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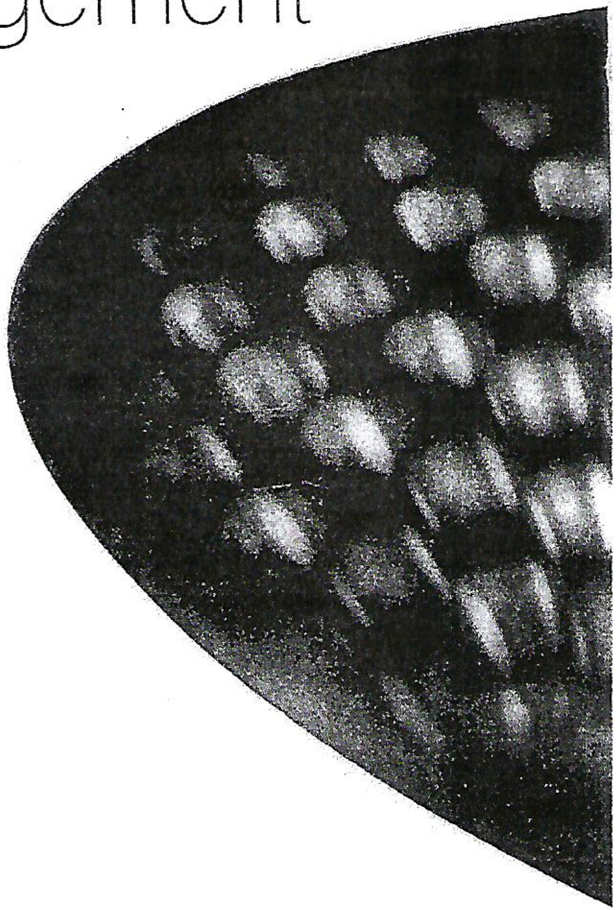

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Editorial

In this second issue of 2011, we again have two law-based and two business-based – fiscal this time – articles. Our connection with Bangladesh continues with a thought-provoking article entitled "Environment and sustainable development in Bangladesh: a legal study in the context of international trends" (Nour Mohammad) which shows some of the workings of a legal system we were introduced to in our first edition of the year (Mollah). We retain an international flavour in "Internal audit function: an exploratory study from Egyptian listed firms" (Ibrahim El-Sayed Ebaid) and "Property tax reform: an evaluation of Lagos State land use charge" (G.K. Babawale and T. Nubi) before returning to the UK with an article "The widening of vicarious liability: implications for employers" (Grame Lockwood). The link is the interest, which the journal is now creating in a truly international community. The legal articles have clear business and management implications and the financially based articles are underpinned with law and legal interest.

It is the hope of the new editorial team in this uncertain climate worldwide that readers will see developments in other jurisdictions which resonate in their own and may give food for thought for development and reform. We really are not alone in our trials, tribulations – and successes! The world is clearly much more of a global community with every year that passes and one of the delights of taking over the editorial post and reading the rich content of articles under review is that authors really appreciate this and pitch their comments for use and discussion way beyond their own jurisdictions. Long may this continue!

Chris Gale and Clive Smallman

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Property tax reform: an evaluation of Lagos State land use charge, 2001

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Abstract

Purpose – The Lagos State land use charge (LUC) 2001 represents a radical and wholesome restructuring of the entire erstwhile land-based tax system in the state, and the first of its kind in Nigeria. The purpose of this paper is to examine how this maiden holistic intervention in property tax administration in Nigeria has fared in its first nine years.

Design/methodology/approach – Primary data were garnered from stakeholders through personal interviews and structured questionnaires, while secondary data include information from the enabling act and other-related materials.

Findings – It was noted that the intervention failed to conform to best practice both in policy and administration. As a result, the reform has not ceased to generate controversies, has enjoyed limited acceptability, and achieved limited success.

Originality/value – Taking a cue from the experiences of countries that have demonstrated best practices in property tax reform, the paper proffers suggestions, covering both policy (e.g. extensive stakeholders' consultation) and administration (e.g. improved links between tax payment and provision of local services) that would help to sustain the reform intervention and make it sufficiently worthwhile.

Keywords Property tax, Nigeria, Local government finance, Statute law

Paper type Research paper

Introduction

Whatever its perceived shortcomings, property tax remains the most viable, relatively stable, predictable, substantial and veritable source of revenue for a truly politically independent local government administration in a truly democratic dispensation. Property tax can be used as to achieve both fiscal and non-fiscal goals. All these partly explain its popularity in nearly all jurisdictions.

Property tax has played significant role in financing local authorities in several developed countries. It is reported that property taxes account for 40-80 per cent of local government finance, 2-4 per cent of total government taxes and about 0.5-3.0 per cent of gross domestic product (GDP) of developed countries (Kelly, 2000; Bahl and Martinez-Vazque, 2007). Regrettably, property tax has not been known to yield much in the way of revenue in any developing country. Kelly (1995) observed that developing countries tends to generate significantly less revenue from property tax – typically generating a maximum of 40 per cent of local government revenue, 2 per cent of total government revenue and about 0.5 per cent of GDP. An International Monetary Fund survey also confirmed that property tax accounts for an average of only 1.3 per cent of total public sector tax revenue in developing countries (Charles, 1996). Dillinger (1991) reported that in the west African countries of Senegal, Nigeria, Cote devoir and Liberia, property tax delinquencies average at least 50 per cent, and collection rate were

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sometimes as low as 10 per cent (in Ibadan, Nigeria, the collection rate was only 9 per cent), in 1980.

