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TENEMENT RATES AND THE LAND USE CHARGE: A COMPARATIVE EVALUATION OF SUITABILITY FOR SUSTAINABLE MUNICIPAL FUNDING

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Abstract

Tenement Rate (TR) has been a feature of municipal funding in Nigeria since colonial times. In 2001, Lagos State, one of Nigeria's sub-national units, introduced in its stead the Land Use Charge (LUC) which has subsequently been adopted by four other sub-national units of Nigeria: Anambra, Edo, Enugu and Ogun States. These developments suggest that TR is unsustainable as a system of municipal funding. Ironically, however, there is discernible in the LUC itself, a potential threat to sustainable municipal funding. This emanates from controversies which have the potential to reduce citizen compliance, and therefore, revenue yield. This paper compares and contrasts the two charges and systems. The findings are that TR, amongst other advantages, has a logical theoretical basis which the LUC lacks; it is locally administered, whereas the LUC is designed and run by the State; TR is constitutionally founded whilst the LUC is a State law of contestable constitutional validity. One may conclude that TR is the better option as its completely local focus suggests a higher potential for wide acceptability and enduring compliance. Contrarily, the hybrid LUC's many shortcomings, particularly its dual purpose design for local and State needs, attracts controversy which casts a doubt as to its sustainability.

Keywords: Land use charge; Municipal funding; Property tax; Sustainable municipal funding; Tenement rate

INTRODUCTION

British colonialism introduced the township concept to the space which is today known as Nigeria. At the inception, policy designated three classes of townships: first, second and third with Lagos alone being in the first category, entitling it to be run by a town council whilst the other township categories as smaller entities were run either by District Officers or Assistant District Officers. The earliest townships included Enugu (1917) and Benin (1920). With these townships came the practice of municipal taxation for the purpose of raising funds for administration. Municipal taxation met with some resistance as in the case of the Aba women's riot of 1929 where the *casus belli* was the imposition of a tax on women. Amongst the taxes introduced by the colonialists was the TR. The policy of townships in Nigeria came through the Township Ordinance No 29 of 1917. The legislation was fundamental to the development of townships given its regulations for land use zoning and land subdivision which set standards for urban spatial order. (Olufemi et al, 2015). The evident reality that municipal administration

would need to be funded from local sources necessitated the legislative empowerment of the responsible authorities to levy taxes. TR was one of these taxes and it subsequently became an important source of municipal funding throughout the country. In 2001, the newly elected government in Lagos sponsored a repeal of the Lagos State Tenement Rates Law of 1989 and introduced in its stead the LUC with the enactment of the Land Use Charge Law of 2001 (Lagos State Government, 1989; Lagos State Government, 2001). Thus, the then subsisting Tenement Rates Edict 1985 and the Tenement Rates (Amendment) Edict of 1985 were also repealed. For years, only Lagos State operated the LUC system, but in recent times, Anambra (2010), Edo (2012), Enugu (2016) and Ogun (2012) states have followed suit.

Municipal Funding in Nigeria

A municipal area is an urban entity which is run by its own government. The policy of townships brought up entities such as the Lagos Township, Benin Township and Aba Township, for instance. The District Officers who administered these townships were empowered to levy and collect taxes such as rates (Aluko, 2011). Councils were subsequently established and these lasted throughout the colonial era until after independence. Following government reforms from the 1970s to 1990, local governments were created with jurisdictions spanning areas larger than the jurisdictions previously covered by cities. Additionally, cities which were previously under one municipal jurisdiction were split and brought under two or more jurisdictions. Strictly speaking, therefore, Nigeria's cities are no longer under one local jurisdiction as they were in the past. In this paper, a municipality is taken to be equivalent to a local government authority, which is the name now applied to urban administrative jurisdictions in Nigeria. Local governments in Nigeria came to be managed by councils which are led by a full-time chairman and supervisory councillors who are popularly chosen by balloting.

The local governments of Nigeria number 774 in all (Federal Government of Nigeria, 1999). Their funding comes from a variety of sources. These include statutory allocations, rates and levies, fines, income from investments, income from projects and property or tenement rates. The major source of revenue is the monthly allocation from the consolidated revenue account of the federation. The three tiers of government share this revenue according to an agreed formula which gives 52.68%, 26.72% and 20.69% respectively to the federal, state and local governments. The local governments heavily rely on this assured source of funding and have tended to neglect other sources which require structures and effort to administer and collect.

