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'KRA has the capacity, but it is kept on a tight leash': The politics of tax administration and policy in Kenya

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Abstract

This paper examines the factors that have influenced the performance of the Kenya Revenue Authority (KRA) since its establishment in 1995. It discovers a pronounced role for Kenya's competitive and fragmented political settlement, which generates strong incentives for ruling elites to constrain KRA's autonomy because of its potential as a patronage tool and as a political weapon. For much of KRA's first decade of existence, these dynamics curtailed its ability to function as a 'pocket of effectiveness' (POE). KRA did, however, emerge as a POE (albeit a fragile and progressively weakening one) from around 2003, when a shared set of ideas motivated newly elected President Mwai Kibaki and an inner circle of likeminded 'technopols' to try and insulate the organisation from the more corrosive and short-termist pressures generated by Kenya's political settlement. They did so because of the importance of revenue mobilisation within their broader developmental vision. That said, KRA was a somewhat isolated POE, as Kibaki's administration failed to overcome the much greater political pressures around tax policy to provide the kind of broader enabling environment that would have allowed KRA to tap significant new revenue streams. Thus, even in periods when KRA has functioned as a POE, Kenya's performance with regards to revenue collection has demonstrated only moderate improvements. These findings, the paper concludes, offer insights into the limitations of POEs when the broader policy environment within which they are located remains unconducive.

Keywords: political settlement, pockets of effectiveness, taxation, revenue authority, Africa, Kenya.

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1. Introduction

This paper tracks the performance of the Kenya Revenue Authority (KRA) in carrying out its tax collection mandate since the organisation's establishment in 1995. A survey conducted by the author had identified KRA as a potential example of 'pocket of effectiveness' (POE) within the Kenyan context, as it received the second highest number of nominations, after the Central Bank of Kenya, when respondents were asked to identify examples of high-performing public sector organisations. KRA was therefore selected as one of three case-study organisations that could be explored through primary research as part of ESID's project that is investigating the POE phenomenon in sub-Saharan Africa (SSA).[1]

Following a conceptual approach outlined by Hickey (2019), the paper uses an expanded form of political settlements analysis (PSA). It builds on Khan's (2010) framework, which has been shown to offer promising insights into how different power structures can incentivise ruling elites to develop state capacity and govern through POEs (Whitfield et al. 2015). However, broader insights from critical political theory and discursive institutionalism suggest that rational choice approaches alone can underplay the role of ideational factors in shaping institutional and organisational performance (Schmidt 2008), including the performance of tax authorities specifically (Schmoll 2020; Wenzel 2005). Ideas are therefore added as core factors within the paper's expanded PSA approach. So, too, are transnational factors, which have also tended to be somewhat neglected within some more methodically nationalist PSA frameworks. Critical state theorists argue that the state is a highly transnationalised phenomenon in SSA, particularly within the region's economic technocracies, which can serve as global signalling devices that secure additional flows of resources and legitimacy for ruling elites (Jessop 2008; Hagmann and Peclard 2010). Finally, recognising that a focus on power structures can obscure the role of agency, the paper will also track organisational-level factors that have been flagged by other scholars when researching POEs. These include the role that leadership and management practices play in enhancing organisational culture, autonomy and mission (Grindle 2012; Johnson 2015; Leonard 2010; McDonnell 2017; Roll 2014).

To assess the explanatory power of these factors, the paper moves through a series of stages. Section 2 draws on a variety of statistical indicators to periodise Kenya's overall performance with regards to revenue collection since KRA's creation. The section identifies three broad performance periods, and these are used to structure the paper's empirical sections, wherein

[1] Survey respondents included current and former state officials, journalists, academics, consultants and civil society actors. Respondents were purposively selected because they were deemed to possess an intimate insider knowledge of Kenya's public sector. The sample size may have been small, and the responses given by respondents will undoubtedly have been shaped by the timing of the survey as well as the reputational bias of particular organisations, but the results nonetheless offered useful indicative insights into public sector performance in Kenya. The Central Bank of Kenya and Kenya Revenue Authority received the highest number of nominations when respondents were asked to name organisations that are effective in achieving their mandates. They were therefore selected as obvious case studies to investigate, along with the Kenyan Ministry of Finance (National Treasury), which emerged from the survey as an organisation whose performance had potentially declined in prior years. This made it a potentially interesting counterexample of a pocket of effectiveness that had been undermined. The methodology for conducting the survey is outlined in detail by Hickey (2019), and it was followed for all five of the country cases that are being investigated as part of the research project (Ghana, Kenya, Rwanda, Uganda and Zambia). The project webpage can be accessed using the following address: http://www.effective-states.org/research/pockets-of-effectiveness/

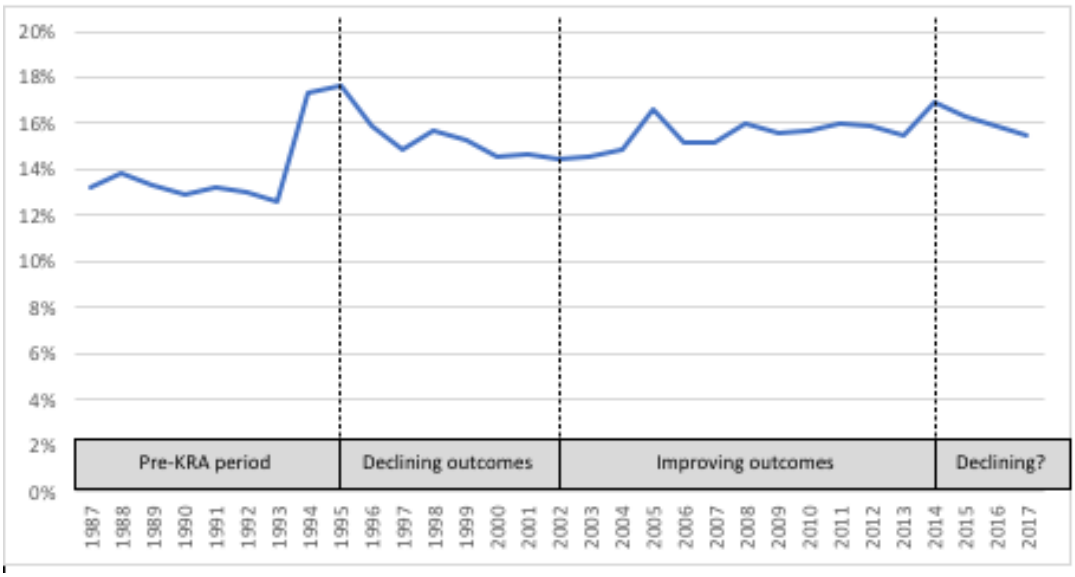
the paper draws on secondary and grey literature, as well as primary interview data generated through a programme of key informant interviews, to explore the underlying drivers of these performance patterns.[2] Each section discusses tax administration and tax policy separately, so as to generate a clearer sense of whether the shifting outcomes were driven by broader tax policy shifts, rather than KRA's administrative efforts per se. A penultimate analysis section then assesses the explanatory power of each of the factors that comprise the conceptual framework, while a conclusion offers the paper's key findings and implications.

2. Periodising Kenya's revenue performance

KRA was established in 1995 through an Act of Parliament and given a mandate of collecting all national taxes.[3] This section will therefore assess a range of indicators that can offer a sense of KRA's performance in meeting this mandate over time. The aim is to identify broad performance periods, the causal drivers of which can then be explored qualitatively within subsequent empirical sections of the paper.

Kenya's tax-to-GDP ratios are presented in Figure 1. What is immediately apparent is that KRA's formation in 1995 actually coincided with a period of declining outcomes, which lasted until 2002. Thereafter, Kenya's tax-to-GDP ratio started improving again. Between 2003 and 2005, this uptick was quite rapid, but from 2006 there was a slower rate of increase until 2014, whereupon there was another spike. However, since then, there are signs that Kenya may be

Figure 1. Tax-to-GDP, 1987-2017



Source: https://www.wider.unu.edu/data.

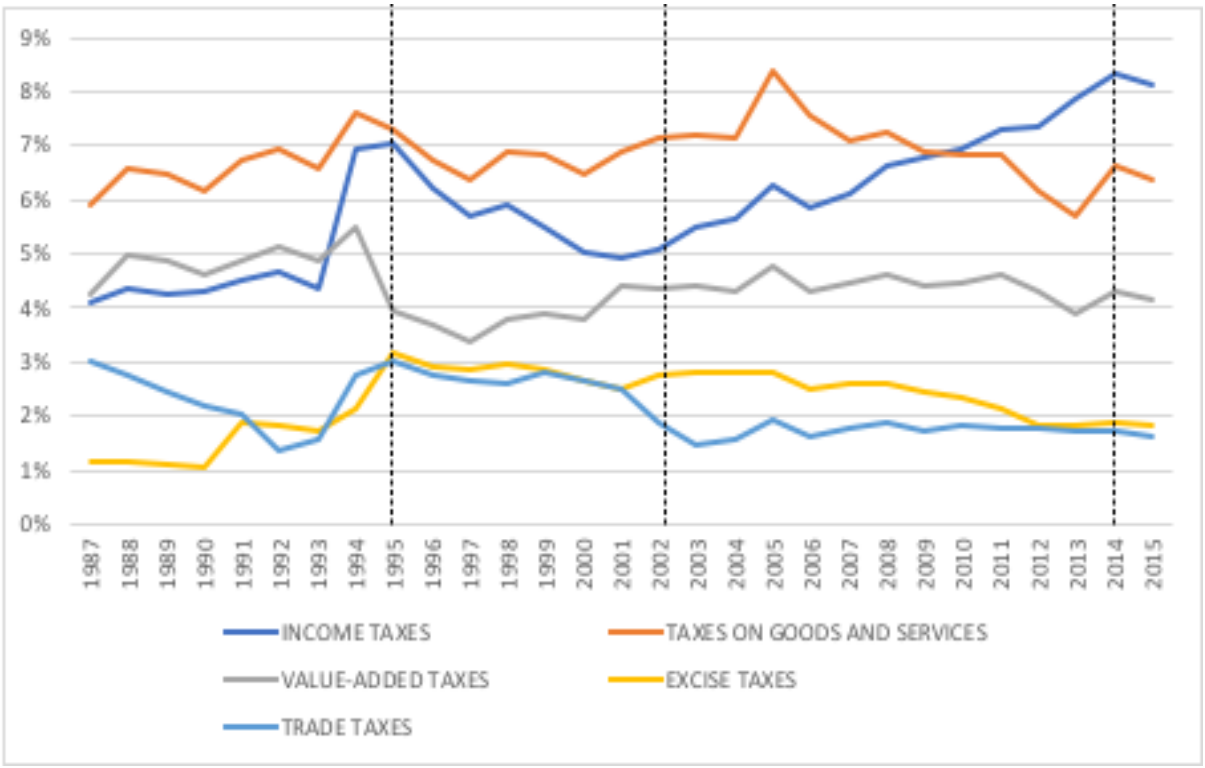
[2] In total, the researcher conducted over 40 interviews with a range of key informants, who either had a knowledge of tax administration and policy in Kenya specifically, or the country's political economy more broadly. These included current and former KRA officials as well as officials of other state organisations that interact with KRA. The researcher also interviewed a variety of other observers, such as journalists, consultants and academics. Informants were selected through a combination of purposive and snowball sampling.