The poor yield from property tax in developing countries is commonly attributed to the twin problems of defective property tax policy and mal-administration. The latter is more critical and is manifested in lack of political will to enforce property tax law; poor machinery for property identification, billing, collection and failure to serve bills as and when due and to enforce compliance (Kelly and Musunu, 2000; Kelly, 2000; Bird and Slack, 2002). Others include lack of required technical and professional staff, brazen corruption and the poor link between tax payment and provision of communal services. The combined effect of poor policy and mal-administration is a tax system that is porous, weak, unwieldy, susceptible, ineffective and costly. A comprehensive intervention touching and integrating policy and administration is, therefore, required to ensure sustainable property tax system that guarantees equity and improved yields, among other goals.

Need for property tax reform

The necessity for improved local property tax system for local government finance is driven by two main imperatives. First is the need for a stable, reliable and expanding source of finance for ever-increasing population and corresponding infrastructure needs, especially for the urban local councils. Constitutional grant from central government has been unreliable, irregular, and has, in several countries, dwindled over the years. Public revenue in Nigeria is mainly dependent on oil component (presently accounting for 43 per cent of GDP, over 80 per cent of government earnings and over 90 per cent of total export earnings), which is unstable as a result of highly volatile prices. Worse still, lower level governments and particularly the local governments do not have enough share of it for their use. There have been instances of zero allocation from the federated accounts to local authorities in Nigeria in the past. The situation is further worsened by recent global economic recession. The need for alternative revenue base and to expand internally generated funds for local authorities has, therefore, intensified over the years in several countries and by donor nations' (Kelly, 2000).

The second imperative for improved property tax system is the strong and persuasive argument that without local tax or own local revenue, local democracy would disappear (Dillinger, 1991). Empirical evidences abound to support this assertion. For instance, in late 1920s, local authorities in The Netherlands, surrendered nearly all their taxes to the central government in return for a proportion of national taxation such that virtually all the costs of local services were to be met by subventions from the central government. This led to increasing central control over the local authorities until the later virtually lost their local powers of decision and discretion. To regain their lost independence, local authorities in the country had to press for the reintroduction of a local tax on real property. The Netherlands is not the only country that has had a rethink on abolition of property tax. About 1975, the Irish Government decided to de-rate domestic property by 100 per cent. A later report of the National Economic and Social Council in that country concluded, among others, that "property tax would ensure accountability and would provide local authorities with a predictable and viable source of finance". In the UK, the White Paper on property tax published in 1983 laid to rest about a decade of debate on whether or not property tax should be abolished. After a detailed and persistent search by both politicians and tax experts in government, the consensus was that "none of the identified alternatives have met the stated criteria and that property tax has a clear balance of merits over disadvantages'. The debate on the future of property tax has, therefore, long been closed in most countries in favor of reform rather than total abolition.

From the foregoing, local governments would hardly be able to perform their enormous and ever increasing constitutional responsibilities effectively; and attain the desired autonomy and provide the much required alternative power base at the grass roots level, unless they have own independent, substantial and reliable revenue sources. In virtually all countries, the focus is on property tax. Thus, the current global wave of political and fiscal decentralization among developed and developing countries is accompanied with local government reform in general, and property tax reforms in particular (Dillinger, 1991; Choe, 2006).

This study presents the conceptual framework for sustainable property tax reform in nations across the globe against which the controversial Lagos State land use charge (LUC) 2001 is evaluated. The paper is arranged in sections. Previous sections introduced the subject matter. The section that follows presents the conceptual framework for sustainable reform. This is followed by a narration of the history of property tax in Lagos prior to the LUC in 2001. Thereafter, salient provisions of the LUC are highlighted, followed by the results of the empirical study, then the conclusions and recommendations.

Framework for property tax reform

Over the last few years, a number of countries; developed, transitional and developing, have attempted to, or implemented property tax reform. Bird and Slack (2002) observed that the nature and extent of reform has been different from one country to another depending on what the reform was design to achieve, and the context in which the reform took place. In most countries, property tax reform has been part of an overall reform of local government structure and finance. In others, property tax reform was part of a reform of the overall tax system or was carried out on its own, without being part of other government initiatives. The goals of the reform also vary among countries but generally include one or a combination of simplification of the tax system, removing inequities in the tax system and establishing a sustainable local revenue mobilization capacity (Bird and Slack, 2002).

Whatever is the reason behind reform, documented evidences from other countries, developed and developing, where property tax reform has been attempted to instruct that mere reform guarantees neither its fiscal nor non-fiscal goals except certain prerequisites are in place and certain canon of taxation are satisfied. First, reform must be related to the existing property tax law. That is, the first step in any property tax reform intervention is to undertake a thorough analysis of existing property tax system with the aim of identifying major constraints, defects, loopholes and opportunities for necessary amendments or improvements, as the case may be. Where appropriate, reform process must also, as much as possible, be synchronized with other economic and inter-government fiscal reforms to enable the reform build on existing political support and reform momentum (Kelly, 1994). Concerning the Indonesian successful reform; all methods, procedures and technology were developed to match the available institutional capacity to facilitate implementation (Sulija *et al.*, 2005). A radical and wholesome restructuring of policy and administration without regard to existing apparatus would naturally provoke opposition, and generate ill feeling among the citizenry.

Sociologists and psychologists have long recognized that most people are often averse to adopting new ideas which they found at variance with presently held beliefs especially if the new idea calls for additional sacrifice.

In the same vein, while the experience of developed nations provides developing countries with ample opportunities to learn and adopt key lessons in their reform process, this must be done with utmost caution and restraints, bearing in mind the peculiar legal, political, economic, social and institutional history and environment of each country. Overly complex tax law and practice developed under a foreign environment may not fit well without substantial modifications and restructuring. The 3rd Annual Conference of the International Property Tax Institute held in Cape Town, South Africa in June 2000, noted, among others, that "many African countries are struggling to adopt outdated or inappropriate colonial property tax system to cope with modern demands and unique land tenure system". As Kelly (1994) suggested, each country must invariably provide own answers to such questions as: What is to be taxed? Who is liable? The tax basis and method of valuation that is most appropriate? What is the tax rate and structure? What should be the division of responsibilities among local, state and federal governments in policy and administration?

