

The Lagos State Land Use Charge Law (2001) and Vision 20:2020 Housing Theme

By

ONI Ayotunde Olawande Ph.D. (Est. Man.), ANIVS, RSV,
Department of Estate Management,
Covenant University, Ota, Ogun State, Nigeria.
Email: wandeoni@yahoo.com; **Tel.:** +234-8023122014, 7026123812

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Abstract

Increasing demand for provision of urban and rural infrastructures with dwindling federal revenue allocations have influenced the Lagos State Government to promulgate Land Use Charge Law (2001) to increase internally-generated revenues through property tax. The Law provides the formula for assessing the Charge payable on properties in Lagos State, amongst other provisions. This paper reviewed the law and determines its short- and long- term effects on housing which is one of the thematic areas of Vision 2020. In attaining this, process of inferences was adopted to evaluate the law in addition to questionnaires administered on selected Estate Surveyors and Valuers practicing within Lagos metropolis. The paper found that the statutory formula to determine the amount of Charge payable is inappropriate and that high Charge and penalties may discourage investment in new housing and maintenance of existing stock. It therefore recommended its review to allow appropriate basis of fair and equitable tax to encourage the investors and owners such that the goal of Vision 20:2020 Housing Thematic Area becomes realizable.

1.0 Introduction

Conceptually, Nigeria's economic potential is well recognized as the biggest economy in the West Africa sub-region with considerable resource endowment being a pointer to strong growth. However, very little of such potential has been realized. This is associated with unsustainable planning and visioning, economic stagnation, declining welfare and social instability in the past thirty years. The main objective of Vision 20:2020 is to make Nigeria one of the twenty largest economies in the world with ability to consolidate its leadership role in Africa and establish itself as a significant player in the global economic and political arena by the year 2020.

There are twenty-nine thematic areas assigned to the National Technical Working Group of Vision 20:2020, one of which is Housing. The responsibility of Governments at all

levels in providing infrastructure and housing is enormous. Such infrastructure may be rural and urban, referring to roads, sewers, or utility lines, and may include hospitals, schools, emergency services like fire fighters and police, sidewalks, or ponds to hold storm-water. The basic facilities make a town or city function and are required for national development. (Collins, 2003; Tesfay, 2008)

Funding of infrastructure especially in urban areas has posed great challenge to Governments. This has partly caused the Lagos State Government to seek avenue to generate revenue internally through property tax to supplement dwindling Federal Revenue Allocations. The Land Use Charge Law 2001 was a creation of the desire of the Lagos State Government to give legal back-bone to revenue generation through property taxation.

A number of questions arise: what will be the short- and long-run effects of the provisions of the Land Use Charge Law on housing delivery in Lagos State in view of Vision 20:2020? Is the basis for calculating the charge reasonable? What is the position of Estate Surveyors and Valuers regarding the provision of the Law? What impact will the Law have on Vision 20:2020 Housing Theme?

The aim of this paper is therefore to examine the Land Use Charge Law (2001) and determine its effects on Vision 2020 thematic area of housing in Lagos State, which is the political, economic, and social nerve-centre of Nigeria. In doing so, succeeding sections discusses the challenge, basic method of determining fair and equitable property tax, highlight the provisions of the Law, and analyze the opinions of practicing Estate Surveyors and Valuers with a view to coming up with appropriate recommendation.

2.0 The Challenge

The rate of urbanization in Nigeria has witnessed tremendous increase in the last two decades. Census in the early fifties showed that about 10.6% of the total population lived in the cities. This rose dramatically to 19.1% in 1963, and 24.5% in 1985. Today, the national

population is estimated to be 150 million with the urban population constituting about 30%.

The Lagos metropolis has grown in terms of population. According to the 1991 national census, Lagos State had a population of 5,725,116 out of a national total of 88,992,220. Although the 2006 National Census credited the metropolitan area with a population figure of 7,937,932 the more reliable population figure given by the Lagos State Government is 17,553,924 based on enumeration that was conducted for social planning. Since the inhabitants of the metropolitan area of Lagos constitute 88% of the population, the population of metropolitan Lagos is about 15.5 million, which is projected to 24.5 million population mark by the year 2015, thereby making it to be among the ten most populous cities in the world (Wikipedia Contributors, 2009a).

According to the Official website of Lagos State, details of the population by Local Government Council Areas are shown in Table 1

Table 1: Population of Lagos State by Local Government Area as at 2006

Local Government	Male	Female	Total
Agege	564,239	468,825	1,033,064
Ajeromi-Ifelodun	723,644	711,651	1,435,295
Alimosho	1,099,656	947,370	2,047,026
Amuwo Odofin	301,012	223,959	524,971
Apapa	264,728	257,656	522,384
Badagry	187,427	192,993	380,420
Epe	153,360	170,274	323,634
Eti-Osa	460,124	523,391	983,515
Ibeju-Lekki	49,613	49,927	99,540
Ifako-Ijaiye	380,112	364,211	744,323
Ikeja	328,778	319,942	648,720
Ikorodu	364,207	324,838	689,045
Kosofe	527,539	407,075	934,614
Lagos-Island	461,830	398,019	859,849
Lagos-Mainland	326,433	303,036	629,469
Mushin	684,176	637,341	1,321,517
Ojo	507,693	433,830	941,523
Oshodi-Isolo	514,857	619,691	1,134,548
Somolu	517,210	507,913	1,025,123
Surulere	698,403	575,959	1,274,362
Total	9, 115, 041	8, 437, 901	17, 552, 942