Property Taxation in Lagos State

Property taxation was first introduced in Nigeria's townships in the form of tenement rates. The procedure was established to reflect the elements of practice in the United Kingdom. Thus, there were chargeable and exempted properties, methods of assessment, procedures, valuation lists, and opportunities for appeal and so on.

By the 1980s, the TR system in Lagos State was managed by the Tenement Rates Edict of 1989 which was as meticulous in its structure and provisions as the British system. Thus, there was a Valuation Office headed by a Chief Valuation Officer and his deputy; there was a Valuation List which was always open to inspection by the public; all the local governments of Lagos State had valuation officers as representatives of the Chief Valuation Officer and their duty was to monitor new developments and have them valued for inclusion in the List; there were provisions for

appeal to tribunals where objections were raised on valuation assessments. There was also a provision for quinquennial revaluations. The procedure was that the Valuation Office prepared the assessments on behalf of the local governments who then, as levying and collecting authorities, issued annual demand notice based upon the established rateable values in the Valuation List. The Valuation Office was often approached to intervene in instances when local governments commonly and unilaterally issued demand notices which were based on inflated rateable values in a bid to collect more money from ratepayers, particularly business organisations. Overall, the investment in the system, which was facilitated by World Bank assistance, was not sustained. This was because after the first general valuation of rateable properties, the expected revaluations after five years did not take place. Thus, because the old rateable values were no longer realistic after so many years, local governments no longer relied upon them and started issuing arbitrary demand notices. With the system having fallen into neglect by the 1990s, the elected government which took over governance in 1999 decided to introduce its preferred way of taxing property to raise revenue for development. Thus, the Land Use Charge was introduced.

Sustainable Municipal Funding

Municipal funding is meant to provide the financial wherewithal for the administration of an urban entity, city or township, and the provision of governance services for its residents. In today's Nigeria, there is no city which is solely administered by one municipal authority as used to be the case. This is as a result of the local government reforms of the 1990s which sub-divided the country's space into 774 units cutting across city jurisdictions previously governed under a single authority. Thus, there is now a situation of two or more jurisdictions subsisting in one city. However, this does not in any way obviate the need for funding, even if it may present some challenges to municipal governance due to the overlapping of jurisdictions.

The concept of sustainable municipal funding envisages the emplacement of a functional and accountable system for the effective and efficient assessment and collection of local taxes of all kinds. Additionally, the system should ensure the deployment of such revenue in a manner consistent with the objectives of governance in order to secure the welfare of the public and ensure it buys-in and takes ownership in a self-sustaining manner. Thus, sustainable funding involves having a functional system which is effective because it delivers the objectives of governance, thereby creating reciprocal and enduring commitment on the part of the governed. With sustainable funding, the system can endure, commitments respected, and thus, the planning and execution of projects sustained.

This paper comparatively examines the TR and LUC and their suitability, in terms of advantages and disadvantages, for effective municipal funding on a sustainable basis. The study is necessitated by the LUC's displacement of the tenement rate system in Nigeria's largest metropolis; by the controversy which has trailed, and still trails, the LUC; and by the introduction of the LUC in three other states. This would mean a further displacement of the established tenement rate system to which the country is accustomed. However, the LUC's controversy and citizen resistance to its provisions raises fears that it may not be better than the TR.

The topic is important for the following reasons. First, taxes levied on property for the purpose local government funding are raised from the local environment. Thus, policy measures must have the confidence and consent of local property owners, if they must have a chance of being

effective and sustainable. This will happen if local taxpayers, as stakeholders, have an input in the process. This is a necessary step towards contributing to the management of their resources and taking effective ownership of their environment. Therefore, it is important to find out whether the LUC demonstrates these requirements better than the TR. Second, there is the prospect that the controversial LUC may lead to a lower tax yield due to citizen resistance or non-compliance. Third, legal issues which have been raised about the LUC could provoke litigation which may lead to rising defaults and a decline in overall tax yield with obvious implications for local funding. Fourth, the assessment method under the LUC system is not known to valuation theory and thus does not enjoy the confidence of professional valuers as does the TR system. This suggests that the LUC may not possess the quality of advancing professional best practice and generating market-relevant data for development planning and research. The task is approached through a review of the two systems from the viewpoints of concept, objective, impact and sustainability prospects. Their origins are traced and their bases of assessment and administration examined.

Following this introduction which presents an overview of municipal funding, taxation of property in Lagos state and the concept of sustainable municipal funding, the paper reviews the TR and LUC systems. They are compared as to concept, objectives, impact and prospects, advantages and disadvantages. The findings are then presented, the practical implications identified, followed by the conclusion and recommendations. The study is focused on the LUC law of Lagos State where the idea originated. The study relies upon secondary data, the sources of which constitute the archives, scholarly literature, the media and stakeholder reports.

