

**‘NO TAXATION WITHOUT REPRESENTATION’ BEING A PAPER PRESENTED AT THE PUBLIC LECTURE ORGANISED BY AELEX ON TUESDAY 20<sup>TH</sup> JULY AT THE AGIP HALL, MUSON CENTRE, LAGOS BY UDOMA UDO UDOMA, PARTNER UDO UDOMA & BELO-OSAGIE (LEGAL PRACTITIONERS)**

1. I believe we all remember the famous statement by Benjamin Franklin that ‘in this world nothing is certain but death and taxes’. In spite of the inevitability of taxes in the modern world no one likes to pay taxes. When taxes are imposed by unrepresentative governments they are even more resented. The statement ‘No taxation without representation’ is associated with the Boston Tea Party. This was a revolt against the colonial British Government by American colonists in Boston. On 16<sup>th</sup> December 1773 American colonists boarded ships laden with tea in Boston harbour and offloaded the shipments of tea into the sea to protest the levies imposed by the Stamp Act of 1765, an Act of the British Parliament. They were angry because they had no representation in the British Parliament. The amount of the tax was quite low so the issue wasn’t the amount but the principle. This incident is considered by many as one of the pivotal events that lead to the American war of Independence. A Boston politician of the time, James Otis, is reputed to have said the memorable words, ‘Taxation without representation is a tyranny’.

2. Even here in Nigeria there were many revolts against taxes imposed by an unrepresentative colonial government. I am sure many of you here have heard of the Aba Women’s tax revolt of 1929. At around the same time as the Aba revolt there was another women’s tax revolt in Opobo which involved a member of my family. On Monday the 16<sup>th</sup> of December, 1929, my paternal grandmother was at the head of a delegation of women that confronted the District Officer in Egwanga, Opobo (now known as Ikot Abasi). The women were protesting the imposition of poll tax on women in Eastern Nigeria. Unfortunately some trigger happy soldiers led by one Captain J. Hill opened fire on the unarmed women and my grandmother was killed. After independence a statue was erected in honour of the women at the spot where my grandmother was killed.

3. No taxation without representation is an old English principle. It was one of the slogans used to fight autocracy in England. Since a government generally needs to levy taxes for the administration of the organs of the State, it was a useful cry for those insisting on democracy and the accountability of government. At the end of a successful battle against the tyranny of the King the people succeeded in imposing the English Bill of Rights of 1689 which specifically provided that no taxes may be imposed without the consent of the people's representatives in parliament assembled. To quote Lord Camden in a parliamentary debate in 1813 in which he attempted to set out the reasoning behind this principle,

"Taxation and representation are inseparable. This position is founded on the laws of nature; it is more, it is itself an eternal law of nature, for whatever is a man's own is absolutely his own. No man has a right to take it from him without his consent, either expressed by himself, or by his representative. Whoever attempts to do so commits an injury; whoever does it commits a robbery."

Similar struggles between kings and their people were waged throughout Europe. Indeed it can be said that representative government first came about in early modern Europe when monarchs were compelled to relinquish some of their authority to parliamentary institutions in exchange for the ability to raise new taxes.

4. Where taxes are imposed or sanctioned by the representatives of the people there is usually an increase in transparency, accountability and indeed, efficiency. However, for this to happen there are three other conditions that must be satisfied. The first is that the tax has to be one that is directly felt and paid by the people. The second is that, as much as possible, the spending government must also be the one levying the tax. The third is that the members of Parliament imposing the tax must have been genuinely elected by the people. Let me explain and illustrate each of these conditions.

## **A. The Tax Basis - Direct Taxes paid by the People**

5. There have been several studies that have suggested that no modern state can remain autocratic whose main source of funding is direct taxes. Authoritarian countries such as Saudi Arabia, Kuwait, Qatar etc. survive on the income from the exploitation of natural resources and not from direct taxes on their citizens. This may explain why there is less pressure on their governments to become fully democratic and accountable. In his book, 'War, Guns and Votes – Democracy in Dangerous Places', Paul Collier states that the typical African country gets its revenue principally from aid, or natural resources, and this has left the tax burden rather light: often around 12% of GDP. He argues that this level of taxation has been too low to provoke citizens into demanding accountability. To avoid citizen revolts many dictators such as Idi Amin, Mobutu and even Mugabe have sometimes resorted to the printing press, thereby causing inflation; an indirect way of taxing its citizens. Indeed, there are many who argue that Nigeria would have been a much better, and more accountable, democracy if the Governments in Nigeria did not have the oil wealth to rely on. It seems that a government that relies on direct taxes is likely, all other things being equal, to be more democratic, accountable and efficient. This is not an argument for increasing the tax levels in Nigeria but for changing the structure of our tax system.

