

**AN APPRAISAL OF THE CONSTITUTIONALITY OF LAND USE CHARGE LAWS IN NIGERIA
VIS-A-VIS THE LAND USE ACT 1978***

Abstract

Nigerian property tax system cannot be discussed without reference to the constitution as it is the bedrock and foundation wherein tax authority derives its taxing power. Property tax in this context does not necessary need income, gain or profit to arise before the liability of it emanates. By virtue of the Constitution, local government being the grass root government is entrusted with the powers to assess and collect privately owned houses and tenement rate. The writer examined whether the said power conferred on the Local Government by the Constitution is absolute or whether it can be delegated to another. Again, the writer examined whether the power to assess and collect the aforementioned tax is designated on the local government chairman or the revenue committee of local government. More so, in this work we further examined whether the exclusive right of the occupier of land amounts to exemption to property tax payment. We adopted doctrinal methodology in this work and utilized primary sources such as Constitution, statutes etc and secondary sources such as text books, journal articles, internet etc. in view of the findings; we recommend that there is need for absolute separation of powers and autonomy of each arm of government to eliminate invasion or diversion of powers.

Keywords: Land Use Charge, Land Use Act 1978, Constitutionality, Nigeria

1. Introduction

Property tax law is an annual tax payable by the property owner or occupier of property on the value of property. The law recognized the jurisdiction of the Local Government as conferred by the Constitution on property and tenement rates¹ over assessment and collection of the taxes aforementioned. However, the law created confusion by making provision to the effect that each local government which it designated as the collecting authority may delegate to the state in writing its functions with respect to the collection of rates and the assessment of privately-owned houses or tenement for the purpose of levying such rate². The liability of tax here does not arise on income, profit or gain. Once an individual or company buys a property whether developed or not he will be liable to make certain payment to the government. Some of these taxes may be one off payment by the way it is structured while some are payable annually. It is on the strength of this that the writer examines whether the drafters of tax law known as Land Use Charge Law took cognizance of this before consolidating both development levy which is paid as one off, tenement rate which is local government tax, property tax rate and maintenance levy into one component law. This to the writer is seen or regarded as anomaly because it will cause undue and untold hardship on the tax payers. They will be in the state of confusion as to whom or the appropriate tax authority to make tax payment to.

2. Property Tax Law

What is property tax law? The word ‘Property taxation’ is the backbone of municipal finance in a number of developed countries. It is common throughout the world. The expression ‘property tax’ only describes taxes that are imposed primarily on lands and buildings, i.e on real property (as distinguished from personal property). This description is confined to the Nigerian situation because in some countries such as the United States of American, property tax is also levied upon personal property³. It has been reported that the major form of property taxation that has been in the country is the property rate or community rate known as tenement rates⁴.

Property tax is also defined as an annual tax on the ownership or occupation of immovable property (ie Land and / or buildings) and serves as an important source of local government revenue in many countries in the world⁵. According to Ipaye⁶, property tax is described as taxes that are imposed primarily on lands and buildings ie on real property (as distinguished from personal property and according to him real property means land and generally whatever is erected on it or growing upon or affixed to land. It covers terms like tenements,

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¹ S 1 (3) *Ibid*.

² S1 (4) *Ibid*.

³ *Ibid* pg 5.

⁴ A U Ajay, ‘Law and Property Tax in Nigeria: Paper Presented at the workshop for the Nigerian Estate Surveyors and Valuers in Minna’, 2008.

⁵ R C Franzen, ‘Property Assessment for Rating Purposes in Southern and Eastern Africa: Present Status and Future Prospects’ 8th Annual Conference of the Pacific Rim Real Estate Society in Christ church, New Zealand, 2002 <http://www.Researchgate.net>< accessed on 16th December, 2021.

⁶ A Ipaye, Property Taxation and Revenue Generation in Nigeria (Tax Practice Series) No 27, 1.

hereditaments: or that which is incidental or appurtenant to land. According to Ijaodola in his book⁷, defines property tax as the imposition of compulsory levy on a property whether real or personal once the base is property; the amount of the tax being dependent on the value of the property, generally expressed as a rate of the property's value. Property tax law could be regarded as system which mandates every property owner to pay required or designated amount of money annually on the value of the property to the tax authority⁸.

