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Bureaucratic Dictatorship in Tax Management in the Rat Race Economies of Sub Saharan Africa: Measurements and Consequences

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Abstract

The focus of this article is on the non representative nature of the tax system in Sub Saharan Africa (SSA) and the consequent immeasurable imbalance that this has created in the social contract relations between the tax payer and the government; and the retrogressive development effects in the ability of taxation as a development instrument in the economies of the SSA. For the theoretical framework, the social contract theory and the doctrine of democratic representation were employed. To measure the level of citizens' participation in the process and the consequences of the citizen non participation, the paper adopted the questioning approach (with rigorous analysis of the status quo as a precursor to producing the desired findings and policy prescriptions). It was discovered that there is no doubt that tax revenues are necessary for the state in the SSA to meet the basic needs of the citizens in the fulfilment of the social contract and to lift millions out of poverty amongst others. The paper posited that the present tax architecture (formulation and legislative process) is dictatorial in its ramification, fuelling unemployment and de-industrialization due to its bureaucratic origination and packaging that is lacking in inputs from citizens or taxpayers among other reasons. The paper also posited that there is almost a complete absence of dialogue between the bureaucrats and the legislature on one hand and the taxpayer on the other hand in formulating, legislating and implementing tax legislatures and policies. Based on other findings, the paper opined in its ramifications should be guided by tax payers' public opinion or perception of national development transformation and not national tax authorities' fiscal rascality as task masters.

Key Words: Taxation, Legislature, Citizens, Bureaucracy and Development

Introduction

Taxation represents compulsory levies by the state on the income of citizens or residents of the state (artificial persons inclusive) for the management of the state in fulfilment of the social contract between the state and her citizens. Usually, the jurisdictions, the tax rates, the administrative instruments, the regulatory institutions, the assessment, collection and appeal procedures etc are enshrined in specific legislations or the constitution or exposed in the budget. This definition however in sub Saharan Africa appear inadequate due to the illegality committed by the state in introducing and collecting several types of taxes, which are tagged fees or levies but are in actual fact taxes and defaulting payers are persecuted under various sham judicial setups. Post colonial African states tax architecture is in all ramifications structured after that of their colonial countries. Besides, the power of the state in the SSA to tax its citizens originates in their various constitutions, several tax specific legislations (as amended), quasi legislations and judicial precedents.

Legislations and institutions and processes for tax legislations and policies are in most cases shrouded in bureaucratic myths and dysfunctionality that lack accountability to the taxpayers and non-participation of taxpayers. Besides, in most cases, citizens appear to lack the knowledge of the existence of these policies and legislations. Because of the obvious nature of bureaucratic dominance in the formulation, implementation and reform of the tax laws and policies; coupled with the high level of poverty and low income, citizens compliance are usually enforce through brute force or state driven illegality. This is further compounded by the almost nil level of accountability for tax revenues; in addition to the huge level of bureaucratic aided fraud and corruption that is marked by high level of over invoicing, treasury looting, unaccounted expenditures and financial prodigality that are cocooned in reckless spending and political rascality at the expense of citizens' oversight.

The doctrine of democratic representation or participatory democracy demand that elected parliamentarians represent the wish of their people; as such it is assumed that whatever is deliberated is actually what the people desire. But in the case of pseudo democratic states in the SSA where parliamentary elections is fraught with huge irregularities (i.e. parliamentarians are selected and not elected) legislative processes and their outcome are designed and activated to suit the interest of the bureaucrats, executives and parliamentarians within the context of a paternalistic patronage network; to the detriment of the citizens (tax matters inclusive). Consequently citizens suddenly find out that tax legislations and policies that they did not participate in its formulation or are not even aware of are being force on them. These legislations and policies have been introduced by the bureaucrats and passed into law by the parliamentarians under the guidance of the bureaucrats at the instance of anti-citizens executives. Consequently this call to question the rights of the taxpayers in the formulation and implementation of tax acts in the SSA; the role of the citizens in the monitoring and evaluation of the proper functioning of the tax system and the expenditure engagements of revenue derived from tax sources; and an examination of the dubious role of the bureaucrats in tax legislation and revenue administration and accountability for revenues derived from tax sources.