6. Let me illustrate. I came across an interesting study by a PhD student at New York University. As we all know in colonial Nigeria in the last years of the 19th century, the British rulers drew an arbitrary boundary line along the 7°10' N line of latitude, separating the population into two separate administrative districts i.e. the protectorates of Northern and Southern Nigeria. Below the line, the colonial government raised money by levying taxes on imported alcohol and other goods that came through the Southern Protectorate's sea ports. Above the line, the administrators of the landlocked Northern Protectorate had no sea ports, and instead raised money through direct taxes. In the areas near the border, this took the form of a simple poll tax, where tax officials collected from each citizen the equivalent of between \$4 and \$20 in today's dollars. According to Daniel Berger, a PhD student in politics at NYU the simple act of having to collect taxes caused governments to be forced to build

the capacity which can now provide basic government services. Berger studied two small communities directly above and directly below the line. He found that governance today is “significantly better” in areas just above the line than in those just below it. After looking at historical evidence and running statistical tests, Berger finds that there is no evidence of pre-existing differences among the people living very close to the arbitrary boundary on either side, and so is able to rule out the possibility that some third factor could account for the differences in governance that remain today.

7. The results are threefold. Berger uses Afrobarometer public opinion data to show that residents just above the line are happier with their local governments, and his use of demographic survey data shows that local governments just below the line spend 10 percent more of their budget on salaries (“an indicator of less competent government.”) Zeroing in on the propensity of mothers to vaccinate their child as a way to get at a precise measure of the quality of public service delivery, Berger finds that “living just below the line leads to a 10.7 percentage point reduction in the probability that her child will be vaccinated for polio.”

8. According to Berger, the conditions created by the administrative division led to two different equilibria, which help explain how the differences above and below the line were able to persist over time:

(i) In the first, the local government does little except extract what few bribes it can. There is no incentive for hard work, as bureaucrats will neither be able to extract appreciably more rents (due to the limited amount of money available in the local economy) nor will they be able to improve government functioning on their own (since efficient functioning requires the entire bureaucracy working together). This also leads to a knock on effect on the human capital available to the local governments as the families which control the local government have no reason to steer their smartest children into local government service.

(ii) The second equilibrium is one in which significant services are actually delivered. Here, the local government is capable of delivering local basic public

services with a reasonable level of efficiency and honesty. This grants sufficient legitimacy to the local government that they are able to collect local taxes, which never go to the center. They can then pay themselves regularly despite the fact that they are not regularly receiving the transfers they are due from the center. Here hard work does make a difference.

Berger's conclusions also speak to the strength of norms and informal institutions. While the formal institutions—the idiosyncratic colonial structure of taxation—that created the original difference in bureaucratic capacity were long ago swept away, it is the informal norms, transmitted across generations, that persist and lead to the different outcomes we see today.

9. What does all this suggest? It would appear to me that if we can find a way to move away from reliance on federally collected revenues derived from rents on mineral resources to direct taxes we are likely to have a much more accountable government. I recall that a few years ago a World Bank official suggested that as a way of achieving a more accountable and representative government Nigeria's oil revenues should be distributed amongst all Nigerians who should then be taxed by Government! When I first heard this I thought it was a ridiculous suggestion. But a step in that direction could be achieved by listing NNPC on the stock exchange. In the distribution of the shares a significant percentage could be set aside for the oil producing communities and States. In this way part of the revenue from crude oil production could go directly to Nigerians who would then be required to pay their taxes.