Source: Official Website of Lagos State Government, 2009

In terms of revenues, the Federation Account serves as pool account where all federally collected revenues are paid as required by the 1999 Constitution and distributed

among the Federal, State and Local Council Governments. The revenue allocations to Lagos State between January, 2004 and December 2009 are shown in Table 2

Table 2: Revenue Allocation to Lagos State (2004 -2009)

S/N	Month	2004	2005	2006	2007	2008	2009
1	January	1,762,480,742.83	2,449,451,457.21	1,934,740,914.12	3,051,532,131.14	4,148,073,998.83	5,423,179,958.78
2	February	1,896,924,816.64	2,491,794,769.75	2,583,657,216.88	5,187,955,802.87	6,240,849,788.18	4,298,088,778.22
3	March	1,877,155,426.35	2,501,109,488.39	2,483,416,714.42	3,438,722,655.65	5,707,396,677.60	6,138,148,974.95
4	April	1,788,954,485.02	2,296,788,541.33	2,247,254,324.21	not available	7,878,024,292.46	4,649,052,732.02
5	May	2,241,955,683.08	2,210,913,664.10	2,301,051,474.42	3,855,086,677.39	5,732,169,138.67	5,671,950,330.55
6	June	2,301,088,516.21	2,739,812,256.75	5,491,729,839.85	4,484,250,236.35	8,364,587,997.51	5,528,747,038.07
7	July	2,667,299,481.16	2,195,772,382.61	2,822,753,758.76	5,057,883,579.43	5,866,578,328.60	not available
8	August	1,835,288,805.71	2,736,586,163.64	3,367,236,592.37	3,861,714,899.73	5,829,699,861.98	5,655,413,238.71
9	Sept	1,793,245,771.59	2,088,187,131.77	6,676,235,659.87	4,596,404,394.44	5,124,073,893.52	5,461,024,065.82
10	October	1,673,104,999.00	2,245,589,838.78	3,089,848,594.57	4,193,327,348.61	5,879,400,031.78	5,599,502,316.45
11	Nov	2,391,761,298.92	2,520,383,808.80	3,167,773,932.00	4,375,938,140.72	6,087,626,604.05	5,872,696,025.51
12	Dec.	2,749,801,850.36	2,574,943,626.08	2,720,283,775.27	4,487,946,391.22	5,672,784,049.82	not available
	Total	23,143,773,071.16	26,754,544,587.88	29,119,898,542.30	46,590,762,257.55	33,745,816,069.31	32,000,000,000.00

Source: Federal Ministry of Finance, Abuja

The increase in revenue into the Federation Account between 2004 and 2007 was buoyed by high crude oil prices before the oil price recession which was occasioned by global economic crisis which peaked at \$147 per barrel in July 2008. In an attempt to explain the direction to which the revenue allocations as detailed in Table 2 are drifting, a graphical illustration in Fig. 1 suffices.

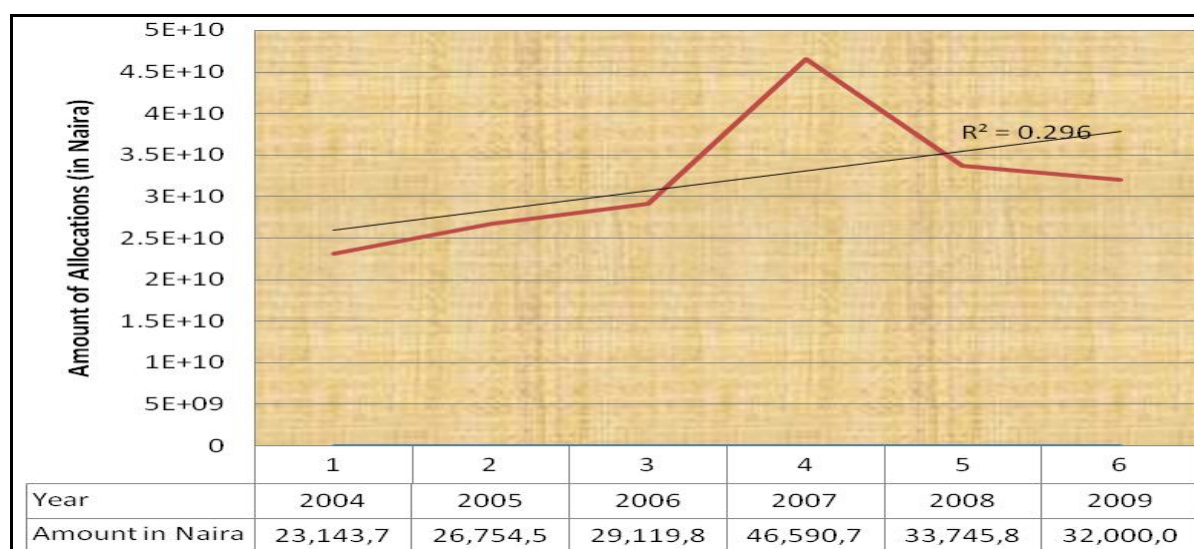


Fig. 1: Trend of Federal Revenue Allocations to Lagos State (2004 – 2009)

As shown in Fig. 1, the amount of revenue allocated to Lagos State from the Federation Account increased continuously between 2004 and 2006 and sharply in 2007 before dropping

drastically in 2008 up to end of year 2009. This probably is a consequence of the incidences of militancy and kidnapping of oil workers in the Niger Delta and the global economic meltdown. The overall effect is that the amount available for revenue allocation from the Federation Account dropped between 2007 and 2009. However, a comparison of the Federal Allocation and internally-generated revenue indicates wide variation as shown in Fig. 2.

