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Working Paper

Tax bargains: Understanding the role played by public and private actors in influencing tax policy reform in Uganda

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Working Paper 2015-2

Tax Bargains

Understanding the Role Played by Public and Private Actors in Influencing Tax Policy Reform in Uganda

*Jalia Kangave
Mesharch W. Katusiimeh*

prepared for the UNRISD project on
Politics of Domestic Resource Mobilization

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Contents

Acronyms	ii
Summary.....	iii
Authors	iii
Introduction	1
Background: Structure of Taxes and Tax Policy in Uganda	1
Research Questions and Structure of This Report.....	3
Methodology.....	4
Background to Law Reform in Uganda: The Role of Contestation and Bargains	5
Contestation and Bargains in Tax Matters: Analysis of Tax-specific Reforms	8
What is a Tax Bargain?	8
Members of Parliament (MPs)	9
International Financial Institutions (IFIs).....	10
Private Actors: The Business Community	12
Civil Society Groups	16
Non-Institutionalized Public Actors	17
Conclusion: A Synthesis of Contestation and Bargains Over Taxation in Uganda	19
References	22
List of Legal Resources	28
List of Interviews.....	28
Tables	
Table 1: Tax Revenue Performance, FY2007/08 – FY2011/12 (Shs. Bn).....	2

Acronyms

CSOs	Civil Society Organizations
DRB	Domestic Relations Bill
FOWODE	Forum for Women in Democracy
GDP	Gross Domestic Product
IFIs	International Financial Institutions
IMF	International Monetary Fund
ITA	Income Tax Act
KACITA	Kampala City Traders Association
LRC	Law Reform Commission
MOFPED	Ministry of Finance Planning and Economic Development
MPs	Members of Parliament
OECD	Organisation for Economic Cooperation and Development
PAYE	Pay As You Earn
PSA	Production Sharing Agreement
PSF	Private Sector Foundation
PVOC	Pre-import Verification of Conformity to Standards Programme
SAP	Structural Adjustment Programme
SEATINI	Southern and Eastern African Trade Information and Negotiations Institute
UGIETA	Uganda Import and Export and Traders Association
UMA	Uganda Manufacturers Association
URA	Uganda Revenue Authority
VAT	Value Added Tax

Summary

With the exception of the role played by International Financial Institutions (IFIs) such as the International Monetary Fund, there is little documentation of the role, if any, played by actors other than the state in influencing tax policy reform in Uganda. This paper conducts an investigation into the extent to which actors such as IFIs, members of parliament, the private sector, civil society organizations (CSOs) and non-institutionalized actors write their voices into tax legislation. We also seek to understand the mechanisms used by these actors to influence tax policy reform. Our findings reveal that more organized and economically powerful actors have more opportunities for contributing to the authoring of tax laws. These actors frequently use institutional channels, even though the technologies employed are rarely publicized. There is another group of institutionalized actors (particularly CSOs) who have not traditionally engaged with tax matters but who are increasingly seeking audience in tax debates. CSOs have the potential to influence legislation but their interaction with tax issues is too recent to result in any visible reforms. Non-institutionalized groups for their part use less formal (or extra-legal) means to engage with tax issues. As a result, their bargaining processes are often less coordinated, more reactionary and less sustainable.

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Introduction¹

Background: Structure of Taxes and Tax Policy in Uganda

The popular slogan “no taxation without representation”, having its origin in the 1765 American Stamp Act, is perhaps one of the strongest bedrocks for tax bargains between rulers and the ruled. The protests that ensued following the introduction of that Act resulted in the repeal of the Act a year later. However, the footprints and symbolism of those protests have continued to define relations between taxpayers and their governments, particularly in developed countries. There is a growing attempt to establish similar conversations about taxation in developing countries, which have intensified with the recent global economic crisis. These attempts strive to re-examine more critically the role that taxation can play, not only in increasing accountability (and, by extension, democracy), but also in ensuring that developing countries are able to sustain their domestic resource mobilization to alleviate poverty. This paper serves as an extension to the conversation on taxation and accountability by examining the extent to which various actors in the public and private arena inform tax policy reform in Uganda and whether there is a connection between those who are taxed and what they demand.

A brief background of the country’s tax structure is necessary here to lay the groundwork for the discussion in the rest of the paper. Uganda’s tax structure can be divided into two broad categories. First, there are taxes at the central government level, which are administered by the Uganda Revenue Authority (URA). These taxes include income taxes (such as corporate tax, pay as you earn (PAYE), withholding tax, property tax, capital gains tax and presumptive tax); domestic consumption taxes (including Value Added Tax (VAT) and excise duty); and taxes on international trade (such as petroleum duty, import duty, excise duty and VAT on imports). The second category consists of local government taxes, which are collected by local councils. These include property taxes and a variety of business levies including trading licenses, market dues and various other fees. Until 2005, graduated tax was also one of the sources of local government revenue. Following its abolition in 2005, the government introduced a Local Service Tax and Local Government Hotel Tax in 2008 (Local Government Finance Commission 2008).

¹ We are grateful to the contributions made by those who participated in the interviews and those who attended the UNRISD workshop held in Kampala, Uganda on the 25th of September 2014.

Table 1: Tax Revenue Performance, FY2007/08 – FY2011/12 (Shs. Bn)²

Collections (Shs.bn)	Outturn ³ 2007/08	Outturn 2008/09	Outturn 2009/10	Outturn 2010/11	Budget 2011/12	Provisional outturn 2011/12
Net URA collections (excl. Govt. Taxes & Tax Refunds)	3,161.1	3,662.3	4,205.7	5,114.2	6,169.2	6,019.5
Income Taxes	862.2	1,028.9	1,303.1	1,665.1	2,033.2	1,958.4
PAYE	451.4	555.7	657.9	825.6	1,057.1	1,011.3
Corporate Tax	213.3	230.0	315.4	419.6	514.7	513.3
Withholding Tax	128.2	158.7	212.8	274.8	346.1	335.2
Others	69.3	84.5	117.0	145.2	115.4	98.6
Consumption Taxes (Domestic)	698.3	768.6	945.5	1,039.8	1,237.5	1,214.3
Excise duty	217.0	242.6	274.1	315.6	383.8	344.3
Value Added Tax	480.7	526.0	671.4	724.2	853.7	869.9
Taxes on International Trade	1,633.7	1,891.7	1,960.7	2,441.7	2,946.1	2,899.5
Petroleum duty	513.6	566.2	638.2	821.2	867.6	921.4
Import duty	304.2	360.1	352.2	447.4	536.2	486.6
Excise duty	80.3	112.5	112.8	93.3	184.9	175.5
VAT on Imports	653.8	763.6	763.4	986.5	1,195.9	1,157.7
Others	81.7	90.3	94.1	185.6	161.6	158.5
Tax Refunds	(95.5)	(101.9)	(105.6)	(143.6)	(168.5)	(167.8)
Fees and Licenses	62.5	78.3	102.7	111.3	120.9	114.2
Government Taxes	45.9	80.9	57.5	55.3	60.7	87.3
Non-Tax Revenue	85.7	124.3	113.8	94.1	120.6	104.0

Source: Government of Uganda 2012

As Table 1 above shows, PAYE constitutes the largest share of domestic taxes, followed by VAT. It has been reported elsewhere that between 1996/97 and 2007/08, VAT grew at an average annual rate of 16.3 per cent (African Development Bank 2010). The table also reveals that Uganda relies heavily on international trade taxes. However, while in 2007/08 these taxes constituted approximately 52 per cent of total taxes collected by the URA, by 2011/2012, the provisional outturn showed a drop in their contribution to 48 per cent. Conversely, the contribution of income tax to total tax revenues rose from approximately 27 per cent in 2007/08 to 33 per cent in 2011/12. Consumption taxes on the other hand reduced from 22 per cent in 2007/08 to 20 per cent in 2011/2012. Even then, VAT retained a significant share.