It is hoped that the findings of this study would enable a better understanding of the advantages of tenement rating; its superiority to the LUC and the need to retain and refine it for municipal financing. Furthermore, it draws attention to the fact that when state governments, as second-tier authorities, interfere in local government constitutional responsibilities, they superimpose themselves between democratically elected local councillors and their grassroots constituencies, thereby hindering the promotion of local democracy and the development of local capacity.

A COMPARISON OF HISTORY, CONCEPTS, OBJECTIVES AND IMPACT

History

Tenement Rate:

Tenement rate has a long history dating from the 20th century pre-independence colonial townships established in Nigeria by the British. There was really no national law on tenement rating, rather the various town councils made edicts for assessment and collection of the tax. This was because the British colonialists followed the practice in their home country where the tenement rate is a local tax to be administered, levied and collected on a local basis from local property owners. Thus, no centralisation or regionalisation was necessary. In the case of Lagos, there was the Tenement Rates Edict of 1985 and the Tenement Rates (Amendment) Edict of the same year. Again, there was The Lagos State Tenement Rates Law of 1989 which may be regarded as being representative of rating law and practice in the country. The system provided for all the requisites of a functional rating system.

Land Use Charge:

The LUC is a 21st century creation. It had no a history of application anywhere else before it was introduced in Lagos. Thus, its history is comparatively recent, dating, as it is, from 2001. Its origins are not local. This means that it did not come about from a genuine grassroots need in the local governments, the appropriate tier of political authority; rather it is an initiative of the state which is a higher and more distant tier of government. This background means that its administration is also not a local affair.

Conceptual Bases

Both the TR and LUC are taxes levied upon landed property. The TR is entirely locally domiciled within the urban council of the area in which the taxed property is located. On the other hand, the LUC is designed, administered, levied and collected by the State purportedly on behalf of the various urban councils. This means that the various elected local urban councils are not directly involved in the assessment of the taxes to be levied on property located within their jurisdictions; owned by the electorate who voted them into power and to whom they are supposed to offer governance services.

Tenement Rate:

Under the British system, TR is “levied... upon the occupiers of property based on annual value of their occupation” (Britton et al. (1980: 363). However, in Nigeria, the tax is levied on property owners. The principle is based upon the ability of landed property to earn an income which is assessed on an annual basis according to certain rules. The procedure requires the ascertainment of *Gross Value* by which is meant the rent at which a property might reasonably be expected to let from year to year if the tenant undertook to pay all usual tenant’s rates and taxes and the landlord undertook to bear the cost of the repairs and insurance and other expenses necessary to maintain the property in a state to command that rent. From the gross values so ascertained, statutory deductions are made in regard of repairs, insurance and other expenses to arrive at the *Net Annual Value* which is defined as the rent at which the property might reasonably be expected to let from year to year if the tenant undertook to pay all the usual tenement rates and taxes and to bear the cost of the repairs and other expenses necessary to maintain the property in a state to command that rent. This is the procedure in respect to property where not predominantly composed of land space. For property where land predominates, assessment is directly made to Net Annual Value.

Rating assessments are based upon valuation theory, thus the TR has a basis in rent and valuation theory. There is a theoretical basis to the tenement rate and this can be traced to the theory of rent as a surplus. The Classical or Liberal economists of 19th century Europe led the way in examining how rent is earned by land in a free market system. Although working under an agrarian economic system, the postulations of Ricardo on agricultural land value provide a rational basis of rental value analysis which Von Thunen expanded by theorising on how the pattern of land use around a city in an agrarian economy can be influenced by the particular location of individual land units.

Going back to theory of land as a surplus, also developed in regard to agricultural land, the concept simply states that the rent which a farmer would pay for the land on which he farms crops would be the residue of his turnover after the deduction of all co-operating factor costs and

a commensurate reward for enterprise. The amount left is alternatively regarded as the pure earnings of land as a factor, pure in the sense that land is not a produced factor and therefore all of its earnings constitute economic rent. The fact that land can earn rent to which its owner is entitled, is the theoretical and rational basis of the tenement rate charge. Under the tenement rate system, the earnings from land are assessed on an annual basis

The Business Dictionary defines the word “Theory” as “*propositions, or accepted facts that attempt to provide a plausible and rational explanation of cause-and-effect (causal) relationships among a group of observed phenomenon. The word’s origin (from the Greek thoros, (a spectator), stresses the fact that all theories are mental models of the perceived reality*” (Business Dictionary, 2020). A theory simply is a way of looking at reality, in effect, often a simplification of the complex reality. Having always been associated with learning and the distillation of the best ideas of humankind through the ages, theoretical expositions have always served to advance the march of civilisation simply because they are open to scholarly examination, re-examination, disputation, possible refinement and acceptance or disapproval and rejection.

