

ORGANISATIONAL DESIGN OF CUSTOMS IN SUB-SAHARAN AFRICA: A CRITICAL EVALUATION

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Abstract

Customs services in Sub-Saharan Africa may be categorised into (a) those that are part of the mainstream civil service (b) those that have been given a measure of autonomy and (c) those that have been integrated with tax departments in revenue authorities. The current organisational design features and functions of Customs are related to the new public administration paradigm that started in the 1980s, which in the case of Customs and tax administration, led to the emergence of integrated semi-autonomous revenue agencies. On the basis of organisational autonomy in this new paradigm, a few customs services in Africa (such as Ethiopia and Ghana) have been granted autonomy from the mainstream civil service, while others have been merged with tax administrations in revenue authorities. In both cases, Customs is required to carry out its mandate, which goes beyond revenue collection, in an environment that emphasises the revenue function over any other function. In other countries, mainly in Francophone Sub-Saharan Africa, Customs still operates as part of the mainstream civil service. The extent to which Customs keeps a proper balance between the competing interests will determine its ability to carry out its mandate in line with the demands of the 21st century.

A. Introduction

The current organisational design features for customs services in Africa can be traced back to the structural adjustment reforms initiated in the mid-1980s with the support and leadership of the international financial institutions and donors. These reforms introduced a new public administration paradigm that emphasised the reduction of the role of the state in service delivery, encouraged the deregulation of public enterprises and sought to reduce the scope and cost of government (Economic Commission for Africa 2003). The impact of these reforms on Customs has ranged from:

- temporary outsourcing of functions to a private sector company in Angola and Mozambique (Moïse 2005)
- awarding of contracts to pre-shipment inspection (PSI) companies to verify the price, quantity and quality of imported goods for the purpose of preventing capital flight, commercial fraud and duty evasion, which had been implemented in 30 countries¹ (WTO 1996)
- transformation of the organisation into a semi-autonomous government agency outside the civil service as happened in Ghana in 1986 (Kusi 1998) and Ethiopia in 1997 (Ethiopian Customs Authority 2008)

- placement of Customs in semi-autonomous revenue agencies, as has happened in Botswana, Gambia, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Rwanda, Sierra Leone, South Africa, Swaziland², Tanzania, Uganda, Zambia and Zimbabwe
- transformation of Customs within government, as has happened in Senegal.

There is considerable analysis on the outsourcing of Customs operational management in Mozambique. One assessment³ projects it as a unique innovation that helped raise revenue by 350% in spite of a reduction in tariffs, significantly reduced fraud and corruption, updated legislation, automated customs procedures and reduced clearance times in line with international standards. Overall, the evaluation has been positive, although the management contract had to be extended twice and at the end, there were still issues that had to be addressed. These included the upgrading of border infrastructure (communications and staff accommodation), waning staff morale and discipline as well as ensuring a smooth handover to nationals (Mwangi 2004).

PSI companies have gradually moved away from direct intervention in customs operations towards participating in partnerships with government for destination inspection of imports (for example, in Tanzania), provision of container scanning technology and services (Ghana and Senegal) and pre-shipment verification of conformity to standards (Kenya). PSI work in valuation, tariff classification and origin determination considerably weakened the capacity of Customs to perform such core customs business, and the high inspection costs added to the cost of doing business. This defeated the objective of reducing corruption as importers began colluding with both Customs and PSI staff to reduce their duty obligations.

A number of countries (mainly in Francophone Africa but including Lusophone Angola and Cape Verde, and Anglophone Liberia, Namibia, Nigeria, and Seychelles) have retained the customs administration within the civil service. Even within the civil service, the customs administrations have been organised and re-organised in different ways at different times in their history. For example, the present paramilitary Nigeria Customs Service is a successor to the colonial Direct General of Customs who was appointed in 1891 to collect inland revenue in the Niger Coast Protectorate (Nigeria Customs Service 2008). Decree No. 14 of 11 January 1986 abolished the Board of Customs and Excise and the service was removed from the Federal Ministry of Finance to Internal Affairs to be managed by the Customs, Immigration and Prisons Services Board (Nigeria Customs Service 2008). The Department of Customs and Excise was transferred back to Finance in 1992, when it was also recognised as a paramilitary force with salary grade levels harmonised with those of the Nigerian Police Force.⁴

It is important to note that customs reform is possible within the civil service. Liberia, a post-conflict country, has rationalised clearance from 47 steps to 9, and is re-examining the PSI contract (Ghana Customs 2008a). The Senegalese Customs administration has carried out far-reaching reforms involving a review of customs procedures and processes, automation of procedures and partnerships with the private sector (United Nations Economic Commission for Europe 2006).