[3] https://www.kra.go.ke/en/about-kra.

entering a third performance period, as the country's tax-to-GDP ratios have declined through the years of 2015, 2016 and 2017. That said, the data points are too few to confirm definitively whether this is indeed a distinct new period of declining outcomes.

Turning to a more disaggregated analysis of Kenya's tax-to-GDP ratios, Figure 2 shows that KRA's formative years between 1995 and 2002 witnessed declines across almost every tax category. Only VAT increased its share of GDP during that period (and, even then, only slightly), just as it was the only tax whose share of GDP declined substantially in the years before KRA's creation. This suggests that there may be something unique about VAT that this paper should track. So, too, income tax, which 'performed exceptionally well' between 2002 and 2013, to the extent that it almost singlehandedly drove Kenya's overall improving tax-to-GDP ratio, and now occupies a disproportionately large share of Kenya's tax structure relative to comparable countries (Wawire 2020: 6; Figures 3-4).[4] Other tax types had also shown signs of improvement between 2002 and 2005, but thereafter they either stagnated or declined. This apparent breakpoint in 2006, then, whereupon it was only income tax that continued with its previously strong upward trajectory, will also need to be explored in subsequent sections of this paper. Finally, since 2014, all of Kenya's key tax categories have declined relative to GDP, corroborating the sense of worsening outcomes during this potential third period (though, again, similar caveats apply regarding a lack of data).

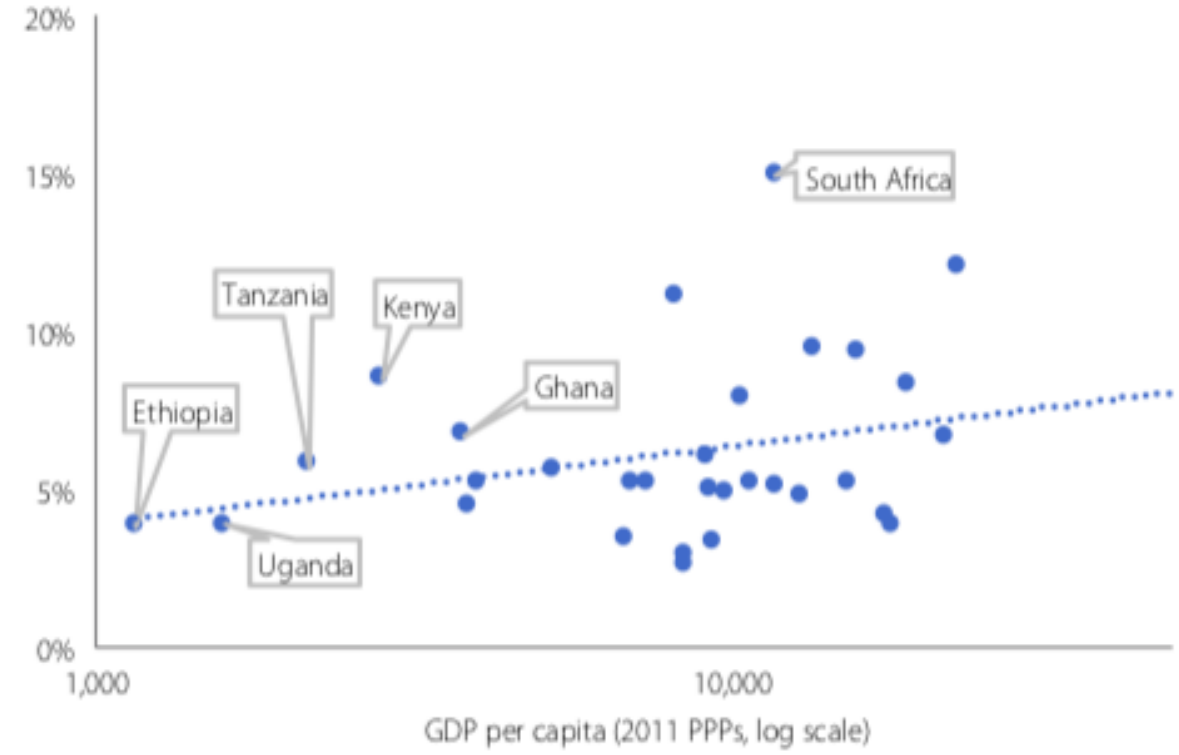
Figure 2. Specific tax-to-GDP ratios, 1987-2016



Source: https://www.wider.unu.edu/data.

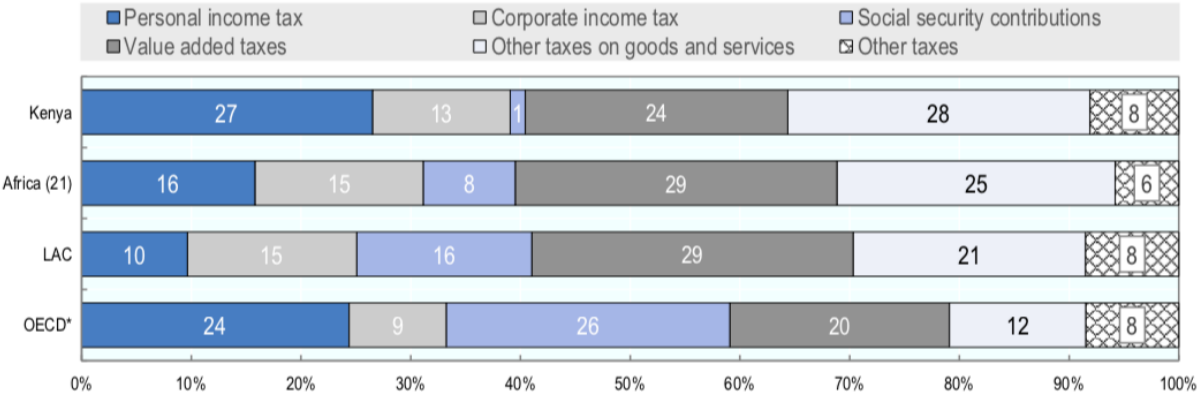
[4] Moore at al. (2018:32) argue that the share of direct taxes (such as income tax) within a country's overall tax structure can serve as something of an 'equity oriented performance measure' for revenue collection, as 'broadly speaking higher dependence on direct taxes indicates a more progressive tax system, in which people with income and assets pay more than the poor and those without property'.

Figure 3. Income-tax-to-GDP: Kenya verses comparable countries, 2017



Source: World Bank (2018).

Figure 4. Tax structure in regional perspective, 2017

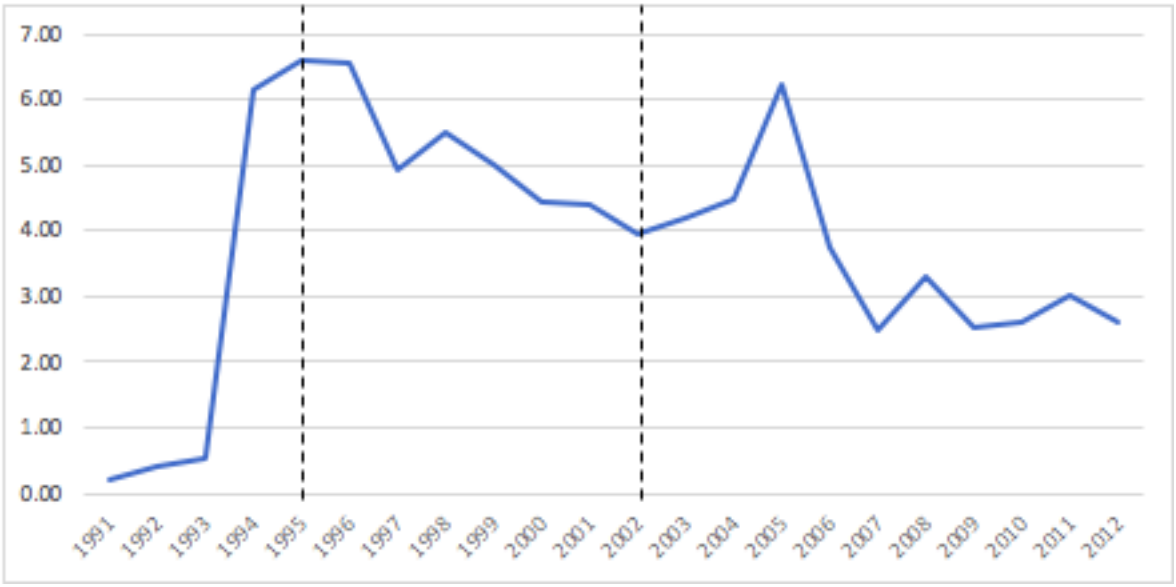


Source: OECD (2019).

While tax-to-GDP ratios offer these useful insights, in isolation they only offer an incomplete picture, as they do not capture a country's potential tax capacity (Waris et al. 2009). Thus, it is also useful to look at scores for 'tax effort', which offer 'a more sophisticated measure of revenue collection', because they account for the structural features of a country's economy and its population (Moore et al. 2018). [5] Kenya's tax effort scores are presented below.

[5] Yohou and Goujon's (2017) 'tax effort' database, which is the one that has been used by this project, takes account of the openness, sophistication and sectoral composition of the national economy, as well as overall levels of health and education amongst the population. Their score for a country's tax

Figure 5. Tax effort, 1991-2012



Source: Yohou and Goujon (2017).

Figure 5 offers a somewhat more sobering picture of performance than the previous figures, as it suggests that Kenya's tax effort scores have actually declined somewhat consistently since 1995.[6] The only exception to this trend was between 2002 and 2005, when tax effort scores reversed course and started increasing again, demonstrating parallels to the trends observed for tax-to-GDP ratios in Figures 1 and 2. Offering further similarities, the year of 2006 again represents an apparent breakpoint, as Kenya's tax effort scores then declined in the two years thereafter, before levelling out somewhat from 2008. Unfortunately, Yohou and Goujon's (ibid) tax effort dataset only stretches until 2012, which means that no scores can be offered for the potential third performance period that began in 2014.

Overall, the data surveyed in this section points to three broad performance periods since KRA's formation. These are: 1995-2002, which was a clear period of poor and declining performance; 2002-2014, when performance indicators improved overall, particularly between 2002 and 2006, to the extent of suggesting that KRA might have then been functioning as a POE; and 2014-present, within which revenue performance appears to be worsening again. Intriguingly, even a cursory knowledge of Kenya's politics suggests that political economy factors may have played a role in these performance patterns, as these periods mirror the administrations of Kenya's recent presidents. The 1995-2002 period, for example, coincides with the final years of Daniel arap Moi's presidency (1978-2002), while the 2002-2014 period matches with Mwai Kibaki's two terms in power (2002-2013). Finally, the third potential period from 2014 closely aligns with Uhuru Kenyatta's presidency (2013-present).