Valuation aims at the assessment of value, in this case the value of annual occupation. The basis of this approach to value is rent theory which acknowledges that land can earn income in the form of rent. Rating theory accepts that the best way to assess the tax payable by the property occupier is by estimating the potential income from the land on an annual basis, the same basis on which the tax or financial system operates. The principles of assessment in rating are that the property is assumed to be vacant and available to let and it is valued in its existing state. The rent assessed is not the rent actually paid, but the rent which a hypothetical tenant would pay.

Land Use Charge:

The LUC, according to Lagos State Government (2001), is a tax on property introduced to consolidate the *ground rent* on leases of *State government land* and *development charges* originally collected by the *State government*, and now, the *tenement rate* levied on property by *Local governments*. Unlike the TR which has a basis in valuation theory, the LUC is an amalgam of the annual ground rent (which may be assessed logically, the development charge (which is a capital sum) and the TR (which is subsumed and assessed in an illogical manner). The LUC cannot be said to be based on a defensible theory of value.

There is no comparative theoretical rigour behind the LUC and this was why people queried its basis. Objections arose not only as to the basis, but also, because the state government (a second-tier authority) was unilaterally changing a long established system and taking over the local government (second-tier) responsibility for the assessment of rateable properties and the levying and collection of tenement rates.

Objectives

Tenement Rate:

The single objective is to raise tax revenue from local property for the purpose of financing the expenses of local administration and services.

Land Use Charge:

This tax differs in objective from the TR in that it is intended to raise revenue not only from local property, but also, from state government property (ground rents and development charges). The logical purposes would be to finance local as well as state governance. According to the Land Use Charge Law 2018 (which repealed the original 2001 law), this tax is intended “to provide for the consolidation of property and land-based charges and make provisions for the levying and collection of land use charge in Lagos state and for connected purposes”. Specifically, the land use charge was defined to include: “all Property and Land-based Rates and charges payable under the Land Rates Law, the Neighbourhood Improvement Charge Law and Tenement Rates as may now be computed on the basis of the Schedule to this Law”. The land based charges then existing were the ground rent, *tenement rate*, and neighbourhood improvement levy.

Impact

Tenement Rate:

The TR has never been characterised by arbitrariness. The levied amounts have never been controversial, neither have the sanctions been harsh. The impression given by the TR is that with good administration the level of compliance would far exceed what has been achieved in the past and definitely more than the compliance level of the LUC.

Land Use Charge:

The most noticeable impact of the LUC has been controversy. Furthermore, the level of compliance has been low, given the revelation of state government officials that payment was made on only 300,000 properties out of 700,000 chargeable properties from a total of 2,000,000 eligible properties as at 2017. In addition, the levied amounts have been very sizeable and unrealistic. Again, the lack of a convincing basis of assessment has precipitated controversy and disagreement amongst various publics and this is not helped by the harsh and undemocratic sanctions applicable to defaulters and late payers under the LUC.

A COMPARISON OF THE TWO TAXES

There are indeed differences between the two taxes as displayed in Table 1. The foundation of the TR is theory-based whereas that of the LUC is not. Whilst land and the improvements made to it are the common bases of valuation for both levies, the assessment method of the TR differs in being the potential annual value whereas the LUC’s was the capital value. Now, the 2018 Land Use Charge Law states that: “the annual amount of LUC payable on any property shall be arrived at by multiplying the Market Value of the property by the applicable Relief Rate and Annual Charge Rate, using the prescribed formulae stated in the new Land Use Charge Law and more particularly described in the Schedule thereto” (Section 10(1) (Lagos State Government, 2018). This is an unorthodox assessment methodology which is unknown to professional valuers.