There is no doubt that SSA states need tax revenue to run their states and meet the basic needs of their citizens in fulfilment of the social contract. However while this objective is been pursued there is the need also to focus on citizen/tax payers right under "global best practice". But the practice in the SSA as at today is skewed towards raising funds to meet state expenditures (capital and recurrent) with flagrant disregard for taxpayers' rights and participation in the process that could provide the fundamentals for improving state revenue drive. Taking this into cognizance the onus is to design and implement a tax architecture that takes taxpayers interest and participation as the core of their tax drive and in the formulation of tax laws and policies, implementation and reform; as against the prevailing bureaucratic impunity or rascality.

Essentially, the right of the tax payer to access dependable and timely information as well as fair, accurate and timely treatment can hardly be overemphasized. Besides, it is the right of tax payers and stake holders to be duly notified of changes in tax policies, legislations and practices. But this appears not to be the case in the SSA. Consequently the suggestion is that tax education should be introduced and be at the core of the tax system (Oriakhi, 2013). In this context he identified some tax payers' rights and obligations, namely:

Rights

i. Right to be informed and assisted
ii. Right to certainty
iii. Right to impartiality
iv. Right to privacy
v. Right to confidentiality and secrecy
vi. Right to appeal
vii. Right to be represented
viii. Right to courtesy

Obligations

i. obligation of data provision
ii. obligation of completing prescribed forms
iii. obligation of identification number for tax purposes
iv. obligation of paying tax in time

Best practice with respect to tax payers are supposed to be upheld on the part of tax authorities and obligations are supposed to be upheld by the taxpayers but these appears not to be the case due to the impunity and dictatorial character with which tax authorities manage the tax system.

Over the years, but until recently (the past decade and a half), the political instability coupled with external interference in the SSA have resulted in a huge imbalance in the social contract between the governments and their citizens and the ability of taxation to act as a development instrument, as well as an instrument for fiscal policy. In this context bureaucratic impunity and dictatorship have been on the rise in an attempt to build a performing tax system, which in all ramifications is a caricature of a pseudo tax system. This in no mean measure has resulted in both local and foreign as well as deindustrialization that has led to the loss of jobs, industrial migration, and inability to re-engineer regional development transformation.

Taking the above into cognizance the rest of the paper is structured as follows:

1. Taxation and Bureaucratic Dictatorship (Section 2);
2. The Doctrine of Social Contract Theory (Section 3);
3. Taxation and Representative Democracy(Section 4);
4. Tax Consensus (Article IV) (Section 5);
5. Policy Prescription and Conclusion (Section 6).

Taxation and Bureaucratic Dictatorship

Issues of citizens participation in tax policies formulation and legislation has not until recently become a subject of tax practice in the SSA. In this context the issue of the role of the bureaucracy in tax policy formulation, implementation and review without reference to citizens' input as an instrument of taxpayers' voluntary compliance has become a critical issue for professional and academic discourse. To exclude the tax payer from the whole process of tax policy formulation, implementation and review the SSA states tax architecture has been structured in a manner where the supremacy of the state's tax authorities is upheld in a circle where they make all the important tax decisions, including adjudication. As a matter of fact what ought to be is for citizens (taxpayers) to maintain an official, extra-legal constraints over authoritarian tax authorities with a view to maintaining a balance in tax formulation, implementation and reform

Tax bureaucratic totalitarianism the way it is emerging today in the SSA emphasizes an official and over reaching ideology for the assessment and collection of taxes to the detriment of the taxpayer. In these systems the goal is to stress the maintenance of regimes power. In order to sustain the system repressive tax mechanism there is the activation of a mechanism that has to do with the limiting of mass political participation where the state is virtually in control of all aspects of mass mobilization for citizens participation in the tax process

Tax bureaucratic dictatorship demands that sentiment, interest of the taxpayer, aspirations, needs, social rights, and interest of the taxpayer should be set aside for the dictates of the state irrespective of the political power/lineage/coloration. The mode of operation here demands that the state activate supervisory institutions that should exercise supervisory adjudication and democratic authority over tax legislation and policies origination, formulation, implementation and reform. However these institutions assume anti-democratic form that denies taxpayers autonomy and rights and guarantees tax dictatorship and impunity. This not only violates tax democracy but encourages taxpayer's hostility and discourages the capacity of taxpayers to exercise plenary authority over their tax affairs.