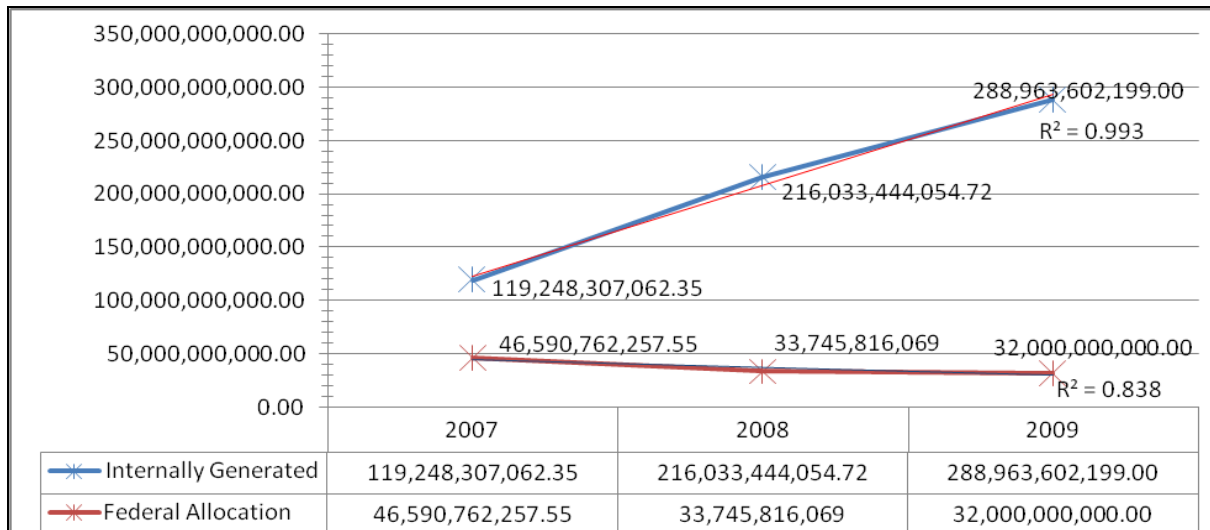


Fig. 2: Combined Internally-Generated Revenues and Federal Allocation to Lagos State (2007 -2009)

Fig. 2 shows that there has been a steady decrease in revenue to Lagos State from 2007 and that there is 83.8% probability that the Federal Allocation in the coming year may decrease further. This might be attributable to uncertainty in the political terrain at the Federal Level and dwindling oil revenue probably as a result of continued fear of oil exploration companies among other factors. From Fig. 2, all things being equal, there is 99.3% probability that internally-generated revenue in Lagos State will increase, due to increased aggressive drive to generate tax, fines, and levies on all “taxable” items. The aggressive revenue drive has probably dictated government’s action to fuse the various forms of multiple taxes, namely, Land Rates Law (Cap. 112), Neighbourhood Improvement Charge Law (Cap 136), and Tenement Rate Law (Cap. 186) into the Land Use Charge Law (2001).

3.0 Determination of Equitable Tax

Tax is the amount levied on an individual, group or corporate entity and payable to

government to meet expenditure on infrastructure and keep the organs of governance running smoothly. Such tax is expected to be (i) fair and equitable, (ii) set in simple and clearly understandable language; (iii) consider the ability of each person to pay based on income, (iv) politically acceptable to the payers to avoid incurring their hostility, and (iv) consistent with goals of promoting stable economy (Emeni, 2000; Olusegun, 2003; Ogbuefi, 2004).

In determining the appropriate method of tax assessment, Harvey (2000) explained that it is usual for local property taxes to be levied *ad valorem* with net annual value (NAV), capital value or site-value being the bases of assessment. An *ad valorem* tax, according to Wikipedia Contributors (2009b), is Latin for “*according to value*”. It is a tax based on the value of real estate or personal property. An *ad valorem* tax is typically imposed at the time of a transaction (a sales tax or value-added tax) and may be imposed on an annual basis (real or personal property tax), or in connection with another significant event (inheritance tax, surrendering citizenship, or tariffs), or the amount that an owner of real estate or other property pays on the value of the property being taxed.

When net annual value is the basis of assessment, it is likely to be determined as follows: *Gross annual value* which is the yearly rent that a property might reasonably be expected to let on a determined rate and *with deductions* made *for* maintenance and insurance and other *outgoings* to give the *net annual value*. Compared with site-value basis, NAV has certain advantages because the base includes buildings as well as land; the yield is higher especially for properties whose building cost is a high proportion of the total cost. It is easier to assess, since in a free market, rentals can be calculated by comparison with similar properties.