The aim of the following sections, then, is to identify the underlying drivers of these performance periods and the variations observed within them. Each section will analyse tax

effort therefore captures the ratio between actual revenues versus potential revenues that could be expected to be collected, in light of the aforementioned structural factors.

[6] It should, however, be pointed out that Kenya's scores for tax effort are still higher than all of the project's other country cases – namely, Ghana, Rwanda, Uganda and Zambia.

administration and tax policy separately, in order to get a clearer picture of whether outcomes were driven more by policy shifts than by KRA's administrative efforts. First, however, the paper provides an historical account of tax reform in Kenya, from independence in 1963 until KRA's creation in 1995. This account will be situated within a political settlement analysis.

3. Kenyan tax reform in historical and political perspective

During Kenya's first decade of independence, there were almost no attempts to reform a tax system that had been inherited from the British colonial administration. Kenya benefited from favourable commodity prices for key exports like tea and coffee, as well as significant foreign aid inflows (Eissa and Jack 2009; Waris et al. 2009). The 1960s also saw pronounced stability within Kenya's political settlement, as the country's founding President, Jomo Kenyatta, drew on his personal prestige and the state's significant patronage and coercion potential to assemble a relatively inclusive, albeit fragmented, *weak dominant party* (Nyong'o 1989). Together, this provided a foundation on which the economic technocracy could foster high growth rates and investment (O'Brien and Ryan 2001). Kenya therefore experienced few fiscal pressures of the kind that would motivate tax reform.

By the early 1970s, this situation was changing. Oil shocks caused Kenya's first fiscal crisis, which generated pressure for reforms that could mobilise additional revenue (Wawire 2017). At the same time, the EAC was fragmenting, as members sought independent monetary and fiscal policies that could respond to their own developmental priorities. The result was an EAC agreement that members could design their own income tax frameworks, which allowed Kenya to unveil an Income Tax Act in 1973 (Waris 2013). At that time, the lower levels of Kenya's *weak dominant party* were becoming increasingly restless, as rapid population growth and elite capture of land acquisition processes had eroded the country's available land bank (Kanyinga 2016). There was therefore an attempt to include redistributive elements within the Act, such as high corporate taxes, particularly for foreign firms, and stringent rates for wealthy individuals (Karingi and Wanjala 2005). Kenya also introduced the region's first capital gains tax in 1975, as the EAC continued to disintegrate ahead of its final collapse in 1977.

The pace of tax reform accelerated during the 1980s, as domestic and external conditions deteriorated further. Oil shocks and commodity price drops caused serious revenue shortfalls (Waris et al. 2009). This exacerbated an already unstable domestic situation, since it meant that President Daniel arap Moi, who succeeded Kenyatta following his death in 1978, had fewer resources to co-opt his political rivals. Ultimately, this shifted Kenya's political settlement towards *vulnerable authoritarianism*, as an attempted coup in 1982 convinced Moi to adopt an 'increasingly exclusionary form of governance' (Branch et al. 2010:251). Leaders of factions that were implicated in the coup were expunged from the ruling coalition as well as key positions within the state bureaucracy, especially from the economic technocracy (O'Brien and Ryan 2001), Provincial Administration (Hassan 2020) and armed forces (Throup 1987). Moi then undermined the broader holding power of these factions by repressing businesses, or even whole sectors, in which they were predominant, exacerbating Kenya's balance of payments issues and deficits (Kanyinga 1994). The result was an increasing reliance on IMF loans, which also led to growing demands for structural adjustment, a core element of which was reforming the tax system (Waris 2013). In 1986, Kenya launched a Tax Modernisation

Programme that simplified tax bands, reduced trade taxes and unveiled new indirect taxes that were seen as more favourable for export-led growth (Karingi and Wanjala 2005).

Kenya continued to adopt donor-driven tax reforms during the early 1990s, as its political settlement underwent another shift. Moi formally acceded to democratisation pressures in 1992, when he scheduled multiparty elections. However, the actual transition to *competitive clientelism* had begun at least two years earlier, when Moi's inner circle started laying the groundwork for the inevitable elections, by concocting political financing schemes that could fund their campaigning efforts as well as the ethnic militia that they would use to suppress opposition supporters (Kajwanja 2009). Donors responded to this growing corruption and violence by suspending their aid, which prompted Moi to try and bring them back on board with a series of reform gestures, including within the realm of tax policy by introducing VAT. However, even this was 'overwhelmingly driven by politics', as VAT was unveiled with a bewilderingly complex set of rates, the highest being 210 percent, which gave Moi cover to 'accommodate powerful, but narrow, special interests' through tax exemptions, while also being able to 'obscure the impact of these changes from public view' (Prichard 2015).

Following the 1992 elections, Kenya's economy was reeling and there was an urgent need to resume the aid that donors continued to withhold. Within the domain of tax policy, Moi sought to appease donors by reducing VAT to four levels, with a standard rate of 18 percent and a top rate of 30 percent (Karingi and Wanjala 2005). These rationalisations, along with concomitant moves to streamline income and trade taxes, drove an increase in Kenya's tax-to-GDP ratio, from 13 percent in 1992 to 18 percent by 1995 (Figure 1). However, these piecemeal reforms, and others across the economic technocracy, were no longer enough to satisfy donors, who were intent on using this critical juncture to demand deeper institutional reforms. These involved overhauling existing organisations within the economic technocracy, such as the Central Bank of Kenya (CBK) and the Treasury (Tyce 2020a; 2020b). But they also involved the creation of wholly new organisations, including a Semi-Autonomous Revenue Authority (SARA). This, donors insisted, would help to insulate tax administration from political pressures. The deals and bargaining processes that informed the creation of this organisation, in the form of KRA, are the focus of the next section.

4. 1995-2002: 'Unfortunately, politics got in the way' [7]

The spate of SARAs that emerged across SSA, and particularly anglophone Africa, during the late 1980s and early 1990s has led to a general sense within the literature that external actors, with their growing interest in Good Governance and New Public Management, simply imposed these institutional arrangements on African countries (e.g. Caulfield 2006; Fjeldstad and Moore 2009; Moore et al. 2018; Waris 2018). Such accounts also pervade the Kenya literature (e.g. Cheeseman and Griffiths 2005; O'Brien and Ryan 2001; Prichard 2015; Waris 2013). According to such accounts, Kenya had little option but to agree to a SARA, as part of a broader package of reforms, because the government wanted to unfreeze donor aid and the foreign investment that would come with renewed IMF guarantees.

[7] Interview, former KRA commissioner general, Nairobi, 20 March 2019.

Yet, while external pressures were certainly important, these accounts can underplay the role and agency of domestic actors. In particular, they neglect the influence of Micah Cheserem, the governor of CBK. After his appointment in 1993, as Moi sought to restore Kenya's economic credibility in the eyes of investors and donors, Cheserem dispatched a team of officials to various countries – including high-income ones like New Zealand and Singapore, but also African peers, like Ghana, Uganda and Zambia – to conduct benchmarking studies on how their economic technocracies were structured (KRA 2010). Importantly, despite only having a mandate for monetary policy, Cheserem extended his team's brief to fiscal affairs as well, so they visited a number of revenue authorities. The team returned with positive accounts of how Uganda's SARA, in particular, had overseen an impressive uptick in revenues that had given its central bank more space to conduct monetary policy.[8] This appealed to Cheserem, who used his ability to 'read the mood of politics' as well as his 'access to State House', whereby he was the brother-in-law of Moi's closest advisor, to make a convincing case for hiving off the Tax Office from the Treasury and making it a SARA.[9] Such a move, he insisted, would give Kenya 'wiggle room with donors' by making the budget less reliant on their funds.[10]

Another important domestic actor, and one who became a key reformist ally of Cheserem's, was Musalia Mudavadi, the minister for finance, who was also appointed in 1993. Mudavadi was a young, intelligent and reform-minded politician who turned around his own ministry's performance (O'Brien and Ryan 2001). Just as critically, he was the scion of an influential political dynasty, which helped him to overcome resistance, within parliament and Moi's cabinet, to KRA's creation.[11] To assuage widespread fears about the organisation having too much autonomy – whereby even cabinet members, according to a then minister, feared that it could be used as 'a political weapon' – it was agreed that KRA would have a strong board with centralised powers and an overwhelmingly ministerial composition.[12] Mudavadi also proposed that the first commissioner general (CG) would be appointed from within the Treasury's Tax Office, to signal 'continuity' and a path of incremental reform.[13] This resulted in the appointment of Edgar Manesseh, the longstanding commissioner for income tax. As another token of goodwill, the Treasury reputedly dispersed a round of tax exemptions to elites, reassuring them that they would remain out of KRA's purview.[14] This, then, could offer some explanation for the decline observed in VAT contributions between 1994 and 1995 in Section 2, as elites scrambled to secure exemptions ahead of KRA's creation.

4.1. Tax administration

While these deals helped to overcome resistance to KRA's creation, unsurprisingly they stymied its subsequent performance. The powerful board, according to a CG who served during this period, 'intervened a lot'.[15] This, combined with the decision to restrict the autonomy of KRA's senior managers, by offering them no legal security of tenure, meant that

[8] Interview, former CBK official, Nairobi, 3 April 2019.
[9] Ibid.
[10] Ibid.
[11] Interview, former Treasury official, Nairobi, 29 April 2019.
[12] Interview, former Minister, Nairobi, 28 April 2019.
[13] Ibid.
[14] Interview, journalist, Nairobi, 5 May 2019.
[15] Interview, former KRA commissioner general, Nairobi, 20 March /2019.

the organisation cycled through four CGs between 1995 and 2002, with none lasting more than three years. Aside from protecting particular firms from scrutiny, board members tried to influence organisational appointments at all levels, as the relatively high pay associated with KRA posts meant that 'there was a lot of lobbying, a lot of people pushing their own candidates, whenever positions were advertised'.[16] This influx of poorly qualified individuals exacerbated the staffing issues that KRA was already experiencing, given that its staff had been inherited wholesale from the Treasury's Tax Office and Transport Ministry without any selective recruitment process. For KRA's first few years, these officials were technically working as secondees, rather than as official employees, and even thereafter any cases of indiscipline, including dismissal, had to be sent to parent ministries for approval. This system, in KRA's (2010: 20) own words, created 'a cadre of staff that were answerable to two masters, leading to cases of indiscipline and corruption' and a poor organisational culture, given that 'there was an obvious lack of loyalty and commitment to KRA'.

These internal challenges, and particularly the turnover in KRA's leadership, undermined its coherency and organisational capacities. KRA (ibid: 22) itself describes this as a period in which 'minimal reforms' were undertaken. Indeed, it was only in 1999 that KRA released its first corporate plan and moved into a central office, bringing together the customs, income and VAT departments that had remained in separate locations. However, there were still few attempts, owing to a lack of leadership and coherency from KRA's management, to unify work processes, meaning that taxpayers continued to be audited by all three. Not only did this increase KRA's administrative costs, but it increased the incentives for taxpayers to avoid complying (Karingi and Wanjala 2005). Indeed, the IMF (2003) estimated that, in 2000-01, compliance rates for VAT and income tax were just 55 percent and 30 percent, respectively.