Essentially, state tax authorities arrogate to themselves wide range of powers, ranging from hearing and veto of initial tax assessment objections, raising of Best of Judgment assessments, tax audits and even disagreeing with organizations wages structure that they do not have the right to determine. What is wrong here is that the state fails to realize that paying tax is a social act that is not premised on tax economic maximization fundamentals. The taxpayers' behaviour goes beyond this and compliance depends on the perceived level of representation and redistribution; individual expectation of the state; and individual's expectation of other actors. The conclusion to be drawn is that tax payment compliance reflects to a significant degree the participation of tax payers in the whole process.

As at today several tax laws and policies are in place in the SSA to which taxpayers inputs are lacking due to bureaucratic and executive dominance that is cascaded in legislative connivance. In this context the emerging questions include:

(i) Are these tax policies and legislations formulated in public interest and representative of tax payers' interest?

(ii) Were the tax legislations and policies put in place without adequate taxpayers' inputs and enlightenment?

(iii) Did the tax authorities (bureaucracy and legislature) oblivious of taxpayers' ability to pay excessive taxation, appeal intimidation, illegality in tax administration and imposition?

(iv) Are the tax laws and policies through bureaucratic enforcement tax away the Capital as against the profit; and engaging in double taxation?

(v) What is the level of taxpayers' representation in the tax appeal and exclusion of taxpayers' rights and social contract?

(vi) To what extent has arbitrary procedures been used to settle assessment, collection and appeal of taxes?

Ancillary to these questions are:

- What use are these taxes put to? Do these uses have tax payers input? Or are the revenues collected from these taxes used to line the pockets of the bureaucrats, executives, legislators and the elites?
- Are the revenues collected from the taxes used to buy arms and fortify the brutal security apparatus to crush dissenting voices of taxpayers?
- Are the revenues collected from taxes used for white elephant projects that have no economic or social contract value to the taxpayers?
- Are the revenues collected carted away to developed economies, thereby enhancing their growth to the detriment of the SSAs' rat race economies?

A rigorous analysis of the status quo will further provide the direction to these questions.

The Doctrine of Social Contract Theory

A social contract is an implicit agreement among the members of an organized society or between the governed and the government defining and limiting the rights and duties of each. (Dictionary.htm). According to John Locke and Jean –Jaques Rousseau social contract is a means to an end-the benefit of the individuals involved-and legitimate government only to the extent that they fulfil their part of the agreement. (Wikipedia.com). Explicitly, John Locke in his second treatise of government argued that government's legitimacy comes from the citizens' delegation to the government of their right of self defense (of self–preservation) along with other rights to achieve the goal of security e.g. allowing their properties to be liable to taxation. Thus, according to him the obligation to obey civil government under the social contract was conditional upon the protection not only of the person but also of private property and that if a sovereign violated these terms, he could be justifiably overthrown. Therefore, government is expected to derive its powers from the consent of the governed. (Britannica.com)

Taxation and Doctrine of Representative Democracy

Representation is democratic if it makes decisions responsive to the will of the people that is symbolic through one man one vote. However there appears to be a mismatch in this dictum between the formal rule of political equity and its representative nature that has created loss of confidence (Nastrom, 2014), and taxation is not an exception. This is because in the first instance members of parliament in a pseudo democracy such as the one in the SSA states, are more or less selected as against been elected in a paternalistic network of political godfathers. Scholars argue that there is a difference between election and representation (Nastrom, 2014). The central trust of representative democracy is that representation has as its core responsiveness to the will of a pre-existent people it claims to represent. That is representation occurs when political actors speak, advocate, symbolize and act on behalf of citizens by making their voices, opinion and perspectives "present" in the public policy making processes (tax policy inclusive) (Wolfgang et al, 2011). In the case of taxation in the SSA states, this ought to be so but it is not .That is the citizens' voices are not heard, neither are their opinions sought. Three reasons account for this:

i. The representatives were brought in by a process in which they are accountable to the godfathers and not to the pre-extent people and as such tax laws are legislated anti-taxpayer (Ebohon and Oghoator, 2012)
ii. During elections the level of financial commitments (loan and sale of family assets inclusive) to the electoral process is huge that they must recover their money first before the Operationalising the will of the people.
iii. The tax process is driven by the government that has the bureaucrats as shadow executives in the drive to mop up revenue for government through taxation; and the bureaucrats are not responsible to the electorate but to the politicians.