In using the capital value basis, tax will be the value of premises if sold freehold in the open market given a willing seller, and provided that capital value equals net annual value capitalized at the relevant rate of interest (Newell, 1977). Capital value, in this respect, is the

amount of money which may be obtained for an interest at a particular time from individuals who are able and willing to purchase it. It is the price arrived at under an open market normal financing, non-cohesive, non-monopolistic condition, and by private treaty at a particular date assuming willing seller, reasonable period within which to negotiate the sale, taking into account the nature of the property and the state of the market, with the property being freely exposed to the market (Richmond, 1975; Johnson *et al* 1980; Millington, 1982; N. I. E. S. V., 1985; Ajayi, 1998; and Kalu, 2001).

According to Lean and Goodall (1977), the basic economic effect of tax is that the open market price will increase in the long run if there is higher demand for a good or service. Similarly, the higher the outgoings in form of tax liability the higher will be the rent that landlord will demand for a given property on the long run. In this regard, where initial capital costs cannot be set off against tax liability whereas maintenance expenditure can be, this will increase additional expenditure on maintenance rather than initial construction.

In respect of supply of properties, in the short-run the stock of rented houses is fixed and the new rates will be borne by owners and the net rent will fall. In the long run, supply of houses will be more elastic since, assuming no planning consent is required, owners will adapt them to other uses or simply not replace them as they wear out, switching to lower-taxed and profitable forms of investment. The tax burden is then passed on to the tenants, the extent of which depends upon the relative elasticity of supply and demand (Harvey, 2000).

According to Harriss (2009), every increase in property-tax rates on structures (not land) reduces the desirability of putting capital funds into new buildings, creates an incentive against upgrading quality by new construction, and discourages maintenance. It also leads to the construction of rooms, apartments, and buildings somewhat smaller than would be the case in the absence of tax.

The common stance of these earlier works is that increase in property tax has negative

effects on investment in new buildings, discourages maintenance and upgrading of existing ones. In addition, tax must be certain, fair, equitable, and based on income that is net of outgoings which is obtained from a property and not on capital value in the case of income receivable in perpetuity, or on profit rent in the case of income for a term certain.

4.0 Relevant Provisions of the Land Use Charge Law (2001)

The Land Use Charge Law (2001) came into force on 22nd June 2001 and has twenty-four sections. It established that a land-based charge is payable on real properties situate in Lagos State, Nigeria with each Local Government Council Area empowered to levy and collect the charge for its area of jurisdiction as the Collecting Authority. Each collecting authority may delegate to the State, by written agreement, its functions with respect to collection of rates and the assessment of privately-owned houses or tenement for the purpose of levying the rate.

The Commissioner of Finance is by Law empowered to undertake or cause to be undertaken an assessment of chargeable properties in such areas as may be designated, and appoint property identification officers, qualified assessors and other persons considered necessary. The payment of the Land Use Charge which is to be based on annual capital sum is to be paid by the owner.

According to Section 5 (1) of the law, the formula for determining the annual amount payable is: $LUC = M \times \{(LA \times LV) + (BA \times BV \times PCR)\}$ **...Eqn. 1**

where,

LUC = annual amount of Land Use Charge in Naira;

M = the annual charge rate expressed as percentage of the assessed value of the property.

The assessed value in this case may vary between owner-occupied residential and commercial properties at the discretion of the State Government. Commercial property refers to properties that are revenue-generating;

LA = the area of the land parcel in square metres;

LV = the average value of a land parcel in the neighborhood, per square metre in Naira;

BA = the total developed floor area of building on the plot of land in square metres, or the total floor area of apartment unit in a building where apartment has a separate ownership title;

BV = the average value of medium quality buildings in the neighborhood, per square metre in Naira;

PCR = the Property Code Rate for the building and which accounts for the building being of higher or lower value than the average buildings in the neighborhood and which also accounts for the degree of completion of construction of the building.

In a nutshell, $(LA \times LV) + (BA \times BV \times PCR)$ in Eqn. 1 is the assessed value of the property.

Sections 10 and 11 state that the collecting authority, that is, the Local Government Council Areas, may declare any person including occupier of chargeable property to be the agent of the property owner and such person will become liable for payment of the charge on behalf of the owner from moneys due by him or becomes due by him for payment to the owner. The payment of the charge will become recoverable from the agent where the owner defaults in payment. Section 11 states that the agent will be indemnified against the owner for such payment made by him.

Penalties for delayed settlement of Land Use Charge are contained in Section 20 with the amount payable as penalty depending on the length of period the payment is delayed. Delay of between 45 and 75 days attracts 25% of the original Charge payable; between 76 to 105 days, 50%; between 106 and 135 days, 100%; while the property becomes liable to receivership after 135 days until outstanding taxes, penalties, and administrative charges are fully paid.

Essentially, the Law states that with effect from date that the Charge is levied on a property, all other laws that impose tax on properties (the Assessment Law, Land Rates Law,

Neighbourhood Improvement Charge Law, and Tenement Rate Law) would cease to apply to such property. A supplement to the Law, known as Supplement to the Lagos State of Nigeria Official Gazette Extraordinary No. 41, Vol. 34 of 13th December 2001 Part B stated the Annual Land Use Charge Rates payable on assessed value of a property to be: owner-occupied residential property – 0.5%; industrial premises of manufacturing concerns – 0.5%; residential property/commercial – 0.65%; commercial property used by occupier for business purposes - 1.75%; owner-occupied pensioner’s property, and family compounds are exempted from payment of Land Use Charge.