The few administrative reforms that were implemented were often pushed by donors, whose contributions to KRA's budget, particularly its capital expenditure, made them highly influential. Donors forced through a staff retrenchment programme in 1999 that had been proposed for years but had never taken off because the Treasury had been reluctant to fund it. However, desperate to renew IMF and World Bank lending – which was cut off again in 1997, due to escalating corruption related to that year's election – the Treasury financed the retrenchment of around 20 percent of KRA's workforce (KRA 2010). KRA also established a Large Taxpayers Office (LTO) in response to donor advocacy. This at least streamlined collection processes for larger taxpayers, boosting compliance rates within upper brackets.

4.2. Tax policy

The disappointing revenue outcomes of these years did not stem from KRA's administrative deficiencies alone, however. For the IMF (2003: 7), the 'largest contributor to the decline in revenue was the policy-induced shrinkage of receipts from income taxes and excise duties' because of 'tax exemptions'. As the previous section revealed, KRA's creation was preceded by widespread distribution of exemptions to elites. This type of deal-making then continued after KRA's establishment, as the award of exemptions, and the threat of their removal, became a useful tool for encouraging loyalty within the political swirl of Kenya's *competitive clientelism*. This was particularly the case during the build-up to elections, a trend identified

[16] Ibid.

by the IMF (ibid: 8) when it observed that 'in the 2001-2002 period [which culminated in an election] at least 86 different exemptions or remittances were made to the tax code'. This, the IMF continued, had given the 'impression that the government can easily be persuaded by pressure groups to grant exemptions' (ibid). The ADB (2010: 7) put it even more bluntly, lamenting that 'the ruling elite conspired to rake billions of shillings of public resources through tax exemptions' for 'the well-connected' during this period.

One should stress, however, that cronyism was not the only motivation for distributing tax exemptions. This is because Kenya, competing with other developing countries, also offered exemptions to foreign firms to secure their investment, in line with prevailing neoliberal orthodoxy (Moore 2014). This was often done through the use of Export Processing Zones (EPZs), within which firms received a standard package of terms, including tax holidays and VAT and duty exemptions. Kenya's experiments with EPZs began in 1991, and for a variety of reasons – including the fact that Moi wanted to generate vote-winning employment, and that powerful domestic capitalists demanded a moderately coherent programme – they did result in a relatively successful programme within an African context, at least in terms of the employment objective (Tyce 2019). That said, scholars have suggested that the EPZ fiscal incentives may not have played a significant part in this 'success', and perhaps unnecessarily deprived the state of revenues, because foreign firms tend to value other investment factors, such as infrastructure and the business environment, more highly (ADB 2010; Waris et al. 2009; Wawire 2020). Therefore, foreign firms might have invested in Kenya anyway.

At a broader level, revenue collection also underperformed because tax policies were wholly inconsistent, subject to reversal and poorly linked to KRA's administrative realities or a long-term fiscal strategy. Much of this inconsistency stemmed from the fact that the Treasury, like KRA, experienced constant turnover in its leadership: between 1988 and 2002, it had six ministers and eleven permanent secretaries, as Moi responded to the vagaries of *competitive clientelism* by accelerating the strategic shuffling of factions across the state bureaucracy to ensure his own supremacy (Kelsall et al. 2010; Hassan 2020). Not only did each leadership team have different priorities and constituencies to favour, but the constant reshuffling meant KRA officials struggled to build collaborative relations with their Treasury counterparts. The Treasury also lacked the coherency and resources to create a dedicated tax unit. Instead, tax policy sat within the broad directorate for Budget, Fiscal and Economic Affairs.[17] KRA's policy unit, meanwhile, was one in name only, as donor demands for a best-practice separation of roles meant that its mandate was confined largely to interpreting the Treasury's policies, rather than actually having a hand in devising them (Waris 2018).[18]

This instability in the Treasury and KRA's leadership, and the general 'political fluidity' that accompanied Kenya's transition to *competitive clientelism* (Southall 1999: 93), meant that many of the tax policies which were introduced were, like the administrative reforms outlined previously, pushed more by external actors. Notable initiatives included another overhaul of Kenya's VAT regime, by reducing the number of tax bands and expanding the number of goods that it covered, and a simplification of corporate income taxes (Karingi and Wanjala

[17] Interview, former Treasury official, Nairobi, 29 April 2019.
[18] Interview, former KRA commissioner, Nairobi, 9 May 2019.

2005). Donors also pushed Moi's government to follow through with its trade liberalisation commitments, though these policies were particularly vulnerable to delays and reversals, especially within politically influential agricultural sub-sectors, like cereals and sugar, or whenever another election was approaching (Poulton and Kanyinga 2014).

4.3. Overall performance

Certainly, some of the explanation for the disappointing revenue performance of this period can be attributed to KRA's administrative deficiencies. Lacking any stability in its leadership, or any autonomy from outside interests, the organisation had no real coherency or strategic vision, and it suffered from a 'loss of competence, institutional memory and morale' at all levels (Prichard 2015). The few reforms that KRA did oversee were those pushed largely by donors, who were influential during these years (albeit not sufficiently so that they could prevent the government from continuing its stop-start approach to structural adjustment and trade liberalisation). Yet, the poor outcomes were not KRA's responsibility alone. This is because there was also a broader failing in tax policy, which was unpredictable and hobbled by the widespread issuance of exemptions, for political and investment purposes, 'without consideration of their effect on tax revenue performance' (Wawire 2020:12).

Another factor that should be mentioned here – and one that was also, to a large extent, 'external' of KRA's efforts – was 'the culture of corruption that became pervasive' in Kenya during this period (ADB 2010: 6). This, in turn, was strongly linked to Kenya's transition to *competitive clientelism*, which generated significant pressures around the need to raise political financing that could fund election expenditures (Mwangi 2008; Maina 2019). As Branch et al. (2010: 15) argue, corruption became 'rampant… at all levels of the state' and 'infected almost all areas of the economy'. This 'chipped into whatever there was of tax morale', undermining compliance rates and thus KRA's ability to boost revenue collection (ADB 2010: 6; Waris 2013). Indeed, tax avoidance was even an 'opposition strategy' within this era of political liberalisation, as excluded elites sought to 'actively undermine the fiscal position of the government', by encouraging Kenyans to withhold their taxes (Prichard 2015).

5. An isolated POE, 2002-2013

Section 2 identified an improved period of revenue performance between 2002 and 2013, albeit while observing significant variations in outcomes within the period. Kenya's tax-to-GDP and tax effort metrics both improved strongly between 2002 and 2005, but then dropped off thereafter. Kenya's tax-to-GDP ratio continued to increase – just at a slower pace, driven almost entirely by income tax contributions (Wawire 2020). Kenya's tax effort scores, by contrast, declined between 2006 and 2008, then flatlined for the rest of the period. Section 2 noted that this period overlapped with the presidency of Mwai Kibaki.

Informants often explained these outcomes with reference to ideas – and, as the period went on, the frustration of them. They emphasised the commitment that Kibaki and an inner circle of likeminded politicians and technocrats – or those who transcended these categories as 'technopols' (cf. Joignant 2011) – had to a shared developmental vision, albeit one that they often lacked the requisite enforcement powers to implement because of the competitive and fragmented nature of Kenya's political settlement. This vision had revenue collection at its

core (Government of Kenya 2003). For Kibaki and his technopols – many of whom, like Kibaki, were trained economists – revenue mobilisation would not only restore Kenya's sovereignty by freeing it from the humiliating donor conditionalities of the Moi years, but also create fiscal space for an extensive infrastructure development programme and increased spending on education and health (Chege 2008; Prichard 2015). It was also hoped, according to an informant who was one of Kibaki's trusted technopols, that increased revenue collection would enable more credit to flow to the private sector, given that the government would have to borrow less from the domestic banks.[19] This desire to avoid crowding out private sector lending, and to promote financial inclusion, was another core policy objective of Kibaki's inner circle (Dafe 2019; Tyce 2020c). Concerted efforts were therefore made to reform tax administration and policy, albeit with varying degrees of success, as the next sections reveal.

5.1. Tax administration

KRA emerged as a more autonomous organisation during Kibaki's presidency. Partly, this was because of Kibaki's leadership style, as his combination of experiences as a trained economist, educated at LSE in London, and as Kenya's longest-serving finance minister (1969-1982) meant that Kibaki was 'an institutional person' who 'did not allow people to interfere … with key economic institutions'.[20] However, at an organisational level, it was also because KRA's new CG, Michael Waweru, appointed in 2003, was a vivid example of Kibaki's preference for appointing 'technopols'. According to a former KRA commissioner, Waweru 'was a transformation leader. He was so focused. He had dreams for that organisation and you just had to fit in, or you would quickly find that there was no space for you'.[21] At the same time, however, Waweru was also 'not someone that you could bully. He was a friend of the president, he had a direct line to State House, he was wired into the political networks around the president'.[22] This meant that 'even the board knew they had to keep their hands off and let him do his work'.[23] Notably, this relational embeddedness allowed Waweru to become the first CG to serve more than one term – indeed, three full terms, as he received special dispensation from Kibaki to circumvent a rule on CGs being confined to two.

KRA had sufficient autonomy and stability in its leadership to undertake 'deep reforms'.[24] Critically, it also had the funding, as Waweru utilised his relational links with Kibaki and Finance Minister David Mwiraria, another Kibaki technopol (Tyce 2020b), to secure 'bigger budgetary allocations'.[25] According to its founding Act, KRA was supposed to receive 1.5 percent of the Treasury's annual revenue estimates.[26] However, during Moi's time, the Treasury reputedly never remitted this. During Kibaki's tenure, by contrast, Waweru secured funding that was 'much closer' to the 1.5 percent or, in some years, the full amount.[27]

[19] Interview, former CBK official, Nairobi, 27 March 2019.
[20] Interview, economic analyst, Nairobi, 6 March 2019.
[21] Interview, former KRA commissioner, Nairobi, 9 May 2019.
[22] Interview, former KRA board member, Nairobi, 10 April 2019.
[23] Ibid.
[24] Interview, tax specialist, Nairobi, 12 April 2019.
[25] Interview, former KRA commissioner, Nairobi, 9 May 2019.
[26] See: http://www.kenyalaw.org/lex/actview.xql?actid=No.%202%20of%201995.
[27] Interview, former KRA commissioner, Nairobi, 9 May 2019.

Waweru's reforms started internally, as he developed a more unified corporate identity and committed workforce. KRA's support functions, which had remained with the Treasury, were brought in-house as Waweru harmonised KRA's salaries and work processes (KRA 2010). Additionally, Waweru convinced the Treasury to finance an organisation-wide wage increment in 2004, so that salaries were comparable with commercial banks and other government organisations with special pay structures, such as CBK. Waweru also introduced performance management tools and organisational-wide bonuses, like the 'thirteenth month bonus', which gave all employees an extra month's salary if KRA met its annual revenue targets (Kariuki 2012).[28] According to insiders, the bonus was unlocked at least twice during Waweru's tenure, suggesting that the Treasury bought into the scheme, by setting realistic targets that motivated KRA's performance. Finally, to bring staff abilities into line with their newfound motivation, Waweru also ploughed resources into the Kenya Revenue Authority Training Institute (KRATI), which offered various new courses, including refresher courses for staff, a graduate training programme and e-learning platforms to enhance knowledge diffusion across regional offices (KRA 2010).