By its very nature, property tax is perhaps the most politically sensitive tax because of its direct nature (Bird and Slack, 2002). Property tax also affects a large and broader group of citizens than other dominant taxes; and given effective administration, it tends to fall most on wealthier members of the society who tend to be politically active (Dillinger, 1991). It is not surprising, therefore, that the primary obstacle to implementing property tax reform especially in developing countries has been lack of political will, which translated to weak administration. Even in Canada (a developed country), property tax reform in Ontario introduced in 1998 followed 30 years of commissions and reports on the need for reform (Bird and Slack, 2002). Sustainable reform, therefore, entails strong political support and extensive government participation – widespread and intensive taxpayer education and consultations; adequate resources mobilization to ensure that fiscal cadastre information are kept up-to-date and that properties are properly assessed, bills are served and collected; that penalties are enforced as provided in the enabling law; and a discernible link between tax payment and provision of local services (Kelly and Musunu, 2000). The success story of Indonesian reform is attributed largely to strong political will (Sulija *et al.*, 2005).

Reform, to be successful, must also satisfy the canon of taxation: equity, certainty, convenience and economy. An equitable and realistic tax policy administered objectively and honestly would go a long way to ensure equity, encourage compliance and improved revenue yields buoyancy. On the other hand, an inequitable, discriminatory tax policy, administered haphazardly and prejudicially would undermine civil responsibility and breed opposition and non-compliance. Property tax must, therefore, be fair, equitable, set in simple and clearly understandable language, be politically acceptable to the payers, and put into consideration the ability to pay based on income (Emeni, 2000; Ogbuefi, 2004). Being an annual tax, property tax should ideally be *ad valorem* tax to improve the equity of the tax system (Kelly and Musunu, 2000; Harvey, 2000). Furthermore, given paucity of market data, and shortage of relevant professional and technical staff, the tax system in developing countries should be kept as simple as possible. To this end, many countries are adopting mass valuation approach (IAAO, 1996). Mass valuation approach is cheaper, simpler and administratively more convenience as it relies on few market evidences for interpolation, reduces room for valuer's discretion, eliminates the often prohibitive cost of valuation and revaluation by consultant professional valuers. In the UK, the 1993 Council Tax reform centered on the adoption of a simple mass valuation strategy whereby all residential properties were classified into one of eight valuation bands (Bird and Slack, 2002).

Given chronic and severe capacity constraints that characterized most developing countries (resulting in extremely low level of collection efficiency), much effort spent in mapping and valuation is likely to be wasted if corresponding effort are not made to improve collection administration (Franzsen and McCluskey, 2004). Thus, sustainable reform in developing countries must be largely "collection-push" rather than "valuation-push" (Franzsen and McCluskey, 2004; Kelly, 2000). Tanzania reform focused solely on the valuation component and has had limited impact on yields (Kelly and Musunu, 2000). Also a "valuation-pushed" reform strategy in Philippines generated maps and values but increased actual tax yields by <1 per cent (Dillinger, 1998). Whereas, a "collection-led" strategy in Indonesia with emphasize on simplicity, equity and ease of administration has been adjudged as an international best practice leading to more than 25 per cent increase in revenue (Kelly, 2000; Kelly and Musunu, 2000).

International best practice also suggests that successful property tax reform must be comprehensive, covering all aspects of property tax policy and administration. Kelly (1994) provides a conceptual model of five predictive variables which cumulative performance ultimately determines the buoyancy of revenue yields as follows:

$$\text{Tax yields} = \text{Tax base} \times CR \times VR \times TR \times CR$$

where:

CR = coverage ratio.

VR = valuation ratio.

TR = tax ratio.

CR = collection ratio.

The model suggests that total tax revenue depend on both policy choices (decisions on tax base definition, exemptions, valuation methodology, tax rates and collection/enforcement provisions) and tax administration (level of completeness of fiscal cadastre, degree of valuation accuracy, efficiency of tax billing and collection; as well as willingness and capacity to enforce compliance). Poor performance in any one of these predictive variables may rubbish whatever success is achieved in the remaining four. Reform intervention must, therefore, be complete and total touching all variables.

Reform must also address the perennial acute shortage of trained and experienced technical, professional and managerial staff characterized of most developing countries (Bird and Slack, 2002; Kelly and Musunu, 2000). Furthermore, property tax reform must not be treated as a one time, or one stop-gap strategy, but as a continuous process. Stakeholder education program must also be sustained to ensure long term, sustainable revenue mobilization (Sulija *et al.*, 2005; Bird and Slack, 2002). Finally, property tax reform must incorporate the development of a comprehensive computer-based rates administration management system covering all aspects of the property tax and effectively linking data-processing procedures with billing, collection, enforcement, dispute resolution and taxpayer services (Kelly, 2000).

The study area – Lagos State, Nigeria

Lagos State is one of the 36 states (and a federal capital territory) that makes up the Federal Republic of Nigeria. The state itself is made up of 20 local government councils most of which are highly urbanized forming part of the mega city. Lagos was the capital of Nigeria until 1991 when the capital was shifted inland to Abuja. In spite of this change in the political status, the emerging mega city remains the commercial and industrial nerve center of the nation, and the most thickly populated with an estimated population of 12.5 million (World Bank, 2006). Over 90 per cent of the headquarters office of post-consolidation commercial banks and insurance companies are located within the city. Lagos property market is perhaps the most active, virile and diversified in the West Africa sub-region. The city presently possesses the highest quantity and quality of the property development and the highest rate of property values.

Table I shows the range of current rents passing on selected residential property type in high, medium and low residential neighborhoods of Lagos metropolis. Rents and sale prices are denominated in dollar in some of its exclusive residential property sub-markets like Ikoyi, Victorial Island and the Lekki axis.