Elsewhere, it has been noted that the bulk of income taxes on individuals are paid by households residing in Kampala largely due to the fact that most formal jobs are located there (Sennoga et al. 2009). The individual income tax threshold is Shs. 235,000 – US\$ 90.8⁴ – per month (Income Tax Act. Cap 340), meaning that majority of the population (who are “employed” largely in subsistence agriculture and the informal sector) are not subjected to income tax. Similarly, it is estimated that the top 35 taxpayers in the country (which are mostly multinational companies) account for about 50 per cent of the total tax revenue (Matovu 2010). In 2008, for example, large taxpayers constituted only 1 per cent of the entire taxpayer base but contributed 72 per cent to tax revenues (African Development Bank 2010). Meanwhile, unregulated small and medium enterprises constitute 75 per cent of all the companies in the country (Matovu 2010)

² In 2007/2008, the tax contribution to GDP was 13.1% while in 2011/2012, the figure was at 13.3% of GDP (Government of Uganda 2013a).

³ The outturn refers to the revenue collected.

⁴ The exchange rate used in the paper is 1US\$ to Shs. 2586.

thereby greatly shrinking the tax base. Also, as at the beginning of 2014, the informal sector constituted 43.1 per cent of the country's total economy.⁵ To this should be added the fact that agriculture is the major source of income for most households, contributing about 38.5 per cent of Gross Domestic Product (GDP) and providing a livelihood to about 90 per cent of the population (Population Secretariat 2008).

At the local government level, before graduated tax was abolished, it constituted the major source of local government revenue. In 1997/98, for example, district local governments derived 75 per cent of their revenues from graduated tax.⁶ However, by 2001/2002, this percentage had dropped to 51 per cent largely due to the "over politicisation" of graduated tax during the 2001 elections. Since its abolition, local governments receive 90 per cent of their revenue from intergovernmental transfers (African Development Bank 2010).

The above statistics are important for a number of reasons. First, our hypothesis is that the nature of taxation reflected in these figures has some bearing on the manner in which different actors infuse their voices into tax policy reform. For example, those affected by direct taxes are more likely to engage in formal bargains – which, however, are often not visible to the general public because of the small number of actors involved and the technologies used to inform change. In contrast, the large number of actors affected by indirect taxes or personal taxes at the local government level often dictates more visible bargains, which may, however, not always be as effective because of the amorphous nature of the actors involved. Second, the categories of taxes and percentage of people affected by the various categories often determine the strategies to be employed in contestation and bargains. Third, the statistics are useful in providing at least some explanation for the sites of contestation and bargains used by various actors.

Research Questions and Structure of This Report

To help us understand the extent of contestation and bargains, the paper seeks to answer one general question: Which actors have informed tax policy reform in Uganda and what strategies have been employed in doing so? Flowing from this are some specific questions:

- What factors have facilitated or hindered the nature of contestation and bargains in tax matters? Does the type of tax matter?
- Have contestations and bargains in tax matters been different from contestations relating to other legal reforms in Uganda? If so, what explains the difference?
- What explains the success of some actors in influencing reforms on the one hand and the seeming failure – or apparent lack of engagement – of other actors on the other hand?
- To what extent are bargains or contestations linked to demands for provision of social services? Does the type of actor influence this link?
- Which actors are most affected by tax reforms and how does this determine the influence they have over the reform process?

Suffice to note from the onset that this paper is not intended as an analysis of the merits or demerits of the various reforms that have been made to tax laws in Uganda. Neither does it seek to unpack the rationale behind the said reforms. Rather, it is an investigation into how various actors have informed these reforms and the methods used

⁵ See Uganda Revenue Authority, n.d. "Tax Register Expansion Project (TREP) to Tap into the Informal Sector".

⁶ See Local Government Finance Commission, "Brief on the Status of Local Revenues".

by them to do so. In the end, it is hoped that the findings of this study will be useful in providing empirical support that is pertinent to understanding the actual and potential role of diverse actors in contributing to the authoring of tax laws and in the process, increasing accountability.

The discussion proceeds as follows. In the next section we outline the research methodology. This is followed by a discussion of the role that contestation and bargains have played in Uganda’s law reform. Specifically, the section highlights the role of various actors in law reform relating to issues other than taxation. We then revert to contestation and bargains in tax-specific reforms. Our discussion in that section begins with a definition of the concept of tax bargains before proceeding to an analysis of the role of actors such as International Financial Institutions (IFIs), the business community, Civil Society Organisations (CSOs), members of parliament (MPs) and non-institutionalized actors. We conclude with a synthesis that reflects on our findings and proposes areas for future research

Methodology

This study was conducted using various methods. We undertook textual analyses of both primary and secondary literature. Primary literature reviewed included government documents, statutes and court cases. Secondary literature consisted of academic articles, books, reports and newspaper articles. We also conducted interviews with representatives from civil society, the Private Sector Foundation (PSF), the Tax Policy Department of the Ministry of Finance, Planning and Economic Development (MOFPED), academics, tax practitioners, lawyers and a consultant on public financial management.

Additionally, we undertook comparative analysis comparing the role of contestation and bargains in legal reform generally with the role of the same in tax policy reform. Our aim in making this comparison is to understand whether actors interact with tax issues in a manner similar to the way they interact with other legal issues. If there is a difference, we seek to understand the reasons for this difference. Invariably, we also compare the technologies employed by different actors to write their voices into tax debates and laws.

Based on our hypothesis that the impact of different taxes has some bearing on the nature of tax bargains, we select three taxes: income tax, VAT and graduated tax. We choose income tax and VAT because one is a direct tax while the other is indirect. Second, because income tax contains various pockets, it enables us to draw from a wide spectrum of examples to showcase tax bargains. VAT is important not only because it has a wider tax base when compared to income tax, but also because it is the second largest revenue generator among central government taxes. Additionally, the global tax order championed largely by IFIs vigorously promotes the replacement of international trade taxes with consumption taxes such as VAT (Fjeldstad and Moore 2007). Consequently, while international trade taxes still constitute a significant share of Uganda’s total tax revenue, we exclude them from our analysis because this “global tax reform” agenda including the movement to eliminate trade borders and plans to create a single customs territory among East African Community member states mean that the significance of international trade taxes in resource mobilization is likely to considerably reduce in the foreseeable future. Lastly, our choice of graduated tax is driven by the fact that even though it was abolished, it impacted on a significantly huge section of the population and was the largest source of local government revenue. It

therefore serves as an important addition to an analysis that unpacks the various layers of citizen engagement with tax issues.

Background to Law Reform in Uganda: The Role of Contestation and Bargains

To understand the nature of contestation and bargains in tax reforms in Uganda, it helps to highlight some instances of public and private participation in law reform generally in the country. We argue that this understanding provides some context that is useful in explaining public and private interaction with tax-specific reforms.

Laws in Uganda are made by parliament (Constitution of the Republic of Uganda 1995). Bills passed by parliament then have to be assented to by the president. Generally, legal reform is the mandate of the Law Reform Commission (LRC). Specifically, the LRC is tasked with making recommendations for the improvement, development, modernization and reform of laws.⁷ In performing its duties, the LRC is empowered to: review and consider proposals for legal reform that are brought to its attention; submit proposals to the Attorney General for the review of laws; formulate bills to be considered by government and parliament; and undertake research for the improvement of laws. The LRC works with various parties in the performance of its duties including government entities, development partners, CSOs, parliamentarians, the private sector, and to some extent, the public (Uganda Law Reform Commission 2012).