Table 1: Comparison of the Tenement Rate and Land Use Charge

Bases of Comparison	Tenement Rating	Land Use Charge
Philosophy/Foundation	Classical Rent Theory	Unclear/undeclared
Valuation Basis	Land/Improvements	Land/Improvements
Assessment Method	Annual Value of Land/Improvements	Capital Value(Depreciated Replacement Cost)
Amount Payable	Depends on earnings attributable to Land/Improvements	Not truly based on earnings of the Land/Improvements

A COMPARISON OF THE TWO SYSTEMS

There are also differences between the two systems as displayed in Table 2 which compares their operational characteristics. The TR is a system designed to be operated by certified valuers who use orthodox methodologies. The LUC system is not understood by valuers who, by training, specialise in the assessment of land value. It was not designed by valuers and it is also not run by valuers. Being of a faulty foundation, it also does not lend itself to logical input from valuers. Again, the TR is a two-sided system because it accommodates the views of property owners. This is the reason behind the requirement that valuations being done according to “the tone of the list” and the opportunity for objections and appeals. Due to these provisions, there is in the UK substantial tenement rates case law developed over time and these have served to improve rating practice and the acceptance of rating as a form of taxation. Furthermore, the TR is not controversial and has not faced revolts whereas the new 2018 Lagos Land Use Charge Law provoked protestations and calls for a boycott by the Nigerian Bar Association (Abdulah, 2018), and objections by the Lagos Chamber of Commerce (The News, 2018). Additionally, a law suit was instituted by a coalition of Lagos residents (The Nigerian Lawyer, 2018). Again, Disu (2018), reflecting public disenchantment states that: “*The Lagos State government introduced a new system of paying for land use and that has been virtually condemned by almost everybody in the State in the sense that the new rates are more than punitive. For example, someone called in to say he used to pay N58, 000 before, but now has a bill of more than N400, 000*”. The public outcry was followed by demands that the LUC be made more realistic in order to achieve the critical level of acceptability and compliance required for sustainability. The fact that the official response was an across the board reduction, suggests that the basis of assessment was unrealistic as well as unreliable. This goes back to the unsound philosophy of the LUC.

The Nigerian Institution of Estate Surveyors and Valuers, Nigeria’s body of professional valuers, weighed in on the 2018 LUC controversy by raising some areas of concern. These are basically about the need for the LUC to be made a fair tax by being “anchored on the basic principles of taxation”; to base the 2018 charges on actual valuations and not on adjustments made by officials; to realise that the capacity to pay depends on rental income receivable which has been negatively affected by the recession; that the high increases in the 2018 charges will negatively impact on incomes of property investors and potentially constitute a disincentive to new real estate investment; and that transparency demands that the valuations of properties be publicly displayed in all local government premises as a means of convincing stakeholders to buy-in and thereby achieve greater compliance.

Table 2: Comparison of Tenement Rating and Land Use Charge Systems

Tenement Rating	Land Use Charge
Based on theories used/understood by certified valuers	Not based on theories used/understood by certified valuers
Involves certified valuers	Basically involves government-employees who need not be valuers
Allows objections & appeals An open system(list of assessments publicly available)	Objections & appeals allowed A less transparent system(list of assessments <i>not</i> publicly available)
A two-sided system	More of a one-sided(government-controlled) system
Constitutional/uncontroversial	Controversial/ suspectedly unconstitutional

DISCUSSION

From these comparative evaluations, the following facts have been revealed:

- a) The TR and LUC are charges based upon landed property.
- b) Both the TR and LUC are *annual* charges, but whereas the former is based only on the estimated gross *annual* income of landed property, the latter is based upon *capital value*.
- c) The LUC is a consolidation of three previously existing charges on landed property, whereas the TR is just a single tax.
- d) The TR is dedicated entirely to the financing of local governance, but the LUC finances both local and State governance.
- e) The TR is administered by the municipal authority whilst the LUC is administered by the State.
- f) The TR has never been dogged by protests and controversy. On the contrary, professional valuers and the Nigerian Bar Association have raised concerns about the LUC just as have business people and the general public.
- g) The TR has a foundation in local participation and input which promotes local democracy unlike the LUC gives the impression of an imposition by the state on local people.

The discussion looks at these revelations, and then considers the requirements for a sustainable tax on property which can lead to achieving the objective of sustainable municipal funding.

Purpose

De facto as well as *de jure*, the TR is dedicatedly a funding method for local governance. This is true because the tax is assessed, administered and collected by the municipal authority. Furthermore, it is managed by the same authority and expended on municipal affairs. The same cannot be said for the LUC which (in so far as the tenement rate element is concerned) is assessed, administered, collected by the state government on behalf of the local government. The state manages the fund and decides how it is spent. Thus, the LUC, being composed of the TR,

neighbourhood improvement charge and ground rent, is not entirely dedicated to municipal funding. Rather, it seems to be a hybrid vehicle for the mobilisation of funds using landed property as a base.