History of property tax in Lagos State, Nigeria

Property taxation in Nigeria has a rich colonial history that can be traced back to the British rule when a simplistic "hut tax" was imposed on the indigenous people. Following from this, other legislations were passed to develop the process of property rating on the assessed value of real property. The passing of the Local Government Reform of 1976 (embodied in the Local Government Edict of 1976) signaled the beginning of a uniform modern tenement rating system in Nigeria. The act in its Part III, Sections 98-140 provided powers to rating authorities to levy and collect tenement rates. The act also provided the basis for the rating edicts for the 21 states making up the Federation of Nigeria.

Lagos State has the longest history of widest acceptability and highest yields from property tax in Nigeria. Property tax has been levied and collected in Lagos as far back as 1958 (Fatimilehin, 2003). Property tax in Lagos State, however, got a boost in 1989 when the first general valuation was undertaken under the World Bank infrastructural development fund project, which produced the first comprehensive valuation list in 1991

Table I. Values of selected residential property types in Lagos Metropolis (2010)

Location and property type	Rent per annum (N)	Sale price
1. A – low density: Ikoyi&V/Island		
(i) Five-bedroom semi-detached house	N7.5-8.5 million	N120-130 million
(ii) Three or four-bedroom luxury flat	N8.5-10.5 million	N120-140 million per flat
2. B – medium density: Gbagada, Anthony, Omole I&Ogudu GRA		
(i) Five-bedroom detached house	N2.0-3.0 million	N50.0-65.0 million
(ii) Five-bedroom wing of duplex	N2.0-2.5 million	N50.0-60.0 million
3. C – high density: Yaba, Ogba, Ketu		
(i) Four-bedroom semi-detached house	N400,000-700,000	N30.0-35.0 million
(ii) Three-bedroom flat	N250,000-400,000	N22.0-28.0 million (for a block of four flats)

Note: 1US$ = N150
Source: Field Survey (2010)

for the entire state. The general valuation was enabled by the Lagos State Government Tenement Rates Edict No. 10 of 1989, which repealed the Tenement Rates Edict, 1985, and the Tenement Rates (amendment) Edict of the same year. The 1989 intervention introduced some limited reform measures including the division of responsibility between the state and local authorities. The law provides for assessment on the basis of the annual value of property (i.e. land with building only); individual property valuation (as against mass valuation); and a quinquennial revaluation, i.e. revaluation every five years. Others include the issues of liability; modality for enforcement and redress.

In spite of this intervention, the property tax environment prior to the LUC 2001 was still inimical to effective property identification, valuation, billing, collection and enforcement. Information to support the construction of fiscal cadastre information was fragmented between the state government and the local authorities, and was often not shared. Because the information was not computerized, older information were not complete and not readily available. The cadastre construction was left entirely in the hands of private consultant valuers with little or no supervision or control by the government. Purpose-designed tax map showing individual properties are not available while available street maps do not provide all the assistance necessary for property identification. The situation is compounded by the chaotic pattern of property development in several parts of the city; the sporadic development and the sprawl of the city outskirt; and the compound pattern of development in the rural areas. Data on property transaction and ownership is inaccurate even in the urban municipalities and may be completely unavailable in rural areas. Basic data or costs, property yields and rate of depreciation are scarce and inaccurate and do not generally reflect true market situation due, in part, to poorly developed property market, poor title documentation system and poor information management. The local government suffers particularly from dearth of trained and experienced technical, professional and managerial staff for the onerous task of property tax administration. The whole tax administration process was been handed manually which provides unlimited avenues for manipulations, fraud and abuse.

The first valuation list under the 1989 law which came into force in 1991 remained the only authentic list, there has been no revaluation since then though property values have increased astronomically in the intervening period in some areas. For example, annual value of between N120,000.00 and N130,000.00 was approved and used for four-bedroom detached house in Ikoyi for the general valuation in 1991. As at 2001, an average four-bedroom detached house in the same area was attracting a minimum of N3,500,000.00, over 2,500 per cent increase. The increase differs between geographical areas and between sectors of the property market. Under this erstwhile property tax administration, local government tax officials had a field day in the interpretation and application of the tax law to their personal advantage.

The Lagos State LUC Law No. 11, 2001

The Lagos State LUC was signed into law on 22 June 2001, but was to have a retroactive commencement date on 1 January 2001. The LUC can be said to be a major institutional and administrative reform of property-related charges and rates in Lagos State and the first of its type in Nigeria. Prior to this reform, land-based tax in Lagos State has evolved into a complex system of three different taxes, rates and charges, administered by different agencies and at different levels of government. These included the Land Rates

Law (development charge, ground rent and premium) Cap 112 of 1984; the Neighborhood Improvement Charge Law Cap 136 of 1986 and the Tenement Rates Law cap 186 of 1989. An integral part of the overall reform, therefore, is the consolidation of the three land-based rates and charges. The new law did not, however, repeal the three laws it purportedly consolidated except that Section 22 provides that the three laws shall cease to operate in respect of a property once the LUC is levied on the property. The LUC is a charge imposed on the owner of a chargeable property, but where the owner is not in possession of the property, the law authorizes the collecting authority to appoint the occupier, who is usually the tenant, to be assessed with and pay for the tax; while the tenant in turn is authorized by the law to offset such payment from monies that may be due from the tenant to the owner of the property.

The goal of the reform intervention was declared to include generation of more funds from the use of land to supply and rehabilitate dilapidated urban infrastructure in Lagos State. The government also aimed through the law "to make the rich pay for the poor". The charge is payable on all properties situate in the state not specifically exempted by the law (Sections 1.1 and 1.2) and the property owner is liable to pay (Section 4).