There is some evidence to support some element of negotiation of diverse voices into Uganda's law reform process. One of the most recent examples of contestation relates to the proposed Domestic Relations Bill (DRB). The Domestic Relations Bill is a bill aimed at reforming and consolidating the law relating to marriage, separation and divorce; to provide for the types of recognized marriages; to state marital rights including rights on dissolution of marriage and the grounds for dissolution of marriage (Domestic Relations Bill 2003). While this bill has a long history, dating back to the 1960s, it was not until the 1990s (after the Attorney General requested the LRC to draft it) that the bill was seriously considered (Kiwanuka 2008). Following a nationwide study conducted by the LRC, a draft bill was presented to parliament in 2005. However, the passing of the bill was blocked by various actors including the Muslim community, the Uganda Joint Christian Council, local elders and the DRB Coalition. In 2005, for example, prior to the bill being discussed in parliament, Muslims staged a demonstration against it on grounds that it contradicted the provisions of the Quran (Ross 2005). Similarly, most MPs who went to consult with their constituencies reported that the bill had been strongly contested by locals (Interview with Development Law Associates' partners, December 2013). Because of these contestations, parliament postponed debating the bill on instructions from government that it should take into account the concerns raised by the various interest groups (Kiwanuka 2008). Consequently, the LRC split the Bill into two: The Domestic Relations Bill for Non-Muslims and the Administration of Muslim Personal Law (Kaheru and Tebajjukira. 2008). The former was subsequently renamed the Marriage and Divorce Bill, 2009. The discussion of these bills in parliament has since stalled.

Perhaps nowhere has the role of contestation in Uganda's legal reform been more evident than the various episodes surrounding the Anti-Homosexuality Act 2014. This Act, tabled in parliament in October 2009, was intended to "prohibit any form of sexual

⁷ See generally, the Law Reform Commission n.d.

relations between persons of the same sex; prohibit the promotion or recognition of such relations and to provide for other related matters” (Anti-Homosexuality Act 2014: Preamble). With the exception of a few local activists and the gay community, the strongest movement against the passing of the law was from the international community (Amnesty International 2013; United Nations 2013) with some countries suspending or withdrawing foreign aid to the Ugandan government (Aljazeera America 2014; Plaut 2014), others (such as the European Union member countries) drafting resolutions in strong opposition of it (European Parliament 2010) and some others (such as the United States) imposing travel restrictions on Uganda government officials (Sekanjako and Walubiri 2014). In December 2013, parliament passed the bill (Parliament of the Republic of Uganda 2013). However, in a letter written by the president to the speaker of parliament at the end of that month, the president vetoed the bill (Museveni 2013). Whatever the reasons behind the veto, it is safe to argue that the pressure from the international community played at least some role in the president’s actions. Shortly after, it was reported that the president had reversed his decision following reports by local and international medical professionals who concluded that homosexuality was behavioural rather than genetic. Consequently, in February 2014, the president signed the bill (Bwire 2014). His public signing of the bill, however, was arguably indicative of a need to garner local support given the fact that, domestically, there were multiple waves of resistance against gays and in support of passing the bill.⁸ In March 2014, human rights activists challenged the Act by filing a petition in the Constitutional Court on grounds that the Act was, *inter alia*, unconstitutional because it encouraged discrimination based on sexual orientation (Gander 2014). In August 2014 the Constitutional Court annulled the law on grounds that it was passed without quorum (New Vision 2014). Following this, the president warned members of parliament not to rush to re-enact the Act, noting, among other things, that it was important to debate the bill without emotional feelings “for the betterment of the country and international relations” (Sekanjako and Walubiri 2014). And while there are talks of re-introducing the bill in parliament, according to one MP, parliamentarians have “agreed to come up with a new version that doesn’t hurt [their] western friends but also protects Ugandans” (Biryabarema 2014). In the end, contestation – both internal and external – significantly influenced both the decision to pass the bill and its subsequent annulment.

On the economic front, a recent example of legal bargains are the June 2013 strikes that were staged by traders in reaction to the government’s introduction of the Pre-export Verification of Conformity to Standards Programme (PVOC). Under the PVOC, government required traders to have their goods inspected from the country of origin before they were shipped into Uganda with the aim of guarding against the importation of counterfeit and substandard goods (Uganda National Bureau of Standards 2013). In response to the proposed inspection rules, traders – through their umbrella organization, the Kampala City Traders Association (KACITA) – undertook not to import goods for a period of two months and to close their shops indefinitely until government withdrew the programme (Ladu 2013). As a result of these threats, the government engaged in talks with KACITA and agreed to reduce on the categories of goods to be subjected to pre-inspection and decrease on the fees that would be levied for the pre-inspection (NTV News 2013).

Economic legal bargains have largely been formal. The long-standing role of IFIs such as the World Bank and the International Monetary Fund (IMF), along with their developed-country counterparts, in authoring the commercial laws of Third World

⁸ Those in support of passing the bill included a considerable number of members of parliament, religious factions and many members of the general public.

countries is, for example, widely documented.⁹ These bargains take various forms including the development of international best practice standards that are localized into domestic laws and concluding bilateral investment agreements that essentially take precedence over local laws (Sornarajah 2004). Domestically, investors, through the foreign investment contracts that they conclude with governments, are able not only to influence the manner in which investment laws apply to them but also to extend their reach to other domestic policies (Cotula 2008; Kangave 2012-2013). Similarly, investor institutions have contributed to commercial legal reform. For example, bodies such as the PSF have been quite influential in the development of laws and regulations governing financial institutions in Uganda (Interview with Partner at Birungyi, Barata & Associates December 2013). And while the traditional role of CSOs was largely restricted to providing relief and supporting government services, this group of actors is increasingly seeking audience to participate in the process of both the LRC and parliament (Interview with official at Forum for Women in Democracy (FOWODE), December 2013). Even then, this last group of actors is yet to have any direct or real influence on law reform.

Occasionally, the judiciary also shifts away from its role of interpreting legal rules to play a more active part intended to result in legal reform. As just one example, in *Attorney General v Susan Kigula & 417 Others* Constitutional Appeal No. 03 of 2006, one of the issues was whether the mandatory death sentence found in various domestic laws was unconstitutional. Court held that sentencing a person is part of the trial process and that by the legislature determining the sentence in capital cases, it had compromised the principles of fair trial and equality under the law. As such, those laws that fixed a mandatory death sentence were found to be inconsistent with the Constitution and “void to the extent of that inconsistency.” While the laws in question have not yet been amended, the court sent a powerful message on the need for legal reform. Pronouncements such as these are not without effect. One of the duties of the Law Revision Department in the LRC is to “constantly [analyse] decisions of superior courts to ascertain their effect on legislation and [make] proposals for review of the affected laws” (Uganda Law Reform Commission 2012: 4). In 2012, for example, the LRC undertook a study of court cases and their impact on the law and found that twenty principal laws had provisions which had been declared unconstitutional by court cases. Following this, the LRC prepared a report and amendment bills to be forwarded to the Attorney General for further action.

The above examples demonstrate that the process of legal reform in Uganda has, at least to some extent, been informed by multiple voices. The nature of the influence has been varied. In some cases, it consists of actual amendments or revisions to the law. In others cases, actors have blocked proposed laws or agitated for the passing of the same. Even then, some caution that while the formal narrative of law reform boasts of wide consultative processes, in practice, these processes are often hijacked by the special interests of a selected few (Interview with Development Law Associates’ partners, December 2013). Those who maintain this argument add that too frequently, there is an element of “presidentialism” in law-making, where less than rational processes are used to make and reform laws at the whim of the central authority. As such, while the power to make laws lies with parliament and while MPs have been known to be critical of the executive, their influence as law makers is often undermined by the fact that in practice, they have limited independence from the executive (Tangri and Mwenda 2013). Others observe that even in instances where government agencies contract consultants to draft

⁹ Anghie 2000; Sornarajah 2004; Ngugi 2006.

general legal frameworks to guide the drafting of bills, and require the consultants to undertake wide consultations with various stakeholders, those contracted frequently omit key stakeholders in the consultation process (Interview with Partner at Birungyi, Barata & Associates December 2013).

Contestation and Bargains in Tax Matters: Analysis of Tax-specific Reforms

While tax bargains are invariably an extension of legal bargains, our hypothesis is that tax bargains are different in two main respects. First, the technical nature of taxation is such that it dictates who interacts with it and the manner of the interaction. Second, because different tax heads affect different categories of people, actors' engagement is defined largely by the nature of the tax head and the actors' awareness of its impact. In addition, participation of international actors might be stronger in this field because of their funding of tax reforms. Following a definition of tax bargains, we embark on an analysis of the role of various actors in engaging in these bargains. The actors studied include members of parliament, international financial institutions, civil society and non-institutionalized actors.