3. Land Use Charge Law

Land Use Charge is payable annually on the value of all real properties situate in Lagos, Anambra and other States which administer this tax in Nigeria. Land Use Charge is designed and run by the state though the constitutional validity is contestable. The Land Use Charge Law makes each local government the collecting authority within its territory⁹. It includes 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 law¹⁰.

4. Has Land Use Charge Law suffered any Criticism?

There has been a lot of criticism ever since enactment of this law known as Land Use Charge Law. Since its enactment, it has suffered so many legal battles and this led to suspension of Anambra State Property Land Use Charge Law.

Issues that gave rise to the challenges are as follows:

- A) Whether the law makers have the constitutional powers to consolidate independent taxes some which are meant to be collectable by the state and that of local government.
- B) Whether it is not the revenue committee of local government that is empowered under the law to collect tenement rate or local government chairman.
- C) Whether the local government has the powers to delegate her duties to the state government.
- D) Whether the exclusive right conferred on the occupier of land excludes him from tax payment.

For better understanding, we shall discuss the issues raised conjunctly. We shall start our conversation here with the decision reached by the court of law in the case of *Knight Frank and Rutley v. Ag Kano State* where it was held that it is not lawful for any tiers of government to collect taxes which should be collected by another tier of government pursuant to the Act. In this case of *knight frank and Rutley v AG (Kano State)*¹¹ the issue was whether state governments had concurrent competence with local government council to embark on property assessments designed eventually to lead to tenement rate collection? The Supreme Court per Wali JSC said,¹² 'the power to assess rates on privately owned houses or tenements for the purpose of levying such rate is within the exclusive statutory powers of each local government as conferred on it by section 7 (5) of 1979 constitution and paragraph 1 (b) and (1) of the fourth schedule¹³. In this case, Uwais CJN said that 'only local government councils have the power to collect same. In delivering the lead judgment he asserted thus:¹⁴

A challenge of competence must not be considered on the face value only of the word challenged but from broader and more general prospective of validity. A High Court has no jurisdiction to entertain the validity of an Edict on the ground of conflict or inconsistency with the provisions of a Decree or the unsuspending parts of the 1979 constitution thereby 'a challenge of competence' may actually extend to such an exercise, therefore it cannot be said that a high court lacks jurisdiction...

To buttress more on this point, Section 2 (1) of Taxes and Levies (Approved List for Collection) (Act)¹⁵ provides thus: 'Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1999, as amended, or in any other enactment or law, no person, other than the appropriate tax authority, shall assess or collect, on behalf of the Government any tax or levy listed in the schedule to this Act, and members of Nigeria Police Force shall only be used in accordance with the provisions of the tax laws. Despite being in agreement with the aforesaid provision, we shall not shy away from the fact that the Act posed as overlord. It forgot to recognize

⁷ R. Ijaodola, 'Property Tax in Electoral Matters in Nigeria (2006)' Vol. 4 No.1 *Nigeria Bar Journal* P 54: R Ijadola, *The Tax Certificate in Nigeria: The Current Problems Modern Trends in Tax Law, Administration and Practice in Nigeria*. O Abifarin (ed Juniper Publication Markudi: 2013) p.137

⁸ Emphasis mine.

⁹ J A M Agbonika, A A J Agbonika & O S Muhammed, *Topical Issues on Nigerian Tax Laws and Related Areas* (Lokoja: College of Law Salem University Kogi State Publishers, 2018) p. 436.

¹⁰ Section 1 of the Land Use Charge Law of Lagos State 2020.

¹¹ 1998 7NWL (pt 556) p 1-37.

¹² *Ibid*, p.209 see also RACE Achara, 'Can Nigerian Local Government Councils autonomously impose rates?' (2003) 47(2), *Journal of African law* 221.

¹³ 1999 constitution (as amended) section 7 (5) and fourth schedule paragraph 1 (b) and (j).

¹⁴ *Supra* at 659 para f-g, T Kehinde *op cit*, p282.