This paper examines the organisational design of customs services operating as semi-autonomous government agencies and those operating within semi-autonomous revenue agencies, demonstrating the dynamic nature of both customs policy and administration in Sub-Saharan Africa.

B. Customs as a semi-autonomous agency

Customs has been established as a semi-autonomous government agency in Ghana and Ethiopia. Established in 1839, Ghana's Customs, Excise and Preventive Service (CEPS) was transformed under PNDC Law 144 into a semi-autonomous government agency outside the civil service in 1986 (Kusi 1998; Ghana Customs 2008b). The first customs law was passed under colonial rule in 1855 (Terkper 1995). The mission of CEPS is to collect, account for and protect customs, excise and other assigned

indirect tax revenues in a timely manner while facilitating trade, investment and the movement of people and goods across and within the borders of Ghana (Ghana Customs 2008b).

The Ethiopian Customs Authority (ECuA) traces its origins to 1889 when it was established by the government to administer and enforce tariff and other related laws (ECuA 2008). It operated under the Ministry of Finance and Treasury from 1889 to 1923, and then from 1941 to 1996 under the Ministry of Trade. In 1997, it was re-established under Proclamation No. 60/1997 as a Federal Government Organ with its own juridical personality, accountable to the Federal Government Revenue Board (FGRB). It has three objectives:

- collection of duties and taxes on imported and exported goods
- implementation of laws and international conventions related to its objectives
- control of the importation or exportation of prohibited or restricted goods (Government of Ethiopia 1997).

In 2002, the Ethiopian Government established the Ministry of Revenue (MOR) under Proclamation No. 256/1994. The Proclamation fully transferred the aims, powers, and duties of the FGRB to the MOR. In addition, the MOR was given the responsibility for revenue sector reform as well as the supervision and direction of the Ethiopian Customs Authority, the Federal Inland Revenue Authority and the National Lottery Authority. Although it is a government ministry, its mission reads like the mission of a revenue authority: 'to enable government revenue to be collected by performing revenue sector reform programme continuously, laying down modern government revenue collection and administration; raising the awareness of the public and executing revenue laws without discrimination and giving transparent, efficient, fair and effective service delivery' (ECuA MOR 2008).

Has the enhanced autonomy led to achievement of the missions of these two organisations? Manasan (2003) and Kidd and Crandall (2006) doubt that it is possible to attribute organisational design per se as a contributor to the effectiveness and efficiency of semi-autonomous government agencies in meeting their objectives. This is due to various methodological difficulties, including difficulties in obtaining reliable data; isolating the impact of exogenous factors such as the quality of national statistics, the economy and economic policy, oil prices and political commitment on revenue performance and isolating the impact of a particular governance model on performance (Kidd & Crandall 2006). Manasan (2003) has pointed to various examples where the tax effort improves significantly after establishment of the new organisation, then stagnates or falls to levels almost equal to the pre-reform period. This has been seen in Argentina, Colombia, Venezuela, Mexico, Tanzania and Rwanda.

In the case of Ghana, it was reported that revenue performance began to stagnate in 1992 after a change in political leadership (Atta-Mills 2002). The financial autonomy of CEPS was assured after the *Revenue Agencies (Retention of Part of Revenue) Act 2002* was passed.⁵ Management supervision is now provided by the Revenue Agencies Governing Board (RAGB).⁶ The RAGB is responsible for CEPS, Internal Revenue Service and VAT instead of having separate boards for each of these services. A key element in the modernisation of Ghana Customs was the introduction of the Ghana Community Network (GCNet). GCNet is an electronic documentation network, modelled after Singapore's TradeNet, that enables the exchange of data among all players in the import process including Customs, Ministry of Trade, Bank of Ghana, shipping lines, freight forwarders, and banks. This has resulted in the reduction of clearance times from 24 hours to 10 minutes (Walsh 2006). Therefore, continuing political leadership and periodic performance review vis-à-vis organisational objectives is important to avoid lapses.⁷

The Ethiopian Customs Authority has had a measure of success in enhancing revenue collection, establishing and maintaining partnerships with the private sector and automating procedures. It now has a website (<http://www.mor.gov.et/ecaweb>) hosted by the Ministry of Revenue. The site provides information relevant to various stakeholders including the trading community, travellers and customs

clearing agents such as rates of duty, valuation data, statistical reports, government proclamations, and customs regulations and procedures.