5.0 The Indicative Parameters of Vision 20:2020

According to the Executive Summary of Vision 2020 Programme, rapid growth of the urban population has proceeded in an uncontrolled and unplanned manner giving rise to extensive slums and shanty towns. Various studies have estimated that there is shortage of 16 million housing units, and according to the World Bank, most people, probably over 80 per cent of the population, live in informal housing structures of varying degrees of permanence on land on which they have no ownership rights

The key goal for Vision 20:2020 is: “By 2020 Nigeria will be one of the 20 largest economies in the world able to consolidate its leadership role in Africa and establish itself as a significant player in the global economic and political arena”; while the key parameters to enhance the economic development goal are listed in Table 3

Table 3: Key Parameters and Goals of Vision 20:2020

Parameter	Goal
Polity	By 2020 the country will be peaceful, harmonious and a stable democracy.
Macro-Economy	A sound, stable and globally competitive economy with a GDP of not less than \$900 billion and a per capita income of not less than \$4000 per annum.
Infrastructure	Adequate infrastructure services that support full mobilization of all economic sectors.
Education	Modern and vibrant education system which provides for every Nigerian the opportunity and facility to achieve his maximum potential and provides the country with adequate and competent manpower.
Health	A health sector that supports and sustains life expectancy of not less than 70 years and reduces to the barest minimum the burden of infectious diseases such as malaria, HIV/AIDS and other debilitating diseases.
Agriculture	A modern technologically enabled agricultural sector that fully exploits the vast agricultural resources of the country ensures national food security and contributes significantly to foreign exchange earnings.
Manufacturing	A vibrant and globally competitive manufacturing sector that contributes significantly to GDP with a manufacturing value added of not less than 40%

Source: Vision 20:2020 Official Website

The main organs responsible for development of Vision 2020 are the (i) National Council on Vision 2020 with the President serving as Chairperson; (ii) National Steering Committee (NSC) consisting of about 70 persons, drawn from the public and private sector, with responsibility for developing the Vision 2020 Implementation Guidelines, Monitoring and Evaluation (M&E) strategy, ensuring a bottom-up approach by which all key stakeholders, Ministries, Departments and Agencies (MDAs) as well as State, Local Government Council Areas (LGAs). The NSC also develops template for preparing the V2020 strategic plan; (iii) National Technical Working Group comprising 20-25 experts in specified thematic areas drawn from both public and private sectors. They are to undertake specific studies or research work to provide data necessary for the working groups report; and (iv) Stakeholder Development Committee which includes State Governments, Federal Ministries, Departments and Agencies (MDAs) and other key institutions; and (v) the Economic Management Team that serves as Think-Tank to drive the visioning process.

6.0 Material and Method

In evaluating the Law, firms of Estate Surveyors and Valuers practicing in Lagos metropolis were sampled for administration of questionnaires. According to the NIESV (2009), there are two hundred and seventy financially active firms of Estate Surveyors and Valuers in the metropolis. The appropriate sample size of the population the respondents using the Bartlett *et al*'s (2001) model is one hundred and fifty which were randomly selected to give members of the population equal opportunity. One hundred and fifty questionnaires were subsequently administered between August and October 2009, out of which one hundred and twenty (representing 80%) were returned and found useful for the exercise.

The respondents were prompted to express opinion about the Land Use Charge Law, its advantages and disadvantages, and adequacy or otherwise of the amount imposed as Land Use Charge. Other questions centered on acceptability of the basis of valuation stipulated by the Law, convenience of direct deductions by Agents from rents that are due to the Landlords, and the short- and long- run effects of the Law on housing in Lagos State. In addition, a process of inference was adopted to consider the provisions of the Law in line with the aim of Vision 20:2020 while secondary data were obtained from websites.

7.0 Analysis and Discussion of the Land Use Charge Law Vis-à-vis Vision 20:2020

7.1 On Provisions of the Land Use Charge

With respect to the acceptability of the Law, 90% of the respondents commended the consolidation of multiple taxes previously payable on properties in the study area. However, they considered penalty payable for delayed settlement of the Charge to be excessive. Owners are expected to settle the Charge within 135 days before the property becomes liable to receivership, whereas respondents claimed that, in some cases, tenants remain in arrears of rent of over six months. Table 4 shows details of respondents' opinions about rent default amongst tenants in the study area.

Table 4: Default Rates amongst Tenants in Lagos Metropolis

S/N	Period of Defaults	Number of Respondents	Percentage
1.	1 – 6months	12	10.00
2.	Between 7 and 12months	86	71.67
3.	More than 12 months	22	18.33
Total		120	100.00

From Table 4, more than ninety percent of the respondents claimed that tenants occasionally fall into arrears for a period of six months and more. The Law ignored the source from where the Charge is to be paid, which is the rent; and when there are problems in collecting such rent, making the property fall into receivership after four months will be highly punitive on the owner since the Charge would be afforded from rent collected on the property.

In respect of the advantages and disadvantages, the opinions of the respondents are summarized in Table 5.

