.A. Ltd; and Uganda Sugar Factory Ltd. In order to ensure that the owners of the company did not defeat the nationalization policy, acts such as declaration of dividends; sale of assets including stocks and shares; charging of shares; issuance of new shares and involuntary liquidation or otherwise stopping of business were prohibited.[19] The government or other public body would pay for the shares acquired, if possible, from the share of profits received by the Government or other public body from the company in which the shares are acquired within a period of time not exceeding fifteen years. This meant that the government was at liberty to pay for the shares acquired from the dividends it would receive from the nationalized companies.[20]

3.3.5 Increased Social Spending

In a peasant economy, increase in social spending initially led to policy initiatives towards the agricultural sector, including subsidies on essential agricultural equipment and fertiliser, and the expansion of extension services and research (Bigsten & Mugerwa 1999). In 1969 the government launched a rural development programme whose function was to co-ordinate and assist in all self-help efforts in rural areas. The priority schemes in the programme were agriculture, animal husbandry, fisheries, marketing, education, health, communication and water supply. The Government established a Borehole

[19] Second Schedule to the Companies (Government and Public Bodies Participation) Act 1970
[20] Section 2 of the Companies (Government and Public Bodies Participation) Act 1970

Construction Division which consisted of borehole construction units and maintenance units for the purpose of providing water supplies to rural areas.

Community development programmes were also established by the Government. The range of social facilities were increased e.g., radio and television sets were provided at community centres for communal viewing; community centres were built in various sub-counties; and a national and large-scale adult literacy campaign was also embarked on. Rural health centres were expanded through the opening of dispensaries and health centres in many parts of the country.

During the 1965/66 fiscal year, 591 tractors were bought and made available to growers throughout the country (Ministry of Finance 1966). Bukalasa and Arapai agricultural colleges were established and these were supplemented by various district farm institutes while the Fisheries Training Institute was opened in 1968.

3.3.6 Army Gains Political Significance

In 1964 the military staged a mutiny seeking to force government to improve their pay and working conditions (Golooba-Mutebi 2008). Obote's immediate reaction was to call in British paratroopers to quell the disturbance, followed by a decision to grant the army's demands, promotion of some of the mutiny's ringleaders (Rwehururu 2002) and giving the army a sense of political significance (Golooba-Mutebi 2008).

When Uganda obtained independence there were expectations (such as jobs, control of the economy) among the populace. Prime Minister Obote attempted to meet these expectations by increasing expenditure on Africans through programmes such as the rural development programme, availing credit to cooperatives, enabling Africans join the civil service and creating employment in urban areas. Obote's programme of "Africanisation" is criticised for having merely created room at the top without any transformation in the society itself (Kwagala- Igaga 2016) but he offered the Africans a

better deal than what the Colonialists did. This is attributable to the fact that laws were enacted to reverse the status that had been maintained by the colonial government. It follows that independence increased the bargaining power of the Africans and lessened that of the Europeans and Asians since African issues gained more prominence.

3.4 Idi Amin

The Idi Amin's regime commenced in 1971 and ended unceremoniously in 1979. During the night of 24th/25th January 1971 gunfire was heard in various parts of the capital and just before 4:00 PM (East African Time) a ponderous voice of an NCO announced on the radio that the army had taken over the government and read a list of 18 points in justification of the army taking this step (Karugire 1980). Among the points was an issue of high taxes which had allegedly left the common man poor. The taxes cited included development tax, graduated tax, sales tax and social security fund tax. After the coup in 1971, there were increasing calls for 'Africanisation' of the economy from the Baganda and other ethnic groups (Kwagala-Igaga 2016). It is these increasing calls for 'Africanisation' of the economy that could have propagated the economic war.

3.4.1 Reversal of the Nationalization Policy

The military was enthusiastically welcomed by the Asian community and the British. On 1st May 1971 Amin announced his new economic program and as a consequence Obote's nationalization policy was rescinded except for seven leading companies (Schultheis 1975). The Amin government negotiated that government's share in these companies would be reduced from 60% to 49% and only four more companies were to be included on the same basis. This demonstrates the fact that the nationalization policy availed the state access to revenues since its capacity to raise revenue through taxation was limited but also implies that there was a form of negotiation between the state and the nationalised companies.

3.4.5 "Economic War"

In August 1972, the Amin government launched what he described as the economic war which was intended to achieve economic independence for all Ugandans. Obote had made several attempts in a bid to enable the Africans effectively participate in the economy but control of trade remained in the hands of the Asians. As traders, Asians played a great role in the spread of the money economy in Uganda since they retained many areas of economic enterprise, particularly in commerce and small-scale manufacturing sector (Schultheis 1975). Anti-Asian pronouncements by government officials and the press became more frequent and the enthusiasm with which begun to wane in the face of repeated accusations. This was worsened by the conducting of a special census of all Asians in October 1971. In December 1971 Amin summoned a special 'Asian Conference' in which all charges of economic subversion and sabotage were repeated.

On 4th August 1972, Amin declared that there was no room in Uganda 'for the over 80,000 Asians holding British passports who are sabotaging Uganda's economy and encouraging corruption'.[21] Amin told his soldiers that he "wanted to see that the economy of Uganda was in the hands of Uganda citizens, especially 'black Ugandans'." He consequently decreed the expulsion of Asians from Uganda. Many Ugandans approved in a general way of Amin's policy, but anguished over the suffering and personal

[21] *Uganda Argus*, August 5th, 1972 in Schultheis, M. J. (1975). The Ugandan economy and General Amin, 1971–1974. *Studies in Comparative International Development*, *10*(3), 3-34.

upheaval which engulfed the Asian community (Schultheis 1975).

By the end of October 1972, 728 businesses had been advertised for sale and four committees were formed to check and to distribute the businesses, and the redistribution of an estimated 3,000 to 4,000 formerly Asian businesses. On 30th October 1972 Amin announced that European farms in western Uganda would be subject to compulsory purchase by Ugandans after 15th November. On 21st November 1972, the government announced that it had taken over the Madhvani and Mehta industrial groups until such a time as there would be people to buy them. In late December 35 British owned businesses and tea estates were nationalized. Eighty-eight other British farms were not permitted to renew their trading licenses, and in May 1973 they were nationalized. The economic war was extended to expatriate religious personnel on the basis that they were spies and were expelled.

When the state nationalized the British farms, payment was not made. It is estimated that the debt arising out of compensation was 40 to 50 million pounds for British interests and 100 million pounds for Asian interests. This prompted the freeze on British, World Bank and other international aid and technical assistance. However, Amin knew that he had a friend in Libya, Saudi Arabia and the Soviet Union.

3.4.6 Army's Increased Political Significance

As an army man Amin was concerned with "security" which meant satisfying the demand of the soldiers. During 1971 government spent about 20% of the recurrent expenditure while about 45% of the development expenditure was spent on the military, costs that ran about 120% and 300% above the corresponding expenditures of Obote's

government (Schultheis 1975).[22] He opines that the principal beneficiaries of the economic war were the army and certain groups of individuals within the army. An attempted military coup in 1974 gave Amin the pretext to make heavy expenditures for military equipment.

In conclusion, President Amin's regime was characterised by an attempt to "Africanise" the economy and reliance on the army to retain power. The regime relied heavily on domestic borrowing in order to finance its expenditure due to its limited capacity to tax and this resulted into inflation. Although Amin may be credited for his attempts to allow Africans greater participation in the economy, the Country was governed through decrees and such there was no rule of law. This explains the decline in taxes and the reliance on borrowing.

3.5 Obote II

Obote returned to power having won the 1980 elections which are largely described to have been rigged on a massive scale. Aliker (2018) narrates that he received 39,000 of the 44,000 votes cast in Gulu South and that on 10th December the Democratic Party (DP) was on the verge of victory in the country with 63 seats out of 126. However, the Military Commission told all returning officers not to announce the election results before further clearance from its chairman. Aliker (2018) further narrates that he was told that he had lost (someone had switched the ballot boxes) and that the final results showed that Uganda People's Congress (UPC) had 74 seats while DP had 51 seats and Uganda Peoples Movement (UPM) had one seat.

[22] This trend continued and as demonstrated in the Budget Speech delivered in 1979 which shows that security accounted for 27% of the budget while social service (education health and related services) accounted for 26% of the budget.

3.5.1 Acceptance of Structural Adjustment Programmes

The status of the economy as described in the budget speech of 1981 is such that production was low, inflation was high, there was scarcity of consumer goods, poor tax administration, and there was shortage of foreign exchange. After the elections the UPC Government sought a new stand-by arrangement with the IMF and a structural adjustment programme with the World Bank (Kwagala-Igaga 2016). The Government based its economic programme on the recommendations of the Commonwealth team of experts. The Government wholly accepted the recommendations and this gave them a much better chance of securing IMF-World Bank funding.[23]

3.5.2 Tax Reductions and Exemptions

The floating of the shilling had an adverse effect on the wages being made hence the need to revise the wages. In 1981 the Wages Advisory Board was appointed with the promised that salaries would go up (Ministry of Finance 1982). However, it appears that by the fiscal year 1982/3 the Government did not have sufficient revenue to make good on its promise to increase wages. As a result, the Government introduced tax measures intended to increase the disposable income of wage earners. In so doing, the threshold was raised to Shs. 20,000,[24] the minimum rate of tax was reduced from 12.5% to 10% and the maximum rate of tax was revised from 77.5% to 60%. In a rather drastic move, persons on payrolls of Government, District Councils, Urban Authorities, Makerere University, the Teaching Service and Institutions of Higher Education were exempted from PAYE on their wages and salaries (Ministry of Finance 1982). Salaries and wages in the public sector were increased effective 1st July 1983 by 50% and so were pensions (Ministry of Finance 1984). In the fiscal year 1984/85 minimum wages were raised while all persons

[23] Nabudere (1970) cited in D. Kwagala-Igaga, *Tax Reform in Uganda: A Case Study if the Reform of Direct Taxation of Business Profits in the Formal and Informal Sector*.

[24] This was subsequently raised to 40,000, 100,000 and finally to 150,000 in 1985

in U Scales including clerical officers, persons in permanent and pensionable jobs would receive salary increment 4.5 times on average. In the fiscal year 1985/86 the further relief was given to income tax payers by reducing the rates payable. For instance, a person whose tax liability amounted to shs. 170,000 would be liable to a revised liability of shs. 70,000.

In the fiscal year 1984/5 it was estimated that 46% of the currency in circulation was outside the banking system and as a result the Government granted a corporation tax exemption for two years to any commercial bank that opened at least two new branches in a year, outside Kampala, Jinja, Entebbe and Mbale. This was intended to encourage banks to open up branches in rural areas. In the subsequent fiscal year, the Government decided that any bank which had opened at least two branches would have its exemption period extended and this would be pegged[25] on the number of branches opened by any particular bank.

3.5.3 Return of Departed Asians' Assets

The assets of Asians were vested in government upon their expulsion as it was a policy of the military government that every departing Asian had to declare his or her assets and liabilities.[26] The Government enacted the Expropriated Properties Act, 1983 to provide for the transfer of the properties and businesses acquired or otherwise expropriated during the military regime to the Ministry of Finance, to provide for the return to former owners or disposal of the property.[27] The Government made effort to balance its own interests, the departed Asians and interests of Ugandans who had acquired the properties. All purchases, transfers and grants of, or any dealings in the property of departed Asians was nullified and expired or terminated leases or

[25] Exemption of 30% would be granted if one branch was opened, 60% if two branches were opened and 100% if three branches were opened.
[26] Section 1 & 3 of the Assets of Departed Asians Act.
[27] This is the long title to the Expropriated Properties Act.

agreements for lease or tenancies in respect of such properties were deemed to continue until such properties were dealt with.[28]

The former owners of the expropriated properties were given the right to apply for their property within ninety days and also on condition that they would return and reside in Uganda.[29] Where the application for reposition related to property in which the Government wished to participate, the minister of finance notified the applicant and negotiations would commence.[30] The Government appointed verification and negotiating committees for the purpose pursuing government interest in said properties and in the fiscal year 1984/85 it was announced that former owners of the expropriated properties had concluded joint venture agreements with Government. In circumstances where the Government did not wish to participate in the property, the applicant would be granted a certificate of repossession.[31]

Compensation and settlements were paid to non-citizens whose property was disposed of by Government and also where property or business had been transferred for value and the property or business is returned to a former owner. The compensation payable to the latter was the purchase price less income derived or which ought to have been derived from the property or business from the date of transfer.[32] The return of the expropriated properties benefited the Government in the sense that it obtained good publicity from the international community, attracted capital and better managers of capital and also legitimised its interests in the expropriated properties and the interests of some of the Ugandans who acquired the unclaimed properties.

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[28] Section 2(2) of the Expropriated Properties Act

[29] However, the courts have interpreted the ninety-day limit as not being mandatory. In *Jaffer Brothers Ltd v Muhamed Bagalaliwo & 2 Others Court of Appeal Civil Appeal No. 43 of 1997* being a remedial Statute should be given liberal construction to achieve purpose i.e. provide for the return to the former owners of the properties that had been expropriated during the military regime.

[30] Section 5(1) of the Expropriated Properties Act

[31] Section 6(1) of the Expropriated Properties Act

[32] Section 12(4) of the Expropriated Properties Act

The reforms under the Obote II regime Policies e.g., devaluation, price deregulation, and the enactment of the Expropriated Properties Act reflect the influenced of the IMF and World Bank in Uganda's political development. Most of these structural adjustment programmes were carried forward to the subsequent regime.

3.6 Museveni 1986-1995

Museveni came to power on 26th January 1986 upon deposing Tito Okello who had overthrown Obote in July 1985. In the first five years of his regime there were no defined policies but the period characterized by a variety of economic reforms. President Museveni initially took an anti IMF and anti-reform stand as reflected in his ten-point programme for rebuilding Uganda (Kjaer 2004). In 1989 a high-profile seminar brought together academics, politicians and officials formally to discuss economic reform for the first time (Whitworth & Williamson 2010). The reforms to be discussed were based on Structural Adjustment Programmes proposed by the World Bank and IMF. This marked the beginning of the journey towards capitalism and a new democracy.

3.6.1 Civil Service Reform

Following the recommendations of the Public Service Review and Reorganization Commission, the Government decided to take definite measures to reform the civil

service and as such retrenchment of civil servants was carried out. In the fiscal year 1992/93 approximately 14,000 civil servants were retrenched and 23,000 soldiers were demobilized (Ministry of Finance 1993). In the subsequent fiscal year Government proposed to retrench 68,000 civil servants during that financial year. Retrenchment was coupled with increasing wages of the remaining civil servants.

Disputes as whether receipt of the retrenchment packages excluded the retrenched employees from obtaining pension arose. In *Abola & 6339 others v Attorney General HCCS No. 1029 of 1998 and Vincent Bagamunda & 1118 Others v UEB HCCS No. 1044 of 2001*, the retrenched employees were awarded pension upon retrenchment. In the *Vincent Bagamunda Case,* it was held that:

> Retrenchment is no magical formulation. Used in the context of this case it means that the defendant was reducing its staff strength or numbers to cut down on costs. Otherwise, it does not mean anything more than termination of service of its staff. The retrenchment package is no more than a termination package. It is a package paid in consideration of an abrupt end to what may have been regarded as permanent service with an organisation. Unless by agreement of the parties' pension rights are specifically imported into this termination package, it cannot be assumed that the package annihilates such pension rights as are existing at the time.

It had been argued for the defendants that the plaintiffs' rights for a pension were waived by the Union representing them in the discussions leading to their retrenchment and that pensions were included in the retrenchment packages. Civil service reforms also took the form of reduction of allowances and monetization of benefits to public officials. However, this met some resistance from professionals, and medical doctors who succeeded in maintaining their lunch allowance.[33]

3.6.2 Liberalization

[33] Mette (2002) cited in A.M. Kjaer, 'Old Brooms Can Sweep too!' An Overview of Rulers and Public Sector Reforms in Uganda, Tanzania and Kenya.

The idea of trade liberalization begun in 1987 when Government announced that guidelines were being made to decide on the parastatals that would remain and those that would be sold to the private sector. The divesture plan as per the budget speech in the fiscal year 1991/92 was such that out of the 112 public enterprises in Government, 16 would be retained with 100% equity, Government would retain majority shares in 23 and minority shares in 13 public enterprises. It was expected that privatization would lead to efficiency gains in the economy and help to raise the rate of growth of the GDP. The rest would be sold to the private sector or wound up. A Privatization Unit was established in order to facilitate the management of the divesture process.

The marketing of coffee was liberalized and cooperative societies were the first beneficiaries of the policy because upon the abolition of the monopoly of the Coffee Marketing Board, four cooperative unions were licenced to export coffee (Ministry of Finance 1991). The abolition of the monopoly of the Coffee Marketing Board coincided with the creation of the Coffee Development Authority to oversee coffee marketing, research and production. Similarly, the monopoly of the Lint Marketing Board was broken thereby enabling the private sector to participate in both the internal and external marketing of cotton and oil prices were also deregulated.

Uganda Investment Authority was established in 1991 pursuant to the Investment Code Act (which replaced the Investment Act) to facilitate trade by offering one stop services to the investors (local and foreign). It was reported in the 1992/93 budget speech that progress had been made in attracting investors since investment licences had been issued to 80 approved projects with a planned investment value of about 200 million dollars.

In 1995 the Government finally zeroed down to the strategy of private sector led growth and agreed to develop a project addressing constraints of private sector growth such as development of equity financing, incentives for business services and further support for

investment promotion. The said project envisaged the establishment of a Private Sector Foundation and as such the 1995/96 budget read as follows:

> A noteworthy feature of this project is that the majority of the members of the Task Force responsible for designing this project are representatives of the Ugandan business community. An important component of this project is support for the establishment of a Private Sector Foundation, a private body which will offer a channel of communication with Government on key policy issues affecting the private sector. I welcome this innovation and look forward to the deepening of dialogue with the private sector which I am sure that it will bring.

The Government undertook measures to ensure availability of credit to the private sector and these included establishment of the stock exchange[34] and supporting the stock exchange by floating attractive shares like those of banks and profitable parastatals, exemption from stamp duty for the registration of shares and dividend income. It is worth noting that the main initiative in setting up a stock exchange came from the private sector (Ministry of Finance 1993). In the 1993/94 budget, incentives such as allowing lessors to claim wear and tear were provided to encourage leasing. The Development Finance Company of Uganda in conjunction with other shareholders incorporated the Uganda Leasing Company such that leasing would provide a much-needed alternative source of capital financing for new and growing businesses. In order to further broaden the financial system, Bank of Uganda encouraged further development of an interbank shilling money market by stimulating interbank borrowing and rediscounts between deficit and surplus banks.

3.6.3 Revenue Reforms

Tax rates were reduced in order to spur voluntary compliance but this was discriminatory and inequitable (Bakibinga 2002). Income tax rates were reduced from 60% in 1986 to 55% for individuals and 45% in respect of corporation tax. In 1990 the rates

[34] The Government also considered creating a National Unit Trust for the purpose of mobilizing savings across the country for investment in stocks at low transactional costs.

in regard to individual and corporation tax were revised to 50% and 40% respectively but financial institutions paid tax at 60% (Bakibinga 2002). In 1992 income rates for individuals were further revised to 40% while corporation tax was reduced to 40%. The income tax rate payable by individuals was ultimately reduced to 30% in the fiscal year 1993/94. In 1990 Customs rates were revised by reducing the categories of rates to five in a range of 10% to 50%, thereby abolishing rates above 50% (Ministry of Finance 1990). The sales tax rates were reduced to four categories (10%, 30% 70% and 150%) while excise duty was reduced to two rates (30% and 60%). The Uganda Revenue Authority was established in 1991 in a bid to improve the capacity of state to tax the citizens.

A lot of effort was made in reducing and streamlining of tax exemptions and widening the tax base. In 1987 corporations such as Uganda Railways, Uganda Airlines Uganda Posts and Telecommunications and Uganda Commercial Bank which had been enjoying tax exemptions were brought into the tax bracket. The justification for this was that although the entities were meant to provide subsidized services, the said services were being provided at commercial rates. It was estimated that the Government lost Shs. 3.5 billion in 1990/91 and over Shs. 8 billion in 1991/92 on tax exemptions (Ministry of Finance 1992). Government decided to abolish all exemptions except those that were under bilateral agreements with foreign countries and agreements with accredited international institutions and those under the Investment Code (Ministry of Finance 1993). In the fiscal year 1994/95 tax-exclusive tendering for government and donor funded projects was abolished in order to make tax administration easier and eliminate the large scope of abuse. The implication was that Government would finance any additional cost caused by tax inclusive tendering by making larger budgetary provision. Tax exemption provision in work and employment contracts with government were subjected to specific approval from the Ministry of Finance and the said approval would only be given if the exemption was required in terms of funding the agreement between government and the donor (Ministry of Finance 1994). Tax privileges such as procuring tax free imports or paying tax free salaries were terminated.

A Tax Identification Numbers system was introduced in 1993 (Bakibinga 2002). It was intended to increase the tax capacity of Uganda Revenue Authority by making the identification of taxpayers easy. The Ministry of Local Government and Uganda Revenue Authority made effort to put in place a comprehensive taxpayer's database in which each business enterprise, institution, and every individual taxpayer were allocated a unique identification number which is the equivalent of an account number.

A computerized system of customs accounting and control called ASYCUDA was introduced with the objective of proper control and accounting of goods passing through the various customs regimes, and speeding up the process of clearing goods through customs. A new system of customs description and coding called "The Harmonised Commodity Description and Coding System" was introduced to replace the National Customs Tariff System based or the Customs Co-operation Council Nomenclature (CCCN) (Bakibinga 2002). A complaints unit was also set up to handle complaints from the general public.

Exportation was encouraged by abolishing tax on exports[35] and allowing manufacturers refunds in respect of sales tax and excise duty paid. Incentives such as carrying over of losses and accelerated depreciation were also introduced in a bid to encourage investment. The collection procedures were streamlined whereby taxpayers would pay the taxes assed directly to commercial banks. Prior to this mode of payment taxpayers would carry large sums of money from banks to tax offices thus exposing staff of the revenue departments to handling large sums of money.

In 1990 the Minister of Finance announced that the proposal to create a tax authority way being studied. The tax authority was expected to yield substantial gains in revenue

[35] However, in respect of coffee, export tax remained in place until 1992.

collection from around 7% of GDP to 15% of GDP in 1993/94 (Ministry of Finance 1991). Uganda Revenue Authority was established to replace the defunct revenue departments in the Ministry of Finance, improve tax administration generally and to provide sufficient autonomy with a view of enhancing revenue collection (Bakibinga 2002). In the fiscal year 1993/94 Double taxation agreements were also entered into with the intention of attracting foreign private investment.

The macroeconomic reforms above signify the role of the IMF and World Bank in determining economic outcomes in Uganda. These reforms created a more democratic environment (or at least a less authoritative regime) in comparison with the past regimes. The implementation of these reforms was affected by interests of the ruling party and those of the people affected by the reforms e.g., scandals such as the sale of Uganda Commercial Bank arose.

3.7 Conclusion

In this chapter I have discussed different political settlements and revenue bargaining outcomes and under the colonial rule, Obote I, Amin, Obote II and partly under the Museveni rule. The trend can be described as a journey from 'serfdom' towards 'capitalism'. Under Colonial rule, the policy upon introduction of cotton and coffee was that Africans were the primarily growers while the European and Asian firms handled the processing and marketing. The colonial period was also characterised by disproportionate expenditure among the foreigners (British and Indians) and the Africans. Attempts (in form of boycotts and demands) were made to bargain for better

positions in the production chain and greater social expenditure but these registered little or no success. This is because Africans suffered a weak bargaining position due to fact that the legal regime did not favour the Africans and limited use of collective action which is in turn attributable to the effectiveness of the divide and rule policy.

Consequently, the Obote I and Amin Governments attempted to correct the perceived economic injustice of the colonial rule. Inspired by the growing appetite for nationalism, the Obote I government increased the African participation in the economy by facilitating the cooperative movement, creating statutory bodies and nationalisation of private enterprises while the Amin regime expelled the Asians and British in a bid to Africanise the economy. These events can be construed as implicit bargaining since the leaders were responding to the known interests of the Africans. Idi Amin confidently declared an economic war which put the country at a risk of losing foreign aid from the West because he knew that he had a friend in Libya, Saudi Arabia and the Soviet Union. The IMF and World Bank found their footing in influencing Uganda's policy priorities during President Obote's second government under which he introduced currency devaluation, trade liberalisation and price de-regulation but these policies did not take shape until the Museveni regime. President Museveni having been a leftist, resisted the structural adjustment programmes from World Bank and IMF but later accepted them. The World Bank and IMF succeeded in making Museveni accept the Structural Adjustment Programmes (SAPs) probably because the country was in dire need of revenue to finance the reconstruction and the said revenue was provided subject to the implementation of SAPs. It is these programmes that have enabled the private sector gain influence over policy priorities. It can be observed that the private sector had limited or no influence on policy prior to 1995, perhaps none existed. The subsequent two chapters examine business interest groups, including the Private Sector Foundation, currently influence revenue reforms in Uganda.

CHAPTER FOUR
HOW BUSINESS INTERST GROUPS INFLUENCE REVENUE REFORMS

4.1 Introduction

The previous chapter sets the stage for the role of business interest groups in revenue reform because structural adjustment programmes set the tempo for modern cases of business interest groups' influence and the lack thereof. The chapter reviews the legal, regulatory and institutional framework governing revenue mobilization in Uganda, an overview of business interest groups in Uganda and cases of how business interest groups engage both the Executive and Legislature in the revenue reform processes. The business interest groups constitute peak business associations such as Private Sector Foundation of Uganda, Uganda Manufacturers Association and Uganda National Chamber of Commerce; on the one hand and industry associations such as Alcohol Association Industry of Uganda, Kampala City Traders Associations and Uganda Bankers Association on the other. However, these are all members of the Private Sector Foundation of Uganda. The Chapter not only analyses the processes through which business interest groups influence the legislative outcome of revenue reforms but also how the implementation of revenue reforms is affected by interests of business associations. The selection of the cases was informed by the need to demonstrate diversity in revenue reform in terms of granting tax exemptions, removal of incentives, 'burdensome' administrative measures, introduction of new tax handles and failed attempts by business interest groups to set the revenue reform agenda. In this regard, revenue reforms such as waiver of taxes, removal of VAT on donor funded projects and the suspension of pre-shipment verification of conformity among others, are analysed in a bid to establish the role of business interest groups in revenue reforms. The outcome is such that some revenue reforms are softened while others are blocked as a result of the influence of business interest groups. Some of the blocked reforms include taxation of losses and the imposition of an obligation on banks to report financial transactions in excess of shs. 20 million. These were blocked through parliament and as such were not

passed into law. Softened reforms include withholding VAT and pre-export verification of conformity. These were modified during the implementation as a result of the influence of business interest groups that lobbied the Ministry of Finance and Ministry of Trade. In order to provide context to the revenue bargaining process, the chapter reviews the legal and regulatory framework for taxation and the budget cycle.

4.2 The Legal and Regulatory Framework for Taxation in Uganda

Taxation in Uganda is governed by the Constitution and various Acts of Parliament. The latter are often amended in a bid to raise more revenue thus creating an avenue for revenue bargaining. Tax heads are administered under separate laws but these are all administered by the Uganda Revenue Authority pursuant to an Act of Parliament. Disputes between taxpayers and Uganda Revenue Authority are resolved by a tribunal established by an Act of Parliament. This section provides an overview of the legal and regulatory framework for taxation in Uganda and in so doing, it provides context for the reforms analysed.

4.2.1 Constitution of Uganda 1995

Article 152 (1) provides that no tax shall be imposed except under the authority of an Act of Parliament. Where a law enacted under clause 1 confers powers on any person or authority to waive or vary a tax imposed by that law, that person or authority is obliged to report to Parliament periodically on the exercise of those powers.[36] Parliament is empowered to make laws to establish tax tribunals for the purposes of settling tax disputes.[37] The Constitution imposes a duty on citizens to pay tax and is also a yardstick for determining the constitutionality of any law or tax measure.