¹⁵ 2004

supremacy of the law. In the case of *AG Cross River State & Anor v Mathew Ojua*¹⁶, it was held that if any provision of an Act of the National Assembly or any other law is in conflict with a provision of the Constitution, that Act or Law is unconstitutional and therefore void. Section 1 (1) of the 1999 constitution of Nigeria (as amended) provides that the Constitution is supreme and binding on all authorities and persons in Nigeria. It further provides in subsection (3) of section 1 that any other law that is inconsistent with the constitution shall to the extent of its inconsistency be void. It is therefore our candid view that the provisions of Section 2 (1) of the Taxes and Levies Act which expressly overrides section 1 (1) and (3) of the 1999 Constitution (on the supremacy of the constitution) shall be rendered null, void and unconstitutional to the extent of its inconsistency. Again, this Taxes and Levies Act which ordinarily tries to harmonize taxes collectable by the three tiers of government instead of bringing to rest the problem of appropriate tax authority to collect tax ended up creating confusion. We shall reproduce the provisions of the amended Schedule ie Taxes and Levies (Approved List for collection) (Amendment Act) Order 2015. The Order by virtue of item 6 Part IV of the Order¹⁷ may be cited as the Schedule to the Taxes and Levies (Approved List for Collection) Act (Amendment) order. The Order is divided into 4 parts but for the purpose of this work we shall reproduce part I –III. The amended or additional parts are under listed.

Part I of the schedule to the principal Act is amended by inserting immediately after the existing item 8,
9. National Information Technology Development Levy.

Part II of the schedule to the principal Act is amended by

(a) Substituting the existing item 7 with a new item 7 as follows:

7. Business premises registration fees in respect of urban and rural areas which includes registration fee and per annum renewals as fixed by each state and

(b) Inserting immediately after the existing item 11, new item 12 to 25 as follows:

12. Land use charge, where applicable
13. Hotel, Restaurant or Event Centre Consumption Tax where applicable.
14. Entertainment Tax, where applicable.
15. Environmental (Ecological) Fee or levy.
16. Mining, Milling and Quarrying fee, where applicable.
17. Animal Trade Tax where applicable.
18. Produce Sales Tax, where applicable.
19. Slaughter or Abattoir Fees, where state finance is involved.
20. Infrastructure Maintenance charge or levy, where applicable.
21. Fire Service Charge.
22. Property Tax, where applicable.
23. Economic Development Levy, where applicable.
24. Social Service Contribution Levy, where applicable and
25. Signage and Mobile Advertisement, Jointly collected by States and Local Governments.

Part III of the schedule to the Principal Act is amended by inserting immediately after the existing item 20, new items 21 as follows: Wharf landing charge, where applicable.

May we also reproduce the part III of the Old but subsisting Schedule which the new one came to compliment. Taxes and levies to be collected by the local government

1. Shops and kiosks rate.
2. Tenement rates.
3. On and off liquor license fees.
4. Slaughter slab fees.
5. Marriage, birth and death registration fees.
6. Naming of street registration fee, excluding any street in the state capital.
7. Right of occupancy fees on lands in rural areas, excluding those collectable by the federal and state government.
8. Market taxes and levies excluding any market where state finance is involved.
9. Motor Park levies.
10. Domestic animal license fees.
11. Bicycle, truck, canoe, wheel barrow and cart fees other than mechanically propelled truck.
12. Cattle tax payable by cattle farmers only.
13. Merriment and road closure levy.
14. Radio and television license fees (other than radio and television transmitter).
15. Vehicle radio license fees (to be imposed by the local government of the state in which the car is registered).

¹⁶ 2011 5 TLRN 5 at 19, *Abacha v Fawehmni* (2000) 6 NWLR pt 660

¹⁷ Schedule to the Taxes and Levies (Approved List for Collection) (Act) (Amendment) Order 2015.

16. Wrong parking charges.
17. Public convenience, sewage and refuse disposal fees.
18. Customary burial ground permit fees.
19. Religious places establishment permit fees.
20. Signboard and advertisement permit fees

A clear and close look at this schedule will show that there is a problem. Collection of Tenement rate is clearly conferred on the local government and not the state. Land use charge and property tax are to be collectable by the state government. It is now so glaring that those are independent and separate taxes whose collections are meant to be done by different tax authorities ie state and local government. The danger in merging and/ or consolidation of them into one composite tax is that the taxpayer will be put in state of pandemonium. They will be confused as to the appropriate tax authority to pay to. In the event they paid, they will be subjected to paying to both authorities thereby amounting to double taxation. This could also lead to tax evasion because taxpayer who doesn't have enough to pay to both tax authorities may opt to evade tax payment.