The LUC Law introduced several policy and administrative changes relating to revenue collection and enforcement, property information and valuation (Table I). Whereas under the Tenement Rates Law of 1989 rateable properties were identified entirely by property-to-property field survey, identification and assessment under the LUC Law uses a geographic information system (GIS). Under this system, a comprehensive digital map that contains the details of the parcel area and building area as taken from space is being used for the exercise. Field enumerators reconcile what they see on site with what is on the map. A plaque with the pin code inscribed is affixed to the property for identification and to indicate that it has been covered in the assessment work. However, because the system cannot capture certain vital information required for valuation, billing and collection (such as physical characteristics and unique attributes of each property including information on the number of floors, property owner and occupier), it has to be supplemented by physical enumeration. Other information necessary to be added by enumerators while on the field include ownership details, type of use, number of floors, quality of construction and materials, state of repairs and general condition of the property. It is the first experiment with GIS in property rating in the country.

The local government authority in the locality where the property is located is the authorized collecting authority. To comply with the constitutional requirements on the division of powers between the state and local government, the LUC Law provides for mutual delegation of authority such that each local authority can delegate to the state, by written agreement, its function with respect to rate collection (Section 1.2).

Assessment under the LUC Law is by area appraisal model aided by GIS for which a statutory formula (rather than by any of the conventional valuation techniques) was contrived to arrive at an undefined value for a chargeable property as follows:

$$LUC = M \times ((LA \times LV) + (BA \times BV \times PCR))$$

where:

LUC = annual amount of land use charge in Nigeria.

M = the annual charge rate expressed in percentage of the assessed value of the property and which may, at the state government's discretion vary between owner occupied residential property and commercial (revenue generating) property.

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

LV = the average value of a land parcel in the neighbourhood, 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 building in the neighborhood, per square meters 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 building in the neighborhood and which also accounts for the degree of completion of the building.

That is, $((LA \times LV) + (BA \times BV \times PCR))$ is the valuation model for arriving at the assessed value of a property (rateable value) which is then multiplied by M to arrive at the annual amount of LUC payable (rate payable). $LA \times LV$ represents the land component, while $BA \times BV \times PCR$ represents the building component of the formula. The average land value and the average building value compiled in 2007 (still in use today unadjusted) were based on an average for sectors and for different areas. The ascribed values for each sector/area have little regards for individual characteristics of plots, and the peculiarity of immediate environment, do not reflect marker evidences. Reconstruction costs also do not reflect obvious differences in the design, construction and accommodation details with their implications on costs.

The annual charge rate (M) is determined by the state Commissioner of Finance from year-to-year and may vary between properties. The PCR is also set by the Commissioner for Finance on the date when this law comes into force and shall, from time-to-time, be revised by the Commissioner. The figure of PCR is, however, subject to the approval of the state House of Assembly.

The charge is required to pay within 30 days of the demand notice. Should there be an objection; an application is to be made in writing to the Commissioner for Finance who is empowered to give discount.

Other notable provisions include the penalty clause contained in Section 20 which provides among others, that if payment is not made after 135 days, the property shall be liable to receivership by the state or its appointed agent until all outstanding taxes, penalties and administration charges are paid. Seizure and eviction of movable and/or immovable property is also provided to deal with non-compliance.

Notable reform in the administration include the contracting of tax collection to private tax consultants; computerized billing; banking sector involvement in cashiering components for tax collection. The law also made provisions for exemptions, Assessment Appeal Tribunal, appeal against assessment and penalties, among others.

Table II summarizes significant shifts in policy and administration introduced by the LUC, 2001 which form the main thrust of the reform.

S. no.	Items	Tenement Rating Edict (1989)	LUC (2001)
1	Antecedent	Replaced Tenement Rates Edict (1985) and Tenement Rates (amendment) Edict (1985)	Consolidates Tenement Rating Edict (1989) and two other land-based charges
2	Construction of fiscal cadastre	Field survey + self (property owner) reporting. Prepared by consultant valuers. Display of valuation list	GIS + field survey. Consultant valuers. Display of valuation list not provided and no valuation displayed
3	Approach to valuation	Property by property physical inspection. Valuation by external consultants	Collection agents employ the prescribed statutory formula to determine the charge payable
4	Assessment authority	State government	State government
5	Collection and enforcement agent/body	Staff of relevant local authority	State government through private tax consultants. Banking sector involved in cashiering
6	Basis of assessment	Gross annual value taking into consideration actual rent or rent on comparables. Otherwise, 5 per cent of depreciated replacement cost (DRC)	Statutory formula without a defined or definable basis
7	Method of property appraisal	Comparative or DRC or profits method. Flat rating	Statutory formula which is close to DRC than any other method. Composite rating
8	Tax rate	Uniform rate per Naira on gross annual value or on 5 per cent of DRC	As determined from year-to-year by the state Commissioner of Finance. Rates differ between property types
9	Revaluation	Every five years	LV and BV to be reviewed every seven years
10	Level of computerization	Nil	Fiscal cadastre construction and billing only
11	Liability to pay tax	Occupier or subsequent purchaser primarily liable while owner or his agents secondarily liable	Property owner is liable. Occupier or owner's agents may pay from money due to the owner

Sources: Tenement Rating Edict (1989); LUC Law (2010); Field Survey (2010)

Table II.
Major differences between Tenement Rating Law (1989) and LUC (2001)

Methodology

Lagos State Government has so far kept virtually all information on the operation and performance of the LUC Law from public view. This study, therefore, had to rely on stakeholders' perceptions for purposes of evaluating the law. Primary data were collected from two categories of stakeholders – estate surveyors and valuers with firms having substantial property portfolio under their management, and property managers in property trading companies with substantial property portfolio. In the absence of authentic information from Lagos State Government or her agents, the respondents (given their educational qualification, job schedule and experience) represents the category of stakeholders that should be most familiar with the provisions of the enabling act, and, therefore, be in a position to provide a representative opinion on the performance of the reform measures.

On the whole, 135 duly completed questionnaires were retrieved. Respondents' assessment of LUC Law, the policy and administration, was measured on a five-point rating Likert scale from "strongly agreed" to "strongly disagree" while the data were analyzed with the use of simple frequency distribution, percentages and ranking based on mean item score. Secondary data were largely from existing studies as well as relevant legislations and documents pertaining to the LUC Law.