[36] Article 152 (2)
[37] Article 152 (3)

4.2.2 Income Tax Act Cap 340

Income tax is charged for each year of income and is imposed on every person who has chargeable income for the year of income.[38] The categories of income on which the tax is charged include business income, property income, employment income and capital gains but certain incomes and persons are exempted from income tax. Persons exempted from paying income tax include listed institutions,[39] local authorities and exempt organizations,[40] while income exempted from tax includes allowances to members of Parliament, income derived from agro-processing and pension. The Act provides for anti-tax avoidance measures and a special regime for taxation of petroleum operations and also provides for the manner in which taxes on income are administered.

Regulations relating to withholding tax, approved industrial buildings, incentives for exporters of finished consumer and capital goods, and transfer pricing were made to put into effect given provisions of the Act.

4.2.3 Value Added Tax Act Cap 349

Value added tax is a consumptive tax charged at a rate of 18% (standard rate) or 0% (zero rate) on taxable supplies made by taxable persons, and on import of goods and services. Taxable persons are those obliged to register because they meet the threshold and collect VAT while taxable supplies are goods and services on which VAT is imposed. The taxing point of a supply of a good or service is the earlier of when goods are delivered or services completed, payment is made or when a tax invoice is issued. The taxable value of a

[38] Section 4 of the Income Tax Act

[39] These are government and inter-government entities such as African Development Bank, European Development Bank, European Union and are listed in the First Schedule to the Act.

[40] An exempt organization is defined under section 2 of the Act to mean an amateur sporting association; religious, charitable or educational institution of a public character; trade union; a body regulating the conduct of professional whose income or assets do not confer a private benefit to any person.

taxable supply is the consideration paid for the supply but adjustments may be made when the supply is cancelled or when the consideration has been altered.

When determining the VAT payable, a credit is allowed for taxable supplies made to the taxable person and goods imported as such, VAT is intended to have a neutral effect on the business. Refunds are allowed for overpaid tax and bad debts but these are often difficult to obtain. The Act penalises persons for non-filing of VAT returns and the non-declaration of sales liable for VAT by imposing a penal tax but this is capped to the principal tax. The Second Schedule to the Act provides for a list of exempt supplies while the Third Schedule provides for zero rated supplies.

4.2.4 Excise Duty Act, 2014

Excise duty is an indirect tax borne by the consumer of the goods and services on which it is charged. The Act imposes excise duty on specific goods and services and the rates depend on the type of good or service. The range of goods and services on which excise duty is imposed is often revised in a bid to widen the tax base while the rates are often revised to increase the tax revenue. The taxing point for excise duty is when goods are removed from the manufacturer's premises or the when the service is completed or at the time of import. A refund of excise duty is granted when excisable goods or services are exported but duty is due when the excisable goods are re-imported. The Act repealed the East African Excise Management Act, 1970 and the Excise Tariff Act Cap 338 pursuant to which the tax was being administered.

4.2.5 Tax Procedures Code Act, 2014

This Act consolidates procedures for the administration of tax under existing tax laws thereby harmonizing and simplifying tax procedures. It provides for registration of taxpayers, tax agents and tax representatives. The Act provides for self-assessments, default assessments, advance assessments and additional assessments as the types of tax

assessments issued by URA. A person dissatisfied with an assessment may object to the assessment within 30 days and URA responds within 90 days by making an objection decision. A taxpayer who is dissatisfied with an objection decision may appeal to the Tax Appeals Tribunal.

Measures for collection and recovery of tax envisaged under the Act include issuance of agency notices,[41] distress proceedings, temporary closure of business, creation of a charge over immovable property and seizure of goods. However, where the tax cannot be recovered by reason of hardship, impossibility, undue difficulty or excessive cost of recovery, the case may be referred to the Minister of Finance who pays the tax on behalf of the taxpayer.

The URA may issue practice notes setting out its understanding of a provision of a tax law and a taxpayer may seek a private ruling on the position of the URA regarding the application of the law to a transaction entered into or proposed to be entered into. Practice notes are binding on the Commissioner but not on the taxpayer. The Act penalises default in furnishing tax returns, failure to maintain proper records, failure to provide information and understating provisional tax estimates.

4.2.6 East African Community Customs Management Act, 2004

This is an Act for the management and administration of Customs within the East African Community. The Act provides for: execution of bonds by importers;[42] exemption from duty;[43] enforcement measures;[44] puts in place measures to prevent smuggling;[45] provides

[41] An agency notice is a notice written by the Commissioner General requiring a person owing money or holding money on behalf of the taxpayer to remit a specified amount to the URA (Section 31 of the Act).
[4242] Part IX
[43] Sections 113 to 117
[44] Sections 130 to 133
[45] Part XII

for offences, penalties, forfeitures and fixtures;[46] empowers the Commissioner to settle cases;[47] and provides for appeals to the Commissioner Customs.[48] A taxpayer who is dissatisfied with the decision of the Commissioner may lodge an appeal in the Tax Appeals Tribunal.[49] The Act is read together with the Common External Tariff (Annex 1 to the Protocol on the Establishment of the East African Community Customs Union).

4.2.7 Uganda Revenue Authority Act Cap 196

The Act establishes the Uganda Revenue Authority[50] whose functions[51] include; administering and giving effect to tax laws, advising the Minister of Finance on revenue implications, tax administration and tax policy. URA is governed by a board of directors[52] which consists of a chairman appointed by the Minister of Finance, a representative of the Minister responsible for finance, a representative of the Ministry responsible for Trade and Industry, a representative of Uganda Manufacturers Association and the Commissioner General of the Authority. However, the President practically appoints and removes the Commissioner General at will.

4.2.8 Tax Appeals Tribunal Act Cap 345

This Act establishes the Tax Appeals Tribunal which is vested with original jurisdiction[53] to review tax decisions made by the URA.[54] Taxpayers are required to pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater

[46] Part XVII
[47] Section 219
[48] Section 229
[49] Section 230
[50] Section 2
[51] Section 3
[52] Section 4
[53] This was decided by the Supreme Court in the case of *Uganda Revenue Authority v Rabbo Enterprises (U) & Anor Civil Appeal No. 12 of 2004*
[54] Part II

pending final resolution of the objection of the tax assessment.[55] The Tribunal is empowered to award damages and to resolve disputes using alternative dispute resolution mechanisms. It is noteworthy that the members of the Tax Appeals Tribunal are appointed by the minister in charge of finance, who is also responsible for the appointment of the Commissioner General of URA.

4.3 Overview of Business Interest Associations in Uganda

Uganda has various business interest associations but the most prominent ones include; the Private Sector Foundation, Uganda Manufacturers Association, Uganda National Chamber of Commerce and Industry, Kampala City Traders Association and Uganda Bankers Association. These can be categorised into peak business interest associations and industry specific associations. This section provides an overview of some of the prominent business interest associations in Uganda including their composition and objectives. Peak business interest associations are largely concerned with broad based revenue reforms while the industry specific associations are more active in respect of reforms targeting a particular industry. The nature of the business interest groups provides insight into their respective bargaining power and strategies since some have closer connections with the ruling party.

4.3.1 Private Sector Foundation of Uganda

The Private Sector Foundation of Uganda is an apex body for the private sector and was created pursuant to the recommendation of the World Bank following the demise of the Uganda National Forum (Kalema 2008). It was established in 1995 with nine members and is currently made up of over 220 business associations, corporate bodies and the major public sector agencies that support private sector growth (PSFU 2016). The PSFU

[55] Section 15

represents all subsectors of the economy and is at the heart of structured consultations between the public and private sector (Kalema 2008).

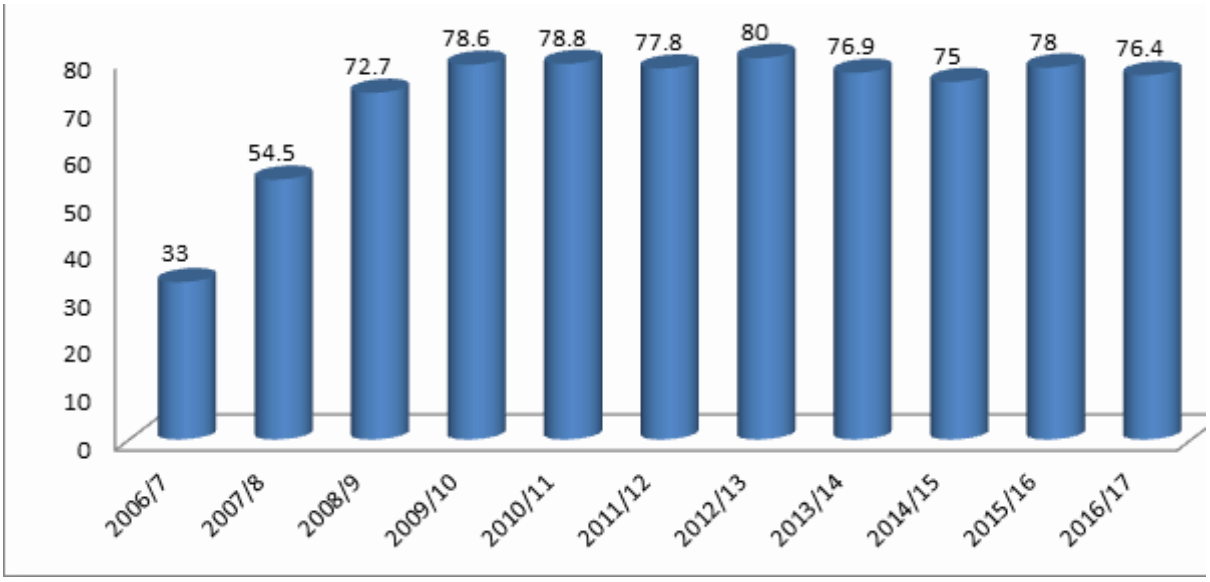
The PSFU's mission is to enhance private sector competitiveness through improving capacity for evidence driven policy advocacy and enhanced business development services for all its members. It is currently headed by Ely Karuhanga who formally chaired the Uganda Chamber of Mines and succeeded Patrick Bitature, both are linked ruling party.

The major lobby and advocacy channels for policy reform are; regular engagements with the president, ministries, parliamentary committees, commissioners and senior civil servants, as well as interface with Uganda's development partners through the private sector donor group (PSFU 2010). This is confirmed by the *Background to 2013/14 Budget* wherein it is stated that:

> In addition, and with a view to fostering a favourable environment for private sector growth, Government continues to dialogue with the private sector through a number of channels including national budget consultations, the Presidential Investors Round Table (PIRT), private sector foundation platforms, and the annual National Competitiveness Forum. These dialogues have improved communication between Government and the private sector and have proved valuable in the enactment of a wide range of commercial bills into law.

PSFU is among the organizations invited annually by government to submit budget proposals and often boasts of its proposals being included in the respective annual budgets. According to PSFU's reports, Government has a high response rate to the private sector proposals/priorities as illustrated in the graph below.

Figure 2: Government response to private sector proposals.



Source: Private Sector Platform for Action 2017

The proposals are submitted by members of the PSFU and are analysed in its tax analysis meetings where consultants are often engaged. On the basis of these meetings position papers are developed and submitted to MoFPED, Parliament and the Ministry responsible for trade and industry (Interview, PSFU 12th August 2019).

4.3.2 Uganda Manufacturers Association

Uganda Manufacturers Association was established in 1960s but due to political instability of the 70's, the association could not continue. In 1988, Dr. James Mulwana (a supporter of the ruling party) and a group of manufacturers proposed to revive the Association but the idea was initially rejected because of the existence of the Chamber of Commerce which was said to be sufficient to address the needs of industrialists (Uganda Manufacturers Association 2020). UMA's membership is said to be in excess of 1221 members and the association also boasts of influencing policy, including taxation (UMA August 2019). The Association is currently chaired by Barbara Mulwana, a daughter of Dr. James Mulwana and is also a supporter of the ruling party.

4.3.3 Uganda National Chamber of Commerce and Industry

Uganda National Chamber of Commerce and Industry (UNCCI) was established in 1933 and incorporated as a legal entity in 1988 by members of business community. UNCCI was formed as a private sector body and it is said to have 10 regional offices, 90 district branches and membership of over 10,000 persons (Uganda National Chamber of Commerce and Industry 2020). UNCCI is also said to have a lobbying and advocacy department that carries out research on the different issues affecting the business community and presents them to the different bodies with which it is affiliated and also studies different laws and policies in order to safeguard the business community (Uganda National Chamber of Commerce and Industry 2020). However, its involvement in policy advocacy is dismal. The association is currently chaired by Olive Kigongo, a supporter of the ruling party and was married to Moses Kigongo who currently holds a seat on the central executive committee of the ruling party.

4.3.4 Uganda Bankers' Association

Uganda Bankers' Association (UBA) is an umbrella organization for licensed commercial banks supervised by Bank of Uganda. UBA was established in 1981 and is currently made up of 35 members. Its mission is to promote a sound banking environment through research and innovation, advocacy, good governance and best practice. The banks constitute the governing council and are represented by their respective managing directors[56] and the governing council appoints an Executive Committee that comprises four managing directors/chief executive officers who oversee the Secretariat's operations, programs and budget (Uganda Bankers' Association 2020). UBA, through its legal committee, has made input in various laws and Bills including Data Protection and Privacy Act, 2019, Security interest in Moveable Property Act, 2019, and National Payments Systems Act, 2020 (Uganda Bankers' Association 2018).

[56] This implies that the leadership does not have political connections with the ruling party since the managing directors are professionals whose tenure is contractual.

4.3.5 Kampala City Traders Association

Kampala City Traders Association (KACITA) is a business support association, established and registered in 2001. It was re-registered in 2009 as KACITA – Uganda with the mandate to cover the whole country. The main aim is to facilitate trade, bring together the business community, and mobilize them into a viable, organized and social sustainable market place (Kampala City Traders Association 2020).

KACITA is famous for resorting to demonstrations/protests as a means of having their concerns addressed. In an interview with the former chairman stated that:

> If you go through PSFU both of you will see the president…PSFU will write and get to see the president. However, KACITA will have to stage a strike in order to get the president's audience.

Such methods have yielded fruit in the past. The chairman of KACITA is not connected to the ruling party and the association is feared to be pro-opposition. However, when asked about the group's allegiance to opposition, I was informed that the group is willing to ally with politicians that support its cause (Interview, KACITA 12th August 2019).

4.4 The Budget Cycle as a Framework for Revenue Bargaining

Government has created an environment that facilitates dialogue with the private sector within the budget cycle. The cycle begins with consultations whereby the Ministry of Finance calls upon different stakeholders to make proposals. Accounting officers are required to prepare and submit Budget Framework Papers (BFP) (in consultation with the relevant stakeholders) to the Minister of Finance by the 15th of November of the financial year preceding the financial year to which the budget framework paper relates.[57]

[57] Section 9 of the Public Finance Act, 2015

Upon receiving the budget framework papers from the respective accounting officers and sectors, the Minister of Finance, Planning and Economic Development prepares a Budget Framework Paper based on the said budget framework papers.[58] The BFP is discussed and approved by Cabinet and then submitted to Parliament by the 31st of December of the financial year preceding the financial year to which the Budget Framework Paper relates.

The Minister responsible for a vote, ministry or the head responsible for a vote, submits to Parliament, the policy statements for the proceeding financial year, for the Ministries or the other votes, as the case may be by the 15th of March.[59]

Parliament considers and approves the annual budget and work plan of Government for the subsequent financial year, the Appropriation Bill and any other Bills that may be necessary to implement the annual budget by the 31st of May of each year. The Minister of Finance presents to Parliament tax and revenue bills which give the Government power to obtain taxes, fees, charges and any other impositions to be proposed in the annual budget as part of achieving the objectives of the charter for fiscal responsibility.[60]

Parliament invites stakeholders to provide their views and the Finance Committee makes a report to the House. Once Parliament has concluded debate on the budget and their concerns incorporated, the Minister thereafter seeks the appropriation and approval of the Budget Estimates through the Appropriation Bill.

The budget cycle involves institutions such as the Presidency, Parliament, Ministries, Departments and Agencies and the business interest groups engage these institutions in a bid to influence taxation and expenditure priorities.

[58] Section of the Public Finance Management Act and Regulation 8 of the Public Finance Management Regulations, 2016.
[59] Section 13(3) of the Public Finance Management Act, 2015
[60] Section 8 of the Public Finance Management Act, 2015

4.5 Blocked, Softened Reforms, Setting the Revenue Reform Agenda and Failed Attempts

This section analyses the influence of business interest groups over selected revenue reforms. The selection of the cases was informed by the need to demonstrate diversity in revenue reform in terms of granting tax exemptions, removal of incentives, 'burdensome' administrative measures, introduction of new tax handles and attempts by business interest groups to set the revenue reform agenda. Some of the reforms e.g., VAT on aid funded projects were claimed by business interest groups such as PSFU yet they are beneficial to government, hence the need to interrogate its participation. It was after selection and review of the cases that they were grouped into blocked, softened reforms and setting the revenue reform agenda. The cases show that some of the revenue reforms such as taxation of losses pitted business interest groups against civil society organizations, with the latter supporting the measure and the former opposing it.

Civil society groups and a section of members of parliament were opposed to waivers of taxes but the reform was passed because it was lobbied for by individuals with strong connection to the ruling party hence securing the support of the executive. These were disguised in such a manner that they benefited the business community as a whole while others were disguised to seem like counterpart funding in respect of strategic investments. The cases demonstrate how the business interest groups influence revenue reforms in the political and bureaucratic arena.

Table 1. overview of cases

Revenue Reform	Strategy	Resource	Outcome
Blocked Reforms			
Taxation of losses	Lobbying Parliament Position papers	Access to Parliament Support of other business interest groups Minority report	The Finance Committee of Parliament rejected a law that imposes taxes on loss making On the second attempt to pass the law, the Committee accepted the proposal but parliament rejected it pursuant to a minority report On the third attempt the Finance Committee rejected the proposal. The president referred it back to parliament and it was again rejected
Reporting financial transactions	Lobbying parliament Petitioning court	Access to parliament Cooperation among members of Uganda Bankers Association	The amendment requiring financial institutions to report transactions to URA was rejected by parliament

Softened Reforms			
Withholding VAT	Lobbying parliament Lobbying the president Lobbying after the law coming into force	Cooperation between many organizations Access to the ministry of finance Access to the president Access to parliament	The law was passed but its implementation was suspended. The withholding rate was subsequently reduced from 50% to 6%
Suspension of PVOC	Lobbying prime minister Lobbying ministry of finance Lobbying parliament	Cooperation between many organizations Access to the prime minister Strike by KACITA	PVOC was suspended and reviewed with the input of UMA and PSFU.
Setting the Revenue Reform Agenda			
Waiver of taxes	Lobbying MoFPED Lobbying the president	Connections to the president Access to MoFPED	Successful waiver of taxes
Business licence reform	Lobbying MoFPED	Donor support Cooperation between PSFU and UMA	A number of licences were removed based on the recommendation of the business licence reform committee

VAT on aid funded projects	Lobbying MoFPED	Lack of counterpart funding Donor support	VAT on aid funded projects was removed and the exemption was extended to subcontractors
Widening the tax base	Lobbying MoFPED	Donor support Report on widening the tax base	Presumptive income scope was expanded from Ushs. 50m to Ushs. 150m
Unsuccessful Attempts			
Empowering the Minister to grant waivers	Lobbying MoFPED	Political connections to MoFPED	Parliament rejected the proposal on the basis that it facilitated corruption
Removal of exemption on agricultural loans	Lobbying MoFPED	Donor influence Support of PSFU Support by SEATINI	The exemption of agricultural loans from income tax was removed
Failed Agenda *rewarding tax collection with a 0.02% rebate; reduction of withholding tax on dividends from 15% to 5%; zero rating locally sold tea and removing VAT on tourism*	Lobbying MoFPED Lobbying the president	Platform for action Proposals to MoFPED Presidential investors round table	These were rejected by MoFPED

4.5.1 Blocked Reforms

These revenue reforms represent clauses contained in revenue Bills that are opposed by business associations and rejected by parliament. As seen above, the budget cycle is such that Bills are tabled before parliament, gazetted and stakeholders are invited to present their views before the Finance Committee. This process gives business associations an opportunity to lobby parliament against undesirable reforms. The cases are indicative of URA's constrained capacity to identify and audit taxpayers hence the unpopular reforms.

a. Taxation of Losses- Income Tax (Amendment) Bill 2018, Income Tax (Amendment) Bill 2019 and Income Tax (Amendment) Bill 2020

In 2018 the Uganda Revenue Authority convinced the Ministry of Finance to introduce an amendment to the effect that a taxpayer who has carried forward losses for a consecutive period of seven years of income shall pay a tax at a rate of 0.5 percent of the gross turnover for every year of income in which the loss continues after the seventh-year income. However, the proposal did not get past the Finance Committee stage.

In 2019, a similar proposal was returned pursuant to the Income Tax (Amendment) Bill 2019**.** It was approved by the Finance Committee but rejected on the floor of Parliament which voted to adopt the minority report. This tax measure was intended to raise taxes in the sum of Shs. 46 billion and the justification of the measure was that Uganda Revenue

Authority did not have capacity to audit all companies around the country, the formulae used by loss making companies cannot easily be traced and interpreted by URA, and that the proposal would eliminate under declaration and fraud.

When the minority report was tabled in Parliament the URA was castigated for its lack of capacity to effectively audit loss making companies and that the losses are a result of business costs as well as investment allowances provided by government in the tax laws. According to the Hansard of 7th May 2019, Hon. Mwanga Kivumbi (DP) argued that:

> …we enhanced the capacity of URA by Shs 90 billion for capacity building so that URA could have mechanisms to expand the taxable base, by training people and acquiring the relevant technology…Mr Speaker, we were just looking at a supplementary budget and URA has just acquired equipment for that capacity. Therefore, the argument of the chairperson that companies are not registering taxes because URA lacks capacity to investigate and tax them does not stand.

It is further documented in the same Hansard that Hon. Nandala Mafabi when tabling his minority report argued that:

> If URA, which is mandated to investigate and it is failing, the proposal I would make is that we close URA and say everybody pays 0.5 per cent of the gross tax.

The PSFU opposed the taxation of losses on the ground that it is against the tax principles, planning and it would affect companies genuinely making losses while the Civil Society Budget Advocacy Group (CSBAG) supported the proposal ('Private sector speaks out on new taxes' 2019). The executive director of CSBAG while supporting the tax measure said:[61]

> I am particularly happy that at least companies that have been declaring losses year in, year out will be forced to pay tax.

[61] *Ibid*

When the PSFU failed to convince the Finance Committee on the issue of taxation of losses, it made its case to a member of parliament who then tabled a minority report (Interview, Senior Policy Officer PSFU, 12th August 2019).

In 2020, the same proposal was returned but rejected by the Finance Committee on ground that it had been rejected before. The President wrote to Parliament asking the House to reconsider the provision.

However, when it was re-tabled, the proposal was supported by the chairman of the Finance Committee who, according to the May 2020 Hansard, argued that:

> Many prominent companies are dodging taxes by reporting losses. All these big hotels you see in Kampala are reporting losses. Is it true that all these companies are not making profits? That is why Government would like to tax their income…

This fell on deaf ears as majority of the members rejected the proposal. The chairman of the Budget Committee opined that:

> What needs to be done is to strengthen the administrative measures such as digital tax stamps and investigations. If we allow this tax, companies will collapse and we shall lose jobs.

Thus, the reform was rejected despite the intervention of the President.

We have seen that the PSFU was able to prevent the taxation of losses by appealing to an influential opposition member of parliament. It is notable that some of loss-making companies include government entities such as National Water and Sewerage Corporation, Micro Finance Support Centre and politically connected entities such as Commonwealth Resort Munyonyo, Roofings Rolling Mills and Imperial Group of Hotels. It is, therefore, probable that these weighed in on preventing the enactment. This case shows that revenue bargaining does not end when a reform is blocked but continues

especially where the reform is returned to Parliament.

b. Reporting Financial Transactions- Income Tax (Amendment) Bill, 2017

Clause 9 of the Bill provided that a financial institution, micro finance, forex exchange bureau and money transferring institution shall report any transaction exceeding one thousand currency points to the Commissioner every month not later than fifteen days after the end of the month to which the transaction relates or as may be required by the Commissioner. The effect of the proposal is that URA would be able to compare taxpayers' returns with the respective bank statements and subsequently issue tax assessments.

This proposal was rejected by the Finance Committee on ground that it would place an extra burden on financial institutions and duplicates the work done by the Financial Intelligence Authority, which is mandated to collect this information pursuant to the Anti-Money Laundering Act. It was further submitted that Uganda Revenue Authority could get the information from the Financial Intelligence Authority without requiring punitive and bureaucratic reporting and the Committee also doubted whether URA was likely to process the information meaningfully.

However, on 16th March 2018 the URA issued a notice to all the commercial banks in the country to provide information on all account holders from 1st January 2016 to 31st December 2017 ('Banks to sue URA over customer data', April 2018). This was pursuant to Section 42 of the Tax Procedures Code Act which empowers the Commissioner General to require any person to furnish any information stated in the notice. The section supersedes any law relating to privilege or public interest with respect to the production of any property or record or any contractual duty of confidentiality.[62]

[62] Section 42(4) Tax Procedures Code Act, 2014

However, the banks under their umbrella body, Uganda Bankers Association (UBA), sought the intervention of Bank of Uganda (the regulator), and wrote to URA requesting it to stay the implementation of its directions pending the response from Bank of Uganda. UBA also instructed a team of lawyers to challenge the request on grounds that it is unconstitutional ('Banks to sue URA over customer data' April 2018). The bank customers were apprehensive about the URA requesting for their information and had approached the banks protesting the measure (Centenary Rural Development Bank Officer September 2019). URA did not pursue the enforcement of the directive yet there was no injunction forbidding the enforcement.

At the time Clause 9 of Income Tax (Amendment) Bill, 2017 was proposed, the Tax Procedures Code Act, 2014 was in force and as such it follows that URA resorted to applying section 42 of the Tax Procedures Code Act because the Clause was rejected. The amendment is also an indictment against URA regarding its capacity to collect tax revenue in light of its revenue collection targets. It seems that when PSFU was advocating for the passing of the Tax Procedures Code Act it did not envisage that section 42 would be used in such a manner. The banks relied on Parliament in order to block Clause 9 of the Income Tax (Amendment) Bill and they successfully prevented the implementation of section 42 of the Tax Procedures Code Act by seeking the intervention of the central bank and legal action. As we shall see in the subsequent chapter, the banks filed a Constitutional Petition No. 14 of 2018 and proceeded to argue the petition despite the fact that the notices had been withdrawn.

4.5.2 Softened Reforms

This section represents a compromise between business associations and the state especially when a revenue reform is being implemented. In such circumstances, business associations are either not opposed to the reform in principle but the details therein or are unable to block the revenue reform in the legislative process and settle for less. A

common characteristic of such reforms is that at the time they are being introduced in Uganda, they are already in existence in other parts of Africa, especially East Africa.

a. Withholding VAT- Value Added Tax (Amendment) Act, 2018 and Value Added Tax (Amendment) Act, 2019

In 2018 the VAT Act was amended to the effect that persons gazetted by the Minister of Finance are required to withhold fifty percent of the VAT payable on a payment for a taxable supply and remit the same to Uganda Revenue Authority. The initial proposal required persons gazetted by the Minister of Finance to withhold the entire VAT and remit the same to URA but this was criticised as being excessive and hence the revision. It was expected that withholding VAT would raise revenue in the sum of Ushs. 45 billion. During the plenary, the Bill was opposed on grounds that Government was in arrears of about Shs 600 billion of the taxes it withheld and had not remitted to Uganda Revenue Authority (URA) and as such it would not be able to remit the amounts withheld. It was also opposed on ground that the fifty percent rate was excessive since it was premised on the assumption that traders earn fifty percent profit.