Another issue surrounding this is that the state government has no power under any guise to takeover local government tax and local government on her part has no powers to delegate her constitutional duties to the state as contained in the Lagos State Land Use Charge Law¹⁸ and Anambra State Property and Land Use Charge Law¹⁹. Local Government is seen as mere custodian of the power. The act of delegation goes against the legal maxim '*delegatus non porte delegare*' meaning that delegate cannot delegate. This means that when power is conferred on a person, that person cannot as a general rule, delegate the power conferred on him unless otherwise authorized by the conferring authority.²⁰ This is because the exercise of such delegated power is invalid and void and will be voided and nullified on application to court. The Personal Income Tax Act²¹ expressly conferred the powers of assessment and collection of tenement rates to not even the Local Government or the Local Government Chairman, but to a statutory body of the local government called the Local Government Revenue Committee.²² Therefore, the Local Government Simplificiter of the Chief Executive Officer by whatever name called cannot validly delegate the assessment and collection of property rates to the state government. This is because in the first place, the powers are not vested in them or him and it is trite law that *nemo dat qui non habet*- No one gives what he does not have but on the Local Government Revenue Committee²³. However, while upholding the principle of *nemo dat qui non habet* in *IBL v MILAD, Ondo State*²⁴ it was held inter alia that taxing powers of the state are vested on the State Board of Inland Revenue Services and not on the Governor or Commissioner; the Local government taxing powers are vested on the Revenue Committee and not on the Chairman of the Council; so the Governor or the Commissioner; or the Chairman in the case of Local Governments cannot delegate the powers not vested in them. Again, in *Ayo Idowu v A.G Lagos State & Ors*²⁵, it was held inter alia that where the Constitution has given a jurisdiction, it cannot be lightly divested. Where it is intended to be divested, it must be done by clear, express and unambiguous words, and by a competent amendment of the Constitution, not by any other method.

5. The Legality or Otherwise of Consolidation of Property Taxes in Nigeria²⁶

The law clearly vested the collection of tenement rate solely on the Local Government Councils and therefore to distort it under any guise is unconstitutional and illegal. Thus, by virtue of section 7(5) of the 1999 Constitution²⁷, the functions conferred by law upon the fourth schedule to the Constitution. In the said fourth schedule,²⁸ the Constitution provides inter alia, that the main functions of a local government councils area follows: assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a state.²⁹ Accordingly, the Constitution entirely vested the collection of tenement rates solely on the local government councils and to distort same and consolidate them after splitting same into numerous heads

¹⁸ 2020

¹⁹ 2010

²⁰ P.A. Oluyede, *Nigeria Administration Law* (Ibadan: University Press Plc, 2002) P. 350. *Majiyagbe v AG and others* (1957) NRNL 158.

²¹ Cap P8 LFN, 2004, Section 90(1) Personal Income Tax Act Cap P8 LFN 2004 thereof established the Local Government Revenue Committee for each Local Government of a State.

²² S. I (I), 2(I) and 4(a) *ibid*, see also S.91 (I) of PITA *Ibid*.

²³ S 91 (1) PITA; K K Ezeibe, The Legality of consolidated property tax laws in Nigeria. A case study of Anambra State's Property Land Use Charge Law (2013) 3 (1) *Business Law Review Nigerian Journal of Business and Corporate Law* p 35.

²⁴ 2000 TLRN 86 @ 107- 108.

²⁵ 2011 TLRN 86 @ 95.

²⁶ K K Ezeibe, The Legality of consolidated property tax laws in Nigeria. A case study of Anambra State's property and land use charge law (2013) Vol 3 No 1 *Business Law Review Nigerian Journal of Business and Corporate Law* 28.

²⁷ Cap C23 LFN as amended.

²⁸ *Ibid*.