Along with his efforts to unify KRA internally, Waweru also projected a more coherent external identity. KRA changed its logo and colours and adopted new taglines that emphasised the linkages between paying taxes and Kenya regaining its sovereignty from donors. This was clearly reflected in the slogan of 'Kulipa Ushuru Ni Kujitegemea' ['paying tax is earning independence'] (Waris 2019: 153). For Prichard (2015: 135), these messages achieved real 'public resonance'. KRA's newly established marketing and communications department, which was backed with a 'significant budget' and officials 'recruited to high levels', spearheaded these efforts.[29] To increase taxpayer education and compliance, the department devised television and radio awareness campaigns, sponsored festivals, held sensitisation seminars and worked with the Education Ministry to develop school outreach programmes.[30] Another successful innovation was taxpayers' day, which saw exemplary taxpayers across different categories receive awards. Demonstrating Kibaki's personal commitment to revenue collection, KRA (2010:111) noted that 'the President regularly graced taxpayers' day' to award some of the prizes. To emphasise its break from its past, KRA also offered a tax amnesty to coincide with its first taxpayers' day, in 2004, which waived interest and penalties on all arrears and yielded an estimated KShs4.8 billion (Eissa and Jack 2009). This helps to explain part of the spike in revenues that occurred in 2005.

Having achieved a greater sense of internal and external coherency, Waweru moved onto 'win-win' reforms that enhanced customer experience, while simultaneously reducing KRA's administrative costs.[31] These included a progressive automation of KRA's systems, as part of a broader ICT-driven modernisation strategy. In 2005, KRA introduced electronic tax registers for VAT as well as an IT system, called Simba, that digitised 90 percent of customs processes (KRA 2010). These initiatives provoked resistance from powerful lobbies, including importers, customs clearing agents and even MPs who had interests in these activities, explaining some

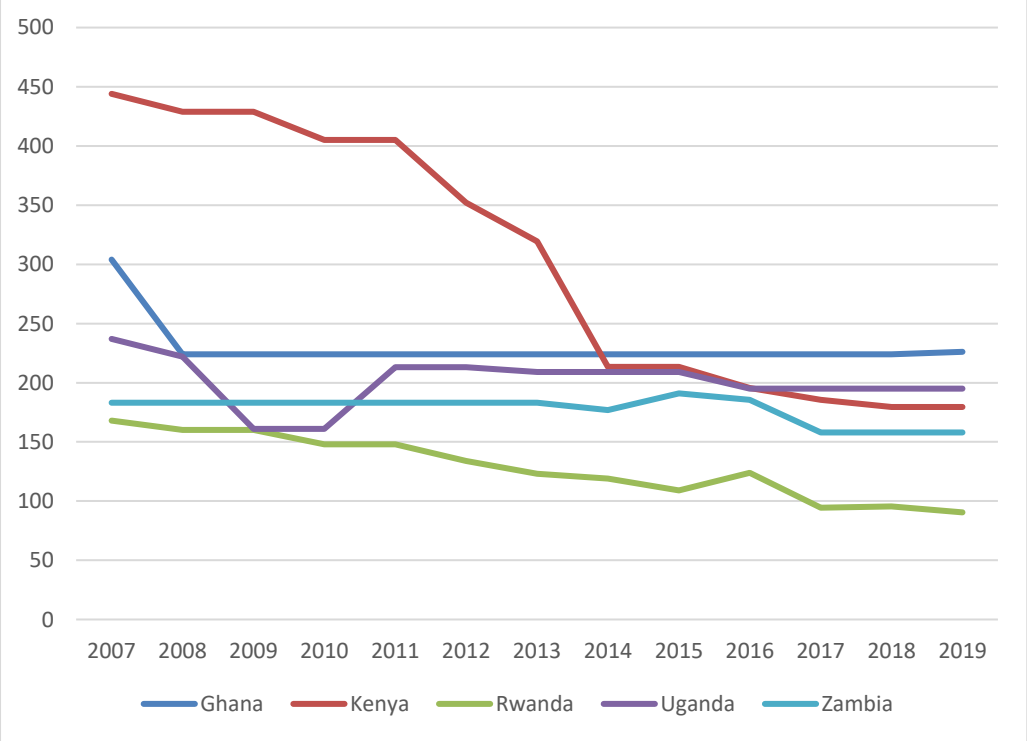
[28] Interview, KRA official, Nairobi, 3 May 2019; interview, former KRA commissioner, Nairobi, 9 May 2019.
[29] Interview, KRA commissioner, Nairobi, 17 April 2019.
[30] Ibid.
[31] Interview, former KRA commissioner, Nairobi, 9 May 2019.

of the 'teething problems' that KRA experienced during implementation (ADB 2010: 34). However, KRA ultimately had sufficient political backing to force the initiatives through. Thereafter, they contributed to increased contributions from VAT and trade taxes (ibid; Eissa and Jack 2009). These initiatives also laid the groundwork for the eventual implementation of I-Tax in 2013, a web-based application that allows taxpayers to pay taxes online and which has boosted revenue by improving the efficiency of collections while simultaneously reducing perceptions of corruption (Ndung'u 2017; Wawire 2020).

A sense of KRA's success in improving the efficiency of tax collections throughout this period can be seen in the significant reductions in the amount of time that Kenyan firms reported dealing with their taxes (Figure 6). Kenya converged rapidly on the project's other country case studies with regards to this metric, which serves as a key performance measure of a country's tax compliance burden (Moore et al. 2018). That said, Figure 6 also shows that Kenya had begun this period as something of an outlier, which offers further insights into just how poor KRA's administrative performance had been previously.

Another key administrative change was Waweru's decision, in 2004, to create a single domestic taxes department (DTD) that unified income tax, VAT and domestic excise. This created a one-stop shop for taxpayers by offering a single point of contact, while it also generated efficiencies for KRA by standardising work processes and placing them under a single accounting framework (KRA 2010). Within this department, whole new teams were created, including an OECD-supported transfer pricing unit (TPU) that became the

Figure 6. Hours spent preparing and paying taxes



Source: https://data.worldbank.org/indicator/IC.TAX.DURS

department's 'best performer'[32] and a 'centre of excellence'.[33] For analysts, the creation of a TPU offers important insights into the relatively farsighted horizons that KRA operated to during Waweru's tenure.[34] This is because investments in these kinds of capacities take a long time to pay off, given the extensive training that staff require, as well as the fact that audits often take years to complete (Hujo and Bangura 2020; Waris 2017). Indeed, these challenges help to explain why there are only two other TPU units in SSA – in South Africa and Uganda (Oxfam 2017; Waris 2019). The most prominent of these is South Africa, but informants stressed that Kenya's approach to building a TPU was 'quite different' from South Africa's, as the latter 'just paid big money to bring people in from outside', whereas Waweru insisted that 'we had to build our own capacities'.[35] KRA therefore 'brought its own people up from scratch' in a more 'organic' process.[36] Critically, however, these efforts also eventually yielded results, as revealed by John Njiraini – Waweru's successor as CG, after the latter had completed his third term – who announced that KRA had, by 2014, 'carried out over 50 transfer pricing audits with a total yield in excess of KSh25 billion' (Andae 2014).

5.2. Tax policy

Based on the preceding account, one might assume that revenue performance should have been more impressive during this period than it actually was. KRA functioned as a POE largely throughout, as it improved the efficiency of collections and finished the period as an 'acknowledged leader' within the African context in transfer pricing and digitalisation issues in particular (Moore and Prichard 2017:11; Ndung'u 2017; Wanjiru et al. 2019). Yet, aside from income tax receipts – which exhibited strong and consistent improvements throughout, thanks in large part to KRA's administrative efforts – most other major tax tickets actually stagnated or even declined during this period, especially after 2005 (Figure 2).

To understand why revenue outcomes were not more impressive, one needs to examine the role of tax policy – or, perhaps more accurately, the failings thereof. Between 2002 and 2005, when Section 2 observed strong outcomes in Kenya's tax-to-GDP and tax effort metrics, tax administration and policy seemed to be pulling in similar directions. KRA and the Treasury, cooperating closely, saw Income Tax and VAT as 'low hanging fruits' and devoted the bulk of their early efforts there. [37] Tax bands were adjusted after years of remaining constant, while VAT was introduced on new products and services (ADB 2010). Efforts then moved on to widening the tax base, particularly by tapping the informal sector. Initiatives included unveiling advance taxes on the lucrative – but also politically networked (Rasmussen 2012; McCormick et al. 2015) – public passenger vehicle [matatu] sector as well as the introduction of a turnover tax for small businesses (ADB 2010). Additionally, to buttress KRA's capacity building efforts around transfer pricing, formal legislation was introduced that specified a wide range of transactions that could be investigated (Waris 2017). Again, this made Kenya something of a unique case within the African context, given that transfer pricing guidelines are 'generally regarded as soft law' and tend to be 'merely persuasive instruments, at best' (Ezenagu 2019).

[32] Interview, KRA official, Nairobi, 3 May 2019.
[33] Interview, KRA official, Nairobi, 9 May 2019.
[34] Interview, tax specialist, Nairobi, 12 April 2019.
[35] Interview, KRA official, Nairobi, 3 May 2019.
[36] Ibid.
[37] Interview, tax specialist, Nairobi, 5 March 2019.

Importantly, Kibaki's technopols also sought to achieve some kind of balance between growth and equity concerns in the adminstration's tax policies, leading the ADB (2010:27) to hail them as broadly 'progressive'. VAT changes were accompanied by increases in the qualifying thresholds. With respect to personal income tax, low-income earners were either exempt under the new rules or subject to lower rates. They also received 'welcome incentives' like tax-free staff canteen meals (ibid). Another progressive element of tax policy during this period was that the bulk of Kenya's tax collections were channelled into enhancing service delivery. This is recognised by the World Bank (2019:4), which argues that public spending under Kibaki had 'a good impact – even better than its peers – as evidenced by the improved quality of infrastructure, and improved outcomes on education and health.' Scholars have also arrived at similar conclusions (e.g. Putunoi and Mutuku 2013; Prichard 2015; Wekesa et al. 2016). Indeed, there is even a sense that Kenya's improved education outcomes, in particular, may make the post-2006 decline in its tax effort scores appear somewhat more pronounced than they may have been. This is because Kenya's much-improved enrolment and literacy rates, which are key indicators that Yohou and Goujon (2017) use to calculate tax effort, were closely linked to increased education spending during Kibaki's presidency (Wawire 2020).