KACITA teamed up with the association of hardware dealers and engaged Ernst & Young who wrote a position paper and the same was submitted to the Minister of Finance (Interview, Spokesperson KACITA, 12th August 2019).

The law was passed despite the fact that the business community was against it. PSFU petitioned government to review the law because there would be a negative cash flow since businesses would need to pay VAT earlier than the payment period of suppliers which can go over three months. PSFU also met the president on the issue (Interview, Senior Policy Officer, PSFU, 12th August 2019).

UMA wrote a letter to the Minister of Finance and the Commissioner General, URA protesting the withholding of VAT citing its ill-planned implementation. In response, the Minister acknowledged the difficulty that the VAT withholding had imposed on the businesses and requested the Commissioner General to liaise with the office of the Solicitor General to effect the recall and prepare an appropriate notice of withholding agents to operationalise section 3 of the VAT amendment Act, 2018 and to propose appropriate amendments to the measure in consultation with all relevant stakeholders ('why government has paused withholding VAT' 2018).

The final temporal termination of withholding VAT is attributable to meetings between Uganda Manufacturers Association (UMA) along with the other private sector players; the difficulty in the implementation by URA; and the fact that it would result into numerous refund claims.

The Value Added Tax (Amendment) Act 2019 re-introduced withholding of VAT but at a lower rate of 6 per cent, of the taxable value and also provides exemptions for compliant taxpayers. Unlike the initial rate of fifty percent, the new rate in effect reduces the probability of VAT refunds. This is commendable because Government does not have money to pay all the VAT claims in time. For instance, if a trader purchased goods at Ushs. 800,000 plus VAT, sells the goods at Ushs. 1,000,000 plus VAT and the buyer withholds 50% of VAT, the trader would claim a refund of Ushs. 54,000 which the Government may not be readily willing to pay.

However, if the trader purchased goods at Ushs. 800,000 plus VAT, sells the goods at Ushs. 1,000,000 plus VAT and the buyer withholds 6%, the trader would pay VAT in the sum Ushs. 25,200. The measure was welcomed by PSFU and civil society organizations ('mixed reactions over new withholding VAT proposal', April 2019)

URA has since submitted a new list of persons required to withhold VAT but the Minister of Finance is yet to gazette the list (Interview, Manager Research and Policy Development, URA, 10th September 2019) but the reluctance in implementation of the amendment indicates that the Government is still constrained by pressure from the business community.

Withholding VAT literally affects the entire business community and this explains why PSFU, KACITA and UMA were involved. However, these business interest groups were not able to block the passing of the reform in Parliament because, in principle, it had the full support of the executive considering that the measure was in force in Kenya. Although the reform was revised to reduce the chances putting the taxpayer in a refundable position, implementation is yet to commence probably because the government is waiting for the dust to settle. It is also probable that the relationship between the leadership of business interest groups and the ruling party had a role in the outcome of the reform, thereby increasing the bargaining power of the business interest groups.

b. Pre- Export Verification of Conformity (PVOC)

PVOC is an inspection and verification procedure applied to specific goods that affect public health, safety and the environment. The inspection is undertaken before shipment of the goods into the country to ensure compliance with the applicable national standards. The Uganda National Bureau of Standards is empowered to enforce standards in Uganda[63] but it is constrained by financial and technical resources. The prevalence of substandard goods prompted the introduction of pre-export verification of conformity. UNBS outsourced the pre-shipment inspection function to several firms in consideration of an 8% commission of the fee charged, intended to build the capacity of UNBS. (Secretary of Environment KACITA August 2019).

[63] Section 3 of the National Bureau of Standards Act, Cap 327,

In 2010 Government introduced pre- export verification of conformity but the business community opposed it on ground that it increased the cost of doing business and the procedure was not clear. In particular, the Uganda Motor Vehicle Importers and Dealers Association, petitioned the Prime Minister's Office claiming that the inspection had caused a decline in the number of imported cars because of added costs ('Government suspends pre-inspection of general goods' November 2010).

In response to the concerns of the car importers, the Prime Minister asked the Minister of Finance to brief him on the implementation of the PVOC but instead the Minister of Finance ordered the Commissioner General of Uganda Revenue Authority to suspend PVOC. The Minister of Trade asked the Prime Minister to take "corrective action" on the suspension of inspection of used vehicles imported into the country.

The reasons given by the Minister of Trade were that the decision by the Minister of Finance to suspend PVOC was irregular because it was done without consulting her Ministry and that suspending a scheme with numerous stakeholders based on complaints from only one of the stakeholders, without consulting others was unfair (Kakaire 2010). It appears that the Minister of Trade was making a case for the multilateral firms that had been contracted to provide the verification service.[64]

The budget speech of the financial year 2010/11 seems to suggest that there were other groups or individuals that influenced Government's decision to suspend PVOC. The Minister of Finance announced that:

> Mr. Speaker, Sir following representations from private sector regarding the re-introduction of pre-shipment inspection on imports to the country, Government has decided to review this policy.

[64] These included Intertek International, Bureau VERITAS and Societe Generale de Surveillance (SGS)

On 3rd December 2012, pre- export verification of conformity was reintroduced. KACITA, UMA, PSFU were against the measure and in particular members of KACITA closed their shops in protest. This lasted several days. KACITA claimed that PVOC was a tax being disguised as an inspection fee. KACITA also argued that the fee punished those who import high quality products since the higher the quality of products, the higher the charges ('City traders unmoved by talks' June 2013).

PSFU's position was that the need to fight substandard goods was no doubt an element which the Ugandan economy required but PVOC in the form and manner introduced would not achieve its intended objective because it would put more strain on the genuine businesses and it did not guarantee the linkage of substandard goods from import sources.

The Minister of Trade held several meetings in a bid to persuade KACITA to call off the strike but she was not willing to stay the implementation of PVOC while the negotiations were on going yet this was not acceptable to KACITA. During one of the meetings a representative of KACITA said:[65]

> For us to suspend the strike the pre-inspection programme must be halted or the amount of money paid for the programme should be reduced or there must be a compromise that we all agree on. Otherwise, we have nothing new to tell our members.

The strike attracted the attention of Parliament to the extent that the Speaker of Parliament directed the Minister of Trade to table a detailed statement of PVOC.[66]

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[65]Nalugo, M. (2013, June 26). Speaker directs minister on strike. *Daily Monitor.* Retrieved from https://www.monitor.co.ug/News/National/Speaker-directs-Trade-minister-on-strike/688334-1894686-1027x5pz/index.html

[66] *Ibid*

The Minister of Trade suspended the implementation of PVOC for a period of six months and instituted a committee comprising PSFU, UMA, KACITA, and UNBS to review and address the issues raised by traders and also carry out massive sensitization. The result of the negotiation was that the list of products was reduced to allow the business community appreciate and familiarize with the programme. The charges were reduced to items of less than USD 2,000, groupage cargo[67] and other items were exempted.

In 2010 a 'little known' association of car importers successfully petitioned the Prime Minister but it appears there was already a growing concern among the rest of the business community. The introduction of PVOC in 2010 pitted international companies who leveraged the support of the Minister of Trade against local businesses and its probable that the former played a role in the reintroduction of PVOC in 2012. Similar to withholding VAT, PVOC affects a wide business community, hence the involvement of PSFU, UMA and KACITA upon its reintroduction in 2012 and the simultaneous use of lobbying and protests, of which the latter attracted parliament's support in favour of the traders.

4.5.3 Setting the Revenue Reform Agenda

Business associations or their individual members set the revenue reform agenda by lobbying the executive for desirable revenue reforms. However, these tend to reduce tax revenue since they are in essence an exemption from tax. Widening of the tax base through taxation of the informal sector is the outlier in this category.

a. Tax Waivers

The Finance (Amendment) Act, 2007 provides that where a taxpayer voluntarily discloses his or her duty or tax obligations and pays the principal duty or tax to the Uganda Revenue Authority, interest and penalty due and owing on the principal tax shall be

[67] This is consolidated cargo of small volumes and different importers.

waived. The basis of the measure as per the *Budget Speech* 2007 was that:

> …a number of taxpayers want to come out and pay their outstanding obligations but are wary of the penalties that they faced which sometimes surpassed the principal tax. A few have approached Government for clemency.

This tax measure is said to have resulted into additional revenue in the sum of Shs. 41 billion and also brought a number of new taxpayers onto the tax register that URA would never have accessed (Ministry of Finance 2008).

The Finance (Amendment) Act, 2008 waived all arrears of value added tax, income tax, excise duty, import duty, penal tax and interest due on or before June 2002 and still outstanding by 30th June 2008. The arrears amounted to Shs. 67 billion and the justification of the waiver was that it would help compliance and encourage entities to clean up their books.

A bulk of the waivers were enjoyed by a group of 25 companies and individuals and among them were companies controlled by Sudhir Ruparelia, Hassan Basajjabalaba and Gordon Wavamunno ('Government should regularise tax waivers' 2009). A member of Parliament, Mr. Nandala Mafabi was opposed to the waiver and according to the *Daily Monitor* Newspaper of 10th September 2008 his reason was that:

> Some of these people (tycoons and big political names) can pay the taxes or else their properties should be attached.

In 2015 Sudhir Ruparelia was reported to have contributed Shs. 3 billion to the construction of headquarters of the ruling party (Kaaya 2015).

The Government enacted the Tax Procedures Code (Amendment) Act, 2018 which in effect waived taxes of some private companies on the basis that the said taxes were related to counterpart funding and strategic investment. The background to these tax write-offs is that since the Minister of Finance has no power to waive taxes he or she

would enter into agreements to pay taxes on behalf of private companies or individuals. Parliament would then appropriate money to allow the Minister pay the taxes due.

However, the 10th Parliament refused to appropriate the said money because it was improper for the State to pay taxes for a company which was enjoying profits. This prompted the Government to table a proposal to write off a set of tax liabilities and also empower the Minister of Finance to grant tax waivers by paying taxes on behalf of individuals and companies.

The Civil Society Organizations such as SEATINI, CSBAG, Action AID were opposed to the tax write-offs as seen in their joint tax position paper. These Civil Society Groups under the umbrella organisation (Tax Justice Alliance Uganda) organised a press conference and also issued a press statement against the waiver of taxes. The press statement read as follows:

> By waiving taxes amounting to shs. 500bn, URA is bound to yet again fail at hitting its revenue target which was set at shs.16 trillion in FY 2018/19. This revenue lost is enough to pay 69,444 grade three primary school teachers a monthly salary of shs. 600,000 for a whole year. This week, as schools opened, teachers begun their industrial action demanding for increment in pay for which government says there is no money. Alternatively, the revenue lost is enough to pay 67,954 nurses a monthly salary of shs. 613,158 for a year- Or even enough to meet Uganda's optimal blood supply for about 8 years without any shortage. The 500 billion in lost taxes means government will have to increasingly rely on debt which currently stands at shs. 41.51 trillion as at June 30, 2018…

Tax Justice Alliance Uganda recommended that Government should establish a multi-stakeholder monitoring panel including policy makers and civil society to evaluate the relevance of awarded tax incentives, exemptions and holidays that the Minister of Finance reports to parliament.

In 2008 PSFU claimed, among its achievements, the waiver of taxes but there seems to be no evidence pointing to its role in tax waivers but the beneficiaries of such reforms are usually politically connected. The tax waivers are often packaged in a disguised manner. For instance, tax waivers in 2008 were disguised to seem like they were benefiting all taxpayers while the 2018 tax waivers were disguised to seem like they were in respect of counterpart funding. As seen above, the principal beneficiaries of tax waivers are individuals who contribute to the NRM party and this was done amidst protests from civil society. Thus, tax waivers epitomise the patron-client relations in Uganda. Since the Minister of Finance still has the power to enter into agreements obliging the Government to pay tax on behalf of companies and individuals, this patrimonial trend will continue until the law is amended by subjecting waivers to meaningful parliamentary approval.

b. Licence Reform- Business Licences (Miscellaneous Repeals) Act, 2015

The private sector has for long been burdened by licence fees which it considers not to serve a regulatory purpose. The PSFU has on various occasions contested the licenses and sought for their abolition. In the budget speech for the financial year 2011/12 it was announced that a comprehensive review of business-related licenses would be undertaken with a view of simplifying requirements, reducing discretionary powers, and eliminating redundant procedures.

In the subsequent financial year, it was announced that a comprehensive review of business licenses had been completed, and would eliminate about 27 licenses. It was estimated that implementation of the agreed recommendations would result into savings in excess of Shs 78.3 billion for the private sector. In recognition of the role of the private sector, the Minister of Finance said:

> I thank the Private Sector which took a key role in the process of business licensing reform.

The business licensing reform was conducted by the Business Licensing Reform Committee (BLRC), appointed in 2011 by MoFPED to assess the existing licences, and advise on reducing regulatory costs and risks of doing business. The Committee was chaired by Hon. Gerald Sendawula who was the chairman of the PSFU at the time and it was funded by the World Bank.

The BLRC recommended the removal of several licences and these recommendations were adopted by MoFPED and later reduced into the Business Licenses (Miscellaneous Repeal) Bill, 2015. The Bill was tabled before Parliament by the Minister of Finance and the Business Licenses (Miscellaneous Repeal) Act, 2015 was enacted.

However, some of the licenses that had been proposed for removal were retained by Parliament for different reasons. These include certificate of remittance, certificate of approval of funds, industrial licenses and licenses under the Liquor Act.

The justification given by the Minister was to the effect that the provisions on liquor licenses, as provided for under the Act, were not enforced, they were out-dated and that the regulatory aspect relating to liquor could be dealt with under other laws regulating product quality, traffic and road safety regulations, trade licenses and child protection provisions. The Parliamentary Committee's response was that Government should first introduce amendments to the Act to bring it in line with the current regulatory framework in the liquor industry.

The World Bank promotes, assesses and ranks countries in regard to the ease of doing business yet unnecessary licencing hinders the ease of doing business. Thus, the reform was successful because the World Bank afforded the business interest groups financial and technical assistance.

PSFU and UMA thereafter mounted pressure on government to implement the BLRC

report (PSFU 2011) hence the passing of the Business Licences (Miscellaneous Repeals) Act, 2015. However, this was not entirely successful because some of the licences that had been recommended for removal were maintained by parliament in exercise of its legislative mandate.

c. VAT on Aid Funded Projects- Value Added Tax (Amendment) Act, 2016 and Value Added Tax (Amendment) Act, 2017

In 2016 the VAT Act was amended to the effect that tax payable on a taxable supply made by a supplier to a contractor executing an aid-funded project is deemed to have been paid by the contractor provided the supply is for use by the contractor solely and exclusively for the aid funded project. In 2017 the exemption was extended to taxable supplies made to a government ministry, department or agency. An aid funded project is one that is financed by a foreign government or a development agency through loans, grants and donations.

The policy of most donors is that the funds they allocate should not be used to pay taxes in the beneficiary countries and as such the said countries are required to provide counterpart funding to cover the relevant taxes. According to the Minister of Finance, the tax measure would avoid unwarranted delays in the execution of such projects caused by lack of counterpart funding and the exemption of supplies procured from the domestic market for aid-funded projects would address the imbalance suffered by domestic suppliers and producers (Ministry of Finance 2017).

The amendment is beneficial to the private sector because it increases the competitiveness of locally sourced products. However, the role of the PSFU and UMA in bringing about this reform has been downplayed by the URA (Manager Policy Research and Development, September 2019) and the Ministry of Finance (Officer Economic Affairs, Ministry of Finance August 2019). The overriding consideration for the enactment was to

provide the Government relief from counterpart funding caused by taxes and as such the benefit to the business community was an unintended desirable outcome.

d. Widening the Tax Base- Presumptive Taxation

The PSFU has on several occasions decried the high burden of tax on those in the formal sector. In 2008 PSFU with support from the World Bank conducted a study on widening Uganda's tax base and improving tax administration (PSFU 2009). The report recommended measures such as widening the presumptive income bracket by increasing the threshold and improving tax administration of rental income.

The Income Tax (Amendment) Act, 2015 increased the presumptive tax threshold from Ushs. 50 million to Ushs. 150 million. The Second Schedule to the Act was amended by classifying persons on the basis of the nature and location of business in respect of those whose turnover is less than Ushs. 50 million. This was intended to encourage compliance among small businesses.

However, it is argued that the move to adjust presumptive tax thresholds was based on other considerations other than mere realization of more tax revenue from the informal sector since it is in the interest of the NRM regime to keep the tax burden of the informal sector very minimal (Khisa, Bakibinga & Ngabirano forthcoming).

The Income Tax (Amendment No. 2) Act, 2017, empowers the Minister of Finance to prescribe estimates of rent based on the rating of the rental property in a specific location in respect of persons who fail to file returns or persons whose returns are misleading. However, the rates prescribed by the Minister of Finance are subject to approval by Parliament.

The role of PSFU in influencing the said amendments was downplayed by MoFPED which claimed it to be its own initiative pursuant to the domestic revenue mobilization plan (Officer Ministry of Finance August 2019). This is not unfounded due to the fact some the recommendations by PSFU resonate with the amendments and bringing the hard to tax into the tax net is beneficial to government in terms of revenue and to the formal private sector in terms of lessening the tax burden.

Therefore, it is difficult to attribute such reforms to business interest groups. It should be noted, though, that the aim of PSFU in commissioning a study on widening the tax base (2019) was to reduce government dependence on the business community for tax revenue.

4.5.4 Unsuccessful Attempts

Business associations may also fail to influence policy as seen in Figure 1 in Chapter 1. This is attributable to the irrational nature of reforms proposed by business associations and the latent manner in which these reforms are lobbied for or against. However, where business associations actively lobby against reforms but fail in the political arena, they tend to resort litigation.

a. Power of Minister to Grant Tax Waivers- Tax Procedures Code (Amendment) Bill 2018

The Bill proposed to authorise Government to pay any tax due and payable arising from any commitment by Government on behalf of a person or owing from Government to pay on behalf of a person through the acquisition of goods and services. The background of the reform is that the 10th Parliament refused to appropriate money to pay taxes for companies that were granted tax waivers because it was improper for the State to pay taxes for a company which was enjoying profits.

The reform was rejected by Parliament because it would yield irrational exemptions since it was susceptible to corruption. When debating against the proposal, a member of parliament said,[68]

> …*the power to impose a tax and the power to waive a tax is ours*. The moment we donate it to the minister, we are supposed to close shop…Looking at clause 3, what the minister is seeking for is blanket power so that I can simply walk into his office and tell him, "I am unable to pay" or "I do not want to pay" then a mischievous minister would simply ask me for a cheque and we will close that deal.

Although parliament was successful in retaining power over exemptions, these are still open to abuse since nothing stops the Minister from undertaking to pay tax on behalf of investors, upon which the Minister seeks an exemption from parliament, on behalf of the government.

c. Removal of exemption on agricultural loans- Income Tax (Amendment) Act, 2014

In 2005 interest earned by financial institutions on loans granted to persons engaged in agriculture was exempted from tax in order to encourage lending to the agricultural sector[69] (Ministry of Finance 2005). In 2014 the law was amended by removing the exemption. Some members of the Finance Committee were concerned that the measure would lead to reduction in loans to the agricultural sector, given the inherent risk which would in turn hinder commercialisation of agriculture and, therefore, recommended that the proposed measure be reconsidered and alternative sources of revenue be sought.

[68] Hansard, June 2018
[69] This was limited to persons engaged in farming, forestry, fish farming, bee keeping, animal and poultry husbandry)

However, this was met with opposition from a section of members of parliament who argued that the exemption was given to commercial banks to ensure that loans granted to the agricultural sector would be charged at a lower rate was being enjoyed by the banks themselves and they were not passing it over to the various farmers. It was also submitted that the exemption was being used by the bank to evade taxes in such a manner that the banks would declare more money lent out for agricultural purposes than they were actually doing. Similarly, the URA's position was that those commercial banks and URA could not prove that agricultural loans were being used in that sector, when a customer borrows (Uganda Radio Network 2019).

The amendment was passed into law and after the reading of the *2014/15 Budget,* IMF lauded Uganda for removal of tax exemptions. The IMF Special Representative for Uganda said that at some point tax exemptions were granted but were being taken back because government had seen that its tax-GDP ratio was very low (Mwesigwa 2014). This resonates with the statement made by the Principal Economist in the Tax Policy Department MoFPED to the effect that some of the exemptions had outlived their stay and it was about time they be scrapped ('URA, Ministry of Finance explain u-turn on tax exemptions' August 2014).

SEATINI had published a report on tax exemptions in 2012, in which it recommended that government should act on its commitment to reduce unnecessary incentives and exemptions since they contribute to narrowing the tax base and lead to loss of tax revenue. SEATINI has also advocated against tax exemptions through press conferences and engagements with the Ministry of Finance (SEATINI August 2019). PSFU which is largely funded by donors seems not to have been opposed to the reform (Senior Policy Officer PSFU August 2019).

It is discernible that some of the beneficiaries of the exemption lobbied members of the Finance Committee but were unsuccessful because the actual benefit accrued to a small group of people, the exemption had existed for nearly 10 years, and the reform was

supported by government, civil society and IMF. Consequently, PSFU and UMA which are supported by the Bank and IMF (PSFU 2016a) had to be seen towing the international financial institutions line on tax exemptions.

c. Failed agenda

There have been a number of reforms which have for long been proposed by PSFU and other business interest groups but which have not been taken up by Government. These include rewarding tax collection with a 0.02 rebate, reduction of withholding tax on dividends from 15% to 5%, zero rating locally sold tea and removing VAT on tourism. Some of these proposals have continuously appeared in different editions of 'Platform for Action'[70] reports and they in effect reduce tax revenue.

The removal of VAT on tourism was proposed during the Presidential Investors Round Table[71] (PIRT) in 2017 on ground that tourism is an export. However, when the President referred the matter to MoFPED, it responded that tourism does not constitute an export and as such it is liable to VAT.

The common characteristic of these measures is that they lead to the reduction of tax revenue and were rejected by Government on ground that they are irrational (Officer Ministry of Finance August 2019). It is also apparent that they are not aggressively lobbied for.

[70] This is an annual report produced by the PSFU on behalf of Uganda's private sector. The main focus of the Platform for Action is to highlight the key growth and competitiveness challenges faced by the private sector and to recommend policy reform actions to Government.

[71] The Presidential Investors Round Table is a high-level forum that brings together a select group of both foreign and local investors to advise Government on how to improve the investment climate in the country.

4.6 Conclusion

The cases in this chapter illustrate how business interest groups influence revenue reforms in the political and bureaucratic arena. In regard to the outcomes, the cases show that business interest groups soften or block undesirable reforms whenever they come out jointly or strongly against the reforms. PSFU, UMA and KACITA jointly resisted withholding VAT and in the end the government not only deferred the implementation of the reform but also amended it in the subsequent year by reducing the withholding rate. Similarly, PSFU, UMA and KACITA jointly opposed the reintroduction of PVOC in 2012 and as a result the fees were revised, the list of goods was reduced and goods below USD. 2,000 were exempted. Additionally, when URA failed to have the amendment requiring banks to report transactions that exceeded UGX. 20 million and resorted to applying section 42 of the Tax Procedures Code Act, UBA came out strongly against the measure, sought intervention of the central bank and even threatened litigation. The outcome was that URA was unable to use bank statements to identify noncompliant taxpayers.

However, business interest groups are unable to set the agenda for revenue reform in the political and bureaucratic arena when they seek irrational revenue reducing reforms such as reducing withholding tax on dividends, zero rating locally sold tea and exempting tour operators from VAT. It is apparent from the cases above that sometimes business interest groups claim credit for reforms even where their participation is limited. For instance, PSFU claimed credit for removal of VAT on aid funded projects and widening of the tax base through improved taxation of the informal sector but its active participation was downplayed by government agencies.

The relationship between business interest groups and the ruling party is such that the leadership of the groups constitutes members of or are at least connected to the ruling party. This enables them gain access to the executive during the revenue bargaining process. However, Tangri and Mwenda (2019) argue that businesses have been granted

only limited access to government decision makers; they are consulted intermittently and are hardly involved in budgeting and economic policy formulation.

Revenue bargaining continues even after a reform has been passed or blocked. This is attributable to the reintroduction of a revenue reform by government and attempts by business interest groups to block passing of the reform. For instance, taxation of losses was blocked four times, including the time when the president asked parliament to reconsider it, and withholding VAT was passed by parliament amidst opposition from business interest groups but its implementation was resisted. However, sometimes business interest groups have limited bargaining power when a reform is being implemented, hence the use of litigation. To this end, the subsequent chapter analyses the use of litigation as a strategy and the role of courts of law in revenue bargaining.

CHAPTER FIVE
REVENUE REFORM LITIGATION

5.1 Introduction

This is a continuation of the previous chapter which analyses revenue bargains in the political arena and outcomes thereunder, because it considers litigation as an extension of the bargaining process and the courts as an arena for fresh revenue reforms. It focuses on how court processes are used to constrain or cause revenue reform, a process it christened revenue reform litigation but otherwise known as judicialization of politics. To this end, it discusses the court system in Uganda and analyses revenue bargains linked to the judicial process (revenue reform litigation cases).

The court system in Uganda was inherited from the colonial regime and it substantially consists of the Supreme Court, Court of Appeal, Constitutional Court and the High Court. The East African Court of Justice also forms part of the court system but it is reserved for matters relating to the Treaty for the Establishment of the East African Community, 1999. Some of the revenue reform litigation cases that have been determined by both the High Court and the East African Court of Justice have been in regard to trade licensing reform and excise duty reforms.

The trade licensing reform cases include the *Stanbic Bank case*, *Uganda Law Society case* and the *NC Bank case* while the *BATU case* challenged excise duty reform. These cases share one common characteristic i.e., the business interest groups failed in the political process but succeed under the court process, which seems to indicate a shift in bargaining power.

However, the *ABC Capital case* is special because it spilled over from the political to the judicial arena thus manifesting the new form of judicialization of politics.

The findings demonstrate that through litigation, banks and law firms blocked the trade licencing reform, a multinational company blocked the increase of excise duty against it, alcohol manufacturers softened the implementation of digital tax stamps, and a local firm reformed the imposition of a thirty percent tax deposit prior to institution of legal proceedings against taxation decisions made by URA. These outcomes are attributable to fact that business interest groups were able to raise potent legal issues (cause of action), availability of a legal procedure that focuses on decision making processes (judicial review), independence of the judiciary and the change in the composition of the courts.

5.2 Nature of Courts in Uganda

The court system in Uganda was inherited from the British Colonialists but it has evolved over the years. Under the current Constitutional Order, judicial power is derived from the people and it should be exercised by the courts in the name of the people and in conformity with the law, values, norms, and aspirations of the people.[72] This is recognised as a principle of constitutional interpretation.[73] In the exercise of this power, the courts are guaranteed independence from the control or direction of any person or authority by obliging all organs and agencies of the State to accord to the courts such assistance as may be required to ensure their effectiveness and protecting judicial officers from liability arising from any action or suit for any act or omission in the exercise of judicial power.[74]

The courts of record are the Supreme Court, Court of Appeal, Constitutional Court and the High Court. The Chief Justice is the head of the judiciary and is responsible for the administration and supervision of the courts. The Chief Justice, Deputy Chief Justice,

[72] Article 126 (1) Constitution of the Republic of Uganda 1995
[73] Advocates Coalition for Development and Environment & 40 others v Attorney General, Constitutional Petition No. 14 of 2011.
[74] Article 128 Constitution of the Republic of Uganda 1995

Principal Judge, justices of the Supreme Court, justices of the Court of Appeal, and judges of the High Court are appointed by the President acting on the advice of the Judicial Service Commission and with the approval of Parliament.[75] Parliamentary approval is intended to provide a cushion of checks and balances but the institution is seen as a rubber stamp owing to the fact that majority of the members belong to the ruling party. Consequently, the president's choice is barely questioned.