²⁹ Paragraph 1(5) fourth Schedule, *Ibid*.

is without any constitutional or legal backing and is therefore void. It was held in *AG Cross River State and Anor v Mathew Ojua*,³⁰ that if any provision of an Act of the National Assembly or any other law is in conflict with a provision of the Constitution, that Act or Law is unconstitutional and therefore void. Accordingly, it could be seen from item 2 of Part II of the Taxes and Levies Act and paragraph I (J) of the fourth schedule to the Constitution that tenement rates assessment and collection is an exclusive statutory and Constitutional affairs of the Local Government councils in the country and accordingly, the state government has no right or power to meddle therein or to purport to consolidate same in any way whatsoever. This is notwithstanding any law the state might have enacted enabling such consolidation as such law is inferior to the Act and the constitution and therefore is *ultra vires* their powers, invalid, null and void being inconsistent and contrary to the clear provisions of the supreme law – the constitution and an Act of National Assembly³¹ Thus, to consolidate property taxes including property and tenement rates which are outside the jurisdiction of the state revenue heads as the APLUC Law purported to do in section (2) is unconstitutional and *ultra vires* the powers of the State House of Assembly and therefore invalid, null and void.

Furthermore, the purported consolidation of these Local government and state taxes as a composite assessment of same, as it were, gives a lie to the voluntary or optional delegation of collection by local governments to the state. This is because how would a local government that elects or chooses not to delegate its powers to the state assesses and collects her own rates within her domain. The case of *Ayo Idowu v. AG Lagos State & Anor*³², the Lagos State version of the law enacted about thirteen years ago was held to be constitutional and valid by a Lagos State High Court. It should be noted that the mandatory provisions of the Taxes and Levies (Approved List for Collection) Act with regard to collection of Taxes by the respective tax authorities were not canvassed by counsel nor considered by the court before arriving at its decision. Thus, it is not clear whether the High Court would still have validated the Lagos State Law if it had considered the provisions of section 2 of the Taxes and Levies (Approved List for Collection) Act which is superior to the Lagos State Law. Thus it therefore remain our view that the APLUC Law is inconsistent with both the 1999 Constitution and Taxes and Levies (Approved List for Collection) Act and is therefore void and invalid to the extent of its inconsistency or at best, even if it is Constitutional (although we are not conceding so) as per the decision in *Ayo Idowu v. AG Lagos State and Anor*, it is illegal as it contravenes the Taxes and Levies (Approved List for Collection) Act³³.

6. The Conflicting Provisions of Lagos State Land Use Charge Law 2020 and Anambra State Property Land Use Charge Law 2010 with the Constitution

There has been worry or much concern towards the some of the provisions as contained in the Land Use Charge Law of Lagos State and Anambra State. However, we shall make much emphasis and or pay more attention to that of Lagos State on the ground that Anambra State property Land Use Charge Law 2010 has been suspended. This having been said, we are minded to respond in details to the question below that is ‘Whether Sections 2(3), 13, 23 and 24 of the Lagos State Land Use charge Law 2020 and sections 3(4), 5, 11, 12 of the Anambra State Property Land Use Charge Law 2010 are inconsistent with the provisions of Section 7(1) and (5) and Section 1 (3), Item (j) of the Fourth Schedule to Constitution’. Section 7(1) of the Constitution guarantees the democratic system of the Local Government Council. On the strength of this position, Government of every state is mandated to ensure that the existence of Local Government is preserved under a law enacted by the House of Assembly. The law made by the State House of Assembly shall provide for the establishment, structure, composition, finance and functions of the Local Government Council³⁴.

In line with the aforementioned Constitutional provision, it could be categorically stated that the letter and spirit of the Lagos State Land Use Charge Law 2018 that was passed by the Lagos State House of Assembly on the 19th January, 2018 and assented by the State Governor, Mr. Akunwunmi Ambode on February 8, 2018 has been officially cancelled by the Lagos State Government and subsequently repealed and or amended in the year 2020. Mr Babajide Olusola Sanwo-olu the current governor of Lagos State assented to this law which came into enforcement on the 26th day of May, 2020. However, this law aforementioned runs afoul of the above letter and intent of the Constitution of the Federal Republic of Nigeria 1999 as amended so also is that of APLUC. It is against this backdrop that this query which births this subheading was raised. For emphasis, we shall reproduce the aforementioned provisions of law. Section 2 (3) provides that ‘Each Collecting Authority may delegate to the State, by a written agreement, its functions with respect to the assessment of privately owned houses or tenement

³⁰ (2011) TLRN 5 at 19: in *Emesim v Nwachukwu* (1999) 1 NWLR (Pt 605) 154; *Abacha v. Fawehimni* (2000) 6 NWLR (Pt 660) 228; *Adisa v. Oyinwola* (2000) 10 NWLR (Pt 674) 116.