Table 5: Respondents' Opinions on Advantages and Disadvantages of the Law

S/N	Options	Number of Respondents	
		Advantageous	Disadvantageous
1.	Making the agents liable	20 (16.67%)	100 (83.33%)
2.	Imposition of penalties for delayed settlement	15 (12.50%)	105 (87.50%)
3.	Liability to receivership after four to five months	0 (0.00%)	120 (100%)
4.	Using annual capital sum as the basis for the amount to be paid.	10 (8.33%)	110 (91.67%)
5.	Prevention of multiple taxes	115 (95.83%)	5 (4.17%)

From Table 5, 83.3% of the respondents considered making agents liable for settlement of the Land Charge as a disadvantage; imposition of penalties for delayed settlement, (87.5%); liability to receivership, 100%; adopting capital sum as basis, 91.67%; while 95.83% considered the land as a good measure to prevent of multiple taxes as an advantage, and would assist in reduction and or prevention of property tax evasion by ensuring that its administration, assessment and collection are much easier.

The Law also provides that any occupier of chargeable property could be declared as the agent of the owner and such person will become liable for payment of the charge on

behalf of the owner from moneys due by him or becomes due by him for payment to the owner; and that the payment of the charge will become recoverable from the agent where the owner defaults in payment. This provision will create a lot of challenges to Estate Surveyors and Valuers acting as Property Manager, for instance. This is because the Law holds occupier or Agents of owners vicariously liable for the misdemeanor of the Principal. This provision appears to be vindictive.

The Law neither provided nor gives allowance for risk of tenants' default in rent payment as it is the case in Lagos State. Default in rent payments by tenants has become common tales amongst Estate Surveyors and Valuers. The penalties imposed on delayed settlements of the Charge are therefore too harsh against the background of many tenants falling into arrears of rent payment of up to twelve months or more. It becomes more difficult for the owners to settle the Charge as soon as it is demanded when the tenant has failed to pay rent as at when due. It will therefore be counter-productive for Government to impose penalty on owners or Estate Surveyors for late settlement of Land Use Charge.

7.2 Case Study: No. 10 Alhaji Bashy Mustapha Close, off Ladipo Bus Stop, Shogunle

In determining the “reasonableness” of the formula and “fairness” of the basis of determining the Land Use Charge, a look at Case Study suffices. No 10 Alhaji Bashy Mustapha Street is a residential property with the front-wing affording accommodation on two floors for one family occupation and the rear-wing consists of 2No two-bedroom flats. The structure is set within fenced 669.05m² curtilage and the total rent paid by the sitting tenants is N470,000 p.a. paying therefrom 10% as Management fees. The property was valued by officials of LUC Office at N9.6m. Land in the neighbourhood is selling for N5m, and the annual charge rate for type of property is 0.5%. The appropriate charge rate payable in the current year will be calculated as follows:

$$\text{Recall: } LUC = M \times \{(LA \times LV) + (BA \times BV \times PCR)\}$$

$$LUC = 0.005 \times \{N5,000,000 + [N4,600,000 \times 1.0]\}$$

$$LUC = 0.005 \times \{N9,600,000\} \times 1.0$$

$LUC = N48,000$ p.a. This amount represents 11.4% of the net rent due to the owner.

Assuming that the property is of commercial user with similar details but the built-up area being 60% of the site area, and prevailing rental value is N550,000 p.a. The corresponding annual charge rate for the commercial property according to the Law is 1.75%.

The appropriate charge rate payable in the current year will be calculated as follows:

$$LUC = 1.75\% \times \{N5,000,000\} + \{N4,600,000 \times 1.0\}$$

$$LUC = 0.0175 \times \{N9,600,000\}$$

$LUC = N168,000$. For commercial user, the amount represents 35.8% of the net rent due to the owner.

The calculation appears straightforward but its components (rate payable and property code rate) are entirely at the discretion of the officials. The Law provides that PCR (property code rate) and M (annual charge rate as percentage of value) would be determined at the discretion of the state government. The implication of this provision is that no property owner is sure of the amount of Charge to be paid in every succeeding year. This negates the principles of fair and equitable tax which expects that the amount of rates should be certain. Calculation of tax liability at the discretion of government official makes the Law prone to abuse by political office-holder and the amount payable becomes uncertain.

The statutory formula assumes that all properties are homogenous whereas no two properties are the same in terms of specific location whereas road network, accessibility, demand and supply, and state of repair. The use of uniform Property Code Rates (PCR) therefore negates uniqueness of each property. Also, the formula implies that the value of land will be added to estimated value of building. It appears to be an 'adulterated' contractor's method of valuation. It involves value of land (LA x LV i.e. area of land multiplied by average value per square metre) to which is added value of the improvements

on site (BA x BV).

The implication is that both the bare-site and physical development on it are being taxed, whereas the norm is that taxes are expected to be levied on the owner of an income-generating property and not on the property per se. By charging tax on capital value, all annual periodic payments now and in perpetuity or for as long as a lease endures (if a leasehold interest) is being compounded far into the future and owners are made to pay the amount now. This is contradictory. If the Land Use Charge is to be paid annually, then the basis for calculation should be the net annual rent. This is because capital value is actually the net annual value compounded in perpetuity or over the term (if leasehold). Why should a landlord pay the Land Use Charge as if he is ‘selling’ his property annually!? The only condition by which capital value may be used as basis for taxation is when it equals net annual value capitalized at the relevant rate of interest to produce an equivalent base for taxation as net annual value.