The East African Court of Justice is a creature of the Treaty for the Establishment of the East African Community.[76] The court was primarily established for the resolution of disputes between the Partner States on the one hand and between citizens and the Partner States on the other, arising from Acts or actions which violate provisions of the Treaty. The courts provide losers in a political process an opportunity to further their interests by seeking the intervention of the judiciary.

The choice of the court from which such intervention is sought is largely determined by *locus standi*, the cause of action, remedies sought and the jurisdiction of the court to provide the redress sought. The jurisdiction (to hear, determine, and grant remedies) with which a court is clothed is a creature of statute but the question as to a court has jurisdiction or not may be subject to mixed interpretations. This section highlights the different courts at the disposal of losers in revenue bargaining processes.

5.2.1 East African Court of Justice

The East African Court of Justice (EACJ) is established under Article 9 of the Treaty for the Establishment of the East African Community as a judicial body which ensures the adherence to law in the interpretation and application of and compliance with the Treaty. It consists of a First Instance Division which has jurisdiction to hear and determine

[75] Article 142 (1) Constitution of the Republic of Uganda 1995
[76] See Chapter 8 of the Treaty for the Establishment of the East African Community.

matters, at first instance, subject to a right of appeal to the Appellate Division.[77] Appeals are limited to points of law, grounds of lack of jurisdiction and procedural irregularity.[78]

The judges of the EACJ are appointed by the Summit[79] from among persons recommended by the Partner States who are of proven integrity, impartiality and independence and who fulfil the conditions required in their own countries for the holding of such high judicial office, or who are jurists of recognised competence, in their respective Partner States. A judge holds office for a maximum period of seven years unless he or she resigns or attains 70 years of age or dies or is removed from office in accordance with the Treaty.[80]

he grounds of removal of a judge are limited to misconduct or for inability to perform the functions of his or her office due to infirmity of mind or body and conviction for an offence involving dishonesty or fraud or moral turpitude under any law in force in a Partner State. Nonetheless, the removal on grounds of misconduct is subject to a hearing by a tribunal consisting of three eminent Judges drawn from within the Commonwealth of Nations.

The EACJ has jurisdiction over the interpretation and application of the Treaty. References to the EACJ can be made by Partner States, the Secretary General, and legal or natural persons. A person who is resident in a Partner State may refer for determination by the EACJ, the legality of any Act, regulation, directive, decision or action of a Partner State or an institution of the Community on the grounds that such Act, regulation, directive, decision or action is unlawful or is an infringement of the provisions of this Treaty.

[77] Article 23 of the Treaty
[78] Article 35A of the Treaty
[79] The Summit consists of the Heads of State or Government of the Partner States.
[80] Article 25 of the Treaty

5.2.2 Supreme Court

The Supreme Court is established under Article 129 of the Constitution and it consists of the Chief Justice and any such number of justices not being less than six. It is the final appellate court. The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears to it right to do so; and all other courts are bound to follow the decisions of the Supreme Court on questions of law. A person qualifies for appointment as a justice of the Supreme Court if he or she has served as a justice of the Court of Appeal or a judge of the High Court or a court of similar jurisdiction to such a court or has practised as an advocate for a period not less than fifteen years before a court having unlimited jurisdiction in civil and criminal matters.[81]

5.3.3 Court of Appeal

The Court of Appeal consists of the Deputy Chief Justice; and such number of justices of the Court of Appeal not being less than seven.[82] An appeal lies to the Court of Appeal from decisions of the High Court. A person qualifies for appointment as a justice of the Court of Appeal, if he or she has served as a judge of the High Court or a court having similar or higher jurisdiction or has practised as an advocate for a period not less than ten years before a court having unlimited jurisdiction in civil and criminal matters or is a distinguished jurist and an advocate of not less than ten years' standing.

[81] Article 143 Constitution of the Republic of Uganda 1995
[82] Article 134 Constitution of the Republic of Uganda 1995

5.3.4 Constitutional Court

The Court of Appeal also sits as the Constitutional Court when determining questions regarding the interpretation of the constitution and when doing so the bench consists of five members of the Court of Appeal.[83] Constitutional appeals lie in the Supreme Court which sits as a Constitutional Court of Appeal and when doing so the bench consists of a full bench of all members of the court.[84] A question of constitutional interpretation is one that seeks to determine whether an Act of Parliament or any other law or anything done under the authority of any law or any act or omission by any person or authority is inconsistent or in contravention of any provision of the Constitution.[85]

5.3.5 High Court

The High Court has unlimited jurisdiction in all matters save for constitutional petitions, presidential elections and tax disputes and it is headed by the Principal Judge. The High Court is also vested with powers to grant prerogative orders under a process known as judicial review.[86] A person qualifies as a judge of the High Court, if he or she is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters or a court having jurisdiction in appeals from any such court or has practised as an advocate for a period not less than ten years before a court having unlimited jurisdiction in civil and criminal matters. A judge of the High Court serves as such until he or she attains the age of 65 years.[87]

5.4 Revenue Reform Litigation Cases

Courts can be used to nullify both the principal and subsidiary legislation and as such are an important arena and resource for legislation reform. This part analyses how

[83] Article 137 Constitution of the Republic of Uganda 1995
[84] Article 131 (3) Constitution of the Republic of Uganda 1995
[85] Article 137 (3) Constitution of the Republic of Uganda 1995
[86] Section 36 Judicature Act
[87] However, the Principal Judge retires at 65 years.

disputes become court cases and how and what occurs to cases once they are in court (Mather 2009), and how they have been relied upon in the revenue reform process by considering the cases beyond the legal principles espoused therein. Some of the cases seem to emerge as result of dissatisfaction with outcomes of a reform in the legislative process while others are instituted in a bid to set the agenda for reform and change the status quo. The outcome is that the reform may be blocked or softened or the business interest groups may fail in doing so. Similarly, sometimes firms may succeed in setting the agenda for reform.

Table 2: Summary of cases

REFORM	**CASE**	**GENESIS OF DISPUTE**	**OUTCOME IN COURT**
Blocked Revenue Reforms			
Imposition of trade licensing fees on banks and legal firms	*Stanbic Bank and 3 others v Attorney General* *Uganda Law Society v Kampala Capital City Authority & Attorney General* *NC bank Uganda Ltd & 24 Others v Kampala Capital City Authority & Attorney General*	The Minister of Trade passed a law that imposed trade licencing fees on legal, banks & ATMs KCCA attempted to enforce the trade licencing Instrument Trade Licensing Act was amended to specifically impose trading licences on banks and legal firms	The banks and ULS succeeded in preventing Municipal Councils from collecting trading licences pursuant to Statutory Instruments. However, ATMs are liable to trading licences.

Reporting of financial transactions	*ABC Capital Bank and 30 Other v Attorney General and Uganda Revenue Authority*	On 16th March 2018 the URA invoked section 42 of the TPC Act and notified all the commercial banks to provide information on all account holders from 1st January 2016 to 31st December 2017	Banks succeeded in blocking the reform.
Increase of Excise duty on cigarettes	*British American Tobacco (U) Ltd v Attorney General of Uganda*	BATU restructured its operations due to high taxes and the Tobacco Control Act Parliament passed an Act which seemed to target BATU. URA implemented the law.	BATU obtained a ruling to the effect that cigarettes imported from Kenya enjoyed the same excise rate as that are locally manufactured
Softened Revenue Reforms			
Implementation of digital tax stamps	*British American Tobacco Uganda Limited v CG & AG* *Nile Breweries Limited and 17 Others v URA* *Alcohol Association Industry of Uganda & 39 Others v AG & URA*	URA commenced implementation of digital tax stamps by requiring manufacturers and importers at their cost.	Implementation was extended and Govt. promised to meet part of the cost

Setting the Revenue Reform Agenda			
Deposit of portion of tax	*Uganda Projects Implementation and Project Management Centre v URA* *Fuelex (U) Ltd v URA*	URA raised a preliminary objection regarding the competence of the suit due non-payment a 30% deposit of the portion of the tax Fuelex had not paid the 30% deposit and asked the Tribunal to refer the matter to the Constitutional Court.	Attempts to have the requirement to deposit 30% of the tax declared unconstitutional was unsuccessful The Court held that depositing 30% when the issue is a matter of law is unconstitutional
Forum shopping	*Commissioner General URA v Meera Investments* *Uganda Revenue Authority v Rabo Enterprises (U) Ltd & Mt. Elgon Hardware*	A preliminary objection regarding the original jurisdiction of the High Court in tax matter was raised.	The Supreme Court permitted forum shopping (circumvented payment of the deposit)

5.4.1 Blocked Revenue Reforms

These cases are a spill over of bargaining in the political and bureaucratic arena. When business associations fail to block reforms in the legislative process or when the interests of industry specific associations are not effectively represented by peak business associations, they tend to resort to court. This section shows how litigation is used by firms and industry specific associations to block revenue reforms. The trade licence reform was introduced to widen the revenue base of the local governments while the increase of excise duty on cigarettes was a mixture of raising revenue and vengeance.

a. Trading licence reform

Local governments have the authority to levy, charge and collect fees and taxes, including rates, rents, royalties, stamp duties, and registration and licensing fees[88] but the revenue collected is incapable of matching their expenditure. This is because the tax handles are limited and their tax base is narrow. Attempts have been made to widen the scope and rate of trading licences in a bid to increase local government revenue but these were met with resistance from the banking industry and lawyers.

Stanbic Bank and 3 others v Attorney General[89]

Section 30 (3) of the Trade Licencing Act empowers the Minister responsible for trade to

[88] Section 80 of the Local Governments Act, Cap 243

[89] High Court (Commercial Division) Miscellaneous Application No. 65 of 2011(unreported)

set licence fees payable on the issue of a licence in the areas set out in the Schedule by amending the same. On 6th September 2011 the Trade (Licensing) (Amendment of Schedule) (No. 2) Instrument, 2011 was made. Item 25 of the instrument imposes licence fees on banks while item 28 imposes licence fees on ATM machinery facilities.

In November 2011 Stanbic, Centenary, Barclays, and Standard Chartered Banks filed an application for judicial review against the Attorney General seeking an order of *certiorari* to quash Items 25 and 28 of the Trade (Licensing) (Amendment of Schedule) Instrument, for an order of prohibition to prevent Items 25 and 28 of the amended schedule from taking effect, and prohibiting the Attorney General or any other person from enforcing the said items against the applicants and other banks.

The banks' argument against the law was that banking business is exempted from paying trade license fees by section 8 (2) (f) of the Trade Licensing Act,[90] because banks are separately licensed to do banking business under the Financial Institutions Act and as a result the Instrument was *ultra vires* the Principal Act in as far as it purported to levy trade license fees on bank branches and ATMs.

In defence of the Statutory Instrument, the Attorney General argued that the Trade (Licensing) (Amendment of Schedule) Instrument only allowed particular businesses to carry on trade in a particular location, licenses provided for by the Financial Institutions Act were not trading licences and that the impugned Statutory Instrument was intended to allow local governments get revenue and control trade and business in the country.[91] It was also argued that the license referred to in section 8 (2) (f) of the Trade (Licensing) Act or a license similar to the trading license was not a regulatory license and that

[90] Section 8 (2) (f) of the Trade Licensing Act was to the effect that no trading licence was required in any event for any trade or business in respect of which a separate licence was required by or under any written

[91] It was submitted that there was a danger of local governments being denied revenue and the control of trade and businesses in towns and cities if most businesses or trades were excluded from the payment of licensing fees due to the fact that they pay for licenses under different statutes.

therefore Items 25 and 28 of the impugned instrument did not contravene the Trade Licensing Act.

The court ruled that the Financial Institutions Act, 2004 is a written law as provided for by section 8 (2) (f) of the Trade Licencing Act, regulation and supervision of financial institutions was clearly the responsibility of the Central Bank and that the application of the Act was limited to trading in stores and as such did not extend to services. This meant that the Minister responsible for Trade unlawfully exceeded her powers by imposing trading licences on banks. The remedy granted was that Attorney General and his agents or servants, or any other person were prohibited from implementing Items 25 and 28 of the Trade (Licensing) (Amendment of Schedule) Instrument of 2011 against the applicants and other banks.

Uganda Law Society v Kampala Capital City Authority & Attorney General[92]

In 2017 Kampala Capital City Authority attempted to collect trading licence fees from law firms pursuant to Item 17 (in Part A) and Item 25 (in Part C) of the Trade (Licensing) (Amendment of Schedule) (No. 2) Instrument, 2011. The Uganda Law Society (a legally recognized body for advocates) filed an application for judicial review seeking to quash Item 17 (in Part A) and Item 25 (in Part C) of the Trade (Licensing) (Amendment of Schedule) (No. 2) Instrument, 2011 and also prohibit the local government from collecting trading licence fees from legal firms.

The law society obtained a temporary injunction[93] restraining municipal councils from enforcing the impugned provisions and from threatening or closing legal firms until the determination of the substantive case. The collection of trading licenses from legal firms was halted as a result of this order.

[92] Miscellaneous Cause (Civil Division) 243 of 2017 (unreported)
[93] Miscellaneous Application No. 533 of 2017 (unreported)

NC bank Uganda Ltd & 24 Others v Kampala Capital City Authority & Attorney General[94]

The local authorities realised that they could not collect trading licences from banks and legal firms in light of section 8 (2) (f) of the Trade Licensing Act which exempted any trade or business in respect of which a separate licence was required by or under any written law, from a trading licence. The State embarked on the amendment of the principal Act.

The Trade Licensing (Amendment) Act, 2015 was enacted to overcome the hindrances manifested in the principal Act. Particularly, section 1 of the Act redefined the terms "trade" and "trading" to include services and section 8(2) (f) was repealed.[95] The Memorandum to the Bill provided that:

> The Bill also seeks to clarify the inconsistency created by the law in section 8 which exempts persons who are licensed by their regulatory bodies from obtaining trade licences by making a clear distinction *between licences issued by regulatory authorities such as Bank of Uganda, Law Council, Medical and Dental Practitioners Council*, *Engineers and Architects Registration Boards*, since these are licences to ensure that persons under those bodies are qualified and competent to practice those trades or professions.

This is in line with the argument advanced by the Attorney General in *Stanbic Bank case* but in conflict with the judge's reasoning that municipal authorities should not charge licence fees against persons who are licenced under separate regulatory regimes.

The Trade (Licensing) (Amendment of Schedule) Instrument, 2017 was made pursuant to the amendment of the principal Act. The Statutory Instrument imposes trade licensing fees on banks and legal firms. Kampala Capital City Authority attempted to collect trading licence fees from banks.

NC Bank and 24 other banks filed an application for judicial review seeking prerogative

[94] Miscellaneous Cause (Civil Division) No.2 of 2018 (unreported)
[95] Section 5 of the Trade (Licensing) Amendment Act, 2015

orders of certiorari and prohibition against Kampala Capital City Authority and the Attorney General. The banks contended that they were licensed, regulated and supervised by the Central Bank under the Financial Institutions Act and therefore the requirement under Item 25 of the Statutory Instrument to pay for trading licences for banking services was irrational, unfair and amounted to double collection of revenue. They also contended that the requirement under Items 28 and 23 to pay separate trade licensing fees for ATMs was unfair, irrational and amounts to double charging since ATMs are part of the banking business.

KCCA contended that the application was misconceived because its role is limited to levying licensing fees that were determined by the Minister and that the Trade (Licensing) Amendment Act, 2015 had repealed section 8 (2) (f) of the Principal Act which exempted the levy of licensing fees on any business which a separate licence was required. The Attorney General argued that the levying of trade licence fees under the Trade (Licensing) Amendment Act, 2015 was lawful[96] and the Financial Institutions Act, 2004 did not preclude the levy of trade licences.

The court ruled that although at first reading of Act no. 28 of 2015, it would seem to support the submission that the amendment of section 8 (1) to include services brought the banks within the ambit of the Trade Licensing Act, but this would amount to stretching the meaning of the term "services" to include banking business as defined under the Financial Institutions Act i.e., banking business is not a service that involves selling and trading. However, the court ruled that ATMs located away from bank premises did not constitute branches of banks nor were they regulated nor defined by the Financial Institutions Act, and as such were subject to trade licensing fees. A writ of

[96] It was submitted that Act No. 28 of 2015 authorised the Minister to bring banking services under the operation of the Act and the Minister lawfully made provision for licence fees payable by banking institutions.

certiorari quashing Item 25 of Part A and Item 20 of Part C of the Trade (Licensing) (Amendment of Schedule) Instrument, 2017 was issued.

b. Reporting of Financial Transactions

As seen in the previous chapter, banks together with their umbrella body blocked Clause 9 of the Income Tax (Amendment) Bill 2017, and on 16th March 2018 the URA invoked section 42 of the TPC Act notifying all the commercial banks in the country to provide information on all account holders from 1st January 2016 to 31st December 2017. In addition to the political pressure, banks together with their umbrella body successfully petitioned the Constitutional Court on the basis that sections 41 and 42 of the TPC Act 2014 violated right to a fair hearing. It is probable that this decision was influenced by personal ideology and preferences, collegial considerations, prevalent attitudes within the legal profession (Hirshl 2009).

ABC Capital Bank and 30 Others v Attorney General and Uganda Revenue Authority[97]

The petitioners argued that the notice constitutes an indiscriminate fishing exercise lacking any objective and rational basis, it did not indicate the part of the tax law intended to be administered with the benefit of the information sought since there is no pending tax investigation in relation to each and every bank account. That this accordingly impairs the right to privacy of all bank account holders in Uganda enshrined under article 27 (2) of the Constitution in a manner that exceeds what is necessary to accomplish the objective of tax collection and is accordingly beyond what is acceptable and demonstrably justifiable in a free and democratic society.

It was argued for URA that the impugned provisions of section 41 and 42 of the TPC Act do not preclude a person from exercising either the rights provided for in the Constitution

[97] Constitutional Petition No. 14 of 2018.

such as the right to access a court of law, the right to challenge any tax assessment, the right to legal representation, the right to presumption of innocence and the right to fair hearing; save for the right to professional privilege.

The Constitutional Court emphasized that the right to a fair hearing is a non-derogable right and held that no arbitrary action can be taken which has the effect of depriving any person of the privacy of communication, their property and privacy of their home without due process. It was also held that sections 41 and 42 of the TPC Act are meant to empower the commissioner in investigation of related facts, the investigation should be prompted by some probable cause such as an alleged commission of an offence under the Tax laws for which information may be obtained through those investigations and it should be required from account holder.

The effect of the decision is that it set a warning against arbitrary behaviour of government institutions, the banks leveraged the law to put an end to the reform, and the court set a precedent on how information should be obtained by URA. This was a unique strategy as we shall see in the subsequent chapter.

c. Excise duty reform

Excise duty on cigarettes is a significant source of revenue considering the fact that tobacco products are highly taxed to discourage consumption. However, it is the discrimination of tobacco products from Kenya against those from Uganda that prompted British American Tobacco to seek legal redress at the East African Court of Justice. The company succeeded in having the imposition of extra excise duty nullified by court, having failed in the political process.

British American Tobacco (U) Ltd v Attorney General of Uganda[98]

[98] East African Court of Justice Reference No. 7 of 2017

British American Tobacco (U) Ltd (BATU) is a foreign owned enterprise, it was the biggest exporter of tobacco in the country and in 2013 it earned about $60m from exporting the tobacco leaf. There are about 65,000 tobacco farmers in Uganda and it is also among the top 10 taxpayers, having paid about $20m in 2012.

In 2011 a member of parliament sought to introduce a Bill to control the manufacture, sale, promotion and use of tobacco products (Tobacco Control Bill). BATU in conjunction with other leading tobacco companies, used its considerable financial clout to oppose the Bill. In this regard BATU wrote to the member of parliament who introduced the Bill (in anticipation that the farmers would rise against him and disorganize him politically), confirming that it would no longer do business with the 709 farmers in his constituency because his Bill and a related plan to raise tobacco taxes had rendered the arrangement increasingly less economically viable ('Tobacco giant 'tried blackmail' to block Ugandan anti-smoking Law' July 2014). The company is also said to have mounted a heavy lobbying campaign; warning MPs on the Committee on Health that replacing the existing Tobacco Act threatens the livelihoods of thousands of farmers.

In 2014 Tobacco Control Bill was tabled before Parliament and referred to the Committee on Health. In the same year BATU announced that it would restructure its dealings by pulling out of the processing and exportation of the tobacco leaves and focusing on selling cigarettes which it would import from a sister company in Kenya (The *Observer*, 'BATU to stop buying tobacco' August 2014). The company held a meeting with the Minister of Trade subsequent to this announcement. The Tobacco Control Act, 2015 was passed amidst furious lobbying. Health activists, were pushing for stricter controls, tobacco farmers from various regions, Uganda Law Society and Private Sector Foundation Uganda, deemed it unfair and oppressive ('Farmers to petition House…' June 2014). BATU restructured its operations in 2015.

On 30th March 2017, the Excise Duty (Amendment) Bill No. 6 of 2017 which sought to increase the rate of excise duty on cigarettes (soft cup) from Ushs. 50,000 per 1000 sticks

to Ushs. 55,000 per 1000 sticks was gazetted. The said rate was to apply uniformly to all applicable tobacco products manufactured within the East African Community. The justification for the increase was that excise duty on locally manufactured cigarettes should not be the same rate with imported cigarettes in a bid to promote growth and encourage more companies to invest in the country and provide market for tobacco farmers.

However, as per the June 2017 Hansard, when the Bill was brought before the plenary and debated upon by members of parliament, the rate was increased and in doing so, it was stated as follows:

> BAT are my friends but they decided to shift the company from here to Kenya and we lost jobs to Kenya. We should make it very hard for them to export to Uganda. Therefore, my proposal is that the locally manufactured cigarettes should be taxed at Shs. 60,000 per 1,000 sticks and the imported ones Shs. 90,000 per 1,000 sticks so that we promote the local cigarettes and deter imported ones.

BATU sought the intervention of Uganda Manufacturers Association and PSFU (to which it is a member) but it failed to gather internal support because its new business model was against the import substitution policy (Interview, PSFU, 12th August 2019). Consequently, BATU sought the intervention of the Office of the Principal Secretary EAC Integration who wrote to the Secretary General East African Community Secretariat informing him that the excise duty that had been imposed by Uganda to differentiate between locally manufactured and imported cigarettes was considered discriminatory and in violation of the Treaty, the Customs Union Protocol and the Common Market Protocol. The letter sought the intervention of the Secretary General of the EAC Secretariat to have Uganda consider abolishing the duties.

The Director General (Customs and Trade) on behalf of the East African Community Secretariat wrote to Uganda's Permanent Secretary Ministry of East African Community Affairs and the Permanent Secretary Ministry of Finance, Planning and Economic Development, urging the Partner States to comply with the provisions of the EAC Customs Union Protocol and the Treaty by granting equal treatment to products from other Partner States.[99] MoFPED took cognizance of BATU's concerns and pledged to review the excise duty regime in the subsequent financial year to align it with that of the EAC Treaty and Customs Union Protocol.

Meanwhile, the Uganda Revenue Authority had re-categorised the cigarettes (manufactured in Kenya and brought into Uganda) as imported cigarettes attracting excise duty at the higher rate for imported cigarettes and had issued tax assessment notices requiring BATU to pay excise duty for its cigarettes.

It is against this background that BATU filed a reference in the East African Court of Justice challenging the legality of sections 2(a) and 2(b) of the Excise Duty (Amendment) Act, 2017 for contravening various provisions of the Treaty for the Establishment of the East African Community, Customs Union Protocol and Common Market Protocol. It obtained a temporary injunction[100] staying the implementation of sections 2(a) and 2(b) of the Excise Duty (Amendment) Act, 2017 and the consequent collection of excise duty based on the impugned rates on imported products.

The Attorney General denied that sections 2(a) and 2(b) of the Excise Duty (Amendment) Act, 2017 contravened the various provisions of the Treaty for the Establishment of the East African Community, Customs Union Protocol and Common Market Protocol. It was argued that differential treatment for locally manufactured *viz* imported goods to bring

[99] See *British American Tobacco (U) Ltd v Attorney General of Uganda Application No. 13 of 2017* (unreported)
[100] *Ibid*

it in tandem with the practice that prevails in the region, as well as counteract the practice of smuggling and its diverse effects on locally manufactured cigarettes.

The court ruled that the Excise Duty (Amendment) Act, 2017 did not contravene the Article 2 (2) of the Treaty but it was the act of re-characterization of BATU's products by the Uganda Revenue Authority that contravened the Treaty and Article 1(1) of the Customs Union Protocol. The reasoning of the court was that the term "import" as used in the Excise Duty (Amendment) Act, 2017 had to be read in tandem with the Treaty for the Establishment of the East African Community and Customs Union Protocol, and in doing so it was held that Kenya was not a foreign country within the meaning of the Protocol.

5.4.3 Softened Revenue Reforms

The digital revenue reform case shows how litigation and lobbying are used simultaneously in revenue bargaining. Similar to PVOC, the use of digital tax stamps in the administration of excise duty was operational in Kenya and Tanzania prior to its introduction in Uganda. Thus, its implementation was a foregone conclusion. However, the room left for negotiation was in respect of how much of the burden of the cost of implementation would be borne by the manufactures. Consequently, the suits against its implementation were filed but later withdrawn as a compromise. Thus, litigation strengthens the bargaining power of business associations.

Digital tax reform

Digital Tax Stamps (DTS) are physical paper stamps which are applied to goods or their packaging but in this case contain; security features and codes to prevent counterfeiting;

tamperproof features; track and trace capabilities to enable consumers validate the stamp, traders and manufacturers track the product movement and government to monitor compliance of the product and stamp; and quick response code (QR code) that allows distributors, retailers and consumers to verify the authenticity of the products (URA 2020).

During the reading of the *Budget Speech* for the financial year 2017/18 the Minister of Finance announced the use of digital stamps as a new measure. He said:

> Madam Speaker, manufacturers and importers of goods that I will statutorily prescribe will henceforth be required to affix tax stamps. Tax stamps minimize under declaration of such goods and boost tax collections. Failure to affix tax stamps, the defacing of stamps, the possession of unstamped goods, or any attempt to acquire or sell stamps without authorization will lead to penalties as prescribed by law.

The Tax Procedures Code (Amendment) Act 2017, introduced part VA wherein it imposed the duty to affix a tax stamp on any goods locally manufactured or imported, empowered the Minister of Finance to prescribe the locally manufactured and imported goods on which tax stamps are to be affixed and empowered the Commissioner to prescribe the manner in which the stamps should be affixed. The amendment also inserted section 19B which provides that a taxpayer who fails to affix a tax stamp on goods prescribed is liable to pay a penal tax equivalent to double the tax due on the goods or fifty million shillings, whichever is higher.

In October 2018 the Tax Procedures Code (Tax Stamps) Regulations, 2018 were made. Under Regulation 12, the Commissioner General was empowered to require manufactures and importers to install a new or modified digital stamp system at the cost of the manufacturers or importers. This prompted manufactures to seek the intervention of court, having made little or no progress with dialogue.

The Prologue- BAT Case[101]

Judicialization of politics is largely a function of concrete choices, interests, or strategic considerations by self-interested political stakeholders (Hirshl 2009). On 4th April 2019 the Commissioner General wrote to BAT informing it that the intended date for implementing DTS was 19th April 2019. On 9th April 2019 BAT lodged an application in the Tax Appeals Tribunal against the Commissioner General and Attorney General. The company sought determination of the legality of Regulation 7 of the Tax Procedures Code (Tax Stamps) Regulations and questioned the decision to exclude it from Government support in respect of the cost of implementing digital tax stamps. BAT also averred that it was aggrieved by the 1st Respondent's decision to implement DTS on 15th April 2019 without following the Regulations.