### **B. The Spending Authority must be the Taxing Authority**

10. I recently read a comparative study of the effectiveness of local government authorities in a number of African countries undertaken by Dele Olowu of the Institute of Social Studies, The Hague, Netherlands. Amongst other things, the study showed that the effectiveness of local administration depends to a very large extent on the source of its funding. In Nigeria the study found that about 94% of the funding for local government administration comes from transfers from the Federal Government. They found that the transfers are opaque and most ordinary people are ignorant of the huge amounts of monies that come into their local government and are therefore

not in a position to press for a higher level of service. They found that the State Governments have generally failed to provide proper supervision and support to the local governments which are riddled with corruption and totally unaccountable. They also found that a huge amount of money is spent on recurrent and personnel expenditure and hardly any money is spent on development expenditures. The practice in Nigeria was contrasted with that in South Africa. In South Africa the study found that there is a vibrant system of local government in which both upward (supervisory) and downward accountability (including elections and citizen participation forums) are strong. In South Africa only an average of 11% of the revenue of local governments come in the form of grants from the central government. Local Governments in South Africa are principally funded by user fees (from bulk purchasing and retailing of water, electricity, sewerage etc), property taxes and other fines and fees. People contribute and pay for their local governments and take pride in them. They also hold them accountable. The more municipalities are able to generate their own revenues the more democracy, initiative and beneficial competition are encouraged. Unconditional grants, as in Nigeria, without effective accountability only increases corruption without increasing the capacity of local governments to deliver services, or promote democracy.

### **C. Parliament must be truly representative of the People**

11. Generally people are willing to accept the imposition of taxes and levies when they feel that the people levying those taxes were selected by them, and can also be removed by them if they are not satisfied with their performance. A properly elected and accountable taxing authority will be extremely sensitive to the views and concerns of the people. This is because any tax they levy must be justified to the people, and shown to be necessary. It should be set at the minimum level required to achieve the standard of public services demanded by the people. In any case, sometimes where taxes are set at a low level the yield may actually be more than a higher tax level because of an increase in collection. Because of the need to remain popular, an elected body is more willing to adjust taxes downwards where the levels have been shown to be too high. Sometimes taxes may even be refunded. An example of this was the Westminster Council in London which recently refunded rate payers part of

the rates they paid in previous years. This level of sensitivity to the electorate can only be achieved when those levying taxes know that they will be subjected to regularly held, free, fair and credible elections.

12 All Nigerians agree that we need to improve on our elections. The respected economist, Paul Collier, observed in his book, 'The Bottom Billion – Why the Poorest Countries are Failing etc', that an abundance of resource rents in countries such as Nigeria has altered how electoral competition is conducted. He indicated in the book that rather than political parties competing on the basis of which party can deliver public services more effectively, Nigerian political parties compete on the basis of which one can deliver more patronage to the voters – that is to say – voters are bribed with public money. Amongst other things, he says that 'Patronage starts to look cost effective for a political party if votes can be bought wholesale by bribing a few opinion leaders.' But we do not need a Paul Collier to tell us the challenges we face in Nigeria in ensuring that we conduct party primaries, and elections, that are free and fair enough to encourage our best and brightest to go into politics at all levels. What is particularly disturbing is that the practices during local government elections are the worst. We are all talking about the reform of INEC. What about the reform of State Electoral Commissions! Many young, aspiring politicians cut their teeth in the local governments. Once bad habits are imbibed at this impressionable age it is difficult to correct these later when they start playing on the national stage. Improving the quality of our electoral practices is not going to be easy. It is therefore important that we all commit ourselves to supporting President Goodluck Jonathan in his declared objective of ensuring the conduct of freer, fairer and more transparent elections in 2011.

### **Summary**

13 The slogan 'No taxation without representation' is a powerful one. It has helped to improve the accountability and effectiveness, as well as the efficiency of governments. It even led to the American Revolution, and its successful war of Independence. But the work of that slogan is not yet done. It can still be called to service in Nigeria in improving the quality of our public services. We must all do more to ensure that the quality of our public services;

of our infrastructure and of our environment is of world standards. We can only do this if we can improve the accountability of our governments, and the quality of our representation. Since taxes are the means of funding these improved public services, let us move towards a tax system that will help to promote the objectives of accountability and democratic governance. I hope this public lecture will help all of us to focus once more on these issues, and to always remember, as the Bostonian politician, James Otis, said in the 18<sup>th</sup> century that 'taxation without the consent of the representatives of the people is tyranny'.

Thank you.

Udoma Udo Udoma

20<sup>th</sup> July 2010