That said, the fall in Kenya's performance metrics from 2006 can indeed also be ascribed to a decline in the efficacy of tax policy, as shifting dynamics within Kibaki's ruling coalition meant that the early pace of legislative reform was not sustained. In 2005, Kibaki's initially-inclusive NARC coalition fell apart, as a faction led by Raila Odinga returned to the opposition to protest Kibaki's backtracking on constitutional reform (Murunga and Nasong'o 2006). To stave off a vote of no confidence in his government, Kibaki 'prorogued parliament indefinitely', preventing the passage of any more legislation (Opalo 2019:186). Kibaki's inner-circle then scrambled to source political financing that could stabilise the remnants of their coalition and bring in other factions to offset the loss of Odinga's (Mwangi 2008). [38] Eventually, Kibaki turned to former KANU stalwarts who had remained loyal to former President Moi, even bringing some into his cabinet. However, their support did not come cheap, as Moi's lieutenants in parliament, notably Nicholas Biwott, reputedly leveraged their influence to secure tax exemptions and favourable policies for their businesses as well as whole sectors from which they derived support. [39] These included maize, which the Treasury made zero-rated for VAT in 2006, as well as tobacco, for which a proposal to increase taxation on cigarettes was dropped in 2007 (Patel 2007). [40] That said, there were clearly also broader political calculations in making maize, a staple food-crop, cheaper just before elections in 2007 that were being billed as too-close-to-call (Poulton and Kanyinga 2014).

After those disputed elections, and the violence that followed them, contestations around tax policies and exemptions became even more acute. Kibaki returned as president at the head of a fragmented and bloated unity government (Booth et al. 2014). With a vastly expanded network of regime insiders, there was even more pressure to dispense tax exemptions and concessions, contributing to what the World Bank (2014) claimed was a situation where Kenya was spending 2.62 percent of its GDP on tax exemptions by 2013. So, too, did the fluid political

[38] See also: https://wikileaks.org/plusd/cables/05NAIROBI4384_a.html
[39] Interview, journalist, Nairobi, 22 April 2019.
[40] See also: https://wikileaks.org/wiki/The_looting_of_Kenya_under_President_Moi.

allegiances and constitutional negotiations of these years lead to the emergence of an increasingly assertive legislature that regularly rejected the Executive's policy initiatives, especially so-called money bills that related to spending and taxation (Opalo 2014).[41] This began as soon as Kibaki commenced his second term, as the Treasury tabled a Finance Bill that sought to remove certain tax exemptions from politicians. Reputedly inserted on Kibaki's personal orders, the proposal was billed as one that would reduce inequality and support a process of national reconciliation. However, parliamentarians shot it down and passed a vote of no confidence in the Finance Minister. This set the tone for the remainder of Kibaki's Presidency, as politicians rejected other proposals to remove exemptions, to increase taxes within politically-influential sectors like tobacco, or to reintroduce a capital gains tax that the Treasury had claimed would 'allow wealthier members of our society to make a token contribution towards our national development agenda' (quoted in Oxfam 2017:25). These dynamics ensured that few notable tax policies were passed during Kibaki's second term. This caused frustration amongst donors, who demanded a new VAT Act in particular (IMF 2013). However, confidantes claimed that it also frustrated Kibaki himself, as he saw a developmental vision that hinged on revenue mobilisation stymied after a promising start. [42]

5.3. Overall performance

This period offers important insights into the limitations of building POEs when the broader policy environment within which they operate remains unconducive. Section 5.1 found that Kibaki's administration offered greater protection and resources to KRA, allowing its long-standing CG to undertake reforms that improved organisational culture and administrative processes. During the first few years of Kibaki's presidency, when tax policy was broadly supportive of KRA's activities, this resulted in strong revenue outcomes. However, after 2005, shifting internal dynamics within Kibaki's ruling coalition, combined with an intense period of intra-factional contestation and realignments in the balance of power between the executive and legislature, resulted in what the ADB (2010: ix) has somewhat diplomatically described as a 'less than ideal policy, legal and institutional environment'. Within this context, KRA's hands were to some extent 'tied', as the Treasury – which found itself in the middle of these internal factional power-struggles (Tyce 2020b) – struggled to introduce new tax policies that could open up additional sources of revenue, or to close existing loopholes through which potential revenues were disappearing.[43] In particular, the IMF (2013) lamented the delays, reversals and 'election climate pressures' that prevented a new VAT Act from being introduced, the absence of which caused serious 'revenue shortfalls'.

Beyond tax administration or policy, however, explanation for the less impressive outcomes from 2006 can also be found in (re)escalating corruption. By 2006, the scale of Kenya's Anglo-Leasing scandal, which was orchestrated by members of Kibaki's inner circle to generate political financing for the 2007 elections, became fully apparent, tarnishing Kibaki's claims that his administration would eliminate Moi-era graft (Wrong 2009; Maina 2019). This 'served to reverse the fiscal contract' that 'appeared to have been built in 2002', when Kibaki's NARC coalition came to power (ADB 2010: 8). The unravelling of trust then accelerated during

[41] Interview, Treasury official, Nairobi, 22 November 2016.
[42] Interview, former advisor to President Kibaki, Nairobi, 5 March 2019.
[43] Interview, economic analyst, Nairobi, 2 April 2019.

Kibaki's second term, as the formation of a unity government 'meant that so many MPs benefitted from being in government – and hence were unwilling to speak out against their colleagues – that there was never a serious attempt to cut down on the misuse of public funds', while there was also no real opposition to provide scrutiny (Cheeseman and Murray 2017: 217). Instead, there was 'almost a form of gentleman's agreement' amongst politicians to 'turn a blind eye' to each other's accumulation strategies (ibid). In turn, this undermined KRA's ability to undertake its revenue collection mandate, as Kenyans lost faith in the government's ability to use their taxes productively (Ogembo 2020; Waris 2013).

6. 'Between a rock and a hard place': 2013-present

Section 2 identified 2013 as a year in which Kenya may have entered a third performance period. This is because, following a brief spike in Kenya's tax-to-GDP ratio in 2014 – which could have been a lagged effect from the previous period – the metric has fallen consistently through the years of 2015, 2016 and 2017. Section 2 concluded that there was not enough statistical data to confirm definitively whether this is a new and distinct performance period. However, the fact that the period overlapped with the entry of a new ruling coalition led by President Kenyatta (2013-present) caused it to be identified, at least tentatively, as one.

Certainly, most informants believed that Kenya has entered a new period in the conduct of tax administration and policy. Primarily, they felt that this was because neither President Kenyatta, nor his Deputy, William Ruto, have possessed any kind of serious commitment to enhancing revenue collection, especially when borrowing – particularly from China and international capital markets – has offered a faster and politically less demanding way of financing the deficit as well as lucrative opportunities for siphoning off funds (Maina 2019; Ndii forthcoming; Wawire 2020). As a result, KRA has received less support than it did under Kibaki. Far from attempting to lift the organisation above the political fray, Kenyatta has exposed KRA to the most virulent aspects of Kenya's political settlement, as well as the internal factional power struggles that have wracked his Jubilee coalition. How these dynamics have affected the conduct of tax administration and policy is the subject of the following sections.

6.1. Tax administration

Informants lamented that KRA has become 'increasingly politicised' under Jubilee, as its co-leaders have fought amongst each other to secure appointees within the organisation's senior management and board positions. The extent of these factional contestations was most apparent in the manoeuvrings that led to the (much delayed) appointment of a new CG in 2019. John Njiraini, the Kibaki-era appointee, had finished his second term in March 2018. However, the president and his deputy could not agree on a replacement, forcing Njiraini to carry on in a caretaker capacity. At one point, the Ruto-dominated board sought to force the issue by formally ejecting Njiraini from office. However, Kenyatta responded by sacking all of the board members involved. As these battles were playing out, Njirani then reached official retirement age, prompting a Ruto-backed lawsuit that Kenyatta only managed to circumvent by scrapping the retirement rules for CEOs of state corporations (Wafula 2019). Eventually, Kenyata's camp won out, securing the appointment of its own candidate, James Mburu, within Kenya's new post-handshake political landscape, which has significantly undermined Ruto's influence within Jubilee (Cheeseman et al. 2019). However, this came after more than a year

of 'paralysis' in KRA's leadership, demonstrating the destabilising effect that Jubilee's intra-factional contestation has had on its functioning.[44]

However, KRA's activities have not only been undermined by the internally fragmented nature of Kenyatta's ruling coalition, but also by its ideas – or, in certain key respects, the lack thereof. Government borrowing has escalated, as neither Kenyatta nor Ruto have shown similar kinds of ideational commitment to fiscal discipline as Kibaki (Ouma 2019; Tyce 2020b). One analyst complained that 'this President chases everything. Anyone can propose a policy idea and, if he likes it, he will approve it, regardless of the costs'.[45] The knock-on effect for KRA is that the Treasury, to make its budgets look even vaguely credible, has been setting increasingly 'unreasonable revenue targets' for KRA to meet, while allocating it ever less funding to achieve them. [46] KRA's (2015: 81) own 2015-2018 corporate plan lamented a 'growing financing gap', whereby the 'resources to be provided by the National Treasury for expenditure will decline from 1.4 percent of the revenue target in 2014-15 to 0.9 percent in 2017-18'.

These developments have left KRA 'between a rock and a hard place', [47] 'squeezed' between rising interference, on the one hand, and increasingly inadequate budgets, on the other.[48] According to one insider, this has 'taken a huge hit on morale'.[49] Another KRA official echoed these claims, describing the new targets culture as 'terrible'.[50] 'The Treasury', he continued, 'seems to devise its budget without thinking about income and says "KRA, you need to raise this much", without knowing what is reasonable … I do not have a role in setting my targets anymore'. [51] Additionally, targets are increasingly becoming delinked from bonuses and incentives, partly because of KRA's budget-related 'austerity measures' (KRA 2018: 8), but also because of differences in Kibaki and Kenyatta's presidential styles, the latter of whom 'does not have a clue about promoting accountability, performance management methods, or following up on performance'. [52] This contrasts with Kibaki's presidency, when performance management tools 'took root across government' because members of Kibaki's inner circle were versed in New Public Management ideas (Hassan 2020: 221; Kariuki 2012; Obong'o 2009). For a KRA official, 'it is now just a stick approach – cautions, disciplinary assessments – with no carrot'.[53] Perhaps the biggest carrot of all, the 'thirteenth month' bonus, has also effectively been lost, as KRA now has to reach 'impossible targets' to unlock it.[54]

As a result of these pressures, staff at all levels have been quitting KRA, leaving an already stretched organisation at 'nothing like full strength' (Githae 2018).[55] According to KRA's (2018: 19) latest corporate plan, 'the current staff establishment of 6,906 is far below the required

[44] Interview, KRA official, telephone, 18 April 2019.
[45] Interview, economic analyst, Nairobi, 2 April 2019.
[46] Interview, tax specialist, Nairobi, 16 April /2019.
[47] Interview, tax specialist, Nairobi, 19 March 2019.
[48] Interview, former KRA commissioner, Nairobi, 9 May 2019.
[49] Interview, KRA official, Nairobi, 11 April 2019.
[50] Interview, KRA official, telephone, 3 May 2019.
[51] Ibid.
[52] Interview, economic analyst, Nairobi, 11 March 2019.
[53] Interview, KRA official, Nairobi, 11 April /2019.
[54] Interview, tax specialist, Nairobi, 16 April 2019.
[55] Interview, former KRA board member, Nairobi, 10 April 2019.