In response the Commissioner General stated that the application was premature since DTS had not been implemented and the roll out date had been extended. The Attorney General contested the jurisdiction of the Tribunal to handle the dispute since the Applicant was challenging a Statutory Instrument. The matter was withdrawn because the implementation of DTS had been extended but prior to the withdrawal, the Tribunal intimated that it had the jurisdiction to hear and determine the application.

Allies in the struggle- NBL[102] *and AAIU*[103] *case*

On 23rd August 2019, Nile Breweries Ltd and 17 others lodged an application against URA before the Tax Appeals Tribunal. Their claim was that by a letter dated 7th May 2019, Uganda Revenue Authority required them to install the DTS system at their cost and as such the Regulations were *ultra vires* the principal Act. The companies also claimed that URA had arbitrarily removed them from the withholding tax exemption list and

[101] *British American Tobacco Uganda Limited v Commissioner General Uganda Revenue Authority & Attorney General TAT 25 of 2019*

[102] *Nile Breweries Limited and 17 Others v Uganda Revenue Authority TAT 85 of 2019*

[103] *Alcohol Association Industry of Uganda & 39 Others v Attorney General and Uganda Revenue Authority Miscellaneous Cause No. 398 of 2019*

threatened them with investigative audits and denial of tax clearance certificates. In its defence URA stated that it issued the notice but the system had not yet taken effect because it was subject to further statutory instruments, and denied the 'arbitrary revenge actions'.

In September 2019, the Alcohol Association Industry of Uganda and 39 of its members filed an application for judicial review against the Attorney General and URA seeking to quash regulation 12 of the Tax Procedures Code (Tax Stamps) Regulations pursuant to which the cost of installation of the DTS system was transferred to companies. This was on ground that the regulations were *ultra vires* the Act. However, these cases were later withdrawn.

Loss of High Ground- The failed injunctions

When Nile Breweries and 17 others filed TAT No. 85 of 2019, they sought a temporary injunction[104] restraining URA from implementing DTS and an order restraining URA from carrying out arbitrary revenge actions for exercising their right to object and appeal against its decision to implement DTS. The Tribunal declined to grant the temporary injunction on ground that the applicants did not meet the conditions for granting a temporary injunction. The Tribunal also ruled that the arbitrary revenge actions had not been proved.

Similarly, when the Alcohol Association Industry of Uganda and 39 others filed the application for judicial review, the sought a temporary injunction[105] restraining URA from implementing DTS and an order restraining URA from carrying out arbitrary revenge actions against them for failing to comply with requirements for implementation of DTS.

[104] *Miscellaneous Application No. 82 of 2019*
[105] *Miscellaneous Application No. 744 of 2019*

The High Court declined to issue the temporary injunction on ground that circumstances were such that it is the duty of every citizen to comply with the law until court declares it unconstitutional/invalid/ ultra vires and that public interest considerations should prevail over private rights. This is outcome may be relatable with the argument that judicial behaviour in cases involving politically charged issues, may be driven by adherence to national meta-narratives, responsiveness to public opinion (Hirshl 2009).

The Political Solution

On 18th November 2019, the President wrote to the Minister of Finance pledging that Government would bear the cost of implementation. He stated that,

> I am writing in connection with the digital stamp provider, SICPA. This electronic method eliminates all fraud. I, therefore, direct that all factories in Uganda must give access to the company to install the cameras *at our cost.* What are they afraid of?

The letter was copied to Uganda Manufacturers Association and this could have contributed to the withdraw of the suits.

Plot Twist

In January 2020, an individual (Sylvester Kamuli) instituted a suit in the Commercial Division of the High Court and obtained an interim order restraining URA from enforcing the deadline of the transition period by which gazetted items should bear digital stamps. His claim was that as a consumer of various products, which have been subjected to Digital Tax Stamps, URA was infringing or threatening his rights guaranteed under the Constitution. However, the interim order was valid for only four days and it did not in effect halt the implementation of digital tax stamps.

As seen from complaints of the affected producers, May 2020, the Government reneged on its promise to meet the cost of implementing digital tax stamps. This could have been as a result of COVID-19 since resources were allocated to fighting the pandemic. In response the Alcohol Association Industry of Uganda and the Uganda Water and Juice Manufacturers Association jointly published an advert in the dailies calling for support to petition the President. Part of the advert read as follows:

> We need your support in a petition to H.E. the President to ensure that Government Continues to meet the cost of DTS, allowing manufacturers, farmers, retailers, distributors and the public to survive the ravages of COVID-19…

Epilogue

As seen above, four cases were filed to block the transfer of the cost of digital tax stamps to manufacturers and importers. Although the cases were never determined, it is apparent that they contributed to the softening of the reform- the deadlines for implementation were extended on several occasions, the actual cost of the stamps was reduced, and government subsidised the cost of implementing the reform for a period of time.

5.5.5 Setting the Agenda for Revenue Reform

Setting the agenda for revenue reform requires one to have access (connections) to the executive since tax Bills are introduced by the Minister of Finance. However, some firms lack such connections and they may not be in position to rely on popular business associations. The use of litigation to nullify undesirable provisions of tax laws enables such firms to set the agenda for reform. The cases in this section show that firms can succeed in nullifying legal provisions or circumventing known procedures without

lobbying the executive but such gains may be overturned and the reverse is true. This is partly attributable to the composition of the courts, with some judges being 'progressive and independent' and some being 'cadres' of the ruling party. The cases below discuss how firms attempted to set the agenda for reform in connection with the requirement to pay 30% of the tax assessed prior to having their case determined by the Tax Appeals Tribunal.

a. Deposit of 30% of the tax assessed

Taxpayers are required to pay 30% of the tax assessed prior to having their case determined by the Tax Appeals Tribunal. This measure is seen as oppressive especially where the amount of tax in dispute is substantial owing to penalties imposed and the period audited. Uganda Projects Implementation and Project Management Centre (UPIMAC) contested the measure in the Constitutional Court and Constitutional Court of Appeal (Supreme Court) and sought the nullification of the respective provision. Unfortunately, in 2010 the justices of the Supreme Court confirmed the decision of the Constitutional Court and held that the measure did not prejudice UPIMAC's right to a fair hearing and as such it was maintained.

However, in a similar case in 2020 the Constitutional Court held that the measure is unconstitutional where the dispute is limited to matters of law as opposed to matters of fact. It is apparent that the composition of the Constitutional Court in 2009 was different from that in 2020.

Uganda Projects Implementation and Project Management Centre v Uganda Revenue Authority[106]

In 2001 the Valued Added Tax was amended by enacting a provision to the effect that a taxpayer who disputed the tax assessed had to pay to the Commissioner General the

[106] Supreme Court Constitutional Appeal No. 2 of 2009

greater of 30% of the tax in dispute or the tax assessed not in dispute. However, this 'pay now and argue later' approach was found to be cumbersome since penalties and interest constituted a substantial part of the assessments.

Uganda Projects Implementation and Management Centre (UPIMAC) carried out a number of community activities mobilizing the population during the National Housing and Population Census 2002 and voter education during the National Referendum 2005. UPIMAC was assessed VAT on the services supplied and it objected on the ground that there was no taxable supply and that even if there was, the money was collectable from the Electoral Commission.

In 2006 UPIMAC filed an application in the Tax Appeals Tribunal for a review of the decision but when the application came up for hearing, URA raised a preliminary objection to the effect that the application was premature and incompetent since UPIMAC had not complied with the provisions of section 34C of the Value Added Tax Act that required a taxpayer to pay 30% of the tax assessed before lodging an application to the Tribunal objecting to the assessment.

UPIMAC contended that the requirement to pay 30% of the tax assessed before it could lodge an appeal against such an assessment contravened Articles 21 and 126(2) (a) of the Constitution, in that it is denied the right to access justice and requested that the matter be referred to the Constitutional Court for interpretation, hence Constitutional Petition No. 18 of 2007.

While at the Constitutional Court, URA argued that restriction of access to court is saved by Article 43 and is justified under public interest, since it is the duty of every citizen to pay taxes for the common good.

In February 2009, the Court agreed that the impugned provisions impose restrictions to the

enjoyment of a fundamental right but held that:

> The requirement to pay 30% of the tax assessed before a taxpayer files an appeal with the Tax Appeals Tribunal may be likened to an intended appellant who may be required to furnish security for the due performance of the decree or to deposit the decretal amount in court before proceeding with the appeal process. We have not been persuaded that the limitations imposed by the impugned section are arbitrary, unreasonable and demonstrably unjustifiable in a free democratic society.

UPIMAC was dissatisfied with the decision of the Constitutional Court and as such appealed in the Constitutional Court of Appeal (Supreme Court). It was contended that the right to access court is a fundamental right in any free and democratic society and therefore, the foundation of equal protection of the law. It was also argued that although certain obligations are usually imposed on a person accessing court, such as filing fees and security for costs, these were intended to prevent abuse of the court process and to ensure effective administration of justice and they did not have the effect of restricting and completely denying the right of access to court.

URA argued and contended that the impugned section did not deny UPIMAC access to court and there was no evidence to show that the appellant was incapable of paying 30% of the tax assessed and could not, therefore, access court. URA also relied on the South African case of *Metcash Trading Co. Ltd Trading Co Ltd Vs Commissioner for South African Revenue Services and the Minister of Finance*[107] where the court held that the principle of 'pay now and argue later' was justifiable under the Constitution because of public interest i.e. to ensure that taxes are collected and government businesses continues to run.

In October 2010, the Supreme Court in dismissing the appeal, held that the appellant had not brought any evidence to prove discrimination. The court also held that the law enabled a taxpayer unable to pay the 30% of the assessed tax before filing the appeal to the Tax Appeals Tribunal to apply to the Commissioner General and the appellant did not make use of this section.

[107] Constitutional Court of South Africa Case CCT 3/2000.

Although UPIMAC did not succeed in its attempt to challenge the requirement that a taxpayer should pay 30% of the tax assessed before lodging an application to the Tribunal objecting to the assessment, the section was removed from the law in 2016 pursuant to the Tax Procedures Code Act. There is a requirement for payment of 30% under section 15 of the Tax Appeals Tribunal Act but it is worded differently and this was the subject in *Fuelex*.

Fuelex (U) Limited v Uganda Revenue Authority[108]

The Applicant petitioned the Constitutional Court challenging the constitutionality of section 15 of the Tax Appeals Tribunal Act which provides that a taxpayer who has lodged an objection to an assessment pending resolution of the objection, pay 30% of the tax assessed or that part of the tax assessed not in dispute, whichever is greater. Three of the justices allowed the petition while two dissented. The Deputy Chief Justice agreed that the section infringes the right to a fair hearing but ruled that he was bound by the decision of the Supreme Court.

However, the majority of the justices held that the section does not extend to a situation where the taxpayer contends that he or she is exempted from a tax upon which the assessment is based or where a waiver has been obtained or the objector is not a taxpayer in Uganda, or where the tax was assessed under a wrong or non-existent law. The majority concluded that section 15 of the Tax Appeals Tribunal Act is not unconstitutional in so far as it applies to disputes over the tax amounts assessed but its constitutionality comes into question where its applicability is sought to extend to parties whose disputes are purely legal and or technical where the issue for determination before the Tax Appeals Tribunal does not relate only to the amount of tax payable.

[108] Constitutional Petition No. 3 of 2009

b. Original jurisdiction over tax matters- Forum shopping

The registrar of the Tax Appeals Tribunal while addressing the 2010 Regional Conference on Resolution of Tax Disputes in the East African Region, mentioned that many of the big complainants were seeking court intervention because there was no requirement for them to pay 30% of the disputed tax ('Taxpayers shun tribunal' May 2020). He was referring to a forum shopping strategy of filing matters in the High Court in order to bypass the requirement to pay 30% of the tax assessed prior to gaining audience in the Tax Appeals Tribunal.

When this practice was objected to by URA in the case of *Meera Investments*, the High Court overruled the objection, the Court of Appeal reversed the decision of the High Court and in 2008 the Supreme Court held that the taxpayer had the liberty to choose whether to commence proceedings in the Tax Appeal Tribunal or the High Court. This meant that taxpayers could avoid paying 30% of the tax assessed by commencing proceedings in the High Court. However, while deciding a similar case in 2017, the Supreme Court held that all tax disputes should commence in the Tax Appeals Tribunal. This subjected the taxpayers to the 30% requirement. Similar to the case above, the composition of the court had changed.

Commissioner General URA v Meera Investments[109]

The Uganda Investment Authority, under statutory powers derived from the Investment code, statute No.1 of 1991, issued a certificate of incentives to Meera Investments exempting some of its properties from tax liability. In 2005, the Commissioner General imposed and demanded tax against some of the properties of Meera Investments including those that had been exempted from tax.

Meera Investments filed a suit seeking specified declarations regarding its liability to pay taxes on certain properties. At trial URA raised preliminary objections, *inter alia*, that the

[109] Supreme Court Civil Appeal No. 22 of 2007

matter in issue was a dispute with inbuilt internal and appeal procedures laid out that exclude original jurisdiction of the High Court. The High Court overruled the preliminary objections and so did the Court of Appeal.

URA appealed to the Supreme Court on ground that Court of Appeal erred in not holding that the suit was prematurely before the High Court. It contended that the suit before the High Court was premature since a dispute had to be resolved internally first before a party could invoke the jurisdiction and powers of the court.

Meera Investments argued that the dispute between the parties was not about the nature or quantum of taxes which statute empowers the Tax Appeals Tribunal to determine first, but is about whether the Commissioner General can ignore or interfere with the decisions of the Uganda Investment Authority.

In January 2008, the Supreme Court found that the case was not concerned with the mere assessment, demand and refusal to pay tax but with the interpretation of and relationship between the Uganda Revenue Authority Act and the Uganda Investment Act, consequently, the issue of the suit being premature did not arise. This case provided taxpayers a basis of circumventing the requirement to pay the 30% deposit by commencing disputes in the High Court but this was only until the decision in the *Rabo Case.*

Uganda Revenue Authority v Rabbo Enterprises (U) Ltd & Another[110]

In 2000 Rabbo Enterprises and Mt. Elgon Hardware sued URA in the High Court for recovery of trade goods and commercial trucks seized on the basis that the respondents had failed to pay tax for tons of cement that were imported into Uganda. The respondents on the other hand contended that they had cleared all the taxes and therefore the seizure

[110] Supreme Court Civil Appeal No. 12 of 2004

and impoundment of their goods and vehicles was illegal. In considering the matter, in the High Court, the judge raised concern about the nature of the case before him and held that since the High Court was not a tax tribunal, the dispute should have been first presented before the Tax Appeals Tribunal.

In 2003, the respondents proffered an appeal to the Court of Appeal on the grounds that the trial judge erred in holding that the High Court did not have original jurisdiction to hear tax disputes and only deals with tax appeals from the Tribunal. In 2004 the Court of Appeal ruled that:

> The conferment of appellate jurisdiction on the High Court by section 27 of the Tax Appeal Tribunal has no effect on the original jurisdiction of the High Court conferred by Article 139 (1) of the Constitution. That means that a party who is aggrieved by the decision of the tax authorities on tax matters may choose either to apply to the Tax Appeals Tribunal for review or file a suit in the High Court to redress the dispute. The choice is his/hers. Once he/she goes direct to the High Court, that court cannot chase him/her away on the ground that it lacks original jurisdiction in the matter.

Uganda Revenue Authority appealed to the Supreme Court in 2007 but the matter was not determined until 2017. By this time Parliament had passed the Finance Act, 2008 which waived all tax arrears, duty, interest and penalties due on or before 30th June 2002 and were still outstanding by 30th June 2008.[111]

The respondents sought to rely on the Supreme Court decision of *Commissioner General of Uganda Revenue Authority v Meera* (which was partly premised on the Court of Appeal decision in *Rabo*), to buttress the argument that Section 27 in respect of the Tax Appeals Tribunal Act which confers appellate jurisdiction on the High Court over decisions of the Tribunal did not in any way affect the unlimited original jurisdiction of the High Court.

[111] See Chapter 4

In July 2017 Supreme Court ended the forum shopping spree when it ruled that:

> It is the Constitution itself which, through Article 152 (3) limits the original jurisdiction of the High Court and empowered the Tribunals with jurisdiction. The powers of the High Court are subject to the Constitution…*I also respectfully disagree with the holding of the Court of Appeal that a litigant can choose whether to take a tax matter to the High Court as a court of first instance or to the Tax Appeals Tribunal*… It would be bizarre that the legal regime would give the High Court dual jurisdiction. The proper procedure therefore is that all tax disputes must first be lodged with Tax Appeals Tribunals and only taken before the High Court on appeal.

Unlike other courts, the Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears to it right to do so.[112] The departure of the court from its position in *Meera* can be attributed to the change in composition of the court and URA's covert lobbying of the judiciary through trainings.

The leading decision in *Meera* was written by Justice Kanyeihamba who together with Justices Odoki, Tsekooko, and Mulenga had retired, leaving only Justice Katurebe. It is probable that the forum shopping strategy would have survived would if the Coram remained the same. URA has conducted annual trainings for judges for the past seven years. During the opening of the training in June 2017 the Commissioner General decried the effect of court cases on revenue collection.

Courts were said to be holding tax cases worth Shs 1.1 trillion, of which, Shs 500 billion are from interim orders against URA ('Courts holding up Shs 1 Trillion in uncollected taxes, says URA' June 2017). Whereas there may be no relationship between the *Rabo case* and the training, it is important to reflect upon the fact that URA had always been

[112] Article 132(4) of the Constitution

opposed to the institution of cases in the High Court because the practice robbed it of the 30% deposit.

5.6 Why Business Interest Groups Choose Litigation

The court cases above are similar to cases in Chapter 4 because they demonstrate the blocking, softening and setting of the agenda for revenue reform. The choice between lobbying and litigation is difficult to make but a comparison of the cases shows that save for setting of the revenue reform agenda, lobbying is available during the legislative process and thereafter while litigation is triggered by implementation of the law. Consequently, business interest groups choose litigation in order to increase their bargaining power due to the uniqueness of the courts as an arena.

The unwillingness of the State to compromise in the political and bureaucratic arena is largely attributable to the need for additional revenue while the failure by business interest groups (or their members) to have their interests catered for largely results from the lack of effective participation in the process and the limited use of collective action. The neutrality of the courts is put to test when conflicts arise between tax authorities and taxpayers which makes court a double-edged sword in the reform process.

5.6.1 Constraints in the Political Process

The term 'political process' in this regard refers to the events leading to the enactment of legislation and events that follow immediately after. The processes such as drafting of a Bill, analysis by a Parliamentary Committee and debating of a Bill gives revenue providers an opportunity to have their interests catered for. These may conflict with the interests of the State and as a result a question of power arises hence the need to reach a compromise. Although at times the State and business interest groups may fail to reach a compromise.

The power of the State is derived from its monopoly over the instruments of coercion (Levi 1988; Moore 2004), the business interest groups need the protection of the State in order to grow their wealth (Bates & Lien 1985), and its influence over Parliament while that of business interest groups is drawn from their revenue contribution, collective action and lobbying. The unwillingness of the State to compromise is attributable to the need for marginal revenue while the failure by business interest groups (or their members) to have their interests catered for largely results from the lack of effective participation in the process and the limited/ineffective use of collective action as discussed below.

a. Revenue pressure

Revenue pressure affects the manner in which the state interacts with the citizens (Levi 1988; Moore 2004). The recurrent financial deficits of governments compel them to come up with measures to increase their revenue. This need for marginal revenue prompts the local governments, in conjunction with the state, to stick to their guns in the process of enacting revenue mobilization legislation. These recurrent financial deficits are partly attributable to the failure by the state to disburse sufficient funds as provided by the law. For instance, Article 193 (3) enjoins the state to provide conditional grants to local governments for the purpose of financing activities agreed upon between the State and local governments.

However, the 2016 Auditor General's report found that financing of local government through central government grant and local government revenues is not in accordance with the formulae agreed upon between the local governments and the Local Government Finance Commission;[113] and the allocation of unconditional grants is not

[113] The Local Government Finance Commission is established under Article 194 (1) of the Constitution with mandate and functions such as advising the President on all matters concerning the distribution of revenue between the Government and local governments and the allocation to each local government of monies out of the Consolidated Fund; and considering and recommending amounts to be allocated as the equalisation

undertaken in accordance with the formulae prescribed under Article 193 (2) of the Constitution. This may explain why the State manifestly supports the revenue collection measures by local governments.

The financial deficits (of up to 17.6% of projected revenues) of local governments are also attributable to weak collection and enforcement mechanisms and the fact that some of the existing laws and regulations governing local revenue management (domestic business registration, regulation and licensing) are not updated to reflect current operations (Auditor General 2016).

The dictum in the *Stanbic Bank case* shows that the judge warned that the need to collect revenue was not sufficient justification for the unlawful measures taken by the State and also construed the measures taken to constitute double taxation. The Attorney General's argument was that there was a danger of local governments being denied revenue in towns and cities if most businesses or trades were excluded from the payment of licensing fees due to the fact that they pay for licenses under different statutes.

However, the judge opined that:

> I hold the firm and carefully considered view that the need to facilitate local governments to collect revenue should not be encouraged and protected to the extent of allowing the implementation of amendments to subsidiary legislation that contravene existing laws… It is also my view *that the issuance of two licenses for the same business, one by the central government and another by the local government cannot be a rational manner of improving the collection of revenue*. Given the financial linkages between the central government and the local governments it appears to be a double collection that would be unfair to the licensee. Its effects may also, due to the resultant increased cost of doing business, impede the expansion of the provision of banking

and conditional grants and their allocation to each local government.

> services by private companies who are in it for profit, and ultimately the capacity to save, much to the detriment of the ordinary citizen. [EMPHASIS ADDED]

The State and local governments failed to heed to this advice and ingeniously enacted the Trade Licensing (Amendment) Act, 2015 in order to specifically include the banks and other low hanging fruits in the local revenue bracket. The banks and professionals are formalised, easy to identify, and are perceived to have the financial capacity to shoulder the revenue burden. Raising revenue from such persons is easy compared smaller businesses.

Uganda's banking industry currently consists of 25 banks and in 2018 the banks made a net profit of 700bn of which the top six banks (which include Stanbic, Standard Chartered and Centenary) registered a net profit of 620bn ('Ugandan banks post record profit in 2018' May 2019). With such profits the banks are expected to be capable of paying the trading licences and that may explain why the State and local governments were uncompromising on the issue.

The local governments relied on the support of the executive and parliament unlike the revenue providers who could only rely on collective action. Political will was a driver in the enactment of the Trade Licensing (Amendment) Act and the making of the Trade (Licensing) (Amendment of Schedule) Instrument, 2017 in the wake of the nullification of the Trade (Licensing) (Amendment of Schedule) Instrument, 2011. The latter was nullified (in as far as it applied to persons regulated by other entities) on 21st December 2011 and a Bill curing its defects was laid before Parliament about six months later. Most of the members of Parliament supported the Bill on ground that there was need to enable local governments to raise revenue and hence passed Clause 5 which led to the repealing of section 8 (2) (f) of the Principal Act.

b. Lack of meaningful participation in the legislative process

Thomas and Grindle (1990) argue that if public involvement is required to carry out a reform, public reaction is much more likely. Similarly, the lack of meaningful participation in the legislative process also meant that the bankers and advocates could not have their interests catered for by the Trade Licensing (Amendment) Act.

The Hansard of 5th March 2015 shows that the Committee on Tourism, Trade and Industry consulted Uganda National Chamber of Commerce, PSFU and KACITA during the analysis of the Bill. Although Uganda Bankers Association and ULS are members of PSFU, they should have been consulted in light of the *Stanbic Bank Case* and as such the *NC Bank Case* would not have arisen.

During the second reading of the Bill, an MP raised an issue regarding the need to distinguish licences aimed at raising revenue and those that are regulatory in nature. She submitted that:[114]

> Over the years, we have been complaining that doing business in Uganda is extremely expensive because there are so many licences. A report of last year authored by the Trade Ministry showed that we have over 289 licences to be issued if you are going to do serious business in Uganda. Mr Speaker, this Bill may be sufficient to deal with many issues of harmonisation. First of all, there are licences to do with regulation and there are licences to do with revenue generation. I do not know whether this Bill before us provides that difference and is going to harmonise the different licences - those of monitoring, quality assurance, different from that of revenue.

This is in consonance with the dictum in the *Stanbic Bank Case.* Ironically, in responding to the issue the Minister of Trade stated that:[115]

> Trade licencing is not and should not be considered as a revenue collection mechanism or an NTR but the ministry will be working with the local authorities and Kampala

[114] Hansard March 2015
[115] *Ibid*

> Capital City Authority to ensure that the regulatory functions take precedence over revenue collection.

The Minister was interrupted by an MP who questioned the intention of the Bill if it was not aimed at raising revenue. The issue arose again while the Bill was before the Committee of the House and it was made clear that the Bill was aimed at raising revenue. The Chairman of the Committee on Trade and Tourism said that,

> Mr Chairperson, section 8 of the original Act talks about trading being prohibited without a trading license. Paragraph (f) says; "Any trade or business in respect of which a separate license is required by or under any written law." We have businesses that pay a regulatory license like the medical and dental practitioners, the banks, who get licenses from Bank of Uganda and under this principal Act they were not required to pay a trading license. *Therefore, what we are trying to address is that local governments have been losing money in that line. We want to ensure that apart from paying their regulatory fees, they pay even trading licenses in areas where they operate.*

Among the members of the Committee of the House were two advocates and a medical practitioner. These were opposed to the collection of trade licensing fees from professionals on the ground that they paid for licences acquired from their respective regulatory bodies but seemed to support the collection of trade licensing fees from banks.

The MP submitted that:

> If you are targeting banks, you could say so but these professional bodies are not many and you can count them even in this House… *The banks are making money*; it is different because a bank is not a professional body. They are making money. They are trading. They only have a license to regulate them - minimum balance and other things by the Bank of Uganda. It is different from a professional body under…

Similarly, the *BATU Case* suggests that the company was being targeted for having relocated to Kenya for the leaf processing function and the issue of increasing excise duty beyond the gazetted rate only came up on the floor of Parliament. It is probable that the

outcome would not have been the same if the affected parties had meaningfully participated in the legislation process.

5.6.2 Limited Use of Collective Action

The *BATU Case* also indicates that the limited use of collective action could lead to failure in a political process even where the revenue provider is powerful and makes significant revenue contributions. When BATU was being discriminated against by treating its consignments as imports for the purpose of excise duty (yet they were not being treated as such for VAT purposes), it sought the intervention of UMA and PSFU but these did not render their support. UMA and PSFU managed to halt the implementation of withholding VAT even after the law had been enacted and as such it is probable that their intervention could have led to have had a significant effect.

However, UMA and PSFU construed BATU's activities as being contrary to the import substitution policy and the interests of other members. BATU thereafter lobbied the Office of the Principal Secretary EAC and the East African Community Secretariat which effort registered limited success.

Therefore, some bargains fail in the political process because the revenue providers have low bargaining power which is attributable to the need for marginal revenue, deficiency of meaning participation in the process, political will, and the lack of collective action.

The need for marginal revenue to bridge local government revenue deficits forced local governments to come up with new revenue mobilization measures. These targeted low hanging fruits such as professionals and banks and were supported by both the executive and parliament. Although PSFU was consulted, it did not seem to have the interests of

some of its members in mind and as a result section 8 (2) (f) was amended contrary to the interests of some of its members.

Similarly, the limited use of collective action left BATU in a weak bargaining position yet it had a valid argument in as far as treating its goods as imports. Perhaps, the disguised manner in which the amendments are made is suggestive of tactics used by the State to avoid effective stakeholder participation considering that Minister of Trade informed Parliament that the Bill was regulatory in nature and stakeholders had been consulted.

5.7 Determinants of Litigation Outcomes

The separation of power model examines the degree to which courts must defer to legislative majorities in order to prevent overrides that result in policy worse than what the court may have achieved through sophisticated behaviour (Segal 2009). They oversee and enforce the application of due process, accountability, and reasonableness in public policy making (Hirshl 2009).