7.3 The Land Use Charge Law Vis-à-vis Vision 20:2020

The overall effect of the Land Use Charge Law on Vision 20:2020 housing thematic area may be determined by considering the short- and long- run effects on rent and quality of housing that will be available in the open market. Fig. 3 was used to determine the short- and long- run effects of LUC on quality of available housing.

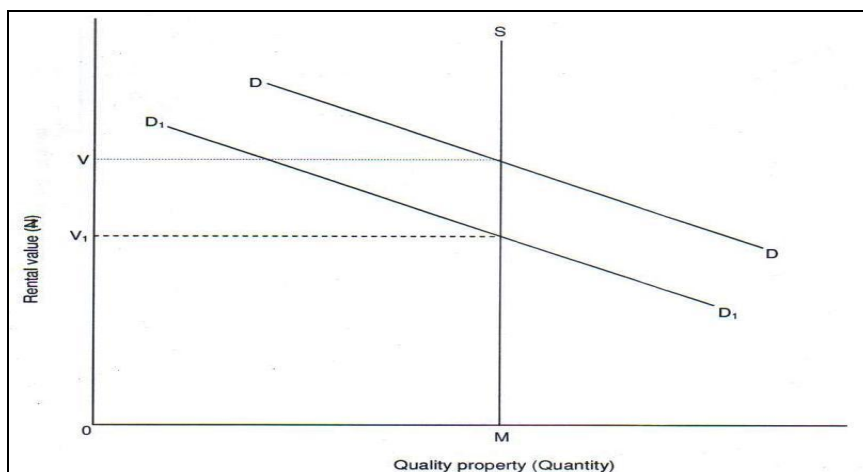


Fig. 3: Short-run Effect of Land Use Charge on Housing Quality

In the short-run, the initial rent will be OV . If Land Use Charge is imposed on the landlord, the net rent will drop to OV_1 and demand curve shifts to D_1 . In the short-run, landlords will receive the net rent which falls from OV to OV_1 . The landlord will initially bear the incidence in anticipation of making up through increase in subsequent rents. Having managed to bear the short-run incidence, the landlord will most likely react and cause long-run effects in terms of increased rent and lower quality of properties available in the open market.

In other words, in the short-run, the incidence of Land Use Charge will cause reduction in the net rent that is due to the owners while the quality of housing will remain constant. However, the situation will change in the long run as shown in Fig. 4

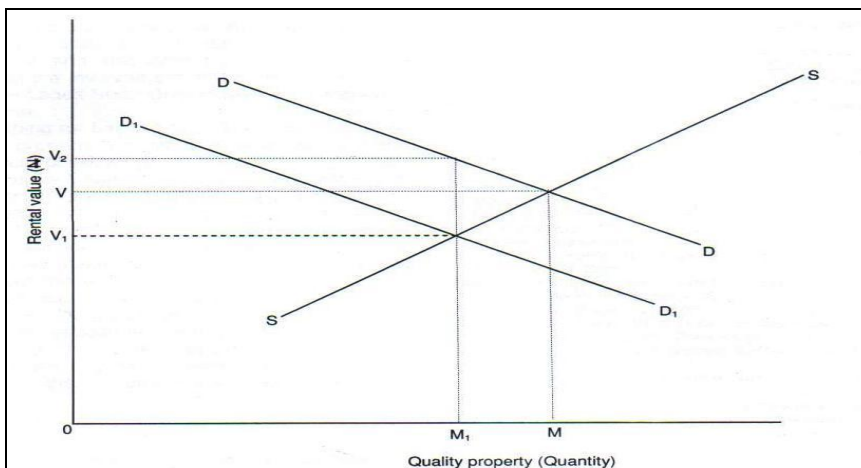


Fig. 4: Long-run Effect of Land Use Charge on Housing Quality

In Fig. 4, in long run supply of quality properties will be more elastic and some of the burden will be passed to the tenant. VV_2 of the rate of burden will be passed to the tenant and V_1V backwards to the property owner. The total rate being $(OV - OV_1) \times OM$; and the quality and available rented housing units will decrease from OM to OM_1 . The incidence of the Land Use Charge will shift in the long run in terms of increase in rent (OV_2) from OV_1 . Expectedly, the tenants will react by defaulting in rent payment; the amount available for maintenance will decrease to OM_1 to OM . Furthermore, parties will resort to litigations: landlord will move to eject the tenants, tenants will apply to court for landlord's compliance

with the provisions of the Rent Control and Recovery of Residential Premises Edict and other Laws that regulate rent payable on residential properties in Lagos State. This will cause influx of litigations between landlords, tenants on one hand, and government and property owners on the other. In other words, in the long run, the incidence of the Charge will be passed to the tenant who will most likely be unable to pay; subsequently, the quality of housing will reduce. High incidence of Charge will force owners to transfer it to the tenant, the effect is that the occupiers of housing units in the State that has already witnessed high occurrence of informal housing will be worse off in the long run. The overall effect is that shortage of sixteen million housing units identified as a problem in the Executive Summary of Vision 20:2020 will be aggravated by the long run effects of the Land Use Charge. The objective of Vision 20:2020 to ensure availability of good quality housing may therefore not be realized.

8.0 Recommendations and Conclusion

The capital value basis of calculating the Land Use Charge is considered inappropriate. The appropriate basis should be the investment method that considers the open market rental value per annum after deducting for outgoings and appropriate rate per naira applied. This will be the best and fair basis. The Law should therefore be amended so that determination of the Charge could be based on annual open market net rental value.