14,555 staff', and the organisation is suffering from a particularly severe shortfall within the area of taxpayer services. This assessment was echoed by an ex-commissioner, who claimed that KRA's LTO and MTO are operating with relationship-manager-to-taxpayer ratios of roughly 1:50 and 1:200, respectively, which is 'nowhere near enough to keep on top of things'. [56] Oxfam (2019) concurs, asserting that 'the benchmark for emerging market economies' should be 1:10 for an LTO. For Wawire (2020: 9), these 'skill gaps' mean that KRA increasingly 'lacks the capacity to carry out frequent random audits to detect taxpayer non-compliance and deter tax evasion', which 'has led to a high level of taxpayer non-compliance'.

The need to plug budgetary holes has also led to a regression in the availability, if not the quality, of internal training. This is because KRA's training institute, recently rebranded as the Kenya School of Revenue Administration (KESRA), has 'become increasingly outward-facing', focused on offering lucrative courses to government agencies, parastatals and policymakers, both domestic and foreign.[57] Ultimately, the vision is for KESRA to become 'a self-sustaining university that provides a return on resources invested by KRA' (KRA 2015: 21).[58] However, while sources acknowledged that KESRA's commercial transition, which is part of a broader move by KRA's management to 'develop alternative funding models' (ibid), is helping to balance the organisation's books, they criticised its business model for offering limited training to KRA staff free of charge.[59] KRA also recently terminated its graduate training programme, claiming that it had become 'an expensive engagement' that was not paying off because 'KPMG or Deloitte were waiting on the other end to snatch the best candidates'. [60] Yet this logic was criticised by one insider, who remarked that 'all serious organisations have a graduate programme. CBK has one and most commercial banks do too. We are supposed to be benchmarking ourselves on them'. [61]

Finally, the combination of ever more stringent revenue targets and a growing funding gap has oriented KRA's bureaucratic horizons increasingly towards the short term, dissuading longer-term capacity building. KRA's TPU, for example, reputedly receives less support than it did previously, given how long cases take to resolve.[62] As another example, a recently departed commissioner lamented that 'everyone is so busy doing low-level work…, caught up with meeting their own targets', that serious thinking on how to bring more of the informal sector into the tax net continues to be 'ignored', even though these efforts 'would eventually bring in lots of revenue'.[63] This point has also been made by scholars, who observe that Kenya's continued inability to find ways of tapping its vast shadow economy – and particularly some of its more sophisticated, but almost entirely untaxed, sectors like digital services (Melia 2020) – places strong constraints on KRA's ability to collect more revenues (Cheeseman and Griffiths 2005; Ndajiwo 2020; Wawire 2020). Instead, KRA 'keeps on hitting the same targets,

[56] Interview, former KRA commissioner, Nairobi, 9 May 2019.
[57] Interview, tax specialist, Nairobi, 19 March 2019.
[58] Interview, KRA commissioner, Nairobi, 17 April 2019.
[59] Interview, KRA official, telephone, 3 May 2019.
[60] Interview, KRA commissioner, Nairobi, 17 April 2019.
[61] Interview, former KRA commissioner, Nairobi, 9 May 2019.
[62] Interview, KRA official, telephone, 3 May 2019.
[63] Interview, former KRA commissioner, Nairobi, 9 May 2019.

milking the same people dry'.[64] Its tendency to do so is also dictated by the continued failings of tax policy, as the next section reveals.

6.2. Tax policy

Section 2 found that this period started with an initial spike in Kenya's tax-to-GDP ratio, but that since 2014 it has fallen back down in the three years for which there is data. This section argues that both these outcomes – the initial spike, followed by declining outcomes – can be explained more by reference to tax policy than administration, even if the recent regressions in KRA's autonomy and functioning have certainly played a role.

The initial revenue spike in 2014 owed much to the launch of I-Tax in 2013, as discussed in the previous section, but also to new tax policies that had been designed during the final years of Kibaki's presidency. Notably, these included a new VAT Act, which Kibaki's government had finished drafting just before the 2013 elections, but then agreed with donors to 'delay' tabling in parliament because there was consensus that 'the pre-election climate could have raised pressures that weakened key provisions in the draft law' (IMF 2013: 2). The only two credible presidential candidates for the 2013 elections – Uhuru Kenyatta and Raila Odinga – were members of Kibaki's then unity government, as deputy prime minister and prime minister, respectively, and it seems that they committed to tabling the bill after the elections, whoever was elected.[65] Certainly, this is what happened, as Kenya's new VAT Act was passed by parliament and approved by President Kenyatta a few months after he won the presidential vote. The fruits of this new legislation were then observed the next year, when tax receipts surged because of the number of goods and services that lost their zero or concessional VAT rates, including mobile phones, cooking oil and, initially, even donor-funded projects (Oxfam 2017).

This momentum in tax policy was not maintained, however – and, indeed, in some respects it quickly reversed (ibid; Wawire 2020). Changes to the VAT code were rolled back, as goods like semi-processed milk returned to concessional rates. According to informants, this was partly in response to public pressure, but also because Brookside Dairy, owned by the Kenyatta family, dominates Kenya's milk market.[66] Furthermore, following lobbying from the World Bank that charging VAT on donor-funded projects had 'created a large funding gap' and slowed the implementation of projects, this provision was also scrapped a year after being introduced (World Bank 2014: 25). Yet more items – including cassava, maize, wheat flour and cream – returned to being zero-rated in the 2017 Finance Act, not coincidentally in the year of an election in which the opposition was campaigning on the high cost of staple items.

For the World Bank, (2018: 7) these reversals have caused significant 'underperformance' in VAT revenues, which explains some of the broader decline in Kenya's tax-to-GDP ratios since 2014 (Figures 1-2). Another underperformer has been income tax, legislation for which was supposed to be next in line for revision after VAT. Yet, despite Kenya's formal commitments to reforming the framework, both in its Vision 2030 blueprint and in its extended credit facility

[64] Interview, economic analyst, Nairobi, 12 March /2019.
[65] Interview, journalist, Nairobi, 22 April 2019.
[66] Ibid.

with the IMF, this has not been implemented to date (Wawire 2020). According to sources, this is partly because a revised Act would have to include similar provisions as the VAT Act around removing discretionary powers to grant tax exemptions.[67] This seems to be unpalatable to a Jubilee coalition that has made heavy use of them, partly as an investment tool, but also very much as a form of patronage (ibid). The World Bank (2019) calculates that Kenya is now spending 5 percent of its GDP on exemptions, when towards the end of Kibaki's presidency this figure was around half that (Therkildsen and Bak 2019). So, too, have Jubilee's leaders made extensive use of 'one-off' or 'emergency' exemptions in ways that have blatantly favoured their own businesses, or those of their allies. President Kenyatta, for example, was the beneficiary of a special directive by the Treasury that the merger of Kenya's NIC Bank with the Commercial Bank of Africa, the latter of which is substantially owned by the Kenyatta family, would be exempted from hundreds of millions of shillings in share transfer taxes (Okoth 2019). Deputy President Ruto, meanwhile, was reputedly the architect of an emergency gazette notice issued by the Treasury in 2017 (an election year) that permitted vast imports of duty- and VAT-free sugar, which benefited some of his key financiers within the sector.[68] The gazette notice was left suspiciously open-ended – specifying neither what types of sugar were required, nor who was allowed to import them – and KRA later estimated that Kenya had lost KShs36.5 billion in duty and tax exemptions on these imports (Mwere 2018).[69]

6.3. Overall performance

While there may be limited statistical data to draw upon, the other data sources presented in this section suggest that the year 2013 has indeed marked the emergence of a new period, one characterised by deteriorations in the efficacy of both tax administration and policy. Administratively, a growing ideational disconnect between the presidency and economic technocracy, coupled with an increasingly vicious intra-coalitional battle for supremacy within the state between Jubilee's constituent factions, has reduced KRA's autonomy, the coherency and stability of its leadership, and its funding. Exacerbating this situation is the pressure that KRA is now coming under to meet the increasingly unrealistic revenue targets that the Treasury needs to make its own budgets look credible, as well as the fact that the government's domestic borrowing programme is crowding out the private sector and thus KRA's ability to collect taxes from it (Ndii forthcoming). Taken together, this has started to chip away at the organisational culture and sense of mission that KRA had been developing during the previous performance period.

That said, the shifts observed in Kenya's tax-to-GDP ratios during this third period have been driven to an even greater extent by the continued (and increasingly pronounced) failings of tax policy. Jubilee's leaders have showed little appetite for resisting the perverse incentives that Kenya's political settlement generates around issuing tax exemptions and cutting personalistic and discretionary tax policies. They have also reversed or stalled key pieces of legislation that either had, or could soon have, unlocked significant new sources of revenue for KRA to collect (Wawire 2020).

[67] Interview, journalist, telephone, 1 October 2019.
[68] Interview, journalist, Nairobi, 8 October 2018.
[69] Interview, journalist, Nairobi, 8 October 2018.

7. Analysis

This section will assess the explanatory power of each of the core factors that comprise the project-wide conceptual framework proposed by Hickey (2019). To recall, these are: the political settlement; transnational factors; ideas; and organisational factors. Each of these will be discussed in turn, so as to build a clearer picture of their relative significance. Table 1 below offers a summary of the analysis that follows.

Table 1. Performance periods and drivers

Period	Performance indicators	Political settlement	Ideas	Transnational	Organisational	Policy environment
1995-2002	Poor: tax-to-GDP and tax effort metrics both decline.	Moi's ruling coalition bound by patronage, leading to insatiable appetite for political financing.	Few salient developmental ideas to help bind the ruling coalition.	Donors influential, because of Kenya's indebtedness. Strong role in pushing for KRA's creation and shaping its structure and functioning.	'Big Shuffle' across bureaucracy leads to instability in KRA's leadership, resulting in little organisational coherency/culture.	Unconducive. Treasury also experiences turnover in leadership, and is pressured into dispersing tax exemptions.
2003-2013	Overall improved, but initially strong outcomes tail off from 2006.	Kibaki's coalition collapses in 2005, leading him to co-opt other factions. Fragmented unity government and	Kibaki's technopols motivated by ideas around fiscal discipline and national sovereignty, as well as New Public Management.	Donor influence declines, as greater proportion of budget funded through domestic revenues. KRA enjoys more 'autonomy from donors'.	KRA led by long-standing technopol, Michael Waweru, who develops stronger organisational culture through performance management tools	Tax administration and policy pull in similar directions until 2005, but thereafter Treasury struggles to design and pass new legislation.

		increasingly assertive legislature post-2008.			and training schemes.	
2014-	Tax-to-GDP ratio declining.	Kenyatta's coalition contains 'two governments in one'. Battle to control KRA and economic technocracy generally.	Little ideational commitment amongst Jubilee's leadership for fiscal discipline or enhancing revenue mobilisation.	Increasing availability of new external forms of financing (China, international capital markets) continues to erode donor influence and incentives to enhance revenues.	KRA autonomy being squeezed by political interference, funding constraints and unrealistic targets. Loss of staff and morale eroding organisational culture.	Continued (and growing) failures of tax policy. Much-needed legislation stalled/reversed, and tax exemptions distributed liberally.