Accordingly, courts play an important role in the adjudication of conflict between the citizens and the State and are only able to do so effectively when they enjoy judicial independence; and as a result, losers in the political process may emerge as winners as a result of the escalating the contestation to the judicial arena. Explaining what courts and judges do and the extent to which they choose to act is called judicial behaviour but the extent to which judges choose to move beyond their policy preferences is what divides the field of law and politics (Segal 2009). Outcomes in the judicial arena may be determined by availability of judicial review procedure, judicial activism and the nature of *locus standi,* but the decisions must be understood in context (Mather 2009).

5.7.1 Judicial Independence, Immunity and Impartiality

Judicial independence or immunity is not a privilege of the individual judicial officer but rather a responsibility imposed on each officer to enable him or her to adjudicate a dispute honestly and impartially on the basis of the law and the evidence, without external pressure or influence and without fear of interference from anyone, be it government, individual or even another judicial officer. This is the definition of judicial independence in the case of *His Worship Aggrey Bwire v Attorney General & Judicial Service Commission*.[116]

Impartiality must exist both as matter of fact and as a matter of reasonable perception and there is absolute immunity once it is adhered to. Judicial independence is a critical feature of the judiciary, requiring the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are equitably observed**.** These safeguards of judicial independence are enshrined in Article 128 of the Constitution and these include; non-interference with the courts or judicial officers in the exercise of their judicial functions; security of tenure; and non-variation of emoluments.

The Constitutional Court has come out to emphasize these safeguards. For instance, a provision of an Act[117] which limited the tenure of office of the judges of the Labour Court to five years and the act of reappointing a Chief Justice whose tenure had expired, contrary to the advice of the Judicial Service Commission, were construed to undermine security of tenure in the case of *Justice Asalph Ruhinda Ntengye & Anor v Attorney General*[118] the case of *Hon. Gerald Kafureeka Karuhanga v Attorney General*[119] respectively.

Independence of the judiciary recalibrates the scales of power by requiring judicial officers to administer justice to all persons alike without fear, favour or prejudice in accordance with the constitution and the law. In court proceedings both parties make

[116] Court of Appeal Civil Appeal No. 9 of 2009
[117] Section 10 of the Labour Disputes (Arbitration and Settlement) Act
[118] Constitutional Petition no. 13 of 2016
[119] Constitutional Petition no. 39 of 2013

their arguments and a decision is made on the basis of the law. Segal (2009) propounds that the role of the judge is to evaluate legal rules such as precedent in an attempt to find the best answers to cases before them.

The *Stanbic Bank* and *BATU cases* were decided in the manner predicted by the literature. The *Stanbic Bank Case* in particular, was premised on the fact that section 8 (2) (f) of the Trade Licensing Act expressly provided that no licence was required in any event for any trade or business of which a separate licence is required. The judge opined that:

> It is understood that there is great need by the local governments to collect revenues and implement their programs. But expediency should never be used as a means of circumventing the intentions of the legislature. *If the legislature had deemed it fit to have financial institutions prohibited, restricted, regulated or licensed by the local governments as well as the Central Bank, then it ought to have amended the general scheme under the Principal Act, as well as the schedules to the Local Governments Act in order to reflect that intention, and made some mention of in it the FI Act*. Absent that, it was not proper for the Minister to purport to amend the law by putting in place a Statutory Instrument that is in conflict both with the Trade (Licensing) Act and the Local Governments Act, as well as in competition with the Financial Institutions Act.

Similarly, the *BATU case* was premised on the fact that the term "import" as used the Treaty and the Customs Union means to bring or cause to be brought into the territories of the Partner States from a foreign country while the term "foreign country" means any country other than a Partner State.

The EACJ had this to say:

> It is manifestly clear that *the intention of the framers of the Treaty and Customs Union Protocol* was to establish the Community as a single economic area characterised by free movement of goods, and in which goods from any Partner State were not treated as imports. Indeed, under Article 2(2) of the Treaty, the Partner States undertake to establish an East African Customs Union and a Common Market as transitional stages to the integral parts of the Community. This commitment is reiterated in Article 5(2)...

It is such lack of preference for political interests and adherence to the law that enabled banks and BATU succeed where political approaches had failed and render the decisions "unsuspicious."

Judicial independence also cushions the judicial process from political interference. Article 128 (1) provides that no person or authority shall interfere with the courts or judicial officers in the exercise of their judicial functions. Political interference with court processes and resistance from the same are at times is difficult to identify because of their covert in nature.

However, in 2007 the courts laid down their tools citing repeated violation of the sanctity of the court premises, disobedience of court orders with impunity and the constant threats and attacks on the safety and independence of the judiciary and judicial officers. The court through the Deputy Chief Justice demanded that the State respects the independence of the judiciary. The strike had been sparked off by the re-arresting of suspects who had been granted bail ('Museveni speaks out on High Court scuffle' March 2007).

What is important for law is the meaning conveyed by those decision, values that lie in the categories of "suspicious and "not suspicious" decisions, and how they are conveyed in each encounter (Mather 2009). The independence of the judiciary is feared to be threatened by the emergence of '*cadre judges*' and perception of retribution against judges who make decisions against the political preferences of State. The phenomenon of cadre judges refers to the President's appointment of politically like-minded individuals to the bench in a practice seen to further the partisan interests of the ruling regime. The term is also used to refer to judges whose judgments suggest that they are determined more by their allegiance to the government than on the evidence produced before court during

the trial (Okuda 2016). During an interview with the *Daily Monitor* a retired Justice of the Supreme Court (Justice Wilson Tsekoko RIP) confirmed and condemned the phenomenon when he said that:

> Yes, that thing [cadre judges] is there. It seems to be increasing because occasionally you get some of the judgments and you can't understand whether they are from judges who are supposed to be independent. There are *rumours some judges consult some politicians* when they have cases with political implications to get a shape of the ruling. This is terrible! It is not proper…

This indicates the extent to which the appointment of judges is premised on their allegiance to the ruling party the perception undermines reliance on courts of law as a resource in the revenue bargaining process as their decisions may be seen to be "suspicious".

Justice Kanyeihamba could be said to have fallen victim to 'political backlashes targeted at clipping the wings of over active judicial officers political in response to unwelcomed judgments concerning contentious political issues' (Hirshl 2009). He was one of the judges who held the view that the 2006 presidential elections should be annulled and he described them as "fatally flawed". He had been part of the eleven-member bench of the African Court on Human and Peoples' Rights and was eligible for re-election for a new six-year term after the expiry of his transitional term of two years. In March 2007, he criticised the executive when armed men besieged the High Court to re-arrest treason suspects who had been granted bail and described it as a near breakdown in the rule of law in Uganda. It is rumoured that in 2008 the government blocked Justice Kanyeihamba's re-election to the court fearing that he would use his position to hold it accountable for human rights abuses ('Government in revenge move against Kanyeihamba' August 2013).

Similarly, when the Judicial Service Commission disowned Justice Tibatemwa's appointment to the Seychelles Court of Appeal, it was perceived as retribution for her

decision that the process leading to the conceptualization of Constitution (Amendment) (No. 2) Bill, 2017, which paved way for scrapping of the presidential age limit was illegal ('Is Justice Tibatemwa being targeted…' October 2019). This "clipping of wings" or "political backlashes" by the executive in retaliation against "unwelcomed rulings "provides basis for Hirshl's argument that determinants of judicial behaviour are not distinct from the determinants of decision making by other public officials, and it explains why decisions must be understood in context (Mather 2009).

Judicial independence is crucial in delivering justice in revenue reform because litigation provides the hope that the courts are reliable. As seen above, it is threatened by limiting the tenure of judges contrary to the constitution, appointment of judicial officers contrary to the advice of the Judicial Service Commission, appointment of cadre judges, interfering with court decisions, and frustration of careers of judicial officers. The courts have come out to safeguard their independence through court decisions and protests. Therefore, since litigation in revenue reform is premised on the notion that courts recalibrate the bargaining power, it presents positive implications for the rule of law when the courts enjoy judicial independence.

5.7.2 Availability of Judicial Review Procedure

Fundamental values like rule of law which are embedded in the principles of justice and fairness limit the sovereignty of the state and are enforceable through judicial review procedure (Freeman 2014). Through judicial review The nature and validity of sources of law can be questioned through judicial review procedure, pursuant to which the High Court exercises supervisory jurisdiction of proceedings and decisions of subordinate courts, tribunals and other bodies of persons who carry out quasi-judicial functions or who are charged with performance of public acts and duties.[120] Judicial review is concerned not with the private rights or the merits of the decision being challenged but

[120] Rule 3 of the Judicature (Judicial Review) (Amendment) Rules, 2019

with the decision-making process. Its purpose is to ensure that the individual receives fair treatment by the authority to which he or she has been subjected, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorized by law to decide from itself a conclusion which is correctly in the eyes of the Court.[121]

When handling judicial review proceedings, the courts consider whether the application is amenable for judicial review; the aggrieved person has exhausted the existing remedies available within the public body or under the law; the matter involves an administrative public body or official.[122] In regard to whether the application is amenable to judicial review the applicant must prove that the decision made was tainted either by illegality,[123] irrationality[124] or procedural impropriety.[125]

The advantages of judicial review in revenue bargaining are that; the procedure is not concerned with whether an institution has exercised the power vested in it but how the power is exercised; proceedings are concluded in a relatively short period of time; and the remedies have the effect of nullifying a reform since the decisions[126] are difficult to appeal. In the *Stanbic Bank case*, the procedure was found to be applicable to subsidiary legislation. It did not matter that the Minister of Trade had the power to determine fees payable in any city, municipality or town, or even the power amend the fees pursuant to

[121] *Pius Nuwagaba v Law Development Centre* Court of Appeal Civil Application No. 18 of 2006.
[122] Judicature (Judicial Review) (Amendment) Rules, 2019 rules 5
[123] Illegality as a ground for judicial review means that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it -Lord Diplock in the celebrated judgment of the House of Lords, in the case of *Council of Ci*vil *Service Unions and Ors Vs Minister for Civil Service* [1985] 1 AC 374
[124] Irrationality refers to a decision which is so outrageous in defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. See *Dott Services & Anor v Attorney General* Misc. Cause No. 137 of 2016
[125] Procedural impropriety is when there is failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in the non-observance of the rules of natural justice or to act with procedural fairness towards one affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision. See *Proline Soccer Academy v Commissioner Land Registration* Misc. Application no. 299 of 2018
[126] *Pius Nuwagaba v Law Development Centre* Court of Appeal Civil Application No. 18 of 2006

section 30 of Trade Licensing Act. It also did not matter that the local governments were in need of revenue. What mattered to court was whether the Minister of Trade had exceeded section 8(2) (f) by including banks among persons liable to pay trade licensing fees. Similarly, in the *NC Bank case*, although section 8 (2) (f) had been repealed, the Minister was nevertheless found to have exceeded her powers because the Principal Act (as amended) did not bring services of banks within the ambit of the Act. The *Stanbic Bank case* was filed in November 2011 and the ruling was delivered 21st December 2011 while the NC Bank case was filed in April 2018 and the ruling was delivered on February 2019.

The remedies (prerogative writs and orders) of *certiorari*,[127] prohibition[128] and mandamus have a substantial effect on the excess use of power and can be enforced easily. Certiorari means an order to quash a decision which is ultra vires.[129] The effect of *certiorari* is to make it clear that the statutory or other public law powers have been exercised unlawfully, and consequently, to deprive the public body's act of any legal basis. The decision is retrospectively invalidated and deprived of legal effect since its inception.[130] These remedies effectively check excess use of power by public bodies and the fruits of litigations are easily realized since enforcement of the remedies require not more than communication of the order to the concerned persons.

[127] *Certiorari* is the means of controlling unlawful exercises of power by setting aside decisions reached in excess or abuse of power. See *John Jet Tumwebaze vs Makerere University Council and Another* HCMC No. 353 of 2005

[128] Prohibition means an order issued by court to forbid some act or decision which would be ultra vires. An order of mandamus is a command directed to any person, corporation or inferior tribunal requiring him or them to do some particular thing specified in the command and which appertains to his or their office, and is in the form of a public duty i.e., to compel performance by public officers of statutory duties imposed on them.

[129] Judicature (Judicial Review) Amendment Rules, 2019, rule 3.

[130] *Proline Soccer Academy v Commissioner Land Registration* Misc. Application no. 299 of 2018

In *Attorney General v Yustus Tinkasimire*[131] court dismissed the appeal against a prohibition order on the ground that the order did not determine the rights of the parties. It was held that:

> As rightly observed by the trial judge, in judicial review proceedings the Court is not required to vindicate anyone's rights but merely to examine circumstance under which the impugned act is done to determine whether it was fair, rational and it was arrived at in accordance with the rules of natural justice…we are unable to agree with Counsel for the applicant that the dispute between the parties has been determined permanently by the restraining order. The restraining order issued in these proceedings although couched in permanent terms is not cast in stone. It does not bar the bringing of an ordinary suit to settle the dispute.

However, judicial review procedure has some demerits e.g., the victory obtained by way of judicial review may be short lived since the procedure does not determine the rights between the parties and orders are granted at the discretion of court and do not automatically follow the finding of illegality, irrationality and procedural impropriety.

The rights of the parties were not determined in the *Stanbic Bank case* and as a result the law was amended in a bid to bring the banks and legal professionals within the ambit of the Trade Licensing Act. This led to the *NC Bank case* which granted victory to the banks but still left the rights undetermined. Consequently, if the law is further amended the banks and professionals may have to pay the trade licensing fees unless the same is declared unconstitutional.

Prerogative orders are granted at the discretion of court and do not automatically follow the finding of illegality, irrationality and procedural impropriety. The court may not grant any such remedies even where the applicant may have a strong case on the merits, so the courts would weigh various factors to determine whether they should lie in any

[131] Court of Appeal Civil Appeal no. 208 of 2013

particular case.[132] These disadvantages leave the procedure susceptible to the weaknesses in judicial independence safeguards.

5.7.4 Judicial Activism

The centrality of judicial will in explaining judicialization of politics is critical to judicial activism (Hirshl 2009). Article 126 (1) of the Constitution provides that judicial power is derived from the people and shall be exercised by the courts established under this Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people. In *Bushoborozi Eric v Uganda*[133] it was opined that judicial activism is required on the part of judicial officers to breathe life into the law in articles 126, 128 and 274 of the Constitution by being innovative and introducing changes that will give the law the most correct interpretation and effect that serves the ends of substantive justice. The Judge relied on the dictum of Lord Denning in *Parker v Parker*[134] which is as follows:

> …and say; what is the argument on the other side? Only this, that no other case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. *The law will stand still whilst the rest of the world goes on: and that will be bad for both*. Thus, the winds of change are upon us. We have a duty to give the law a persuasive and liberal legal interpretation.

Judicial activism is therefore an approach adopted in the exercise of discretion or judicial power (in general) to ensure that the ends of substantive justice are met in accordance with the values, norms and aspirations of the people.

Judicial activism is beneficial (in the revenue bargaining process) in the exercise of discretion to revenue reform where if the interests of the petitioner/applicant are

[132] *Proline Soccer Academy v Commissioner Land Registration* Misc. Application no. 299 of 2018
[133] High Court Miscellaneous Cause No. 11 of 2015
[134] [1954] ALL E.R. 22

interpreted to be in conformity with law and with the values, norms and aspirations of the people but values and norms differ among judicial officers. It appears that the *Stanbic Bank case* went beyond the mere conflict between section 8 (2) (f) and the Statutory Instrument, to whether it would be lawful and just for banks to obtain licences from both the central bank and local government. The Attorney General argued that the banks were required by law to pay the requisite fees which they were intending to dodge and that it was in the interest of justice the application is dismissed. The judge opined as follows:

> Local governments have no mandate to collect revenues from licenses and permits except fees and fines on licences and permits in respect of any service rendered or regulatory power exercised by the local government council… A few questions may be posed here to advance the discussion above. *If local and urban councils do not have the mandate to regulate financial institution business, why then would they issue licenses to them*? Would it be solely for the purpose of obtaining revenue? What criteria would they use to establish which financial institution is deserving of a license for the next financial year or not, or at all?

The judge concluded double collection would be unfair to the banks and it would ultimately impede the capacity to save, much to the detriment of the ordinary citizen.

The opinion in the *Stanbic Bank case* seems to have had a 'spill over effect' on the *NC Bank case* regarding the application of the Trade Licensing Act to banking business. In the *Stanbic Bank case* it was decided that no licenses were prescribed for providers of services since the term 'trade' as used in the Act did not cover banking business. Similarly, in the *NC Bank case* it was decided that the application of the Trade Licensing Act to the banks would amount to stretching the meaning of the term 'services' to include banking business (acceptance of deposits, issue of deposit substitutes, lending or extending credit, consumer and mortgage credit) as defined under the Financial Institutions Act yet it was not defined.

Judicial independence forms a premise for the exercise of judicial activism because the latter can only be exercised where a judicial officer can adjudicate a dispute

without external pressure or influence and without fear of interference from anyone, be it government, individual or even another judicial officer. The exercise of discretion in constitutional petitions and judicial review application creates an opportunity for judicial activism which could make these more attractive for losers in political process.

5.7.5 Locus Standi

Locus standi means a place of standing and it is, therefore, the right to be heard in court. Thus, it is only those with *locus standi* that can be permitted to have their request heard.[135] In judicial review proceedings the right to be heard in court is extended to wide range of persons.[136] The use of the word 'sufficient interest' equates the *locus standi* in judicial review matters to that in constitutional matters. Article 30 of the Treaty for the Establishment of the East African Community grants legal and natural persons *locus standi* to institute claims in the East African Court of Justice[137] and it is not any different from Article 137 (3)[138] of the Constitution.

[135] *Hon. Sekikubo Theodore & Others v Attorney General* High Court Miscellaneous Cause no. 92 of 2015
[136] Judicature (Judicial Review) Amendment Rules, 2019, rule 3. Also see *Twinobusingye Severino v Attorney General* Constitutional Petition No. 47 of 2011
[137] It provides that any person who is resident in a Partner State may refer for determination by the Court, the legality of any Act, regulation, directive, decision or an institution of the Community on the grounds that such Act, regulation, directive, decision or action is unlawful or is an infringement of the provisions of the Treaty.
[138] It provides that which provides that a person who alleges that an Act of Parliament or any other law or anything in or done under the authority of any law; or any act or omission by any person or authority, is inconsistent with or in contravention of a provision of this Constitution, may petition the constitutional court for a declaration to that effect, and for redress where appropriate.

In the *Uganda Law Society case*, ULS was able to apply for judicial review (on behalf of all advocates) against trade licensing fees because permission to be heard in judicial review extends to more persons than ordinary suits and the *BATU case*, the company was able to seek relief in the EACJ because the law grants legal persons *locus standi*.

Locus standi is therefore the basis of recognition of a party before the temple of justice, without which many litigants would be denied right to be heard in court. The nature of *locus standi* in judicial review application, constitutional petitions, and petitions before the EACJ grants access to a wide range of people and facilitates collective pursuit for justice by groups of people. As such, it enables business interest groups institute suits through proxies in order to avoid the 'wrath' of the state.

5.8 Conclusion

Revenue reform litigation cases arise as a result of the failure by the State to listen to the 'voice of reason' during the reform process or an attempt by firms to change the status quo. The trade licence and excise duty reform cases resulted from the failure to reach a compromise in the political process which is attributable to the need for marginal revenue, lack of meaningful participation in the political process and limited use of collective action. These factors weakened the bargaining power of business interest groups and as a result their voice of reason was not heard. However, the business interest groups later succeeded in court due to judicial independence, availability of judicial review, judicial activism and *locus standi*. Among these factors, judicial independence recalibrates the scales of power because courts are able to focus on reason and justice of the case without fear of repercussions. The cause of action in the cases above related to the legality of provisions of law but victories under judicial review procedure are less sustainable than those from the EACJ. This is because the latter determine the rights between the parties while the judicial review cases only focused on processes. That

notwithstanding revenue reform litigation is a useful strategy in revenue bargaining because it affects the bargaining power of the citizens and the state.

CHAPTER SIX
BARGAINING POWER, TRIGGERS, ARENAS AND STRATEGIES

6.1 Introduction

We have so far discussed historical cases of socio-economic influence of various societal groups and modern cases of business interest groups' influence over revenue reforms within the context of checks and balances. However, the undertones that pronounce the relationship between political economy and the legal doctrine of rule of may have been overlooked. This is why this chapter discusses some of the salient features of revenue bargaining and in doing so, it bridges the missing links in a bid to provide better understanding of the relationship between the revenue bargaining theory and the rule of law. These undertones include revenue bargaining processes, bargaining power, arenas where revenue bargaining takes place and strategies employed by the business interest groups in the process. In regard to bargaining power the chapter discusses how tax contributions, government's appetite for additional revenue, mobility of capital and contributions to the NRM affect the bargaining power of business interest groups. The chapter also discusses how the arenas and strategies may affect the revenue bargaining outcome.

6.2 Revenue Bargaining Processes

The influence of policy by the citizenry has evolved since the colonial times, from acrimonious to the diplomatic form of bargaining over revenue reforms being witnessed today. Under the Colonial regime, the State depended less on direct tax and more on cotton and coffee, which it taxed by setting low prices for the farmers (Jamal 1978). Some farmers often decried the low prices while others grew just enough to meet their poll tax obligations (Karugire 1980). Karugire also narrates how natives bargained over gaining access to the more lucrative parts of the supply chain (processing) since the implementation of the licencing regime was in such a way that processing was ring fenced for Indians while the Africans were relegated to the growing of the cash crops.

After independence the government changed and so did the actors. During the Obote I and Amin regimes, contestation over economic policy was between the foreigners and the State. Obote nationalised several enterprises and created state owned enterprises because the owners of capital (foreign business owners) were hesitant to invest in the economy and the need to increase the participation of the Africans in the economy in light of the fact that the natives were inexperienced in managing capital (Bakibinga 2002). Similarly, Amin declared an economic war and expelled Asians on the ground that they were sabotaging the economy (Shultheis 1975). In both cases the foreigners had intended to use their economic positions to obtain concessions from the State.

Privatization of the economy meant that the State would depend on taxes, save on the cost of managing the entities (Bakibinga 2002) and as such it divested its enterprises or parts thereof to the private sector. This coincided with the setting up of PSFU (Kalema 2008) hence, the increased bargaining in the current era. The cases reviewed show that contestation/bargaining is often triggered by the proposal (Bill) or implementation of a reform (an Act of Parliament) which is made in a bid to increase the tax effort. When this happens business interest groups lobby government in a bid to block or soften the reform but when lobbying is not effective, they resort to litigation. Banks and law firms resorted to litigation against trade licensing fees and British American Tobacco (U) litigated the discriminate imposition of excise duty on cigarettes because lobbying was ineffective.

Tax exemptions may be implicit or explicit and are often intended to benefit particular individuals who are closely related to the NRM regime (Ole, Jamal & Khisa forthcoming). They are also characterised by patronage (Tangri and Mwenda 2019) and other forms of corrupt tendencies. When arrears of value added tax, income tax, excise duty, import duty, penal tax and interest due on or before June 2002 and still outstanding by 30th June 2008 were waived, the official narrative was that it would foster compliance by enabling businesses clean up their books. However, it was later reported that the amendment was

intended to benefit particular individuals who are known to have close ties to the ruling party ('Government should regularise tax waivers' May 2009).

Most of the tax exemptions are selectively awarded and do not go through legal channels i.e., authorization by Parliament (Tangri & Mwenda 2019). However, individuals connected to government can set the revenue reform agenda by lobbying the executive to introduce provisions waiving tax. In 2008 the Minister of Finance rationalised the waiver of tax due before June 2002 and outstanding by June 2008 by stating that 'a number of taxpayers' reached out to government seeking clemency on ground that they did not have supporting documents given the period. It later turned out that the actual beneficiaries were companies controlled by individuals connected to the ruling party. Similarly, in 2018 government waived taxes of some private companies under the guise that the exemptions were related to strategic projects. For instance, a company was given free land to set up a palm oil project and in addition the government entered into a memorandum of understanding to pay taxes on its behalf only to request Parliament to waive the tax. However, in 2018 Parliament declined to amend the Tax Procedures Code Act by granting the Minister of Finance the right to pay taxes on behalf of taxpayers on the ground that this would lead to the hawking of exemptions on the streets of Kampala by a Minister of Finance (Hansard May 2018).

Revenue bargaining also takes the form of protests especially among business associations or groups that have limited access to the political arena. In Chapter 3 we saw that riots broke out in Buganda partly because the licencing regime excluded Africans from coffee and cotton processing, while in Chapter 4 members of KACITA protested against the pre-export verification of conformity by closing their shops. It can also be argued that the State may give in because it would be costly to enforce an unpopular reform in comparison to the tax yield (Levi 1988).

The bargaining processes in regard to reforms not constituting constraints to tax or tax exemptions, for example removal of VAT on aid funded projects, widening the tax base and removal of the exemption on agricultural loans are difficult to observe and as such they can be claimed by different groups as achievements of their own; success has many parents but failure is an orphan. For example, the removal of VAT on aid funded projects reduced government's cost of funding projects and at the same time increased marketability for local suppliers. The PSFU claimed to have influenced the reform yet government insisted that this was its own initiative. Similarly, the removal of exemption on agricultural loans was lauded by the World Bank and PSFU but the latter's role in the introduction of the reform remains unclear. For instance, *Crane Bank v Uganda Revenue Authority*[139] shows that the exemption was being abused by banks that would lend to persons involved in low-risk activities in the production chain like agro-processing. It is therefore, probable that the proposal was suggested by URA and merely supported by PSFU and the World Bank.

Revenue bargaining is a continuous process in that revenue providers engage the government even after legislation has been passed. Consequently, they are able to influence the enforcement of the law. As seen in Chapter 4, the business interest groups were against the withholding VAT due to its effect on cash flows but were unable to influence the enactment. However, business interest groups continued to engage government and as a result the law was not enforced and the withholding rate was subsequently revised from 50% to 6%. Similarly, when the courts ruled in favour of the banks on trade licences, the government amended the law which resulted into another bargaining cycle.

[139] High Court Civil Appeal No. 18 of 2012. In this case Crane Bank, which is owned by Sudhir sued URA for not recognizing the loans to those engaged in agricultural processing as activity that falls within the meaning agriculture as envisaged by the law. The court dismissed the case and so were the appeals.

The revenue bargaining process is also largely diplomatic especially among the business interest groups which have access to the political and bureaucratic arenas. The Legislative Council (Legco) was set up to serve principally the interests and for the preserve of Europeans and Indians such as H.R Fraser and R.G. Dakin, who were the representatives of coffee and cotton interests respectively; and the *Uganda Herald*, acted as the mouthpiece of Uganda Planters' Association (Mukasa-Mutibwa 2016). Similarly, Fukuyama (2012) argues that the barons imposed the Magna Carta on King John at Runnymede in 1215 in order to better protect their rights through the king's courts; thus, protecting their interests through access to the political arena.

Currently, PSFU, UMA and UBA have access to parliament, ministers and the president which explains why they do not resort to protests. KACITA on the other hand seems to have limited access to these arenas hence the protests like it were in the case of the Buganda riots. Litigation is often pursued as a last resort when political and bureaucratic arenas do not yield favourable results but it can also be used simultaneously.

6.3 Bargaining Power

The bargaining power of business interest groups or their individual members can be examined on the basis of their revenue contributions, government's appetite for additional revenue, the mobility of capital and contributions to the ruling party. This implies that bargaining power varies depending on the situation and as such business interest groups may succeed in influencing a given outcome but fail at another.