Prima facie, between the tenement rate and the land use charge, there is a common objective: to raise funds for municipal financing. But is this really the position? Three reasons suggest that the arrangement is not altruistic undertaking of Lagos state. First, the local governments did not invite the state government to collect tax on their behalf. Second, the local governments are not incapacitated as regards tax collection because they are effective in collecting all other taxes due to them. Thirdly, the local governments do not participate in the collection of the LUC and the state decides what size of revenue to give out to them at the end of the day. These combine to suggest that the arrangement is one between superior and inferior parties. The view has been expressed that the LUC is a tax collection contraption; designed to deprive local government of their revenue; make local governments tied financially to the apron strings of state governments; hinder capacity building at local level and take over local government constitutional responsibilities. This may be dismissed as conjecture, but the fact remains that some local government constitutional responsibilities have been taken over by the Lagos State government. These responsibilities include building control/planning approval, tenement rate assessment and collection, parks, urban transportation and refuse disposal. That Nigeria's state governments, Lagos inclusive, have no intention of allowing autonomy at the local level was borne out in 2014 when the 36 state governors unanimously opposed a bill of the National Assembly for local governments to receive direct funding from the Federation Account by doing away with the current joint account arrangement.

Philosophy

The TR has a basis in classical rent theory and, therefore, possesses the qualities of logic, deductive reasoning, principle, verifiability, demonstrability, defensibility and intellectualism. On the other hand, the LUC, by not discriminating between like and unlike, fuses the theoretically rationalised tenement rate with dissimilar others to create a new charge. This makes the LUC a veritable composite of expectations. The basic defect in the combination of like with unlike suggests that the new charge cannot be deemed to be a fitting replacement of the tenement.

Furthermore, the initial LUC law had the following deficiencies as pointed out by Oni (2010). First, the 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" (Oni, 2010:15). Second, the components of the calculation were "entirely at the discretion of the officials" with the implication 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*". Third, the use of capital value (a summation of annual values yet to be received) as basis of the calculation, contradicts the idea of an annual tax. Thus, it is defective in this regard. However, the revised law of 2018 has changed the basis of assessment to market value and provides for the involvement of professional valuers in its assessment. This is an attempt to address the shortcomings of the original legislation, but it may not be a solution to the deficiencies of the system. It is odd that the government prefers to make

incremental adjustments to the faulty LUC rather than go back to the theoretically sound TR system. The TR approach to value with which valuers are familiar is a better solution than asking them to help to rationalise or legitimise a faulty system. .

Promotion and Sustenance of Local Democracy

The TR is designed as a local affair which is to be run by local authorities in the interest of local residents. Thus, it is a grassroots-based system. It is, therefore, resident-friendly. It is consultative. The annual rate levied depends upon the local budget for each year and may be higher or lower depending on the expenditure plan of the local government. Thus, penalties for non-compliance are not stiff or harsh, allowing opportunities for representations and appeals. In the case of the LUC, it is perhaps a reflection of its non-local origins and orientation that penalties for delays in payment are adjudged harsh (Oni, 2010) and undemocratic (LCCI, 2018). This is evidence of poor consultation and a communication gap between the promoters and managers of the LUC, on the one hand, and citizens and residents, on the other. This absence of a buy-in would tend to impact negatively upon the LUC as a sustainable means of funding.

Legality

There is the issue of constitutionality which suggests that the LUC may be contrary to law. Item J of the Fourth Schedule of the Constitution of the Federal Republic of Nigeria 1999 (as amended) empowers only local governments to assess and collect the TR. Thus, the assessment of rates is a constitutional right of local governments, not state governments. According to Ojo (2018), “It will amount to a usurpation of the powers of the Local Government Council for the State Government to carry out such an exercise or engage any person or authority to do so on its behalf.” Citing the Supreme Court judgement in Knight, Frank and Rutley v. Attorney General of Kano (1998), the author states that: “*the intendment of the Constitution is that only Local Government Councils have the power to assess and impose rates on privately owned property. The Lagos law cleverly attempts to position the state as having the consent of the local government. This is but a clever attempt to subvert the constitution*”. It is pertinent to add that there is an absence of democracy in the arrangement by which Lagos State levies and collects the TR on behalf of the rightfully constituted authority. This is because the local governments of Lagos, all 57 of them, would need to consult the various resident owners of chargeable properties before taking such a step in view of the certainty that their state involvement would lead to higher tax obligations and the loss of local control which the various councillors were elected to exercise. Ojo (2018) concludes that: “*The imposition by the Lagos State Government of a charge or encumbrance on the exclusive rights of the occupiers in Lagos State is a direct attempt at altering or amending the Land Use Act without complying with the provision of Section 9 (2) of the Constitution and the Land Use Charge Law of 2018 is, therefore, unconstitutional, null and void*”. The legality of the LUC is already being challenged by a coalition of Lagos residents as reported by The Nigerian Lawyer (2018).