In the context of the above the underlisted emerging questions became pertinent:

i. Does bureaucratic mastermind of tax laws and policies raise the question of democratic legitimacy of tax laws and policies in SSA countries?
ii. Does it initiate and grow bureaucrats as shadow executives in the initiation, coupling and implementation of tax laws and policies?
iii. Who should have the right to speak on tax matters on behalf of the legislators and taxpayers?
iv. Is legislative claim to act on behalf of the people in tax matters democratic or representative, and do they actually do so?
v. Is the present tax architecture as characterized by institutionalized uncertainties and difficulty in locating the authority of the taxpayers destructive?

Flowing from the above there is an assumption that even if representatives are chosen through fair and democratic elections, the legislative institution remains unrepresentative particularly in the case of tax payers (Bird, 2003). This places a question mark on the representativeness of the whole system.

Tax Consensus (Article IV)

In the past, tax debate in the context of development policy was in the domain of the economist whose concern was with fiscal stability, equity or economic efficiency. However, today, the concern is with how to fathom the linkage between tax and development/governance. This dovetails into no taxation without representation that demands connection between the way states acquire and use their power and authority (shaped by the way citizens are taxed –a responsive state that respond better to the need of its citizens and second from the capability of the state –determining what needs are, or managing competing interest, in addition to bureaucratic capability to design and implement policies, and to reassure authority (Moore & Simpson, 2007). In this context, the state tends to rely on multiple forms of taxation with less need to negotiate with or be accountable to the citizens, or to build a capacity to raise and administer tax with a social contract as a core. This raises three broad questions: 1). Does broad taxation affect the development of the state itself by focusing on obtaining revenue from the citizens without representation? 2).How does the tax affect the citizens? Does the state engage them politically? 3). How does the state and citizens interact with each other over revenue and the issue of resources redistribution function? 4). How sound is the accountability mechanism in place and to what extent does this encourage tax compliance or taxation with representation?

Several illegal taxes are bound. Some of which the state have legalized through legislations: Check points tax, police road block tax, Customs inland intra- national border checkpoints tax. All these not only constitute a very serious tax burden on the taxpayer but make goods made in the SSA states uncompetitive at the global level as well as increase the inability of the central banks in the region to combat inflation, due to its multiple effects on domestic trading and manufactured goods; and inability of tax payers to a fair hearing that is not laced with intimidation, or the inability of the tax payer to seek redress from the tax appeal authorities as a result of the cost of doing so. This is further compounded by the taxpayer limited knowledge of the existence and role of the appeal process and the misuse of the term Best of Judgment (BOJ) by overzealous tax agencies, particularly in the case of ''Sole Traders" and small scale firms that provide the bulk of limited jobs for the teeming unemployed graduates or youths in the SSA.

An overview of the tax situation in the SSA indicates that the concept of tax consensus around the world over the couple of decades about what taxes should do, and how they should do it and how they should be set up; on which the tax architecture is built has failed. This was vividly explained by Alex Cobham (2007). Tax consensus has been led by economists and tax experts working in tandem with the IFM article IV consultant. A critical examination indicates how pervasive it is in driving the building blocks for installing tax architecture in the SSA. Indications are that the tax consensus has failed. To understand why tax consensus has failed there is the need for a conceptual definition of the four clear outcomes of taxation in SSA (4RS).The first R is Revenue: taxes raises money to pay for health ,roads ,education, more direct things like good regulation and administration. The second R is Re- distribution- where taxation is used as an instrument to check poverty and inequality; and for spreading the benefits of development more widely. In *this* context different taxes have different effects: income taxes are usually progressive (they reduce inequality); corporate taxes are regressive (increase inequality), property taxes are progressive. Indirect taxes (such as VAT) are generally regressive. The third R is Re-pricing (and subsides) that is used to change behaviour to curb potentially harmful activities. Finally the fourth R is the Representation. This appears to be one of the most forgotten, though it is as important as the first R (revenue). In this context, taxation is supposed to strengthen and protect channels of representation: when citizens are taxed, they demand representation in return from the state.