According to a 2019 report by Uganda Revenue Authority, Uganda's tax effort stands at about 17 trillion shillings which represents a tax to GDP ratio of about 15%. The tax is collected from excise duty, VAT, customs and income tax respectively. Revenue from income tax is approximately half of that of VAT while excise duty is about four times the

VAT. These taxes finance a substantial part of the budget; hence the government's dependence on tax revenue is significant. Large taxpayers play a critical role in revenue collection (Moore 2008) because excise duty and VAT are indirect taxes and large taxpayers are important collection points for URA. Similarly, Uganda relies on a withholding tax regime which requires the cooperation of large taxpayers.

The URA's capacity to enforce compliance among large taxpayers is constrained by the fact that the latter have the potential to engage in aggressive tax planning and measures such as tax return examination, audits and investigations require highly trained auditors and lawyers which makes enforcement costly. The government, consequently, makes compromises in order to reduce the enforcement costs and as such it encourages tax compliance (Levi 1988). Since the majority of large taxpayers who play a critical role in revenue collection are members of UMA, UBA, and PSFU, it would not be inaccurate to speculate that peak business interest groups wield substantial bargaining power.

Government's tone in reference to the private sector in the various budget speeches indicates the extent to which government relies on the sector. Government often uses the phrase 'private sector led growth' and claims to support this objective through various fiscal measures. This resonates with the argument that the state depends on the private sector for revenue while the private sector depends of the state for policies (Bates & Lien 1985). Thus, the government makes concessions with the business interest groups because it considers the private sector a partner in the growth and development of the economy.

Conversely, Idi Amin's economic war was waged against Asians and British notwithstanding the fact that they provided substantial revenue to the government. Most of the Africans to whom the businesses were given were unable to manage them thus leading to their collapse (Schultheis 1975). The government heavily relied on borrowing and printing money which worsened the economic situation (Karugire 1980). The fact

that those who witnessed and live through it blamed Amin not so much for what he did but the manner in which he did it (Mukasa-Mutiibwa 2016), shows that the economic power of the Asians and British was outweighed by the political power of the natives.

Mobility of capital affects bargaining power in that when capital is mobile taxpayers can deploy it in a jurisdiction with a friendlier tax regime (Bates & Lien 1985). Capital mobility comes at a cost and regulation may hinder a company from exiting an industry which leaves businesses with the option of scaling down further investment or restructuring its activities. When BATU failed to influence the Tobacco Control Act it restructured its business by ceasing the purchase of tobacco leaf from Ugandan farmers, disposing of its leaf processing plant (divestment) and concentrated on importing cigarettes from Kenya. However, scaling down further investment may be counterproductive since the government may react by nationalising the enterprises as was the case during the Obote and Amin regimes.

Bargaining power attributable to mobility of capital is limited to foreign companies and multilaterals since these are highly capitalised and have no ties to Uganda save for business interests. Companies owned by citizens are unable to move their capital elsewhere because management is not separate from control and as such moving their capital to another country would amount to self-imposed exile.

The contributors to the ruling party (NRM) are at times able to leverage their contributions to obtain tax exemptions. The budget process is such that money is appropriated on the basis of approved budgets outlined in the policy statements. This leaves less room for misappropriation of funds by the State hence the reliance on contributions to fund the ruling party's activities. As seen in Chapter 4, when the ruling party was fundraising for the NRM house, the Secretary General of the party was quoted to have said that the donors were carefully selected from business community some of whom had been supporting the party in various activities (Kaaya 2015). This shows that

some members of the business are related to the political activities of the ruling party. Patrick Bitature, who was among the donors is a former chairman of the PSFU.
Khan (2010) argues that political settlements in developing countries are 'clientelist' to the extent that they are characterized by the significant exercise of power based on informal organizations, typically patron-client organizations of different types and that some patron-client networks can operate through formal organizations like political parties. Is it therefore, a coincidence that donors such as Sudhir Ruparelia were cited as the biggest beneficiaries of the 2008 tax exemption? It suffices to note that lobbying is the process of offering campaign contributions, bribes, or information to policymakers for the purpose of achieving favourable policy outcomes (Denzau and Munger 1986; Grossman and Helpman 1994; Hall and Deardorff 2006).

Government's appetite for additional revenue which often results from budget deficits tends to undermine the bargaining power of business interest groups. In December 2019, the government sought approval of parliament to borrow 300 million Euros to finance the budget deficit, part of which was attributed to delays in the implementation of the digital tax stamps reform. In such circumstances the government leverages state power in terms of its numbers in parliament, control over its party members, and monopoly over tools of coercion to ensure the passing of laws and payment of taxes even when these are against the will of the members of business interest groups.

Cases such as PVoC, withholding VAT and digital stamps demonstrate that when government is in need of additional revenue, it is only willing to negotiate the modalities of the tax form i.e., the rate or tax burden or defer enforcement to a later date in the worst-case scenario. For instance, the PVoC case shows that the government could only compromise on the range of goods and the quantum to be paid while the withholding VAT case indicates that the compromise was limited to reduction of the rate and "suspension" of the law.

In the digital tax stamps case attempts to lobby against the implementation of the reform through UMA and their individual capacities were futile despite the fact that the companies involved are large taxpayers. Worse still, URA retaliated by threatening to remove the manufacturers from the list of withholding tax-exempt taxpayers and deportation of their staff[140] which resonates with the vengeance literature on evolutionary models of human and political behaviour (Weingast & Witman 2009). The most UMA and the manufacturers of beverages could get out of the negotiations was that government would pay for part of the cost of implementing the reform for an initial period of one year.

The prevailing relative democracy (Brautigam, Rakner and Taylor 2002) coupled with the founded perception of a compromising president also increases the bargaining power of business interest groups. The existence of a relatively functional parliament and judiciary improves the bargaining position of business interest groups by giving them viable options. Business interest groups can lobby parliament as they did on taxation of losses or institute proceedings in court as was the case for trade licences. At times even the mere threat of litigation may constrain the implementation of a reform (De Figueiredo & De Figueiredo 2002; Rubin, Curan & Curan 2001). For instance, banks threatened to drag the URA to court when it attempted to enforce section 42 of the TPCA by requiring them to furnish URA with details of transactions in excess of UGX 20 million and as a result the provision was not enforced ('Banks to sue URA over customer data' April 2018).

The cases also suggest that the president is quite tolerant and often reaches compromises when conflicts arise between the taxpayers and the URA. This benevolent character creates hope that business interest groups stand to gain a positive result, however minor,

[140] *Alcohol Association Industry of Uganda & Another v Uganda Revenue Authority HCMA No. 744 of 2019*

from negotiations in which the President is involved. In the 18th November 2019 letter,[141] the President settled the digital tax stamps issue by promising the manufacturers that the government would shoulder the installation costs thus revealing his benevolent character.

Institutional reform lawsuits are a component of the continuous political bargaining process that determines the shape and content of public policy (Diver 1979) and as such litigation can enhance the bargaining power of business interest groups. This is because judicial ideology in itself affects bureaucratic decision-making independently of litigation (Canes-Wrone 2003). For instance, when courts are seen to be independent and cases are decided on the basis of facts, law, and principles of justice the political/bargaining power of business interest groups is bolstered.

As seen in the previous chapter, banks and lawyers relied on the courts to nullify the licence fees imposed by the Trade (Licensing) (Amendment of Schedule) (No. 2) Instrument, 2011; and the banks later put an end to URA's unlawful attempts to search customers' bank information in the hope of raising more taxes. On the contrary, the business interest groups' ability to draw power from the courts is undermined by the appointment of cadre judges and retribution against judicial officers who make decisions that leave a bitter taste in State's palate.

The also cases demonstrate that the bargaining power of business interest groups is relative. The groups have a high bargaining power when the reforms proposed by government are not sound or rational for instance taxation of losses and reporting financial transactions, and low bargaining power when the reforms are backed by development partners or when they have been implemented in neighbouring countries i.e., withholding VAT and digital tax stamps. The cases also show that business interest

[141] This letter was circulated all over social media.

groups have low bargaining power when their proposals have an effect of reducing government revenue i.e., rewarding tax collection with a 0.02% rebate, reduction of withholding tax on dividends from 15% to 5% and removing VAT on tourism.

6.4 Triggers

Triggers refer to the underlying motivations that spark revenue providers to set in motion the bargaining process e.g., introduction of a new revenue reform or administrative measures and implementation of existing laws (Kjaer, Ane and Marianne 2019). Bargaining over taxation of losses and the requirement to report financial transactions were triggered by the introduction of tax amendments and an attempt to enforce existing provisions of the law. Although the issuance of a notice by URA to all the commercial banks to provide information on all account holders from 1st January 2016 to 31st December 2017 appeared to be premised on section 42 of the Tax Procedures Code Act, it was for all intent and purposes a re-introduction of a failed tax administrative reform. This triggered the banks to engage URA through Uganda Bankers Association.

Implementation of reforms and existing laws takes different forms e.g., issuance of tax assessments, communication of dates on which the reforms take effect as and gazetting of enabling instruments. Upon occurrence of the said events, business interest groups engage the relevant authorities in a bid to block or the soften reforms. Bargaining over withholding VAT was reignited by the publication of the list of taxpayers mandated to withhold VAT while litigation against digital tax stamps by BAT was sparked off by communication of the implementation date of the reform.

However, triggers are difficult to identify in instances where business interest groups set the reform agenda. This is largely because bargaining does not occur in the open. It can only be deduced that in such circumstances bargaining is triggered by the continued desire of firms to have their tax burden lessened and the budget cycle. The budget cycle

avails an opportunity to business interest groups to participate in the amendment of revenue laws by suggesting reforms.

6.5 Arenas

Arenas are spaces of negotiation and may be categorised into political, bureaucratic and public (Kjaer, Ane and Marianne 2019). The choice of arena can be linked to the legislative processes and as such the political arena is often accessed when stakeholders are called upon by parliament to give their views on tax Bills. The effect of their participation is such that at times the business interest groups and tax professionals are able to block a reform at the committee stage. Business interest groups may also access the legislative arena by approaching powerful individual members of parliament and by petitioning the Speaker. However, their power may be undermined when the president weighs in against them.

The bureaucratic arena constitutes ministries, departments and government agencies. In this arena, business interest groups leverage clientelist links between their leadership and State which gains them access to the arena and increases their bargaining power (Khan 2010) hence the softening of reforms during implementation. In the public arena, business interest groups such as KACITA leverage the political and economic consequences of protests to influence the implementation of reform while groups such as UMA use events/occasions to lobby by inviting distinguished politicians. This seems to contradict Cortner's argument that smaller groups are highly dependent upon the judicial process as a means of pursuing their policy interests, usually because they are temporarily, or even permanently, disadvantaged in terms of their abilities to attain successfully their goals in process, within the political institutions or in the bureaucracy. However, the courts of law are often used by industry specific business interest groups to soften and block reforms as a means of enhancing their bargaining power.

6.5.1 Political Arena

The term 'political arena' for the purpose of distinguishing it from 'bureaucratic arena', refers to the legislative process and by extension to parliament. The legislative process is such that the Ministry of Finance calls for tax proposals for the subsequent financial year. PSFU, UMA, KACITA and other business interest groups make suggestions but it appears that there is no engagement between the State and the business interest groups at this stage. It is on the basis of these suggestions that the tax bills are drafted but the they are often dominated by proposals from URA.[142]

The first reading of a Bill marks the formal introduction of the Bill in Parliament and the Bill is then committed to the relevant Sessional Committee of Parliament[143] for consideration. The Committee on Finance, Planning and Economic Development examines tax Bills before they are debated. At this stage, the Committee normally invites the relevant Minister to introduce the Bill and may also invite other stakeholders to state their views on the provisions of the Bill and the Committee may at sometimes hold hearings for the said purpose.

In order gain access to an arena, the organization needs to appear as a legitimate actor (Demil and Bensedrine 2005) and to appear as a legitimate actor economic clout and

[142] For instance, the Income Tax (Amendment) Bill, 2018 largely contains proposals aimed at increasing tax revenue including unpopular proposals such as taxing losses and withholding tax on agricultural supplies.
[143] Sessional Committees, whose purpose is to enable Parliament efficiently perform its functions, are envisaged under Article 90 of the Constitution and tenure of the committee members is two and a half years.

broader representation are relevant (Deng and Kennedy 2010). PSFU, UMA and KACITA are often invited to air their views on reforms owing to their clout. For instance, PSFU's Executive Director and the Director of Policy Advocacy appeared before the Committee on Finance, Planning and Economic Development during the discussion on taxation of loss and they were opposed to the taxation of losses. Furthermore, the trade license reform case in Chapter 5 shows that during the second reading of the Trade (Licensing) Bill, the chairman of the Committee on Tourism, Trade and Industry informed the Committee of the Whole House that views had been obtained from PSFU, KACITA and Uganda Chamber of Commerce among others (Hansard 2015). Consequently, business interest groups are able to access committees because they are recognized by Parliament and the Parliament's Rules of Procedure are such that stakeholders' views should be obtained in the process of analysing Bills. However, it is one thing to obtain views from stakeholders and another to consider the views.

The legislative process also involves scrutiny by the relevant Sessional Committee which, submits a report to Parliament which in turn constitutes itself into the Committee of the Whole House and debates the provisions of the Bill clause by clause and all proposed amendments. At this stage business interest groups can only access the arena by lobbying individual members of parliament. In Chapter 4 the reform on taxation of losses was reintroduced in 2019, the Committee on Finance, Planning and Economic Development approved it but the issue was resurrected by a member of Parliament as a result of lobbying by PSFU hence reversing the decision of the Committee. The reverse occurred when the Excise Duty (Amendment) Bill no. 6 of 2017 was being debated by Committee of the Whole House which increased the tax because BATU had restructured its business by relocating the production process to Kenya (Hansard May 2017).

The Speaker being the head of Parliament has power over the business of the institution and as such controls the business of Parliament.[144] Consequently, parliament can also be accessed by petitioning the Office of the Speaker. The concerned group may approach the Speaker informally through a member of parliament or formally, discuss the issue and have the petition delivered at a later date, and upon receiving the petition the Speaker pledges to respond to the grievances therein, sometimes in the presence of the media. The Speaker thereafter forwards the petition to the relevant parliamentary committee for consideration.

In October 2018, the Uganda Alcohol Industry Association petitioned the Chairman Parliamentary Committee of Finance, Planning & Economic Development against digital stamps on alcoholic products. In May 2019, when URA sought UGX. 103 billion from Parliament for the purpose of implementing digital tax stamps in the financial year 2019/20. While making a case for the financing sought, the Commissioner General of URA said that it was the decision of Government to introduce digital tax stamps and URA had already procured the services of SICPA SA ('MPs want URA's digital stamp project probed' May 2019). However, the Budget Committee declined to pass the budget and instead questioned what informed the signing of the contract with SICPA SA without the required funds for the project, the high cost of implementing the project in Uganda as compared to the neighbouring countries like Kenya, and presentation of the request at the tail end of the budget process yet the money was neither included in the budget of URA nor part of the unfunded priorities. When it was later returned, the Speaker took issue of the basis that it was earlier rejected.

Similarly, when taxation of losses was proposed, it was defended by URA before the Finance Committee of Parliament. However, PSFU opposed the measure before the

[144] To this end Article 82 (4) provides that no business shall be transacted in Parliament other than an election to the office of the Speaker at any time that office falls vacant.

Committee and as such it was thrown out. When the measure, was reintroduced and passed by the Finance Committee, PSFU relied on an influential member of parliament who wrote a minority report and the same was adopted by Parliament and as such the reform was blocked.

Grievances can also be brought to the attention of Parliament when a member of the House raises a matter of urgent public importance. Rule 55 (1) of the Parliamentary Rules of Procedure provides that any member may move the adjournment motion for the purpose of discussing a definite matter of urgent public importance, if not less than five other members rise in their places in support and the Speaker orders that the matter is a definite matter of urgent public importance. This implies that the member of parliament who raises a definite matter of urgent public importance either anticipates to gain political capital or has been lobbied by a given group of people. When traders protested against the reinstatement of PVOC, the matter was raised in Parliament as one of urgent public importance and the Speaker directed Minister of Trade to table a detailed statement on the basis that most MPs lacked information on the strike and they needed to be briefed first before they could comment ('Speaker Directs Minister on Strike' June 2013).

6.5.2 Bureaucratic Arena (Executive)

Negotiations also take place among business interest groups and the Prime Minister, Ministries and government agencies such as URA. The Office of the Prime Minister is established under Article 108A of the Constitution and the office bearer is appointed by the President from among member of Parliament or among persons qualified to be elected as members of Parliament. The Prime Minister is the leader of government business in Parliament and is responsible for the coordination and implementation of government policies across ministries, departments and other public institutions. Negotiations in the Prime Minister's Office may be at the behest of the President or as a

consequence of having been approached by business interest groups. For instance, the President referred the digital stamps matter to the Prime Minister who convened a meeting between UMA and URA while the Uganda Motor Vehicle Importers and Dealers Association made their case directly to the Prime Minister when government introduced PVOC ('Government suspends pre-inspection of general goods' November 2010). Similar to Parliament, the Office of the Prime Minister can be accessed through individuals with political connections (known as power brokers) and these can be found among the members of the group (Tangri & Mwenda 2019).

The Ministries, especially Finance and Trade, constitute an arena for revenue bargaining. The Uganda Revenue Authority and Tax Appeals Tribunal are under the Ministry of Finance, Planning and Economic Development which is also responsible for all the revenue reforms. The Minister of Finance is supported by State Ministers in charge of Economic Monitoring, General Duties, Privatization and Investment and Finance, Planning and Economic Development. It is the latter that usually introduces and defends the Tax Bills before the Committee on Finance, Planning and Economic Development and the Committee of the Whole House. Since the Ministry of Finance, Planning and Economic Development has control over revenue reform and implementation, it is viable for business interest groups to address their grievances to the Ministry.

UMA addressed the withholding VAT and digital tax stamps issue to the Ministry by writing letters and so did BATU on excise duty on cigarettes. These letters may not on their own suffice and are as such often followed up with phone calls or meetings or both. UMA and PSFU often interact with the Ministry of Finance and as such have access to the Ministry. For instance, the World Bank funded programmes such as Competitiveness and Enterprise Development Project (CEDP) are jointly managed by PSFU and the

Ministry of Finance which means that Finance is always in contact with PSFU whose membership comprises UMA. It, therefore, follows that when UMA wrote to the Minister of Finance on withholding VAT and the Ministry of Finance responded by directing URA to halt the implementation of the reform, it is probable that there were discussions that either preceded or were subsequent to the letter.

Revenue bargaining also takes place at Ministry of Trade, Industry and Cooperatives since it is in charge of formulating, reviewing appropriate policies, legislation, regulations and standards for sustainable development of trade and industrialisation. The Ministry is responsible for trade licences and also oversees institutions like Uganda National Bureau of Standards. As seen in the PVOC case, KACITA addressed its grievances to the Minister of Trade and the traders were able to reach an understanding with the UNBS and the Minister. When BATU threatened to restructure its operation, the Minister convened a meeting probably in a bid to dissuade the company. In both cases access to the Ministry seemed to result from the latter's attempt to intervene in a bid to end a crisis. When URA announced the commencement date for digital tax stamps, UMA wrote to the Minister of Trade seeking assurance that Government would pay for the costs associated with the implementation of digital stamps (*'*Digital stamps start next month, UMA petitions government' October 2019).

Government agencies such as URA and UNBS are also revenue bargaining spaces although they are not used often. This may be attributable to their limited role in policy and legislation considering that they are concerned with implementation. As seen in the digital tax stamps case, when the URA announced the commencement date for the stamps, manufacturers voiced their concerns in regard to the costs and time needed to sell their current stock. However, URA is said to have responded by victimising some of the manufacturers. And in so doing, it allegedly withdrew the withholding tax status of some of the manufacturers and also threatened to deport their foreign employees which compelled the UMA to seek alternative arenas. Similarly, UNBS being the

implementation body seemed not to have the capacity to address the traders' concerns and as such they engage the Minister of Trade.

6.5.3 Public Arena

The outcome of some reforms is largely determined by societal reaction in a bid to change existing conditions among the societal groups and interests that are most affected by the reforms (Thomas & Grindle 1990). The streets are an arena for protests among revenue providers who have limited access to the political arena but are dissatisfied with a reform. Unlike elite business interest groups such as UMA and PSFU, which have access to the President and Parliament, KACITA is dominated by informal traders who are suspected to sympathise with the opposition, which hinders their access to the President. When PVOC was re-introduced by the Minister of Trade, members of KACITA took to the streets by closing their shops. KACITA's preference for the streets is evident from the remarks of the group's chairman in Chapter 4 where he described PSFU as an organization whose solutions require people with neck ties unlike KACITA.

Unlike Parliament and the President, access to the streets only requires procurement of the general consensus of the members and confidence to withstand police brutality. In the premises, protests are resourceful to business interest groups because they tend to portray the government as unpopular, they can be hijacked by the opposition and they have an adverse impact on the economy.

The media forms part of the public arena, although it is not commonly used by business interest groups. Unlike civil society groups which call for press conferences to voice out their concerns, business interest groups seem to only give their positions on given reforms through the media when approached save for where the reform is very undesirable. When newspapers get to learn of instances (of revenue bargaining) that are

worth reporting, they reach out to the business interest groups for interviews on the issues and the views obtained are published as part of the story.

However, elite business interest groups tend to be cautious when commenting on such events. As seen in Chapter 4, URA attempted to enforce section 42 of the TPCA having failed to secure the passing of the provision mandating banks to provide information relating to transactions in excess of UGX. 20 million. The *Daily Monitor* Newspaper published a story titled 'Banks to Sue URA over Customer Data' wherein it was revealed that the newspaper had interviewed the chairman of Uganda Bankers Association. Similarly, when PVOC was reintroduced, the *New Vision* Newspaper sought the opinion of PSFU's Chief Executive Officer and Policy Officer's opinions on the reform ('UNBS, private sector battle over pre-shipment inspection charges' November 2012). The latter questioned the degree of consultation while the former was concerned with the effect of the cost of the reform on business.

The main benefit of the media is that it publicises issues thereby giving them traction. Withholding VAT gained traction partly as a result of the attention given to it by the media. The main media houses published a variety of stories related withholding VAT. NTV published a story titled 'Withholding VAT may lead to defaults.' The *Daily Monitor* Newspaper published various stories related to withholding VAT. On 20th August 2018 it published a story titled 'New tax law loaded with cash flow problems.' On 27th August it published a story titled 'Government moves to recall VAT Law.' On 22nd October 2019, it published a story titled 'Why government has paused withholding VAT' and on 19th April 2019 it published a story titled 'Mixed reactions over new withholding VAT.' On 14th August 2018, the *New Vision* Newspaper published a story titled 'Value Added Tax Amendment Law, 2018 is prohibitive'. On 22nd October 2018, it published another titled 'A new approach to tax policy is much needed'.[145] That notwithstanding, limited use of

[145] This was an opinion by to the effect that tax reforms such as withholding VAT require closer scrutiny and deeper analysis by Government and stakeholders before they become law.

the media as an arena for revenue bargaining can also be explained by the fact that business interest groups have access to the political arena and limitations to the freedom of speech.

Government agencies also make use of the media by emphasising their positions on a given reform. For instance, URA's head of corporate and public affairs convened a press conference at the National Media Council to emphasize the fact that the manufacturers/importers would be responsible for the cost of the digital stamps since the effective date had already been published in the Gazette ('Uganda introduces digital tax stamps to boost revenue' February 2019). Therefore, the media is a double aged sword in far as it is available to both the state and its agencies on the one part, and business interests on the other.

Deng and Kennedy (2010) emphasize the importance of personal connections and trust building by hosting banquets as lobbying strategies. To this end, business interest groups also use their annual events to lobby government in a bid to set an agenda for reform. The Uganda International Trade Fair is an annual event organised by UMA. The President is often invited as the guest of honour and when he was invited at the opening of the 27th trade fair, he had a closed-door meeting with the board of UMA wherein he was told the grievances which included the unresponsiveness of URA ('Museveni blasts URA for failing manufacturers' October 2019). During his speech, the president accused Uganda Revenue Authority (URA) of inefficiency in its audit department and tasked the tax body to sort out the mess before it was too late. He said:

> I am told that sometimes the traders present their books of accounts to URA for audit and URA delays to audit the books. When they come to audit the books, they ask the traders to pay all the arrears and penalties immediately. How can this be? How can any reasonable

> Ugandan, who knows the suffering of Ugandans say you must pay now? It was not my fault that you did not come in time. If you did not have enough auditors, then I should not be punished for your mistakes. We shall sort that and stop it…

However, URA's mandate to audit a taxpayer within a period of three years from the date returns are filed or anytime in the case of fraud or discovery of new information is derived from the law[146] and the penal interest which is imposed as a result of non-compliance is also a creature of statute.[147] This implies that the promise to put an end to the practice of auditing taxpayers years after returns have been filed should be taken with a pinch of salt and therefore not a credible commitment.

In May 2019, UMA held a networking business luncheon and invited the Speaker as the chief guest. During the event she was told that the National Development Plan II lacked work plans towards industrialization. The Speaker pledged to make a midterm review of the National Development Plan II to have industrialization fully incorporated. It suffices to note that in 2017 the Speaker reached out to UMA for financial assistance for rehabilitation of her district and UMA donated Ushs. 30 million (Uganda Manufactures Association 2019). It is probable that such support created rapport between the Speaker and UMA and as such makes it easier for the latter to access the office of the Speaker.

6.5.4 Courts of Law

Courts are politically constructed political institutions, because the determinants of judicial behaviour are not distinct from the determinants of decision making by other

[146] Section 23 of the Tax Procedures Code Act, 2014
[147] Sections 48-53 of the Tax Procedures Code Act, 2014

public officials (Hirshl). This explains why they are an arena for continuous political bargaining processes and as such judicial ideology affects bureaucratic decision-making independently of litigation (Canes-Wrone 2003). This implies that courts are an important arena for business interest groups when the political arena (in particular parliament) becomes less effective. For instance, the banks did not seem to have participated nor considered in the business licence reform political process in Chapter 5 despite being at variance with the State on the issue.

This explains why the banks instituted another case against the amendment and they were successful in so far as it was decided that the Financial Institutions Act excluded banking services from the scope of trade licences. In a similar way, the digital stamps tax reform demonstrates that BATU and the Association of Alcohol Manufacturers instituted court cases against the reform as a continuous political bargaining process considering that they had lost out in the political process.

The courts of law enhance bargaining power of business interest groups because judges may substitute their judgment for that of other policy makers and as such power looms particularly large because judicial decisions concerning constitutionality are very difficult to overturn thus making them more permanent as well as more dramatic (Smithey & Ishiyama 2002) as was the case in *ABC Capital Bank and 30 Other v Attorney General and Uganda Revenue Authority.*[148]

Business interest groups find courts accessible, affordable since costs are shared, and they often engage politically connected premium law firms.[149] The availability of interlocutory

[148] Constitutional Petition No. 14 of 2018.
[149] K & K, MMAKS Advocates, and AF Mpanga are some of the premium law firms which argued the cases discussed in chapter five, with some believed to be politically connected

remedies such as temporary injunctions and interim orders also makes courts a viable arena for revenue bargaining because they bestow 'early victories' unto litigants, which may demoralise government agencies. For instance, in the *Uganda Law Society* case the court granted an interim order restraining the local government from implementing the trade licence reform while in the *British American Tobacco* case the court issued a temporary injunction restraining URA from charging the company a higher excise duty rate pending the disposal of the substantive case. The effect of the injunctions was that the reforms could not be implemented until the cases were determined and the reform may be long forgotten by that time. Judicial review is effective in checking state power to the extent that courts substitute their judgment for that of other policy makers and as because judicial decisions concerning constitutionality are very difficult to overturn thus making them more permanent as well as more dramatic (Smithey & Ishiyama 2002).