Data Gathering

There is a dearth of real estate data in the Nigerian system, which situation can be improved by reliable rental value data made available through an effective TR system. The unconvincing logic in the LUC means that it has no contribution to make in this regard as the figures produced under it have a severely limited connection with reality. These cannot, therefore, be regarded as valid data. The purpose of LUC is to raise revenue for a system which effectively circumvents proper

procedure and good practice. The availability of realistic property data would aid professional practice and economic planning and research.

Development of Professionalism and Capacity

An effective TR system would mean the promotion of professionalism amongst valuers as they engage regularly in the valuation of various tenements and the defence of their valuations in the tribunals, as required by law. Improved professionalism would develop capacity for the benefit of the system. Furthermore, the use of orthodox methodologies as required by the TR system means that realistic property data can be gathered and made available for planning and reference.

Compliance

Under the TR system there is the potential of greater compliance by citizens, leading to greater tax yield and fewer defaults. This is because the charges would be much lower; the yield higher as the base would be wider; the involvement of professional valuers in the assessments; and also the opportunity for appeals and objections at tribunals. Right from its 2001 introduction, the LUC has been controversial and this has been exacerbated by the 2018 review of the system, particularly because the “sanctions for defaulters under the reviewed Land Use Charge (LUC) Law of Lagos are too severe and not in tandem with democratic ideals” (LCCI, 2018). It is reasonable to assume that the TR will always have a higher level of compliance due to its logic and the in-built safeguards and protections.

Progressive Assessment

The Lagos State government is of the view that the LUC meets the requirements of a progressive tax, but the argument is difficult to sustain. A progressive tax takes account of the ability to pay. The outcry over the 2018 charges in Lagos is indicative of the fact that ability to pay was not considered. Objectors logically mentioned the salient issues of a recessionary economy, double-digit inflation and a poor external position as reasons why ability to pay was low. This also brings into question the basis of assessment which does not emphasise the income-earning capacity of land. Was this the case, surely, landed property would have a lower income-earning capacity in a recessionary economy because, as a factor of production, it would be producing less and, therefore, be earning less. These are the prescriptions of theory and the reality of practice. It is, therefore, ironic that the charges made in parlous times were far higher than those of the preceding, pre-recession years. This is a contradiction. Again, the government’s 50% reduction in the charges for commercial and residential property (vanguard, 2018) does not have any real justification if the ability to pay was truly considered and the basis of assessment was right. It cannot be reasonably argued that the reduction by a fixed percentage across the board means that the ability to pay is now equal amongst all businesses, locations and socio-economic groups.

To conclude, what appears to be a verdict on the rationality of the LUC was given in a comparative study of the various laws of four LUC-operating states: Anambra, Edo, Lagos and Enugu by Odimegwu et al (2018). The study aimed at ascertaining the extent to which these laws reflected the qualities of a good tax using as benchmark the UN-Habitat Policy Guide on Land Use and Property Tax. The findings were that the four LUC laws, which are similar in all respects, do not contain the necessary features of a good property tax, leading to a recommendation for their re-appraisal, using input from estate surveyors and valuers.

SUSTAINABLE MUNICIPAL FUNDING, TR AND THE LUC

Given the differences between the two systems, the important issue to address at this stage is which of them has the potential to achieve the defined objective of sustainable municipal funding. As observed, sustainable funding should involve local participation, be accountable and dedicated to meeting the needs of local governance in such a way as to ensure the level of citizen co-operation and compliance which is necessary for achieving consistency of yield and long-term sustenance. Banwo and Ighodalo (2018: p4) report that according to “*information credited to officials of the Lagos State Government, the LUC was reportedly paid on only about three hundred thousand (300,000) properties out of 700,000 identified chargeable properties. This contrasts sharply with an estimated two million (2,000,000) eligible properties in the entire state as at December 2017*” clearly suggesting that, even before the 2018 increment, the LUC had not the widespread acceptability and compliance necessary for a sustainable tax .