The United Nations Economic Commission for Africa (UNECA) has provided technical assistance in training officials in computer hardware support, operating systems and networking; building skills in web, database and application development technologies and project management and use of Geographic Information Systems tools for better tracking of goods (UNECA 2006).

Revenue collection has also improved although, in some instances, below government expectations. The target for the year ending June 2007 was surpassed and it was reported in August 2008 that there were plans to merge the Ethiopian Customs Authority, the Federal Inland Revenue Authority and the Ministry of Revenue into one entity to be known as the Ethiopia Customs and Revenue Authority. The reason for the anticipated policy shift is because the revenue raised by all the agencies under the Ministry of Revenue (including the National Lottery Administration) as a percentage of the Gross Domestic Product (GDP) was 12.8% against the Sub-Saharan Africa average of 23.4% (Anberbir 2008). If this happens, the organisational design of Customs will have moved to what is the virtual norm in East and Southern Africa.

C. Customs *in* a semi-autonomous revenue agency

In a study prepared for the UK Department for International Development (DFID), Delay, Devas and Hubbard (1998) drew attention to a paradox of the new revenue authority (RA) model that had been created in a number of countries in Africa since the early 1990s: RA was a double-edged sword which could cut both ways. On the positive side, RA was expected to maximise revenue collection; minimise costs of collection; minimise the cost of compliance to taxpayers; enforce limitations on imports and exports; appropriately administer tax law and policies as well as administer the law equitably. On the negative side, RAs saw revenue collection as the be-all and end-all of their existence and ended up hurting taxpayers with over-eager enforcement; corruption still remained an issue; and there were tensions between the RA and the Ministry of Finance. Worse still, the RA design did not shield the agency from political interference. Boards were dominated by government nominees, and members were wont to interfere with the day-to-day running of the agency. Therefore, RAs had organisational autonomy in theory and lacked independence in practice.

The RA was seen as a solution to poor revenue performance, low rates of compliance, ineffective staff and corruption (Kidd & Crandall 2006). Initially, most RAs met with considerable success with improved professionalism in tax collection, reduction in corruption and increased revenue. Has this success been sustainable? Five years after the Delay, Devas and Hubbard (1998) study, Fjelstad, Kolstad and Lange (2003) pronounced a negative verdict in the case of Uganda Revenue Authority (established 1991) and Tanzania Revenue Authority (established 1996):

In Uganda, the reforms appeared to be a success in URA's first six years of existence. Reported tax revenue increased sharply – from 7% of GDP in FY 1991 to more than 10% in 1997. Corruption seemed to be declining too. But since then, the tax-to-GDP ratio has stagnated. There are also clear indications that corruption is on the rise again. The Tanzania Revenue Authority has experienced a similar development, though the decline in the tax-to-GDP ratio and rise in corruption came faster compared to the URA: reported revenue increased in TRA's first year of existence from about 10% of GDP in 1996 to almost 11% in 1997. Thereafter, the tax-to-GDP ratio has declined.

RAs were established using the executive agency (EA) model. EAs are given relative autonomy from control by the central government in terms of day-to-day operations, budget and human resource management policies including determination of reward systems. In Tanzania, the operations of executive agencies are governed by the *Executive Agencies Act, 1997*. The Act sets out the framework for 'the

establishment and operation of semi-autonomous executive agencies within the ambit of Government Ministries for the purpose of providing public services in selected areas in a more efficient and effective manner and for related matters’.

EAs may be established by one department in a ministry, or by a combination of two or more departments.⁸ Therefore in the case of most revenue authorities, the EA combines the operations of the Customs and Excise Department, Income Tax Department and Value Added Tax Department. Section 3(2) of the Tanzanian Act requires the Minister to use the following criteria to determine whether establishing the EA will achieve the following objectives, namely to:

- improve the delivery of public services
- create an environment conducive to efficient and effective management
- improve the quality of the services hitherto offered by the department concerned
- promote the potential for continuous improvement of the services provided by the Executive Agency.

While the *raison d'être* for revenue authorities is assumed to be revenue collection, the study by Kidd and Crandall (2006, p. 44) found that ‘... customs organizations within an RA tend to remain separate from the tax administration’. Why is this so? According to Kidd and Crandall (2006, p. 44):

This is likely because of the inherent “real-time” nature of customs operations compared to tax administration, and because customs must carry out its operations where it has physical control over its transaction environment (border crossings, international airports, secure warehouses, and so on). Furthermore, there appears to be a widening non-fiscal role for customs (security-related) that will tend to keep it apart. These different features of customs operations tend to preclude the true integration of business processes and client services with tax operations and, thus, reduce the scope for effectiveness and efficiency gains, such as are possible with the integration of direct and indirect tax operations.