Analysis and discussion of results

The analyses and results that follow are based on respondents' characteristics (Table III), and respondents' assessment of the LUC Law in terms of policy (Table IV) and its administration (Table V).

The statistics contained in Table III(a)-(e) revealed that most of the respondents possess higher degrees, belong to relevant professional bodies and have considerable post-qualification experience in property management as the research instruments were purposively directed at senior members of firms having considerable number of management properties in their portfolio.

Table IV contains the summary of respondents' assessment of the policy aspect of LUC Law. About 11 policy criteria were used to elicit respondent evaluation of the LUC

Variables	Frequency	Percentage
(a) Gender of valuers		
Male	128	95
Female	7	5
Total	135	100
(b) Academic qualifications		
BSc/HND (Estate Management)	88	65
MSc (Estate Management)	17	13
BSc/HND/MSc (other discipline)	16	12
Others	14	10
Total	135	100
(c) Professional qualifications		
ANIVS	98	73
FNIVS	12	9
ANIVS/FNISV + RICS/FRICS	5	4
Others	20	15
Total	135	100
(d) Experience		
0-10 years	34	25
11-15 years	68	50
15 + years	33	25
Total	135	100
(e) Number of properties in firm's portfolio		
0-50	30	22
51-100	86	64
101-200	15	11
200 and above	4	3
Total	135	100

Note: $n = 135$

Table III. Some characteristics of the respondents

Table IV. Respondents' assessments of the policy aspects of the LUC

Criteria	Strongly agree	%	Agree	%	Neutral	%	Disagree	%	Strongly disagree	%	Mean	Ranking
Valuation model – it distributes tax burden equitably per sector/area	0	0	10	7	17	13	84	62	24	18	3.70	6th
Valuation model most ideal given the valuation environment	0	0	25	19	10	7	65	48	35	26	3.30	7
Method to fiscal cadastre construction reasonable/adequate	21	16	58	43	15	11	32	24	9	7	2.62	9
Liability simple to estimate/determined	0	0	5	4	2	2	62	46	66	48	4.40	2nd
Liability reasonably reflects ability to pay	5	4	22	16	8	6	66	49	34	25	3.76	5
Certainty – it is reasonably predictable, not discretionary	1	1	10	7	0	0	78	58	46	34	4.17	3
Sufficiently related to existing property tax laws	48	36	45	33	4	3	29	22	9	7	2.30	10
Comprehensive – it touches policy and administration	35	26	69	51	0	0	28	21	3	2	2.22	11
Exceptions provisions reasonable and adequate	10	7	53	39	35	26	27	20	10	7	2.80	8
Penalties/enforcement provisions reasonable and adequate	6	4	16	12	5	4	58	43	50	37	3.96	4
There was sufficient consultation and taxpayer education prior to enactment of the law	0	0	2	2	0	0	28	21	105	77	4.75	1

Note: $n = 135$
Source: Field Survey (2010)

Table V. Respondents' assessments of the administration aspects of the LUC

Criteria	Strongly agree	%	Agree	%	Neutral	%	Disagree	%	Strongly disagree	%	Mean	Ranking
Accuracy and consistency in actual assessment	22	16	44	32	21	16	28	21	20	15	2.85	5
Method of servicing the bill: timely and properly delivered	36	27	46	33	8	6	25	19	20	15	2.61	4
Economy – low collection: administration costs ratio	4	3	12	9	77	57	31	23	11	8	3.24	3
Convenience – easy for taxpayers to pay	73	54	47	35	3	2	8	6	4	3	1.69	10th
Penalties/enforcement procedure reasonable	6	4	13	10	0	0	71	53	45	33	4.01	1st
Time limit to pay reasonable	3	2	53	39	3	2	35	26	41	30	3.42	2nd
LUC preferred to the combined effects of three laws it consolidates	30	22	62	46	0	0	25	19	18	13	2.55	8th
Collection by private tax consultants is an improvement in administration	25	19	52	39	12	9	28	24	18	13	2.72	7th
Improvement in transparency and accountability-billing, collection, etc.	26	19	31	23	6	5	30	22	42	31	3.23	4th
The use of GIS and computer has improved administration – coverage, billing, etc.	35	26	53	39	6	5	28	21	13	10	2.49	9th

Note: $n = 135$
Source: Field Survey (2010)

as property tax reform measure. These criteria emerged from existing literatures as major factors used for gauging the reasonableness and adequacy of property tax reform measures (Sulija *et al.*, 2005; Franzsen and McCluskey, 2004; Kelly and Musunu, 2000; Kelly, 1993, 1994, 2000). From casual observation, the assessment weigh heavily on the side of "disagree" and "strongly disagree" suggesting that LUC as a property tax reform policy falls short of stakeholders expectations. Areas of marked disagreement include insufficient consultations and taxpayer education; the model for determining that charge payable not lending itself to easy calculation; the charge not being predictable (ostensibly because the Commissioner of Finance is given too much discretion to vary certain critical parameters in the assessment); inappropriateness of the valuation methodology; the resultant charge not reflecting ability to pay; and the penalty and the enforcement procedure.

Table V summarizes respondents' opinion on the administration of the LUC Law so far using criteria for measuring effectiveness and efficiency in property tax administration (Sulija *et al.*, 2005; Franzsen and McCluskey, 2004; Kelly and Musunu, 2000). Respondents' rating of the administration aspect of the reform is much better than the rating of the policy. Areas where respondents disagree mostly with the administration of the tax include the time allowed for payment; and the prescribed penalties and enforcement procedures which include additional surcharge of 25, 50 and 100 per cent, respectively, where the charge delays payment for up to 75, 105 and 135 calendar days from the date of receipt of the assessment. If the charge remains unpaid thereafter, the property shall be liable to receivership. Another is a penalty of up to N100,000 or three months imprisonment for non-compliance with the LUC Law, obstruction of authorized officials, damages to property identification plaques or incitement to other persons to refuse to pay the tax.