Given the identified features of the TR system vis-a-vis the LUC, it is obvious that the former offers a better foundation for developing a sustainable funding system for cities and towns. However, it is a fact that the TR system is not being comprehensively and professionally administered. It appears to have gone into neglect in many cities probably due to the opportunity which local governments have for receiving monthly funding from the Federation Account. Also, there is a tendency for local governments to concentrate on easily gathered sources of revenue such as stallage fees, permits, parking fees, motor parks and markets which are areas of constant growth in an environment dominated by retail trading. Thus, the TR is given less attention as it requires effort to sustain in terms of personnel and organisation. This relates especially to inspections, valuations and quinquennial revaluations. There is, therefore, an undoubted need for improvement by reorganisation. If this can be diligently done, the TR can ensure a tax yield which is *sizeable* because it has a widespread base; *predictable*, because it is realistic and potentially consistent; and *sustainable*, because of a higher potential for compliance being constitutional, supportive of local democracy and a comparatively lower annual burden than the controversial LUC.

Researchers have examined how TR can be better administered and used to realise its inherent potential as a stable and significant revenue source for the provision of local services and the management of local infrastructure. For instance, Ayeni and Adewale (2006) investigate how the Geographic Information System can be used to improve efficiency and effectiveness of tenement rate administration by moving away from the handicap of manual data archiving and management which serves to produce a low revenue yield. The authors conclude that “It is impossible to intelligently administer rates without a rich reservoir of geographic information” (Ayeni & Adewale, 2006). In Aluko’s (2005) research the problems of property tax administration are examined and reforms proposed for improved revenue yield. Baba (2017) argues for repositioning the TR system through the development of “a framework of property rating practice” (Baba, 2017:7). The objective is to supplement local government funding through an improved yield from TR in order to meet the challenge of provision and maintenance of neighbourhood facilities. The two interesting facts about these works are first, they are post-2001 efforts, meaning that they were done after the introduction of the LUC). However, whilst the authors do not claim to be responding to the LUC’s advent, their works can be seen as responses to the crisis of funding at the grassroots. Secondly, they all focus on improving the TR system,

suggesting that the system is not presently being effectively administered. Nevertheless, there is also the recognition that TR can be made *more effective* through better administration. Furthermore, there is the suggestion that TR can be *sustainable*, if properly administered. These observations support the main finding in this paper that TR has important advantages and is a better option than the LUC.

The main differences between the TR and the LUC are as follows. TR has a theoretical foundation in 19th century classical rent theory whereas the LUC is a 21st century idea which was put forward without any theoretical arguments; there is a defensible logic in TR, whilst the LUC is open to challenge on the grounds of logic; TR theoretically and practically supports local democracy, whilst these attributes cannot be observed in the LUC; and that there are no issues of legality in the tenement rate whereas this exists in regard to the LUC.

CONCLUSION

This paper set out to compare the long-established TR and entirely new LUC systems as sources of sustainable funding for Nigeria's municipalities. The study indicates that, overall, the TR has advantages which are lacking in the LUC; and that the latter possesses some features which suggest that it is a less suitable option. The conclusion, therefore, is that the TR is a better option for sustainable municipal funding.

The study reveals that the TR has the important advantages of support for local democracy, because the local authorities handle property tax directly and thereby relate better with the grassroots; that the LUC is an unwarranted composite of three charges unlike the TR which is a single purpose tax; that the TR allows the engagement of professionals who deploy proven methods which enrich professional practice, as well as guarantee the generation of reliable data for planning and research, unlike the LUC.

The meaning of the findings is that the TR is a true local *tax* on local *property* for local *purposes*, unlike the LUC which looks beyond the local scene. Furthermore, the TR system is centred on independent valuation professionalism, unlike the LUC government initiative which usurps the constitutional power of local governments to assess, levy and collect tenement rates directly.

It is hoped that the findings of this study would enable a better understanding of the advantages of tenement rating; its superiority over the LUC and its potential for refinement for municipal financing. Furthermore, it draws attention to the fact that when state governments, as second-tier authorities, interfere in third-tier local government constitutional responsibilities, they superimpose themselves between democratically elected local councillors and their grassroots constituencies, thereby hindering the promotion of local democracy and the development of local capacity. It cannot be gainsaid that truly transformative development can better come about in a "bottom-up" grassroots-focused way which the TR reflects, rather than the "top-bottom proclivities of the LUC.

Area for Further Research

Evidently, the level of LUC compliance by Lagos property owners is low given the report that as at December, 2017, payment was received on only about 300,000 properties out of 700,000 identified chargeable properties, contrasting sharply with an estimated two million (2,000,000) eligible properties then identified in the entire state. This may well turn out to be the same trend in other LUC-operating states. An investigation of comparative compliance (and stakeholder views on the displaced TR system in those states) would be helpful in assessing the effectiveness and sustainability of this new tax.

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