What is a Tax Bargain?¹⁰

A tax bargain, also commonly known as a fiscal contract, is a negotiation between taxpayers and government, where the former agree to comply with tax obligations in exchange for the provision of effective government services (OECD 2010). Tax bargains can be made with specific groups of taxpayers or they can be “negotiated” generally. They can be explicit or implicit. Explicit bargains often consist of targeted *quid pro quo* negotiations between government on the one hand and taxpayers and/or their representatives on the other hand. Implicit bargains can be in the form of behavioural adjustments on the part of taxpayers and adjustments aimed at encouraging compliance on the part of government, particularly where the latter senses resistance that is likely to undermine its legitimacy. Constructive tax bargains by taxpayers are more likely where the taxpayers: share common interests; mutually trust each other; are well organised; are aware of their rights and obligations; and can draw clear links between taxation and expenditure. On the part of government, effective tax bargains generally seem to emanate from a combination of democracy and a consolidation of legitimate statehood (D’Arcy 2012). Some argue, for example, that where states have not consolidated their statehood, they are more likely to coerce citizens into paying tax than they are likely to enter into fiscal contracts (D’Arcy 2012). Yet there is no guaranteed relationship between taxation and democracy since there have been instances, particularly in the developing world, where democracy – or at least the need for electoral votes - has translated into a weakening of the fiscal contract by resulting in the abolition of taxes altogether. In Uganda and Tanzania, for example, the abolition of graduated tax and the development levy respectively have been closely linked to a need to win elections by the ruling political parties in the two countries (Kjaer and Therkildsen 2013; D’Arcy 2012). In the end, it would seem that bargains are more likely to succeed where citizens trust that government will improve governance, that it will not provide special treatment to small interest groups and where it is important for the government that taxpayers comply voluntarily (OECD 2010).

Some authors observe that in most African countries, tax issues do not take centre stage in political or economic debates; essentially implying a limited presence of tax bargains

¹⁰ See also generally UNRISD 2012.

(Therkildsen 2001). As far as Uganda is concerned, at least one author has highlighted a limited degree of stakeholder engagement in tax policy reform between 1900 and the mid-1980s (Kwagala-Igaga 2013). This engagement was largely through public consultations that were undertaken as part of the studies and inquiries that were commissioned in furtherance of the development of formal tax systems first, as part of the British protectorate and later, as independent states that were part of the East African Community. On the whole, however, many commentators agree that any semblance of a fiscal contract between government and citizens in Uganda is undermined by various factors. First, there is a narrow tax base consisting mainly of a small group of private sector organizations, those in the employment of government and importers (African Development Bank 2010; Fjeldstad and Rakner 2003). Given the fact that a large section of the population remains outside the tax net (either in agriculture or in the informal sector), the tax paying culture is very weak, which translates into fewer calls for accountability (Rakner and Gloppen 2003). Second, the fact that a large proportion of the government budget is financed using external resources reduces the need to enter into fiscal contracts with citizens (African Development Bank 2010). Third, tax bargains in Uganda are undermined because taxpayers perceive public finances as being mismanaged. The result is low tax compliance which translates into limited engagement with tax issues.

In the ensuing discussion, we map out empirical evidence of the extent of tax bargains in Uganda. We draw from the definitions of tax bargains provided above. To this end, we document negotiations between government and non-government actors which have had the effect of either influencing a change in tax law or an attempted change which may not have materialized. We use the term negotiation loosely to include both bargains through formal/legal processes and non-formal means (such as demonstrations).

Members of Parliament (MPs)

MPs are not “traditional” actors in the sense of engagement in tax bargains. In other words, because they are policy makers, they respond to and are targets of lobbying by those seeking to make bargains. In another respect, however, MPs engage in private activities, thereby making them subject to taxation. Our discussion of MPs in this section is two-fold. On the one hand, we analyse their role as law makers, highlighting how this law-making role is a bargaining process. Second, we demonstrate how MPs are not neutral arbiters given that the laws that they make affect or have the potential to affect them in their capacity as private citizens.

MPs are central to the legal reform process because of their power to confirm bills. When a tax-related bill is tabled in parliament, it is sent to the Finance Committee (Interview with MOFPED official, December 2013). The committee scrutinizes the bill, invites the MOFPED to explain it clause by clause, and then invites stakeholders to give their opinion. The committee then prepares a report in which it states whether it agrees with the MOFPED partially, entirely or does not agree. The bill then goes to the floor of parliament where it is debated clause by clause. In 2012, the MOFPED started working with the Budget Advisory Committee; a committee of MPs which was selected by the president. This committee also tables proposals on changes that they would like to see in the law.

There are various instances showcasing the role of MPs in critically debating and analysing aspects of bills that are tabled before them. For example, there were extensive debates on the various provisions of the Income Tax Act (ITA) as it was being introduced in 1997. As a result of these debates, the concept of rental income was, for

example, critically deliberated upon with the result that adjustments were made to the threshold, allowable deduction and the tax rate applicable to the same (Parliament of Uganda 1997). Also, in 2008, the Minister of Finance proposed an amendment to the ITA to exempt from income tax persons who make new investments in agro processing whose businesses were located at least 30 km outside Kampala (Parliament of Uganda 2008). One member of parliament raised the concern that restricting the distance in this manner would discourage some investors. The resulting amendment made to the Act omitted the component of distance (ITA: Section 21). Similarly, the issue of exempting education institutions from income tax attracted heated debates in parliament before the proposal was passed (Parliament of Uganda 2008).

Even then, some perceive MPs as having a very limited impact on tax reforms. The fact that in a number of instances, amendments made to tax laws are not contained in the bills that are discussed in parliament is one indicator of the limited influence of MPs in tax matters (Interview with Partner at Birungyi, Barata & Associates, December 2013). Their less than desired impact has also been attributed to the fact that politics is expensive and has resulted in some MPs being compromised because they are heavily indebted.¹¹ The result is that, frequently, the constitutional law-making role of MPs becomes a scripted one, aimed mainly at legitimizing the decisions that are made by “big money” outside the doors of parliament (Interview with Development Law Associates’ partners, December 2013). This is exacerbated by the role of IFIs in dictating the broader framework within which laws operate. We discuss the role of IFIs in the ensuing section.

The law-making role of MPs is also tainted by the fact that they are sometimes subjects of the tax policies that they deliberate over. To this end, they become private actors engaging in tax bargains for their own benefit. A study conducted on behalf of the Private Sector Foundation (PSF), for example, noted that it was difficult to revise tax policy to provide for the taxation of the real estate sector and to levy an annual wealth tax because parliamentarians and senior government officials would be affected by such policies (Private Sector Foundation 2009).

International Financial Institutions (IFIs)

There is little doubt about the identity of the No. 1 driver of the global tax reform agenda: the International Monetary Fund (IMF). Whether or not policymakers from developing countries go to the IMF for advice about tax, the IMF comes to them, in a rather authoritative way. Actual decisions about substantive tax reform are especially likely to be made at moments of economic stress or crisis (Fjeldstad and Moore 2007: 4).

The engagement of IFIs – particularly the IMF and the World Bank – with tax policy issues in Uganda can be traced back to the internal and external economic crises of the 1980s. Internally, the civil and political wars that ravaged the country during that period, combined with the expulsion of Asians in 1972 and the collapse of the East African Community around the same time, resulted in an economic meltdown (Bakibinga 2002; Kuteesa et al. 2006). The external shocks, which resulted largely from the global economic crisis, included a drastic fall in coffee prices (a product that constituted 90 per cent of Uganda’s export revenue and 50 per cent of government revenue), skyrocketing energy prices and a significant rise in international interest rates (Rakner and Gloppen 2003; Bakibinga 2002). Like many other African countries, this

¹¹ Interview with Development Law Associates’ partners, December 2013; Biryabarema 2013; Abola 2013.

crisis forced Uganda to enter into economic restructuring agreements (which were part of Structural Adjustment Programmes – SAPs) with IFIs.