Due to the real-time nature of customs operations, Customs laws allow greater discretion to the frontline officer. In passenger clearance, no person is allowed to remove any baggage from the baggage hall unless the proper officer authorises such removal (*East African Community Customs Management Act 2004* [EACCMA] s. 45(3)), the form of the declaration is at the discretion of the proper officer (EACCMA s. 46(1)) and the duty free allowance for passengers’ baggage and personal effects is to a certain extent made at the discretion of the proper officer (Fifth Schedule Part B Item 5 (1) and (7)).

The exercise of discretion is fraught with the danger of abuse and leads to perceived and real corruption in Customs even within a revenue authority model. In this regard, Taliencio Jr. (2004) reports of the Kenya Revenue Authority that ‘significant corruption exists, especially in customs’. While the situation may have changed since this was written, there are still frequent reports of Customs staff dismissals on allegations of corruption.

Compared to the tax departments, there are a greater number of sources of customs law and (in the case of East African Community Partner States) these include the relevant provisions of the Treaty establishing the East African Community (EAC), the EAC Protocol and Annexes, Regulations and Directives made by the Council of Ministers, applicable decisions by the Court, Acts of the Community enacted by the Legislative Assembly (such as the East African Community Customs Management Act) and ‘relevant principles of international law’ (Art. 39 (f) of the EAC Customs Union Protocol).⁹

The fact that Customs operates at the border donates to it enforcement powers that are broader than powers that are exercised within the borders of a country. Therefore, Customs has powers to intercept people, goods and means of transport that may have violated laws that go beyond the provisions of the basic law. This is expressly provided for in the Customs legislation, for example in the EACCMA:

- coordination of the administration of Customs within the Partner States is placed under the EAC Directorate of Customs
- prohibited goods include ‘(1) All goods the importation of which is for the time being prohibited under this Act, or *by any written law for the time being in force in the Partner State*’ [emphasis added]; and ‘(8) Hazardous wastes and their disposal as provided for under the base conventions’¹⁰
- restricted goods include ‘(19) Ozone Depleting Substances under the Montreal Protocol (1987) and the Vienna Convention (1985)’ and ‘(22) Endangered Species of World Flora and Fauna and their products in accordance with CITES March 1973 and amendments thereof’.¹¹

Historically, entry to Customs was not based on any specific educational or professional qualifications.¹² Therefore, with the onset of the revenue authority and its emphasis on a minimum of a first degree for specified posts, many customs officers with many years’ experience found themselves at a disadvantage when it came to getting promoted into the higher ranks. It didn’t help matters that Customs’ procedures (including its multiple legal sources) were little understood within the revenue authorities. Besides, the role of Customs in controlling the entry of various prohibited and restricted goods that could pose a threat to the safety and security of the nation could not be directly correlated to revenue collection.

For the foregoing reasons, Customs in revenue authorities find themselves with a number of challenges, including but not limited to:

- how to carry out the full mandate of Customs (revenue plus other responsibilities) within an organisation whose appellation, vision and mission emphasises its revenue function over other functions
- seeking and obtaining funding for procurement of human resources and technology for its non-fiscal functions
- inducting new officers (and developing serving officers) with the skills, knowledge and attitudes to work in Customs, yet with the flexibility to work in other areas of the revenue authority including the tax departments
- how to operate in a fast-changing regulatory environment (shifting government policies and regional/international legal and regulatory environment)
- measuring its performance in non-fiscal functions while ensuring optimum (not maximum) revenue collection.

D. Conclusions

Regardless of organisational design, customs services are inextricably linked to the state. Therefore, the public sector reform programs that began in the 1980s with emphasis on a new way of managing public affairs have had a greater impact on Customs than on the administration of VAT and Income Tax. Some of the extreme cases that have been witnessed include the temporary outsourcing of customs services to a private company under a management contract (in Angola and Mozambique) to the handing over of the core customs technical functions of valuation, tariff classification and origin determination to PSI companies. Beginning with Ghana Customs in 1986, many Customs Services in Africa have been either given greater autonomy or merged with other revenue departments as semi-autonomous government entities.