On the other hand, respondents favor the use of GIS and computer, and agreed with the collection and enforcement by private tax consultants. Under the old regime, staff the ministry responsible for billing and collection exploited the system to defraud taxpayers. Outrageous bills were usually sent to taxpayers who are then expected to approach the officials of the ministry for private negotiation leading to bribery, low collection and arbitrariness. There is also remarkable acceptance of the banking sector's role as revenue collecting agents as an innovation that makes tax payment much simpler and easier. With e-banking, taxpayers can pay in any branch of the designated banks, a number of which has scores of branches dotted over the city. While the final assessment may be considered outrageous, is it widely agreed that private consultants would unlikely resort to unscrupulous manipulations of bills as it was common under the old system. It was in fact gathered during interviews that the consultants would accept a reasonable proportion of bills in full settlement in order to minimize court cases and to meet the target set for them by government, which also forms the basis of their remuneration. However, a large number of respondents apparently vein ignorance of the success of the reform in terms of revenue yields and its cost effectiveness. The reason for this level of indifference is brilliantly captured by the following comments by one of the consultants to the state government on revenue generation:

> At the same time, there is great concern among various stakeholders questioning the involvement of private sector agents in tax collection on a whole series of governance criteria, like transparency in the appointment of consultants and accountability on the management of the revenue. As for efficiency, there is no disclosure to the public of cost-revenue ratios. Public rumours about alarmingly high levels of collection costs

contribute to keeping taxpayer morale and voluntary compliance as low as it is. No annual report is published on the activities of the tax agents. Contracts for tax work are not awarded on the basis of public competitive tendering. Confidentiality of taxpayer information is not guaranteed. The present arrangement with three (groups of) tax consultants working with the LSBIR is fragmented, which has led to disagreements, insufficient cooperation and refusal to exchange information. Finally, the legality of the present arrangement is seriously disputed. Whilst formal assessment and collection are still done by the Lagos State Board of Internal Revenue (LSBIR), activities that are very close to those core responsibilities and basically are essential parts of them, like the processing of confidential taxpayer information and the monitoring of collection, have been contracted out (Zeeuw and Abdulrazaq, 2005).

Conclusions

To yield the desired results, property tax reform intervention must be pursued logically, methodologically and with due regard to equity, fairness and local peculiarities. Nothing undermines civic responsibility than an arbitrary and discriminatory tax policy administered haphazardly, discriminatory and prejudicially, as is the case with the Lagos State LUC. It is not surprising, therefore, that almost ten years after the LUC was passed into law, and in spite all the coercion, threat, muscle-flexing and substantial shifts in grounds by the government in terms of concessions, little has been achieved by way of compliance and yields while the protest is getting wider and louder by the day especially now that the tax is applicable to all local government areas.

The protest that greeted the passage of the LUC was loud, vehement and spontaneous, cutting across all stakeholders as well as all sections of the general public. The Nigerian Institution of Estate Surveyors and Valuers (NIESV), the Nigerian Bar Association (NBA), the Chartered Institute of Taxation of Nigeria (CITN), among professional bodies and the organized private sector (OPS) have particularly attacked the law on various grounds describing the law variously as the law has been described variously as outrageous, vexatious, objectionable, draconian, unrealistic, ill conceived, uncivilized, retrogressive and a breach of democratic ideals, among others. The OPS, the major stakeholders and a number of its numerous affiliated bodies have dragged the state government to court challenging various aspects of the law. Major Nigerian newspapers have ran series of editorial commentaries on the law advising the Lagos State Government to give the law human face and tread the path of negotiation and dialogue with the stakeholder. The Lagos Millennium Group on the Environment, an NGO, called on its members to disregard the law.

The LUC Law has never ceased to attract criticisms because, going by the responses summarized in Tables IV and V, the law was wrongly conceived as a policy and has so far been haphazardly administered. Regarding policy, it was alleged that there were no consultations or discussing nor was the law subject to public debate at the floor of the Lagos State House of Assembly before it was passed (NIESV, 2002). All discussions and consultations including limited taxpayers' education that ever took place only in response to public cry against the law. The right professionals were not involved in the drafting of the law. Being a tax on land, experts in land management should have been practically involved from the onset instead of accountants and tax officers. For example, the inputs of the NIESV as well as the NBA, and the CITN, should have been sought in the process of making the law.

From Table IV, most of the respondents largely agreed that the prescribed valuation model is inappropriate. This agreed with the submission of the NIESV, the custodian of valuation practice in the country, which described the prescribed formula as a "most curious" (NIESV, 2002). The statutory formula for assessing capital value has little market-evidence contents. It is not surprising, therefore, that the model produces inconsistent, spurious and questionable values whereby building owners are being asked to pay annual charge of up to 100 per cent or higher than the annual rent receivable in some cases. The percentages for properties belonging to a particular property trading company range between 30 and 140 per cent (Mayaki, 2002). This anomaly is not peculiar to this particular property company. It is a universal principle that a government should not use tax as an instrument for expropriation of property or of a significant part of it. Moreover, the burden should be distributed in such a fashion that persons are taxed according to their capacities to pay the tax. High tax rate discourages property development and investment. It also discourages mortgages and perfection of property/land titles.