Paying tax is a social act which is not premised on raw economic maximization fundamentals. Tax payers' behaviour goes beyond this and compliance depends on: The perceived or expected level of re-distribution; Individual expectation of the state; and Individual expectations of other levels. The conclusion to be drawn from this is that paying tax reflects to a significant degree the right to participate in the whole process of the society, not just economic maximization. Consequently the tax consensus under which SSA states tax architecture is designed and operates has failed because among others it has seriously undermined re-distribution. The consensus demands that the re-distribution should be activated via spending and not taxation under the assumption that the state has full range of instruments, including an option to make direct transfer of cash to households, that theoretically combined with non progressive taxation should generate the equivalent effect of a progressive (e.g. income) tax. However, indications show that the SSA state do not have the capacity to make these transfers. Consequently, operating under the consensus means the giving up of the state power to reduce inequality with development decapitation effects.

In the SSA the tax consensus has failed on each of the 4rs.First it emphasizes tax neutrality; but a tax system should not distort production or consumption decisions as this is likely to reduce economic efficiency. In practice this could mean a shift away from direct taxation (which is generally progressive) towards more regressive taxation (as well as trade liberalization in the name of greater efficiency); resulting in the state, being stripped of the essential tools of re- distribution, with the resultant worsening inequality, damaging political representation and stability and consequent harming of efficiency, living little or no space for re-pricing.

Conclusion / Policy Prescription

In the past decade several SSA countries have activated tax policies and legislations and or instruments (legal and illegal) in managing their tax regimes or architecture as well as exploit tax payers at the expense of their rights, dwindling fortunes and representation. Essentially these strategies seem not to be yielding the desired result because of the impunity at which tax authorities backed by their governments operate; who often do not take the taxpayers into consideration in formulating and implementing tax laws and policies. The total exclusion of tax payers in the tax architecture affects compliance. The bureaucracy overlooks this important aspect and sees it as an immeasurable and irrelevant. This paper while measuring this immeasurable concludes that it has enormous impact on tax administration In addition the macro variables of the 4P's (Revenue, Redistribution, Re-Pricing and Representation) have been gotten wrong and designed to favour executive , legislative and bureaucratic interest at the expense of the social contract that have dovetailed into the usurpation of tax payers rights and representation. Besides, the process through which negotiations and citizens (tax payers) engage in tax policies formulation and implementation (appeal process inclusive) are not only intentionally designed to favour governments, with taxpayers lacking the capacity to participate on an equal party platform as an actor but also questionable. In addition the procedures in place for resolving taxpayer's grievances are also fraught with great cost implications and bureaucratic impunity. Consequently there is the need for a reform of the present arrangement through greater representation and tax appeal cost subsidy. The whole arrangement for tax policies and legislation formulation and implementation appear to not only lack tax payers representation but getting through reforms is slow, disorderly, chaotic and inefficient.

Consequently there is need for a reform of the present arrangement through greater representation of the tax payer in tax policies and legislation formulation, implementation and reform. This should be through greater direct taxpayer participation in the process and not through democratic representation as it is today. This is because democratic representation in the SSA does not amount to effective representation of the citizens as elected officials are selected by a few cabals. This finding is in consonant with Schumpeter's democratic theory- crisis of representation- when he asserted that the electorate does not control the elected officials. However, his postulation was criticized by Gerry Mackie when he stated that democracies unproblematically achieve representation by having leaders to be both responsive and accountable to the electorate (Mackie 2009). However, it is worth noting the middle of the road posture of Jeffrey Edward Green in his work – Three Theses on Schumpeter: Response to Mackie (Green 2010). Our findings revealed that in the SSA, the position of Mackie does not apply as based on the developed democracies and not a reflection of the rat race economies of Africa South of Sahara. Therefore, there should be greater use of community based communication/information mechanisms for eliciting tax payers' interests, inputs and participation in the whole process.

Citizens' demand from the state in the tax equation has become increasingly high in fulfilment of the social contract and direct participation in the whole process. Consequently the questions that arise include; what is the level of bureaucratic impunity? How should the whole process or the tax architecture position itself to align with citizens' development aspirations and tax rights? In this context the tax architecture and the role of the bureaucracy must begin to consider the symmetric relationship between the state and its citizens and the opportunity it can leverage to eradicate or reduce to the barest minimum bureaucratic hegemony and impunity.

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