In spite of the complexities of customs operations in a revenue authority environment, it is not anticipated that any customs administration in Sub-Saharan Africa will be de-linked soon from a Revenue Authority. In fact, we are likely to see more customs administrations that directly report to Ministries of Finance hitched with tax departments in revenue authorities. If Ethiopia decides to integrate the functions of Customs and tax in a new semi-autonomous revenue entity under the Ministry of Finance, Ghana’s organisational design will be the exception. We have seen that many Francophone countries have

resisted the temptation to go the revenue authority way. However, it was reported recently that there were plans in the pipeline to set up a revenue authority in Burundi.¹³ Burundi may therefore become the first Francophone country in Africa, and it remains to be seen whether other countries will follow. Burundi's membership of the East African Community would motivate it to adopt the same organisational design for revenue, given that all the other EAC members (Kenya, Rwanda, Tanzania and Uganda) have revenue authorities.

The location of Customs in a revenue authority is fraught with both opportunities and risks. Opportunities include the ability to exchange information with the tax department leading to higher rates of offence detection, transfer of such skills as tax auditing and upward mobility by applying for vacant positions in the revenue support departments where the core skills of Customs may be required (for example, Investigations and Intelligence). On the negative side, customs officers may be disadvantaged if they do not make efforts to improve their skills and knowledge in the workings of the revenue authority beyond the specific skills and knowledge required to work in Customs. As well, it is expected that the tension between the emphasis on revenue collection and the requirement for Customs to carry out important non-fiscal functions will continue. How to keep a proper balance will determine the contours of Customs in the 21st century.

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Endnotes

- 1 The 30 countries included Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Comoros, Côte d'Ivoire, Democratic Republic of Congo, Ghana, Guinea, Kenya, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Tanzania, Togo and Uganda.
- 2 The Swazi Revenue Authority Bill establishing the Swazi Revenue Authority was passed by both Houses of Parliament in 2007. See Hlengiwe Ndlovu, 2008, 'Revenue Authority Commissioner General not yet recruited – Majozi', *The Swazi Observer*, <http://www.observer.org.sz/main.php?id=46049§ion=Business>.
- 3 By Crown Agents, 2006.
- 4 In comparison, the Canadian Border Services Agency was created in 2003 as a new agency under the Prime Minister's Office, Ministry of Public Security and Emergency Preparedness, merging the functions previously carried out by Customs (from the former Canada Customs & Revenue Agency), Immigration Canada and the Food Standards & Inspection Agency.
- 5 Section I of the Act reads as follows: 'Each of the following institutions:
Internal Revenue Service
Customs, Excise and Preventive Service
Value Added Tax Service
shall for the carrying out of its functions and for the payment of salaries, allowances, operational and administrative expenses and other expenditure, retain an amount as may be determined by the Minister not exceeding 3 per cent of the total annual revenue it collects'.
- 6 *Revenue Authorities (Governing) Board Act, 1998*, Act 558 of Ghana.
- 7 For example, in August 2008 a number of importers made serious allegations of corruption and extortion against CEPS and Police officers at a public forum organised by the Ministry of Finance and Economic Planning under the Financial Literacy Programme contained in the 2008 Budget Statement. See 'Importers accuse CEPS, cops of bribery', *Daily Graphic*, 2 August 2008, viewed 30 August 2008, <http://news.myjoyonline.com/business/200808/18959.asp>.
- 8 In Ethiopia, the Ministry of Revenue supervises three semi-autonomous agencies: Ethiopian Customs Authority, the Federal Inland Revenue Administration and the National Lottery Administration.
- 9 The example from the East African Community Partner States is for illustrative purposes. Any customs service is expected to enforce laws related to regional trade including preferential trade schemes, international conventions and bilateral/multilateral laws and agreements in addition to the basic domestic law.
- 10 *East African Community Customs Management Act 2004*, Second Schedule, ss. 18, 19, and 20, Part A – Prohibited Goods, (1) and (8), p. 156.
- 11 *East African Community Customs Management Act 2004*, Second Schedule, ss. 18, 19, and 20, Part B – Restricted Goods, (19) and (22), p. 158.
- 12 Thus, in the case of the Nigerian Customs Service, Comptrollers Generals of Customs have included a former veterinary doctor in the Sokoto Public Service, Dr Bello Harilu Mohammed (1988-92) and a military engineer, Major General Song Ango (1992-99). See Musa 2008.
- 13 During the 23 Meeting of the East African Revenue Authorities Commissioners General held in Kigali, Rwanda in December 2007, Burundi's Director General of Customs, Mr Ezechiel Nibigira, said that Burundi loses a lot of revenue because it does not have a national tax body and reported that Burundi would have a revenue authority by July 2008 (Hitimana 2007).

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