The law purportedly consolidates three major taxes namely: the Land Rates Law, the Neighborhood Improvement Charge, the Tenement Rate Law, which are different in basis and status, beside the fact that the law fails to repeal the three laws purportedly consolidated. The consolidation represents an unusual mix as it combines what is basically state tax with what is basically local government tax. Whether a local government authority can delegate its constitutional power to the state government was a matter of various litigations in Lagos State following the passage of this law. However, in the case of *Knight Frank & Rutley* v. *A.G. of Kano State* [1990] 4 NWLR (Pt 143) 210, the Nigerian Court of Appeal expressed the view that it was not constitutional for a tier of government to delegate its constitutional powers to another tier, a decision which the Supreme Court affirmed in [1998] 7 NWLR (Pt 556) 1; [1998] 4 S. C. 251. The question of whether payments made under this Law are tax deductible under the Companies Income Tax Act and personal income tax also remains a controversy.

The LUC Law as it stands today offends all known canon of taxation in several aspects. For instance, it does not take ability to pay into consolidation and it is discriminatory. Until recently, the law applied only in four out of the 20 Local Government areas in the state (Eti-Osa, Ikeja, Lagos Island and Apapa) and applies only to certain categories of property selected on yardsticks that are not made public. Recently, the law is said to apply in all local councils in the state but several properties in several parts of the state are still being charged under the Tenement Rate Law of 1999 administered directly by the local councils.

The annual charge remains uncertain as the Commissioner for Finance is vested with the power to determine certain critical variables in the assessment model – the values of M and PCR. In November 2002, as a result of non-compliance and series of litigations, the government reviewed the original rates (M) downward as follows:

- Owner-occupied property – 0.15 per cent of the assessed value. That is, $M = 0.0015$.
- Commercial/residential property – 0.65 per cent of the assessed value. That is, $M = 0.0065$.
- Commercial property – 1.17 per cent. That is, $M = 0.0117$ per cent (*The Guardian*, 26 November 2001, p. 94).

In the same year, government further cancelled all bills for 2001 and granted a further discount of about 30 per cent on issued bills and waived half of the amount to be deposited by property owners who wished to appeal against their assessment. In March 2003, due to non-compliance and increased litigation government granted further discount (Table VI).

In effect, the 2002 bills have been discounted by 75 per cent or more depending on the class of property in question. The new rates were to be applicable for a period of seven years commencing from the 1st of January 2002, but still remain in use today (2010). These amendments have introduced a lot of arbitrariness and inconsistencies into the tax system with equity and fairness implications. At present (October 2010), PCR is 0.4 for low quality houses; 0.5/0.6 for average quality houses and 0.75/0.8 for high-quality houses.

The appointment of private tax consultant for collection and enforcement has remained controversial. Stakeholders' position on this initiative is mixed (Table V).

Finally, going by the substantial shifts in grounds already conceded, the government might have unwittingly succumbed to the fact that the law as it stands is incapable of successful implementations. The government must, however, be courageous enough to accept that no amount of coloring will give the law the needed human face. As the NIESV suggested "the LUC is a very bad law in its entirety. It cannot be sanitized by cosmetic amendments. It must be abrogated (NIESV, 2002)". Complete abrogation is, therefore, the only path of honor out of the present impasse.

Recommendations

Sustainable reform intervention must commence with elaborated taxpayer education, and wide-range consultations and discussions with all stakeholders particularly with the residents, community-based organizations and the business community aptly represented in Lagos State by the OPS; relevant professional bodies such as the NIESV; the NBA; and the CITN; and public officers charged by law with the administration of the tax system. Such consultations and discussions provide invaluable avenue to address grievances underlying hostilities to property tax in general, and specific areas of possible differences in the new law.

Sustainable property tax reform also demands strong political and operational supports. Relevant professional bodies, elected councilors and chairmen; the Obas; the community leaders; the business community; the residents as well as the staff of the State and Local Government in charge of revenue mobilization and collection must be actively involved in policy formulation and administration. Property tax being a direct tax, elicits

Property classification	Old rates (2002)	New rates (2003)
Commercial property (%)	1.75	0.375
Residential property/commercial (%)	0.65	0.125
Industrial premises of manufacturing concerns (%)	0.50	0.125
Owners occupied residential property (%)	0.15	0.0375
Owner occupied pensioners property	Exempt	Exempt
Family compound/public, etc.	Exempt	Exempt

Source: *The Guardian* (10 March 2003, p. 24)

Table VI. Approved discount rate per property type taxpayers' support through elaborate taxpayer education, wide consultation and discussions, incentives and improving the current poor link between rates payment and local expenditure and service delivery. Nothing undermines civic morality as graft, corruption and discriminatory enforcement of any law. It is important, therefore, to ensure that future property reforms take into account not only the need to be politically acceptable and administrative feasible but also that increased taxes be designed properly from an economic perspective (Bird and Slack, 2002). The link between property tax payment and local service delivery must also be substantially improved.

To improve costs: revenue ratio, property tax system must be kept as simple as possible. A mass valuation approach that sufficiently incorporates local market realities into the valuation process is widely advocated especially for developing nations (Kelly, 2000; Bird and Slack, 2002). If the primary function is to generate a reliable and adequate revenue in a cost effective and equitable manner, a less cumbersome and less costly method of assessment would allow tax authority to focus on the most important aspects of tax reform, namely, tax administration and the creation of enabling environment to improve property coverage, billing and collection (Franzsen and McCluskey, 2004; Kelly and Musunu, 2000). Modern property tax is considered an *ad valorem* tax. Besides, improving yield buoyancy, an *ad valorem* tax would also ensure equity, effectively relates tax to the capacity to pay, and "reimburses" public investments that stimulate increases in property values (Sulija *et al.*, 2005).

The present use of GIS and computer should be retained and expanded; the private sector involvement in revenue collection and banking sector cashiering has potential advantages on efficiency and revenue yields and should also be retained. While the state government retains the function of generating fiscal cadastre because of the enormity of its human and material resources requirements; billing, collection and enforcement should be left entirely to the local authorities.

A functional tax administrative procedure and a friendly tax environment is *sin qui non* to a sustainable, effective and efficient property tax reform. No other area of taxation is more dependent on administration than with respect to property tax (Bird and Slack, 2002).

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