The SAPs that Uganda embarked on in the late 1980s and 1990s had various tax components: a strategy to widen the tax base; gradual lowering of tax rates; simplifying tax bands; an introduction of VAT; a reduction and subsequent abolishing of export tariffs; reducing import duties; reducing the number of goods subjected to excise duty; and making adjustments in tax administration (Fjeldstad and Rakner 2003; Bakibinga 2002). Some specific examples suffice. Between 1986/87 and 1993/94, income tax rates were gradually lowered from 60 per cent to 30 per cent; a 2 per cent withholding tax was introduced on certain items; and the individual income tax threshold gradually increased from Shs. 50,000 (US\$ 19.3) to Shs. 840,000 (US\$ 324.8) per annum (Bakibinga 2002). In addition, in 1991, the Uganda Revenue Authority (URA) was established as a semi-autonomous body to concentrate on tax administration (Kangave 2005); VAT was introduced under the 1996 VAT Act to replace the sales tax and commercial transaction levy (Bakibinga 2002); and a new Income Tax Act (ITA) was enacted in 1997 to replace the 1974 Income Tax Decree. Among other things, the 1997 ITA repealed the sections of the 1991 Investment Code that granted tax exemptions and replaced this tax treatment with a depreciation regime. The ITA also introduced a residence based system of taxation, a presumptive tax for small nonprofessional businesses, a limited capital gains tax and a tax on rental income (Bakibinga 2002).

Even though the IMF's role in tax policy reform was most pronounced in the 1990s, the organization has continued to have a strong influence on major tax reforms to this date. For example, whenever the MOFPED needs to undertake major reforms in tax laws, it seeks technical assistance from the IMF (Interview with MOFPED official, December 2013). The IMF sends a team, which discusses the reforms with the MOFPED and comes up with a report that is subjected to stakeholder consultations. Following this, a draft bill is prepared by the MOFPED, analysed by an IMF consultant and finally, principles extracted by the MOFPED and the consultant. It is these principles that are presented to cabinet for approval and from which the bill tabled in parliament is drafted.

The policy space commanded by IFIs can be attributed to various factors. To begin with, these institutions and their developed country counterparts have historically funded a significant proportion of Uganda's expenditure budget through grants, debt and debt relief. For example, while grants constituted 22 per cent of total revenue in the 1989/90 budget, the figure had risen to 51 per cent in 1990/91 (Background to Budget 1993/94). As has been noted elsewhere, this "... persistent large gap between domestic revenues and the public expenditure framework, has given ample room for international development organisations to exercise considerable influence in Uganda's fiscal governance" (African Development Bank 2010: 7). By 2005/2006, the contribution of grants had reduced to 28 per cent with gradual annual reductions in subsequent years to 14 per cent 2012/13 (Background to Budget 2010/11, 2013/14). It remains to be seen what this reduction in grants and the discovery of oil in 2006 will mean for the policy bargains between government and IFIs, including tax bargains.

The strong influence of IFIs does not emanate solely from economic muscle. The imprint of financial support is further buttressed by their ability to produce knowledge that is widely consumed by countries such as Uganda. Thus, in addition to the direct technical assistance offered by IFIs, these organizations have permeated the legal texts of Uganda through the numerous policy papers and articles published by their staff (Fjeldstad and Moore 2007). Their activities have in turn been reinforced by similar-

mindful organizations. The Organization for Economic Cooperation and Development (OECD) has, for example, been quite influential in developing models on issues such as tax treaties and transfer pricing guidelines. Similarly, Uganda is one of the 22 member states of the African Tax Administration Forum (ATAF), which among other things, has drafted an *Agreement on Mutual Assistance in Tax Matters*¹² which is largely modelled after the OECD *Agreement on Exchange of Information on Tax Matters*.¹³

Suffice to note, however, that IFIs do not act independently. Frequently, their ideologies are legitimized and localized by the fact that the recipients of their prescriptions take ownership of the policies for various reasons. To begin with, there is a paucity of technical capacity in Uganda which creates a consistent demand for the technical assistance provided by IFIs. Second, there are dividends attached to being in the good books of powerful institutions such as IFIs and signing up to the global economic order that they create. In the end, as some have noted, sometimes these relationships are mutually beneficial (Tangri and Mwenda 2013). For example, even though the National Resistance Movement that came into power in 1986 had socialist aspirations, the fact that it was not able to secure funding from like-minded partners (such as the Soviet Union) meant that it had to subscribe to the neo-liberal ideologies touted by IFIs if it was to maintain its state power (Kjær and Ulriksen 2014).

Private Actors: The Business Community

The reforms driven by IFIs often affect multiple taxpayer categories and canvass major policy adjustments. There are other reforms which result from the actions of members of the private sector at an industry or individual level.

Perhaps one of the most influential tools used (particularly by big business) to push for policy reform are professional tax advisors, consisting mainly of accounting firms and lawyers. Tax advisors in turn use various strategies to write their voices into law. They lobby the MOFPED directly by putting forward proposals in favour of their clients and potential clients (Interview with Tax Advisor, December 2013). They hold business forums before and after the reading of the annual government budget where they invite their clients, MOFPED, the URA and other interest groups to discuss the concerns that taxpayers would like the budget speech to address, the tax challenges that they face and the implications of any proposed amendments. Based on their findings in the forums, tax advisors compile reports that they present to the MOFPED for consideration in legal amendments. Lastly, especially as the annual budget speech draws nearer, tax practitioners contribute to tax write-ups in business columns of widely circulated newspapers in which they communicate some of the changes that they would like to see being made to policy issues.

Various reforms can be attributed to the lobbying undertaken by tax advisors:¹⁴ the exemption from VAT of goods and services supplied to contractors or subcontractors of hydroelectric projects (VAT Act: Second Schedule); changing the definition of a supply of goods to include leasing (VAT Act: Section 10); contributing to the special provisions on the taxation of petroleum operations (ITA: Part IXA); and compelling government to clearly spell out that capital gains derived from a sale of shares in a private limited liability company are taxable (ITA: Section 21). It is believed that there are many other amendments that are negotiated by this group of actors but because

¹² This agreement is yet to be ratified by the member countries. See draft at African Tax Administration Forum. n.d.

¹³ See OECD n.d.

¹⁴ Interview with Tax Advisor, December 2013; Interview with Partner at Birungyi, Barata & Associates, December 2013; Interview with MOFPED official, December 2013.

negotiations are normally behind closed doors, it is difficult – if not impossible – to exhaust the list.

Sometimes, investors engage in individual tax bargains. The listing of the Aga Khan Foundation as one of the institutions exempt from tax under the ITA, for example, was as a result of an agreement concluded between the foundation and the government of Uganda (Parliament of Uganda 1997). Similarly, on several occasions, individual business people have approached the MOFPED to inform it of shortcomings of proposed legal reforms as far as their businesses are concerned (Interview with MOFPED official, December 2013). It would appear that, particularly for big projects where the government has an interest, concessions are more likely to be made. For example, some argue that the VAT exemption on hotels was intended to benefit individuals with close political ties to the president (Tangri and Mwenda 2013). Similarly, it has been reported that various local businesses have in the past obtained concessions in the form of tax waivers and exemptions in exchange for financing elections (Tangri and Mwenda 2013). Consequently, as election campaigns become more expensive, it is not uncommon to find that those taxes accruing from private financiers are effectively reduced (Therkildsen 2013, Kjær and Ulriksen 2014). In some cases, while a change might not be made in the legal text, government changes the way in which it deals with a taxpayer by, for example, granting them an exemption with respect to a specific activity (Interview with Tax Advisor, December 2013).