7.1. The political settlement

Kenya's political settlement has played a pronounced role in shaping the conduct of both tax administration and policy throughout the period of analysis in this paper. In terms of the former, KRA's importance as a patronage tool and as a political weapon has often led to constraints being imposed on its autonomy and to it regularly being subjected to debilitating intra-coalitional power struggles between rival political factions. Meanwhile, the influence of Kenya's political settlement has been even more pronounced with regards to tax policy, where the dispersion of power contributes to a policy environment that is unpredictable, inconsistent and reversable. The closely contested nature of Kenyan elections, and the consequential importance of political financing that can help to tip the scales, creates huge pressures to disperse tax exemptions and favourable tax policies. This is the case both horizontally, as ruling elites hand them out to businesses owned by allies, as well as vertically, by easing taxes on goods and services – or club goods – that are valued by lower-level actors, particularly those who form key voting blocs within the ruling coalition or potential swing seats.

With its focus on the horizontal and vertical distribution of power, Khan's (2010) political settlement typology offers a useful lens for analysing these political pressures around tax policy and administration. However, findings from this paper suggest that there are other features of Kenya's political settlement that Khan's typology is less good at capturing, notably the role of factionalism within the ruling coalition. In particular, intra-coalitional factionalism helps to explain why revenue performance dipped after 2005, when Kibaki's initially inclusive NARC coalition collapsed. This forced Kibaki to co-opt other coalitional makeweights, who, amongst other things, had to be lured with favourable tax policies and exemptions. During his second term, Kibaki then had to navigate an extremely fragmented unity government and an increasingly assertive legislature, the combination of which further undermined the coherency of his tax policy agenda. An alternative political settlement typology that might hold some more promise for capturing these kinds of intra-coalitional dynamics is currently being developed by Kelsall et al. (forthcoming), based on an initial contribution by Kelsall and vom Hau (2020). This combines Khan's (2010) focus on the distribution of power with an analysis of a political settlement's 'social foundation' (i.e. the range of groups and factions that ruling elites must cater to, and negotiate with, to maintain the stability of the political settlement).

7.2. Transnational (f)actors

Transnational actors were particularly influential during Moi's presidency, first in pushing for KRA's establishment, and then in filling the void that was left by the constant turnover in both KRA and the Treasury's leadership by pushing for a semi-coherent reform agenda. However, they were less influential during Kibaki's presidency, not least because one of his motives for trying to boost revenue mobilisation was to free Kenya from donor control. By 2008, foreign aid accounted for just 11 percent of Kenya's budget, compared to an EAC average of nearly 40 percent (IEAK 2011; Ouma 2019). At an organisational level, an ex-commissioner recalled that these developments gave KRA 'more autonomy from donors", which allowed Waweru to

'pick the [capacity-building and external training] programmes that were most relevant to our own economy', rather than feeling pressured to accept ones that were 'not contextualised to our circumstances'.[70] As an aside, this suggests a skill that leaders of revenue authorities should have, namely an ability to pick through a mass of often irrelevant external training and capacity-building programmes – especially today, as donors show renewed interest in tax reform (Fjeldstad 2013) – and select only those that offer a good fit with their own organisational priorities and the broader nature of the economy.

These reflections also point to a broader observation that the role of transnational actors, while pronounced, has certainly not always been positive – or, indeed, consistent. Perhaps most glaringly, donors have helped to sustain the very system of tax exemptions that they have so often criticised, given that they continue to insist that foreign development assistance should be VAT-exempted and have lobbied against the Kenyan government whenever it has tried to reverse this situation. Beyond their mixed messaging, donors have also had a tendency to push uncoordinated and non-contextualised technical assistance on Kenya and KRA specifically that has paid little or 'no regard to the politics of the country', or to the realities of its economy (Wawire 2020:14). For example, informants lamented the lengths that donors have gone to ensure a full, 'best-practice' separation of roles between the Treasury and KRA, without recognising the serious challenges that Kenya's political settlement raises around intra-governmental coordination, given that ministries and agencies tend to be the fiefdoms of competing factions.[71] A lack of institutional mechanisms for ensuring collaboration means that KRA's policy unit is confined largely to interpreting the Treasury's policies, rather than assisting with their design, while the Treasury lacks practical knowledge of how the collections system is working.[72] This only exacerbates the disconnects between tax policy and administration, in a situation that is common across SSA (Fjeldstad and Moore 2009; Hujo and Bangura 2020).

Another example that informants raised of unsuitable donor advice has been their advocacy – in Kenya and beyond (cf. Moore 2014) – of an 'OECD-style model'' that splits a SARA between large, medium and small taxpayer offices.[73] Such a structure does not appear to be entirely relevant for Kenya or other developing countries, where a more useful split may be between formal and informal taxpayers, the latter of whom tend to slip through the net because Western-inspired models are premised on the presence of an overwhelmingly formal economy. Wawire (2020: 1) has offered a similar analysis, concluding that development partners now 'need to direct technical assistance to the informal sector'. This is likely to be an even more urgent necessity with the onset of the 2020 coronavirus pandemic, which has clearly shown that 'the failure to adequately serve and regulate [and tax] the informal and agricultural sectors has left African policymakers with a set of very blunt tools' for dealing with such crises,

[70] Interview, former KRA commissioner, Nairobi, 9 May 2019.
[71] Interview, tax specialist, Nairobi, 16 April 2019.
[72] Interview, tax specialist, Nairobi, 19 March 2019.
[73] Interview, tax specialist, Nairobi, 12 April 2019.

given the limited fiscal basis of many African states and their consequential underinvestment in other sectors like health.[74]

7.3. Ideas

The role of ideas was perhaps most clearly observed under Kibaki, whose inner circle of technopols was motivated by ideas around self-reliance, national sovereignty, fiscal discipline and New Public Management. These ideas caused Kibaki to try and insulate KRA from political pressures, so that the organisation had more freedom to fulfil its mandate, while they also propelled his administration into tax disputes with powerful groups and lobbies. Notably, these included Kenya's MPs, who shot down various attempts to remove their exemptions and even passed a vote of no confidence in Kibaki's finance minister as revenge. Kibaki's administration also clashed with powerful business associations, such as those representing Kenya's horticultural sector, whose pleas to be able to locate within EPZs, so that they could receive a comparable set of fiscal incentives to competitors in countries like Ethiopia, were repeatedly dismissed (Mwangi 2018; Tyce 2020d). [75] That said, Kibaki and his technopols often struggled to match their ideational commitment to improving revenue collection with the enforcement capacities that were actually required to realise their vision. This left KRA as a somewhat stranded pocket – or, perhaps, as a more accurate metaphor, 'island' – of effectiveness that was marooned within a turbulent sea of ineffective tax policies.

7.4. Organisational factors

The paper has identified two types of organisational factor that have been especially critical in shaping KRA's performance.

7.4.1. Leadership

There are two aspects of organisational leadership that have been particularly notable in the KRA story. The first, and most obvious, is the extent to which there has been stability in the leadership, as whenever there has been a frequent turnover of leaders – the notable example being the 1995-2002 period under Moi, when KRA had four CGs, with none lasting more than a single term – there has been little reform-mindedness or strategic planning (Table 2). The second aspect of leadership relates to whether KRA's leaders have possessed a mix of technical capacities *and* political connections as so-called 'technopols' (Joignant 2011). Findings from this paper suggest that pure technocrats will struggle to navigate a domain that is as politically contentious as taxation if they are not deeply embedded within broader networks of power. Certainly, this helps to explain why KRA's performance was strongest between 2002 and 2013, since this was a period in which Michael Waweru, a trusted technopol, was serving three full terms as CG and undertaking deep reforms.

[74] https://kenopalo.com/2020/04/13/some-policy-lessons-from-covid-19/
[75] Interview, Kenyan horticultural association, Nairobi, 27 April 2017.

Table 2. Tenures of KRA CGs

Performance period	CGs
1995-2002: poor	• Edgar Manesseh (1995-1996) • Yusuf Nzibo (1996-1998) • John Msafari (1998-2000) • John Munge (2000-2002)
2003-2013: improved	• Michael Waweru (2003-2012) • John Njiraini (2012-2013)
2014-present: declining	• John Njiraini (2013-2018) • John Njiraini, acting capacity (2018-2019) • James Mburu (2019-present)

7.4.2. Organisational culture

A key focus of Waweru's reforms was to develop a more unified organisational culture. Waweru therefore spent significant time and resources harmonising KRA's pay structures and work processes, improving its remuneration and training schemes, and introducing performance management tools that combined realistic targets with bonuses and rewards that incentivised performance (Kariuki 2012). In all, informants often recalled feeling a level of pride and motivation to be working at KRA that they had not enjoyed either before or since, which goes some way to explaining the organisation's improved performance during that period. That said, the apparent weakening of this budding organisational culture since 2013, during KRA's third and ongoing performance period, suggests that organisational culture is fragile, reversible and dependent on the priorities and embeddedness of the organisation's leadership, as well as its embeddedness with ruling elites.

7.5 Tax policy versus administration

Finally, all of these reflections lead to a broader discussion about whether it has been shifts in tax administration or policy that have been more significant in shaping the outcomes observed. Here, the paper would argue that it has been tax policy that has carried more explanatory power. Kibaki's presidency, in particular, offers insights into the limitations of building POEs when the broader policy environment within which they are located remains unconducive. KRA presided over significant administrative reforms during Kibaki's presidency, but these efforts yielded only moderate improvements in revenue collection because of an unfavourable policy environment. Creating and sustaining POEs within a context of *competitive clientelism* is itself no easy task and KRA, even under Waweru, was far from a fully functional, highly autonomous, corruption-free organisation. However, Kibaki had just about enough political capital to insulate the organisation from the more corrosive pressures generated by Kenya's political settlement. Tax policy, by contrast, generated political pressures that proved almost impossible for his administration to resist or circumvent.

8. Conclusion

This paper has examined the factors that have shaped revenue performance in Kenya since KRA's formation. It has identified a significant role for Kenya's competitive and fragmented political settlement, which generates strong incentives for ruling elites to restrict KRA's autonomy, given how valuable the organisation is as a patronage tool and as a political weapon. At an organisational level, the short-termist pressures that are generated by Kenya's political settlement also tend to undermine the stability and coherency of KRA's leadership, as well as the organisation's ability – or inclination – to invest in longer-term capacity building and tax-raising efforts. Generally, these dynamics have curtailed KRA's ability to function as a POE. That said, the organisation did operate as one between 2003 and 2013, when a shared set of ideas motivated President Kibaki and a selection of 'technopols' to try and insulate the organisation from political pressures, because of the importance of revenue collection to their developmental vision. That said, KRA remained a somewhat stranded (and fragile) 'pocket of effectiveness', especially as the period progressed, since Kibaki's inner circle could not overcome the much greater pressures around tax policy that would have allowed KRA to tap significant new sources of revenue. These findings, then, reveal the role of ideas as well as interests in motivating political behaviour, but also how the structures of power that characterise a country's political settlement can deprive ruling elites of the enforcement capacities required to see their ideas through.

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