The existing provision for penalty for delayed settlement of the land use charge is considered too harsh. Many tenants in Lagos State do not pay rent as at when due, many are usually in arrears of six months or more. Imposing penalty according to number of months that payment is delayed does not consider owners' or Estate Surveyors' plight in the management of properties in Lagos State. Consideration must therefore be given to delays and defaults in rent payment. If Lagos State Government insists on prompt payment of the Charge, then there should be provisions to protect the owners against rent arrears by tenants

while penalty should be 10% flat per annum after payment has been delayed for more than six months.

It is recommended that Estate Surveyors and Valuers should not be held liable to make deductions for the Charge from rents collected on behalf of their clients. It is recommended that Lagos State Government should appoint Estate Surveyors and Valuers to determine the appropriate annual values on a net annual basis of valuation, collect and remit Land Use Charge to the Government. It is good for the Lagos State Government to raise funds through property tax as applicable all over the world to finance physical and infrastructural developments and make life meaningful to the citizens. The Law should be amended to make the net annual rental income as the basis of valuation.

To make the Vision 20:2020 housing theme attainable in Lagos State, the incidence of Land Use Charge should not be too high as to encourage investment in provision of housing, and prevent neglect of proper maintenance of existing housing stock. Quoting President Shehu Musa Yar'Adua, Mr. Stephen S. Mayaki, Chairperson of the Housing Thematic Area of the Vision 20:2020, said "The challenge is great. The goal is clear. The time is now." In other words, the challenge of raising adequate fund to provide necessary infrastructure in Lagos State, nay Nigeria, *is great*; the *clear goal* is to make quality housing affordable and accessible through encouragement of investors in housing, and the time to key into the Vision 20:2020 is *now* to remove all hindrances to its success.

References

- Ajayi, C. A. (1998). *Property Investment Valuation and Analysis*. Ibadan: De-Ayo Publications.
- Bartlett, J. E., J. W. Kotrlik, and C. C. Higgins (2001). Organizational Research: Determining Appropriate Sample Size in Survey Research. *Information Technology, Learning, and Performance Journal*, 19, 1, Spring 2001
- Collins, C. (2003). Infrastructure. *Advanced Learner English Dictionary*, 4th ed. London: Harper Collins Publisher.
- Emeni, K. F. (2000). Taxation in Financial Planning and Decision-making. *Nigerian Taxation – Journal of the Chartered Institute of Taxation of Nigeria*. 3(1&2), Jan.- June, 37-38.

- Harriss, C. L. (2009). The Economic Effects of Today's Property Tax, in www.groundswellusa.org/feet7.htm; accessed 7 December 2009.
- Harvey, J. (2000). *Urban Land Economics*, 5th Ed. NY
- Johnson, T.; Davis, K.; and Shapiro (2005). *Modern Methods of Valuation of Land Houses and Buildings*. London: Estates Gazette.
- Kalu, I. U. (2001). *Property Valuation and Appraisal*. Owerri: BON Publications
- Lagos State of Nigeria Official Gazette No 20 Vol. 34. Lagos State Government of Nigeria. Lagos State Printing Corporation, Ikeja. LSPC 566/72001/500
- Lagos State Official Website in <http://www.lagosstate.gov.ng/index.php?page=subpage&spid=12&mnu=null>, accessed December 11, 2009
- Lean, W. and B. Goodall (1977). *Aspects of Land Economics*. London: The Estates Gazette Limited.
- Millington, A. F. (1982). *An Introduction to Property Valuation*. 7th Ed. The Pitman Press, Bath
- Newell, M. (1977). *An Introduction to the Economics of Urban Land Use*. London: The Estate Gazette Limited.
- NIESV (1985). *Guidance Notes on Property Valuation*. 1st Ed. Feb. 1985. Lagos: The Nigerian Institution of Estate Surveyors and Valuers.
- NIESV (2009). *Directory of Members and Registered Firms* 7th Ed. January 2009. Lagos: Climax Communications Limited.
- Ogbuefi, J. (2004). *Comparative Property Rating and Taxation*. Enugu: Institute for Development Studies. ISBN 9752409589
- Olusegun, K. (2003). *Fundamentals of Real Estate Taxation*. Lagos: Climax Communications Limited, 45
- Richmond, D. (1975). *Introduction to Valuation*. London: The MacMillan Press Ltd.
- Tesfay, A. (2008). Infrastructure Development Enhances National Development Shaebia in http://www.shaebia.org/artman/publish/article_5480.shtml, accessed on Tuesday, 1st July 2008 at 7p.m.
- The Estate Surveyors and Valuers Registration Board of Nigeria, Decree No. 24, 1975 (now Act of 1975)
- Vision 2020 Official Website: <http://www.nv2020.org/>
- Wikipedia Contributors (2009a). Lagos In *Wikipedia, The Free Encyclopedia*. Retrieved 15:10, December 14, 2009, from <http://en.wikipedia.org/w/index.php?title=Lagos&oldid=331377721>
- Wikipedia Contributors (2009b). "Ad valorem tax." *Wikipedia, The Free Encyclopedia*. Wikipedia, The Free Encyclopedia, 22 Nov. 2009. Retrieved 12 Jan. 2010 http://en.wikipedia.org/w/index.php?title=Ad_valorem_tax&oldid=327327947