One sector that is having an impact and is likely to further influence tax legislative reform – whether directly or indirectly – is the oil and gas sector. Indirectly, the discovery of commercial oil wells compelled the government to introduce special provisions relating to the taxation of petroleum operations in 2008. Also in that year, the Minister of Finance announced two major tax measures that would affect the petroleum industry: an amendment to the Income Tax Act to align it with Production Sharing Agreements and the removal of exemptions on import duties and other supplies relating to the industry (Government of Uganda 2008b). As discussed above, tax practitioners (and presumably members of the petroleum industry) contributed to the development of the special provisions.

More directly, oil investors have been able to influence tax laws at least in as far as negotiating the application of these laws to certain aspects of their transactions. For example, in the Production Sharing Agreement (PSA) concluded between the Government of Uganda and Heritage Oil and Gas Limited, the parties agreed on the application of tax accounting principles, the classification of expenditures for income tax purposes and the manner of determining capital allowances (Government of Uganda and Heritage Oil and Gas Limited 2004). Elsewhere, some authors have observed that PSAs frequently have an impact on law reform particularly in as far as their stabilization and equilibrium clauses limit governments' ability to make legal changes (Cotula 2008; Kangave 2012-2013). Article 33 of the PSA between the Government of Uganda and Heritage Oil and Gas, for example, was to the effect that where changes to Uganda's laws and regulations materially reduced the economic benefits to Heritage Oil and Gas Limited, the parties were under obligation to modify the provisions of the agreement to restore the company to the position that prevailed prior to the changes. If they failed to reach agreement on such restoration, the matter would be referred to arbitration. Clauses similar to this have, in other jurisdictions, had the impact of freezing legislative reform – at least as far as specific investors are concerned – or requiring (often prohibitive) compensation for those investors affected by the reforms (Cotula 2008; Kangave 2012 - 2013). The impact of such provisions on tax reform in Uganda is yet to be determined.

However, thus far, this sector has contributed to tax jurisprudence by supporting the interpretation of legislation including determining the duties of agents under Sections 106 and 108 of the ITA (*Tullow Uganda Ltd. v Heritage Oil and Gas Ltd and Heritage Oil PLC* [2013] EWHC 1656 and the subsequent appeal by Heritage Oil and Gas Ltd and Heritage Oil PLC in 2014), taxation of capital gains (*Heritage Oil and Gas Limited v. Uganda Revenue Authority* Civil Appeal No. 14 of 2011; *Tullow Uganda Limited and Tullow Operational Property Limited v. Uganda Revenue Authority* TAT Application No. 4 of 2011) and the definition of immovable property (*Heritage Oil & Gas Limited v. Uganda Revenue Authority* TAT Application No. 26 of 2010). Again, it ought to be underlined that these decisions have not yet resulted in amendments to tax legislation but they do have the potential to influence a shift in legislative drafting.

Other times, businesses act through institutional affiliations or umbrella organizations. The PSF, for example, was instrumental in changes pertaining to the increase in the individual income tax threshold from Shs. 1,560,000 (US\$ 603.2) to Shs. 2,820,000 (US\$ 1090.5) per annum (Private Sector Foundation 2009), the exemption of education institutions from paying income tax (Interview with official at the PSF December 2013) and the elimination of initial allowances under the Income Tax Act (Private Sector Foundation 2009; Government of Uganda 2014). Other groups that have acted as mouth pieces for investors to lobby for tax changes are the Uganda Manufacturers Association (UMA) and the National Chamber of Commerce (Interview with Professor at Makerere University, December 2013). UMA, for example, has on several occasions made presentations to the MOFPED to demonstrate the manner in which particular reforms affect its members (Interview with MOFPED official, December 2013).

Business-focussed bargains are not one-sided. Sometimes, investors and their advisors are approached directly by the MOFPED to seek for their opinion. For example, before the annual amendments to tax statutes, the MOFPED invites stakeholders such as UMA, PSF, Uganda National Chamber of Commerce and accounting firms to come up with proposals on the changes that they would like to see in tax laws (Interview with MOFPED official, December 2013). These stakeholders are also invited to give their opinions on the technical reports that are prepared by advisors such as the IMF. Lastly, high profile business men and women are frequently invited to presidential round tables to provide input on various economic issues including taxation.

Additionally, by contesting interpretations of legal provisions using the court system, private actors have compelled government to amend the law. In *AON Uganda Limited v Uganda Revenue Authority* HCT-OO-CC-OS-04-2008, for example, one of the issues was whether insurance brokers provide insurance services for purposes of VAT. While the VAT Act provided that the supply of insurance services was exempt from VAT, it did not define what constitutes insurance services under the Act. The plaintiff, an insurance broker, claimed that it provided insurance services. The URA opposed this interpretation. Before providing his ruling, the judge noted that he was aware of a bill that had been tabled in parliament to include brokerage services in the definition of insurance services. However, he held that the bill would not cure any shortcoming in the law. Instead, he argued, it spelt out what had always been the *de facto* position in practice. In 2009, the VAT Act was amended to provide that insurance services include brokerage (VAT Act: Second Schedule). Whereas the amendment was proposed while the case was still in court, it is arguable that the court proceedings had at least some bearing on the decision to amend the provision. Similarly, in *Ketan Morjaria & Rajni Karia v. The Commissioner General & Uganda Revenue Authority* Miscellaneous Application No. 628 of 2010 arising out of Civil Suit No. 398 of 2010, one of the issues

was whether shares sold by individuals in a private limited company to a private limited liability company attracted capital gains tax. In June 2011, the parties entered into a consent judgement in which the suit was disposed of and the assessment issued by the URA vacated. Before the consent judgement, an amendment was made to the ITA in 2010 to provide that capital gains on the sale of shares in a private limited liability company are not exempt from tax (ITA: Section 21).

Also, in *Standard Chartered Bank (U) Ltd, Centenary Rural Development Bank Ltd, Bank of Baroda (U) Ltd, Bank of Africa (U) Ltd, Diamond Trust Bank (U) Ltd, National Bank of Commerce (U) Ltd and Orient Bank Ltd v The Commissioner General Uganda Revenue Authority* HCT-OO-CC-CS-63-2011, one of the issues was whether bonus shares are dividends for income tax purposes. Court found that bonus shares are not a distribution of profits and as such could not be deemed dividends. In 2013, the ITA was amended to explicitly spell out that dividends include the issue of bonus shares to shareholders (ITA: Section 2).

Lastly, over time, there have been amendments in the law geared towards reducing the amount of interest payable by the URA on refunds due to taxpayers (Interview with Partner at Birungyi, Barata & Associates, December 2013). The original provision was to the effect that interest payable by the URA would be computed from the date when the taxpayer paid the tax refunded to the last day of the month in which the refund is made (ITA: Section 113). However, particularly as a result of the URA losing many tax cases in court, the section was amended in 2002 to provide that interest would become payable from the time the taxpayer made an application for the refund. Essentially, for cases before the tribunal, an application can only be made after the tribunal has disposed of the matter.

In addition to the above formal means of informing legal change, resistance has also – to a limited extent – been employed by the business community to shift the law. Perhaps the most notable act of contestation was the strike that was organized through the Uganda Import and Export and Traders Association (UGIETA) against the introduction of VAT in 1996 (Rakner and Gloppen 2003). The strike lasted for one week. Partly as a result of the strike, the VAT threshold was increased from Shs. 20million (US\$ 7,734) to Shs. 50million (US\$ 19,334.9) (Interview with MOFPED official, December 2013). More recently, there was a suggested amendment to the VAT Act that also resulted in contestation and a reversal of government’s proposal. In the 2013/2014 budget speech, the Minister of Finance proposed a removal of the exemption given to hotel accommodation under the VAT Act (Government of Uganda 2013b). Following the proposal, tour operators, through the Association of Uganda Tour Operators, announced that they would scale back on their services or even close business since the tax would expose them to losses. The Association also wrote to the MOFPED arguing that they had already entered into long term contracts, which they could not reverse without incurring huge costs (Interview with MOFPED official, December 2013). Furthermore, they appealed to the minister in charge of tourism and along with the PSF, went to parliament to appeal for the proposal not to be passed (Interview with official at the PSF, December 2013; Karugaba 2013). In December 2013, government announced that the exemption on hotel accommodation would be reinstated (Ssebuyira 2013). However, in her 2014/2015 budget speech, the Minister of Finance once again proposed a termination of the exemption on hotel accommodation in tourist lodges and hotels outside Kampala district (Government of Uganda 2014). It is yet to be seen what the reaction to this proposal will be.