6.6 Strategies

Business interest groups use collective action, litigation and lobbying either concurrently or consecutively depending of the nature of the reform (Kjaer, Ane & Marianne 2019). Collective action increases bargaining power of business interest groups when groups such as KACITA, UMA and PSFU stand together against a reform because in such circumstances they are seen to represent the entire business community. Litigation is often resorted to when lobbying is unsuccessful and it tends to yield positive results when the judiciary enjoys independence.

6.6.1 Collective Bargaining

Taxpayers mobilise against a tax if they feel that they are not likely to get value in return (Prichard 2015) and as a result acting collectively enhances their bargaining power. Business interest groups derive their strength from their degree of cohesion, the number of members (Handley 2010) and the importance of the sector to the economy. When firms bargain through highly centralized and well-integrated business interest groups, they achieve better outcomes (Castaneda 2017) since their interests are concentrated. UMA and PSFU have numerous members whose businesses cut across different sectors of the economy, some with political connections, and are organised/structured i.e., they have different levels of management. These factors account for the respect they command in the wider political arena. For instance, the enforcement of withholding VAT and PVOC was jointly resisted by UMA, PSFU and KACITA and significantly softened.

Broad based (peak) business interest groups tend to be more effective at legitimization and pressure (Demil and Bensedrine 2005) compared to industry specific business interest groups and as a result they are more influential. This grants them better access to the political and bureaucratic arenas because their power is recognised by the State owing to their strength. The Uganda National Chamber of Commerce and Industry, which may be described as a shadow of its former self, was consulted during the trading licence reform yet Uganda Bankers Association which appears to be more vocal was not consulted. Similarly, during the digital tax stamps reform Uganda Manufacturers Association was able to secure an extension of the reform yet the Alcohol Association Industry of Uganda's political and litigation efforts to push the cost of implementing the reform to the government did not yield much in comparison.

This does not mean that industry specific business interest groups are not influential because in Chapter 4 we saw how the Uganda Motor Vehicles Association and KACITA were able to influence PVOC. It appears that industry specific business interest groups are relevant when a reform targets a specific industry while peak business interest groups are effective in cross cutting reforms. The reasons for this trend may range from the view

that industry specific reforms or those that largely affect a defined industry are not taken with the same degree of concern by peak business interest groups since the benefit accrues or peril is suffered by a small group of people.

Collective bargaining is not independent of other strategies such as protests/demonstration, lobbying, litigation and it is therefore used in combination with the said strategies. However, unlike protests/demonstrations, collective litigation seems to be an emerging trend in revenue bargaining. In the first trade licensing case a handful of the banks instituted the suit while in the subsequent case nearly all banks were part of the suit and the *ABC Bank Case* included their umbrella organization, Uganda Bankers Association. This seems to also have been adopted in the digital tax stamps cases in both the Tax Appeals Tribunal and High Court. Therefore, the use of collective litigation and its combination with lobbying as revenue bargaining strategies is likely to grow in the foreseeable future.

Firms are most likely to use a collective lobbying strategy when targeting sector-wide trade policy in the nature of public goods while they are likely to lobby individually when they lobbying for more product-specific outcomes (Saha 2017). Thus, the likelihood of lobbying collectively is higher in sectors characterised by low concentration such that the competition effect is clearly dominating any free-riding effects.[150] It is common for firms to act individually when seeking tax exemptions and litigating against the enforcement of reforms. The latter is partly as a result of the right or capacity to bring an action (*locus standi*) which is a creature of statute or established rules of procedure while the former is an act of rent seeking behaviour. As seen in Chapter 4, some of the beneficiaries of the exemptions form part of the ruling elite or have links to it.

[150] *Ibid*

Protests are a common phenomenon during reforms and tax is no exception. However, they are quite peculiar when it comes to business interest groups because the strategy draws a line between elite and non-elite business interest groups. The remarks of the chairman of the PSFU as contained in the 2005/2006 report explains why elite groups do not engage in protests. It reads (in part) as follows:

> Over the past year PSFU was able to utilise the knowledge and expertise of a team of representatives who were selected by you members to dialogue with government on key private sector concerns. It has been regularly meeting with government to discuss and secure top-level government commitment to implementation on several issues.

This demonstrates that peak business interest groups have the resources to access the State as well as a running relationship and consequently, they do not find protests a viable option. It is arguable that some of the leaders of these groups would find protests counterproductive since fund and benefit from the ruling regime. For this reason, when peak business interest groups' concerns are not catered to, they persistently engage the State in a diplomatic manner rather than protesting.

The remarks above, when contrasted with the comment of the chairman of KACITA to the effect that KACITA protests in order to seek the attention of the president, fortifies the proposition that it is the business interest groups with limited access to the political and bureaucratic arena that resort to protests. Members of KACITA protested the reintroduction of PVoC by closing their shops yet PSFU and UMA held talks with the Minister of Trade, as a result of which a committee was set up to review the policy. Similarly, Buganda protests during the colonial regime happened because Africans had limited access to both the Legislative Council and Governor; compared to the Europeans who had seats on the Council.

The effectiveness of protests can be seen from the manner in which the State responds to the demands of the protesters. Protests are effective where the State responds to the

demands of the protesters or at least a significant part thereof, but are not successful where the State invokes its tools of coercion to supress them, without responding to the demands. The colonial regime barely responded the natives' demand for involvement in the lucrative sectors of the economy but the current government was responsive to KACITA's demands on the inspection costs and group cargo. Thus, protests were unsuccessful under the colonial regime but successful under post-independence regimes.

Protests may also attract the attention of third parties who may lend support to the protesters thereby mounting pressure on the State to reach a compromise by joining the protestors or condemning the State over its actions. Protests can also attract the attention of opportunists with the motive to further their political agenda. This, among others, explains why the State may be quick to reach a compromise in a reform process. For instance, during the re-introduction of PVOC, the Minister of Trade was tasked by Parliament to table a detailed statement ('Speaker directs Trade Minister on strike' 2013). During the debate, one of the members of parliament stated that:

> There are people who will not have bread on their tables today. Traders contribute 80 percent of our trips. We should be discussing how their shops should be opened. A day lost in business is lots of income lost…

Thus, the State may respond to the demands of protesters to prevent the escalation of a crisis.

6.6.2 Litigation

Litigation is often adopted as a revenue bargaining strategy when the political arena does not yield desirable results. Suits may be lodged in form of petitions to the Constitutional Court, references to the East African Court of Justice, applications for judicial review in the High Court or applications for review in Tax Appeals Tribunal. The choice is guided

by both the nature of the cause of action and the remedies sought. Although actions in both the Constitutional Court and East African Court of Justice involve questions of legality of Acts of Parliament and persons (natural and legal), constitutional petitions are restricted to the infringement of the Constitution while references are limited to matters regarding the infringement of the Treaty for the Establishment of the East African Community and Protocols thereunder. Applications for judicial review are limited to contestation over the legality, irrationality and procedural propriety of a body vested with quasi-judicial power including the Minister of Finance while applications for review of objections[151] and tax decisions[152] are limited to decisions made by the URA.

The remedies granted by the Constitutional Court and EACJ nullify Acts of Parliament (or provisions thereunder) and decisions of persons while orders under judicial review only condemn the manner in which decisions are made without investigating the merits of the decision. However, it is easier to make a case for judicial review than making one before the Constitutional Court and EACJ since all that is required in judicial review is to fault the decision-making process and not the decision itself. Remedies granted by the Tax Appeals Tribunal on the other hand, are such that the Tribunal is clothed with the powers conferred upon URA and as such it can affirm, vary or set aside the taxation decision.

The courts are not divorced from the politics of the day and this could have an impact on the effectiveness of the strategy. As seen in Chapter 5, the judge in *Alcohol Association Industry of Uganda* invoked the principle that courts should be slow in granting injunctions against government projects meant for the interest of the public at large as against the private proprietary interest or otherwise a few individuals. It is probable that

[151] An objection decision is taxation decision made in respect of a taxation objection (objection to an assessment).
[152] This refers to any assessment, determination, decision or notice.

the court was alive to the efforts by the business interest groups to oppose the reform and since the traditional principles for granting a temporary injunction could have favoured the applicants, it explains why it may have been necessary to invoke the public interest principle.

Using litigation to set the agenda for reform by changing the status quo is rather an uphill task especially where the administrative measure is entrenched in the law compared to relatively new reforms such as access to information in the *ABC Capital Bank*. The attempt to challenge the 30% deposit requirement in the *UPIMAC Case* was unsuccessful in the Constitutional Court of Appeal (Supreme Court) with the court deciding that the measure was not arbitrary, unreasonable or demonstrably unjustifiable in a free democratic society. However, in the *Fuelex Case,* the Constitutional Court took an ambitious stance by attempting to reverse the decision of the Supreme Court (Constitutional Court of Appeal). Therefore, having such actions succeed requires a re-composition of the court by having some judicial activists on the bench.

As seen in Chapter 5, the effectiveness of litigation as a revenue bargaining strategy is hindered by the politicization of the courts and subtle lobbying of the judiciary by URA. The politicization of the courts is entrenched through the appointment of cadre judges while URA organises conferences under the guise of training judges on tax. During the opening of a two-day taxation workshop for justices of the Supreme Court and Court of Appeal in 2017, the Commissioner General put her grievances before the Chief Justice as follows:[153]

> The tax cases that are filed before you my lord *put a stop to us collecting revenue*. The longer the cases take to be resolved the longer it will take for us to collect the revenue…We also experience exorbitant bills of costs and subsequent attachment of bank accounts which greatly impairs our work as tax collectors and also affects remittance of funds to the consolidated fund…

[153] 'Chief Justice, URA clash over tax cases stalling in courts' 2017

This is in addition to reminding the bench that it should facilitate collection of revenue since their emoluments are paid from the revenue collected i.e., low revenue would translate to budget cuts in the judiciary.

6.6.3 Lobbying

Influencing revenue reforms also involves providing information to those in power in a bid to influence their decisions, and it is this that constitutes lobbying. Lobbying may also involve providing political support in the form of campaign finance or party contributions in anticipation for political favours (Denzau and Munger 1986; Grossman and Helpman 1994; Hall and Deardorff 2006). PSFU, UMA and other business interest groups do lobby by providing information in various forums. These include events such as the presidential investors round table, parliamentary committees, media (including circulation position papers) and annual events.

PSFU and UMA were routinely invited by Parliament's Committee on Finance, Planning and Economic Development during the discussion of reforms e.g., taxation of losses and they expressed their discomfort with the reform. When this was not successful, PSFU is said to have approached an influential member of Parliament who wrote and tabled a minority report, and it was the basis on which the house rejected the proposal. PSFU also commissioned a study on widening the tax base in which it proposed measures such as laying more emphasis on taxation of property and the informal sector. These came to pass and are now included in the Income Tax Act, although this may be considered a coincidence.

In regard to the use of annual events as lobbying platforms, UMA often invites the President to the opening of the annual manufacturers exhibition and seeks his intervention on tax issues who respond with cheap talk rather than credible

commitments. Similarly, during the presidential investors round table[154] industry specific business interest groups make effort to convince the president to grant them tax incentives but this rarely yields results.

Business interest groups are compelled to engage in lobbying partly due to the volatility and unpredictability of tax environment. Amendments to the tax Acts (reforms) are introduced every financial year in a bid to increase tax revenue. This has caused the peak business interest groups to establish departments (staffed with professionals) dedicated to advocacy. For instance, PSFU's director in charge of Private Sector Development is also in charge of Policy Advocacy (Private Sector Foundation 2020) while UMA has a policy and advocacy department headed by a manager (Uganda Manufacturers Association 2020). These follow the budget cycle, identify reforms that are not favourable to the private sector and lobby against them. Unfortunately, there is limited time to engage in gainful lobbying since the reforms are introduced at the close of the financial year yet they are effective at the beginning of the subsequent year. These departments are also not optimally staffed and as a result they are constrained.

Business interest groups at times leverage the personal connections that their leaders or members have with State, to lobby the president or ministers. This strategy is covert and can only be deduced from the relationship between the leadership of the business interest groups and the State and the outcomes of the engagement. The current chairman of PSFU (Hon. Elly Karuhanga) is a former chairman of the Uganda Chamber of Mines, a former Member of Parliament (Constituent Assembly) and a known to be a supporter of the NRM. His predecessor (Mr. Patrick Bitature) is reported to have been among the businessmen that contributed to the NRM house while his predecessor (Hon. Gerald

[154] The Presidential Investors Round Table is a high-level forum (often chaired by the President) that brings together a select group of both foreign and local investors to advise Government on how to improve the investment climate in the country.

Sendawula) is a former minister of finance. PSFU's advisory board has had members such as Mrs. Maria Kiwanuka and Dr. Ezra Suruma who are also former ministers of finance. Similarly, UMA's chairperson (Barbara Mulwana) is a daughter of the former chairman (James Mulwana) who was a supporter of the NRM. The advisory council includes individuals such as Prof. Gordon Wavamuno and Mr. Amos Nzeyi and families like Alam and Madhvani who are known supporters of the regime. This trend shows that it is probable that in choosing a leader, the decision of the members of business interest groups is informed by the nature of the relationship between the candidate and the State. This is in anticipation of the ability of the leader to access and put their agenda across especially before the president.

6.7 Conclusion

It is discernible from the discussion above that revenue bargaining includes restraining government's effort to collect tax and it is a continuous process. It may be in form of seeking tax exemptions or opposing reforms aimed at increasing the State's taxing capacity or persuading government to lessen the tax burden by widening the tax base. Revenue bargaining is now more pronounced than before due to the volatility of the tax landscape and the increasing tax burden. This in turn results from pressure to raise additional revenue to finance the growing needs of the State.

The effectiveness of bargaining power of the business interest groups is reflected in the clauses of Tax Bills that are rejected and the failure to enforce some of the existing provisions. That notwithstanding, bargaining power of business interest groups is relative and as such it is largely dependent on the State's appetite for additional revenue. Companies owned by citizens may have low bargaining power or their bargaining power may depend on the relationship between the owners and the State. Consequently, the

formation of business interest groups creates bargaining synergies since they can collectively lobby, litigate or even protest against undesirable reforms.

The courts increase the bargaining power of business interest groups but this is subject to the independence of the judiciary. This is because the judicial officers are appointed by the president. As such, he influences the appointments and also has the potential to reprimand judicial officers by hindering their career growth.

Revenue bargaining arenas and strategies speak volumes about the political processes and the functionality of Uganda's institutions of governance. Although all the three arms of government are accessed in the course of revenue bargaining, business interest groups predominantly engage the executive and in particular the President. This indicates that a lot of power vested in the person of the president. That notwithstanding, revenue bargaining demonstrates that there is at least a semblance of functional institutions of governance in Uganda. This provided the basis of the conclusion that taxation presents positive implications for the rule of law when firms act collectively and when the courts enjoy judicial independence, as explained in final chapter.

CHAPTER SEVEN
CONCLUSION AND RECOMMENDATIONS

7.1 Conclusion

This thesis has presented an analytical framework that demonstrates the link between taxation and the rule of law and by extension, the linkage among litigation, political order, and economic political change (Mather 2009). This was in an attempt distinguish between textbook and what really happens when law is in action in a bid to resolve inevitable conflicts in society (Freeman 2014). In short, the need for additional revenue leads to enactment of tax legislation (revenue reforms) or enforcement of existing laws which tend to increase the tax burden. Consequently, contestation ensues between the State and business interest groups or firms which seek the intervention of the executive, or legislature (lobbying) or judiciary (litigation). The conflict between business interest groups and the State is bound to arise because the reforms tend to reduce profitability of the enterprises. The outcome (at least to a greater extent) is that the reform is either blocked or softened. However, firms may set the revenue reform agenda by seeking tax exemptions from the State or cause reform by litigating against an existing tax measure, or bargain with/lobby the executive in a bid to block or soften the implementation of a revenue reform. Thus, since taxation breeds contestation, it presents positive implications for governance/rule of law when firms act collectively and when the courts enjoy judicial independence.

Revenue pressure not only triggers bargaining but also affects bargaining power. Contestation between business interest groups and the State over revenue reforms is a recent development but one that is expected to intensify over time. This is attributable to the narrow tax base, limited capacity of URA and the ever-increasing financial needs of the State. Since the tax handles are limited, partly due to URA's limited capacity to effectively tax the informal sector, and the State in need of additional revenue, resorts to the formal sector. This, coupled with access to information, formal and informal

institutions make revenue bargaining imminent. The unceremonious termination of the Commissioner General of URA by the President[155] could be an indicator of the State's appetite for additional revenue and failure by the Commissioner General to deliver on the same.

The intensity of the contestation between business interest groups and the State is attributable to the desire by business to maximise profit yet reforms tend to undermine profit and cash flow. Revenue mobilization measures such as taxation of losses, business licences and reporting of financial transactions adversely affect profitability while reforms such as withholding VAT and excise duty undermine the cash flows of businesses. In light of this, the logical consequence is that business owners are enslaved to the need to engage the State over such revenue reforms.

Business interest groups have had influence on the broad-based taxation policy through revenue bargaining, and as the effort to collect additional revenue from the formal sector fails to materialise, the state resorts to the hard to tax, hence broad-based taxation. The Income Tax (Amendment) Bill, 2020 contained proposals such as withholding tax on sale of land other than a business asset, new tax regime for small businesses and withholding tax on commissions paid to insurance and advertising agents which are targeted towards the hard to tax. This is probably as result of the increased pressure to raise additional revenue and failure to raise the same or a substantial part thereof from the formal sector.

The organizational capacity of peak business interest groups accounts for their strength/bargaining power (Handley 2010). The establishment of secretariats and units manned by professionals charged with the responsibility of policy advocacy enables business interest groups command respect, mobilize resources, and effectively pursue

[155] On Sunday, 29th March 2020 the President published a tweet that read "By virtue of the powers granted to me by the Constitution, I have appointed Mr. John Musinguzi Rujoki as the new Commissioner General of @URAuganda. This appointment takes immediate effect."

revenue bargaining strategies such as lobbying. As seen in the previous chapter, PSFU and UMA have secretariats staffed with professionals (executive directors and individuals in charged with various responsibilities), which improves their organizational capacity to engage in robust sustained set of exchanges concerning revenue reform because they are armed with the relevant technical capacity and as such the members need not actively participate in the contestation over reforms.

However, organizational capacity of business interest groups is to an extent undermined by limited financial contributions of the members. For instance, PSFU's financial statements for the year ended June 2019 show that of the UGX. 1.8 billion generated, UGX. 98.2 million was collected from members' dues, UGX. 226.5 million from grants while the bulk (UGX. 1.4 billion) was generated from contributions for activities. It is probable that if business interest groups were resourceful enough to direct and fund themselves without recourse to the State or external donors, they would be in a far stronger position to negotiate with the State since such contributions would spur greater participation of the members. Organizational capacity is also hindered by the limited involvement of multinationals in the affairs of business interest groups (Sen and Willem et Velde 2007) because they have access to the president as was the case of Coca Cola in the digital tax stamp reform case.

The amicable relationship between the State and the business community in general has facilitated revenue bargaining. Unlike the previous regimes where the relationship between the State and the business community is said to have been characterized by mistrust and suspicion (Kalema 2008), today the relationship appears to be much better. This is partly attributed to Government's decision to leverage private sector led growth and as such it views the business community as a development partner. If the drive by the business community to make donations towards the fight against COVID-19 is

anything to go by, [156] one may attribute this to the good relationship between the State and the business community or for a lack of a better world, courtship. This not only creates room for discussion by giving business interest groups to access institutions but also amplifies their voice.

In answering the question, "How do business interest groups influence revenue reforms in Uganda?", the thesis has demonstrated that lobbying, protests and litigation are the main strategies employed by the groups in furtherance of their interests. These are in consonance with Mushtaq H. Khan's proposition that the resistance of powerful groups can range from legal attempts to reverse institutional changes, non-compliance with rules at different levels of intensity and ultimately engagement in conflicts in the form of withdrawals of investments, strikes and, in some cases, violence.

Chapter 5 shows that court cases were instituted against trade licence, excise duty and digital tax legislation in an attempt to resist these reforms while Chapter 4 shows the use of strikes to resist PVoC. The outcomes of these processes are such that the reform is withdrawn, deferred or revised in the interest of business interest groups. These help us appreciate the power of business interest groups to contest, obstruct and oppose legislation enacted against their interests. These outcomes also lend credence to Mick Moore's proposition that governments will tend to be more responsive to 'strategic taxpayers', that is, to large taxpayers that have the greatest capacity to trouble the tax collector by not paying in a timely and reliable way. It can, therefore, be concluded that taxation in Uganda is less coercive at least, to the extent that business interest groups have a say in the reform processes.

[156] Different members of the business community contributed cash, food, cars and other non-food items to help government ameliorate the effects of the stay home directives on the vulnerable. This is over and above their tax obligations in light of a forecasted grim economy.

Revenue bargaining by business interest groups as seen in the preceding chapters, highlights the strengths and weaknesses of the rule of law in Uganda in terms of separation of powers/ checks and balances. This occurs as business interest groups interact with arms of government in a bid to influence reforms. The revenue reforms are proposed by the Executive to Parliament but these are often dominated by URA's interests. The consequence is the fear that in absence of Parliament or the judiciary, proposals such as taxation of losses and the reporting of transactions by banks would come to pass.

Parliament was able to check the Executive's effort to bestow unto itself the power to grant tax exemptions by rejecting the proposal. This would have had far reaching implication to the extent that it would enable rent seekers obtain exemptions with limited oversight from Parliament. However, since the State can grant exemptions by undertaking to pay taxes on behalf of 'strategic investors' and later seek to be exempted from making good its obligation, the abuse of exemptions remains at large. Even if the State were to make good its obligation to pay tax on behalf of 'strategic taxpayers', the idea that a taxpayer's money is used to settle such obligations of a favoured taxpayer is and should be intolerable.

As seen in Chapter 5, the Judiciary defended the right to a fair hearing as a non-derogable right and held that no arbitrary action can be taken which has the effect of depriving any person of the privacy of communication, their property and privacy of their home without due process and that any such investigation should be prompted by some probable cause such as an alleged commission of an offence under the Tax Laws. The Judiciary also checked the excesses of the Executive by nullifying parts of the Trade (Licensing) (Amendment of Schedule) (No. 2) Instrument, 2011 and Trade (Licensing) (Amendment of Schedule) Instrument, 2017 which imposed trade licenses on banks despite the fact that some of the gains were lost when Parliament amended the Trade Licensing Act.

Taxation also improves governance in that the State is compelled to behave in a 'certain kind of way' towards its people. It becomes responsive to those from whom it collects taxes or is at least mindful of their interests in a bid to maximise the revenue derived from them (Bates & Lien 1985). Consequently, tax liability is on a basis of a majority decision and the distribution of the tax burden is both a legal and political question. Thus, revenue bargaining enables business interest groups gain control over revenue reforms.

My contribution, may not be by way of advancing novel arguments in regard to the link between taxation and governance. However, novelty may be found in the manner in which the arguments are couched. The current political economy literature that links taxation to governance pays limited attention to the doctrine of rule of law, at least within the context of checks and balances, yet it is also an important aspect of political development. The literature is currently limited to taxation and representation/ state building (Tilly 1992; Moore 2004), the link between governance and quasi voluntary compliance (Levi 1988), taxation and control over policy (Bates & Lien 1985; Timmons 2004) and taxation and accountability (Prichard 2015). Similarly, the terms used to describe the relationship between taxation and governance so far include 'fiscal sociology', 'fiscal contract', 'governance dividend' and 'revenue bargaining'. Levi (1988) and Bates and Lien (1985) discuss the link between taxation and governance within the revenue bargaining context but not much is said about the bargaining power and strategies used by particular revenue providers. I build onto Schumpeter's argument on how the need for additional taxes leads to concessions in determination of tax liability and distribution of the tax burden. To this end, I use historical cases of socio-economic influence of various societal groups, modern cases of business interest groups' influence over revenue reforms and the relevant literature in an attempt to link taxation to rule of law in Uganda. As a result, I have examined how business interest groups in Uganda influence revenue reforms at both the legislation and implementation stage.

Perhaps my greatest contribution is the contextualization of governance, to mean rule of law and specifically checks and balances; by discussing courts of law as an arena for revenue bargaining; and thereby applying a political science approach to a legal doctrine. These results are in tandem with the view that a voice and an organised response to new revenue policies are emerging in Uganda (Fjeldstad and Rakner 2003; Moore 2008).

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7.2 Recommendations

The recommendations below are premised on the conclusion that taxation presents positive implications for the rule of law when firms act collectively and when the courts enjoy judicial independence. As a result, the focus is on strengthening the capacity of business interest associations, advocating for meaningful participation in revenue reforms, improving independence of courts and suggestions on related areas of research.

7.2.3 Business Interest Groups

Business interest groups should increase their capacity to credibly engage the State in technical policy discussions by conducting research, increasing the technical capacity and expanding the size of their policy advocacy departments or outsourcing consultants.

The administration of peak business interest groups could be organized in such a manner that it accommodates a more significant part of the private sector and bargaining should be centrally coordinated.

7.2.4 Government

The Ministry of Finance could consider the effect of amendments against business interest groups' businesses. This would mitigate the risk of passing broken window fallacies such as withhold VAT at a rate 100%.

Parliament is required to consider and approve tax Bills by 31st May. The 2020/21 tax bills were published in the Gazette on 30th March 2020 and stakeholders were notified to submit their views, by 7th April 2020. This time frame may not permit the business interest groups ample time to digest the reforms and caucus, hence the need to publish and circulate the Bills earlier. The frequency of the amendments may create fear as to whether there is a defined path being followed in revenue mobilization.

Government should implement the Administration of the Judiciary Act, 2020 in a bid to strengthen the independence of the judiciary. The Act provides for the functioning, institutional operation and administrative independence of the Judiciary, as well as the retirement benefits of judicial officers. It also elaborates and cements the independence of the Judiciary by making it self-accounting and protects the administrative expenses, emoluments and retirement benefits of judicial officers. Therefore, the implementation of these provisions is crucial to the independence of the judiciary.

The appointment, tenure, emoluments and supervision of the Tax Appeals Tribunal could be reviewed with an aim of engineering greater independence. This would go a long way to instil confidence in the taxpayers.

7.4.5 Further Research

Fiscal policy comprises revenue and expenditure. So far, the influence of business interest groups on revenue is known but the influence on expenditure priorities and accountability remains at large. Understanding the role of the private sector in the determination of state expenditure priorities is valuable to the revenue bargaining theory. As such the role of business interest groups in determining expenditure priorities is worth studying. Similarly, we need to gain a better understanding of the role of international capital on revenue and expenditure policies.

Uganda discovered oil and substantial progress has been made in regard to realise its extraction. The effect of oil revenues on the rule of law is, therefore, worth knowing especially against the backdrop of the allegation that that rentier states tend to be repressive.

This study has focused on dominant business interest groups such PSFU, UMA, KACITA and UBA. It does not explain if or how small business interest groups influence fiscal policy. As such research on how small business interest groups influence policy and how they interact with the dominant groups would deepen appreciation of the political economy of revenue reform in lower-income countries.

Revenue bargaining is institutionalised to the extent participation of stakeholders is part of the legislative process. When tax bills are published, the Clerk to Parliament invites stakeholders to give their views, which are reviewed by the Finance Committee, and later invited for consultative hearings. Research should be carried out on the effectiveness of such institutionalised revenue bargaining.

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Appendix 1

INTERVIEWS REFERRED TO IN THE TEXT

Chairman of KACITA (August 2019)

Spokesperson KACITA (August 2019)

Secretary Environment, Security, Mediation and Port Coordination of KACITA (August 2019)

Officer of Economic Affairs of MoFPED (August 2019)

Manager Research and Policy Development, URA (September 2019)

Budget Policy Specialist of CSBAG (August 2019)

Programme Officer of Tax Justice (August 2019)

Programme Coordinator of SEATINI (August 2019)

Manager Policy and Advocacy of UMA (August 2019)

Senior Policy Officer of PSFU (August 2019)

Legal Officer of Centenary Rural Development Bank (September 2019)