The ability of this group of actors to strike tax bargains has largely been defined by two factors. First, an institutionalization that allows the actors to mobilize around shared values. Second, it is defined by accessibility. Access in this case is in two forms. First, there is access that is enabled because of one’s ability to understand and navigate the complexities of tax law. The second form of access is associated with – or perhaps more accurately, emanates from – availability of resources. The ability, for example, of certain taxpayers to gain audience with the MOFPED or influence change through the court system is largely made possible by either monetary or social status, and in many cases, by both factors. As just one example, the requirement that taxpayers should deposit a significant proportion of the tax assessed by the URA before final resolution of an objection¹⁵ serves as a technology of excluding certain taxpayers based on economic ability.

At the same time, the extensive engagement in tax bargains by this group of actors can partly be explained by the country’s narrow tax base. Rakner and Gloppen note, for example, that “According to available evidence the only group visibly affected by the central government tax reforms are the formal business corporations” (Rakner and Gloppen 2003: 13). In the 2006/2007 financial year, for example, the top ten taxpayers contributed 28 per cent of the total taxes (Juuko 2007). Among these were telecommunication companies, beer and soft beverage manufacturers, oil companies, a tobacco company, cement producer and power generating company. It is thus no wonder that these big players are frequently the most visible in negotiating tax reforms at the central government level.

Civil Society Groups

In Uganda, the engagement of civil society with tax issues is quite recent. While CSOs often spoke of the social contract between the state and its citizens, tax specific work did not begin until the late 2000s (Interview with Action Aid official, December 2013; Interview with SEATINI-Uganda officials, December 2013). CSOs mainly interact with tax issues on two fronts. First, they conduct awareness campaigns in the local communities in which they operate. Specifically, they dedicate considerable effort to sensitizing communities, not simply about taxation and accountability but also about the duty of citizens to pay taxes. These organizations have found that often local communities have not been able to link the provision of government services to the taxes that they pay. Consequently, many (particularly in rural areas) see government as doing them a favour when it provides services such as education and health. The approach of CSOs has thus been to demonstrate how the system works by using simple tools to analyse the taxes that community members pay when they buy goods and pay local council rates. The awareness arising from these activities has greatly empowered citizens and driven their interest in the tax system (Interview with Action Aid official, December 2013).

Second, CSOs interact with government on tax-related issues through formal dialogue. There is, for example, the Tax Justice Task Force, which is composed of tax experts from the URA, the Local Government Finance Commission and tax consultants, who help to verify the tax newsletters authored by CSOs (Interview with SEATINI-Uganda officials December 2013). CSOs also convene meetings in which they invite the MOFPED, the URA and tax practitioners and ask them to explain tax policies and listen to the concerns raised by local communities. A number of CSOs are members of a

¹⁵ Section 15 of the Tax Appeals Tribunal Act Cap 345 requires that when a taxpayer lodges an objection, they should pay 30 per cent of the tax assessed or that part of the tax not in dispute, whichever is greater, before final resolution of the objection.

coalition called the Civil Society Budget Advocacy Group. Through this group, they analyse various economic issues including those relating to taxation (Interview with official at FOWODE, December 2013). Lastly, there is a Tax Justice Alliance, which is a loose alliance of groups that come together to work on tax-related issues whenever the need arises.

The other mechanism used by CSOs to communicate with government is the production of knowledge which is used to support requests for reform. To this end, local and international CSOs have published papers and reports on issues such as the revenue loss resulting from tax incentives and exemptions (Tax Justice Network Africa and ActionAid International 2012; SEATINI – Uganda et al. 2013); capital flight arising from issues such as transfer pricing, tax evasion and corruption (ActionAid 2008); and taxation, governance and accountability (SEATINI-Uganda et al. 2012, 2013).

It is difficult to establish with certainty a direct link between the advocacy work undertaken by CSOs and tax reforms in Uganda. At the same time, one cannot downplay their current and potential role in influencing change. For example, while CSOs acknowledge the fact that the IMF and World Bank may be strongly behind the current wave which targets the elimination of tax exemptions, these organizations maintain that the studies that they have conducted on tax waivers and exemptions have played at least some role (Interview with SEATINI-Uganda officials, December 2013; Interview with official at FOWODE, December 2013). Specifically, they maintain that their work provided at least some impetus for the Minister of Finance’s announcement in the 2013/2014 budget that the government would comprehensively review the ITA and VAT Act with the aim of eliminating the tax exemptions contained therein (Government of Uganda 2013b).

Perhaps more importantly, the engagement of these organizations with tax issues at the grassroots promises to generate a new body of actors comprising of a larger population who have traditionally had very limited interaction with tax policy issues.

Non-Institutionalized Public Actors

In Uganda, taxation is one of those issue areas where public, non-institutionalized actors have had very limited influence. For this group of actors, fiscal issues have more or less been imposed on them as used to happen under the colonial government (Interview with Professor at Makerere University, December 2013). And while some individual business people have been able to influence how laws apply to them (through, for example, obtaining exemptions), smaller size businesses have not had the same success. Similarly, at the local government level, local communities rarely, if at all, take part in law reform processes (Interview with Public Financial Management (PFM) Consultant, December 2013). For this level of government, the reform process is largely driven by representatives from the central government, local government and key stakeholders (such as development partners).

Generally, in most developing countries, “amorphous” non-institutionalized groups are more likely to engage in tax bargains at the local government level since the taxes at that level affect them more directly (OECD 2010). Similarly, there is evidence to support the fact that, particularly around election time, local governments are used as sites for political contestation using local government taxes as bait (Fjeldstad et al. 2003; Kjaer and Therkildsen 2013). In Uganda, graduated tax serves as perhaps the best example of the manner in which these bargains have manifested themselves. In 1984, for example, citizens rebelled against the Obote II government because of a tenfold

increase in graduated tax (Mamdani 2008). Later, in the early 1990s, citizens in the eastern part of the country staged protests against the tax (Kjaer and Therkildsen 2013). Similarly, in 2002, there were strikes by workers at Kinyara Sugar works in Masindi (Parliament of Uganda 2002). However, it was not until the 2001 elections that government saw a need to engage in bargains relating to graduated tax. Specifically, opposition candidate Kizza Besigye campaigned for the abolition of graduated tax (Bahigwa et al. 2004). In response, the incumbent, president Yoweri Museveni, promised to reduce the minimum tax payable from Shs. 11,000 (US\$ 4.3) to Shs. 3,000 (US\$ 1.2) per year; which promise he honoured after the elections. Later, as the 2006 elections drew closer, the president abolished the graduated tax (Therkildsen 2006).

There is an argument that, especially when one takes into account the fact that riots against graduated tax are not a recent occurrence, the desire for government to participate in a bargain in 2001 was driven by the opening up of the political landscape for competitive elections.¹⁶ Specifically, the democratization process that allowed for an opposition party to participate in elections in a previously single party state provided an institutional channel through which previously marginalized groups added their voices to the tax debate (D’Arcy 2012; Therkildsen 2006).

Whatever the explanation given for bargains involving the public, it appears that with the exception of graduated tax, this group of actors has had less influence on tax reform than it has had on the reform of other laws. The limited engagement with tax issues can be explained by a number of factors. First, taxation is too frequently perceived as a technical issue which should be handled by experts. Second, taxpayers are often unaware of the magnitude of taxes that they pay. Most, especially in rural areas, assume that their tax obligations ended with the abolition of graduated tax (Interview with Action Aid official, December 2013; Interview with SEATINI-Uganda officials, December 2013). It is as such no wonder that even where the impact of taxation falls on the final consumer, such as in cases of VAT or excise duty, it is often traders that contest against increases. This is exacerbated by the fact that there is a limited understanding amongst the majority of citizens that economic rights are an extension of human rights (Interview with Professor at Makerere University, December 2013). Third, there is a tendency for the public to be unsettled more by socio-cultural issues (which are perceived as central to core values) than with tax issues (Interview with Development Law Associates’ partners, December 2013). It is for this reason that there was more public contestation against the Domestic Relations Bill and in support of the Anti-Homosexuality Bill than there ever is with financial statutes such as tax Acts. Fourth, the lack of institutionalization (through, for example, taxpayer associations), has limited the extent to which this group of actors can mobilize around tax issues (Interview with Tax Advisor, December 2013). As with any amorphous group, non-institutionalized actors are generally often restricted by an inability to act collectively. Those who espouse the concept of collective action maintain that the ability to mobilize and organize around policy issues is largely influenced by shared identities or special interests which are more readily found in small groups (Olson 1971; Garay 2007). To this end, small groups mobilize because the potential benefits outweigh the costs.

And yet, as one interviewee noted, contestation takes various forms (Interview with Development Law Associates’ partners, December 2013). It does not necessarily have to consist of marches on the streets. Tax evasion is also a strong form of contestation. And while evasion is often targeted at issues of accountability, it does, in one way or another, affect tax policy. For example, a narrow tax base impacts on tax policy in the

¹⁶ Therkildsen 2006; Kjaer and Therkildsen 2013; Kjær and Ulriksen 2014.

sense that it forces government to focus its legislation on taxes that are easier to collect, such as indirect taxes.

Also, while this group of actors has historically had limited active engagement with tax issues, we are likely to see a change in their role in the foreseeable future. CSOs and those working on local government issues report that there is an interesting conversation taking place in local communities.¹⁷ Many (particularly women and older males) complain that since the abolition of graduated tax, men have become lazy and unproductive because they have no obligation to pay tax.¹⁸ Research conducted by CSOs reveals that some of these community members are thus calling for a reintroduction of this tax (Interview with Action Aid official, December 2013; Interview with SEATINI – Uganda officials, December 2013).

Conclusion: A Synthesis of Contestation and Bargains Over Taxation in Uganda

This report set out to investigate the role played by private and public actors in the process of tax policy reform in Uganda. It did so by first inquiring into whether these actors have had any input in legal reform generally. We opine that studying actor involvement in general legal issues is helpful in providing at least some understanding of the culture of bargains between the government of Uganda and its citizens. Having established this general background, the analysis reverted to tax-specific reforms. Our research found some evidence of the existence of tax bargains. Some actors (particularly IFIs) have historically been involved in the reform process. And while investors and their institutional representatives have been known to influence tax policy reform primarily behind closed doors, we have provided some empirical evidence of specific reforms that this group of actors has influenced. The predominance of IFIs and the private sector in tax bargains is a continuation of the trends observed in the colonial period where small (but powerful) groups of actors dictated policy issues. We also found that CSOs have recently been fascinated with tax issues; a participation that is important particularly in as far as these organizations take these debates to local communities.

In the end, however, the technical nature of tax issues has traditionally restricted engagement with tax reform to a selected community of actors. Arguably, this dilemma is not unique to Uganda. Globally, tax reforms are too frequently monopolized by a selected few, consisting mainly of employees of IFIs and national tax administrations, lawyers, accountants, economists, big transnational consultancy firms, and academics who specialize in taxation (Fjeldstad et al. 2007). And while other actors in this global community may engage more with tax issues than is evidenced in Uganda, it is quite likely that a significant component of the engagement is targeted at issues of accountability for tax monies.

However, that taxation is technical in nature does not necessarily undermine the role or potential role that the various actors can play in its reform process. Invariably, some actors (such as IFIs and big business) are more powerful in conducting tax bargains. For others, the bargains are more implicit. For example, while non-institutionalized

¹⁷ Interview with Action Aid official, December 2013; Interview with PFM Consultant, December 2013; Interview with SEATINI – Uganda officials, December 2013

¹⁸ Taxation, as a tool for compelling individuals to get into the workforce is not a new phenomenon. In the colonial era, for example, the British levied the hut and poll taxes to coerce adult males to work on plantations and industrial undertakings (Kwagala-Igaga 2013).

groups/citizens rarely engage directly in tax issues, their power to influence reform is derived from election processes. Similarly, CSOs, by locating the tax debate in local community landscapes, are increasingly able, not only to raise awareness on tax issues (which is intended to translate into demands by the masses) but also to demand the audience of policymakers.

There is another pertinent role being played by civil society. Perhaps more than any actor – or more accurately, unlike other actors – CSOs draw clear links between taxation and demands for social services. Their campaigns in local communities link taxes to the delivery of services such as health and education. For most other actors, this link has been, at best, an implied one. For example, demands by IFIs to amend tax laws are largely based on a desire to reduce on the costs of doing business, which feeds into economic development and impliedly, the ability for government to afford public services. Consequently, while IFIs provide funds to support social programmes such as health and education, they have traditionally treated tax issues with technical gloves, concentrating largely on how this revenue source can attract investment in the developing world. Investors for their part are largely concerned with a favourable business environment which is composed of political stability, good infrastructure, human resources and natural resources. Lastly, the complaints of the public often focus on accountability as it relates to the use of public finances.

Invariably, there are also reforms that are driven by government’s own initiative and because of economic or other circumstances. For example, government has a yearly target of increasing the tax to GDP ratio by 0.5 per cent (Interview with MOFPED official, December 2013). It raises this revenue from the normal growth in the economy, tax policy measures, and through seeking to improve tax administration. Of late, a number of reforms have also been driven by the desire to harmonize policies with the rest of the East African Community (Interview with Partner at Birungyi, Barata & Associates, December 2011). Similarly, the 2006 discovery of commercial oil reserves was followed by an announcement of a need to establish legal and institutional frameworks to support investment on the one hand (Government of Uganda 2008a) and to tax the sector on the other hand (Government of Uganda 2008b). In 2008, special provisions relating to the taxation of the petroleum sector were introduced in the ITA (ITA: Part IXA).

The policy implications gleaned from this research are that the more direct the impact of a tax is, the more likely it is that those affected will engage in bargains. Direct, in this sense, does not necessarily correspond with the technical understanding of a “direct tax”, which in this case would be limited to income taxes and graduated tax. Rather, direct refers to those that are charged with remitting the tax, even though they can potentially pass it on to final consumers. This explains why, for example, with the introduction of VAT in 1996 and the proposal to remove exemptions on hotel accommodation in 2013, it was traders and hoteliers (and not the final consumers of these goods) who contested. These actors perceive such taxes as direct because they have the potential impact of reducing consumption of the goods or services in question.

Lastly, there is an argument, particularly as far as Third World countries are concerned, that “tax administration *is* tax policy” (de Jantcher 1990: 179). Or as one author put it: “... in Africa, tax administration tends to determine actual tax policy” (Therkildsen 2001: 111). What this means is that to get a more comprehensive understanding of the manner in which tax bargains are made, future research needs to study negotiations that are made off statute books. For example, even before the abolition of graduated tax,

local politicians often discouraged taxpayers from paying the tax, particularly close to election time (Bahiigwa et al. 2004). Similarly, while tax exemptions were abolished with the coming into force of the 1997 ITA, in practice, they continue to be given to taxpayers on an ad hoc basis. And even though rental income was introduced in the 1997 ITA, URA has only recently intensified its implementation of that provision. Future research also needs to undertake empirical studies on the actual impact that CSOs are having on tax reform. As part of this research, it will be important to establish what is driving CSO engagement in this issue area, the extent to which they have been able to mobilize non-institutionalized actors to engage in tax debates and any shifts that they have made in the law as a result of their interactions with policy organs such as the MOFPED. Given that international organizations generally and the IMF in particular have historically played a central role in authoring tax laws, a future research agenda could also include an unpacking of the impact of the engagement of such actors and establishing the manner in which diverse local actors could be involved in these law-making processes.

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