³¹ Section 4(5) CFRN *op cit*: *Obaba v. Military Governor of Kwara State* (1994) 4 NWLR (Pt 336) 26; *Military Governor of Ondo State v. Adewumi* (1998) 13 NWLR (Pt 82) 280; *AG Abia State v. A.G Federation* (2006) 16 NWLR (Pt 1005) 265.

³² (2011) 5 LRN 86@96.

³³ *Op cit*.

³⁴ Section 7(1) of the Constitution of the Federal Republic of Nigeria as amended.

for the purpose of levying and collection of such rate as may be prescribed under this Law. On the other hand, section 3, 5, 11 and 12 of the APLUC Law contains similar provisions.

Section 13(1) The Commissioner shall cause to be issued in each Financial Year Land Use Charge Demand Notice with respect to every chargeable property that has been assessed in accordance with the provisions of this Law.

(2) The Land Use Charge Demand Notice may be delivered to the owner or occupier and can also request for by either the owner, occupier or authorized agent of the property at any of the Land Use Charge Offices or via electronic platform.

(3) If there is no Owner or Occupier or Agent available to take delivery. The Land Use Charge Demand Notice shall be pasted on Property and such posting shall be deemed sufficient delivery of the Notice.

(4) The person liable to pay the amount of Land Use Charge on the Demand Notice shall within thirty (30) calendar days after the date of delivery of the Land Use Charge Demand Notice pay that amount at one of the designated banks specified in the Demand Notice.

(5) Upon an application in writing made by the Owner, Occupier or authorized agent to the Commissioner, the Commissioner may reduce the Land Use Charge by such discount as is specified in the Demand Notice, if the payment is made within fifteen (15) days of receiving the Demand Notice.

Section 23(1) the Commissioner shall establish and maintain a fund, to be known as the Land Use Charge Collection Fund, consisting of all Land Use Charge payment deposited in designated banks in accordance with this Law.

(2) At the beginning of each month, the Commissioner shall determine the total amount of the Land Use Charge payments deposited in the designated banks

(3) The Commissioner shall, not later than ten (10) days after the beginning of each month, pay to each Local Government Area in the State its share of the Land Use Charge Collection and standing on deposit in the designated banks.

(4) The share to be paid by the Commissioner to each Local Government Area shall be such percentage of the Net Land Use Charge on deposit at the end of each month as agreed between the State and all the Local Government Areas.

Section 24(1) The Attorney-General of the State shall, on the recommendations of the Commissioner apply to a court to

a) Recover sums payable under this Law

b) Recover any Land Use Charge or penalty incurred under this Law by a deceased person at any time before the person's death;

c) Attach a person's earnings, and/ or person's goods where a court has made a liability order against that person.

The provisions of section 24 of Lagos State land use charge is similar to section 18 of Anambra State Property Land Use Charge save that number of days here given by commissioner is 14 days. Having reproduced the provisions of the law, the writer have come to the conclusion that Sections 2(3), 13, 23 and 24 of the Lagos State Land Use Charge Law 2020 are inconsistency with the provisions of section 7(1) and (5) of the Constitution. They are inconsistency with the Constitution in the following sense:

- Section 2(3) of the law suggests delegation of power of the local government area to the State Government by a written agreement with respect to the assessment of privately owned houses or tenement for the purpose of levying and collecting rate.
- Sections 23 of the Law clearly place the commissioner as one to establish and maintain a Land Use Charge Fund thereby stripping the revenue committee of the local government of their duty.
- The powers conferred on Local Government Council which include power to identify or assessing property for the purpose of levying tenement rate and power to appoint consultants has been surreptitiously taken away by the Commissioner for Finance
- Sections 2(3), 13, 23 and 24 of the Law contradict or watered down the provision of section 2(1) by making the Commissioner for Finance the sole collecting authority of the tenement rate. This is a direct attack and assault on the functions and powers of the Local Government under the provision of section 7(5) of the Constitution as amended.

Section 7(1) of the Constitution provides the system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the government, of every state shall subject to section 8 of this Constitution, ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils. 'The functions to be conferred by Law upon local government councils shall include those set out in the Fourth Schedule to this Constitution.

Fourth Schedule (1) (j) Assembly of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the Houses of Assembly of a State.

The import of the constitutional provision under item (j) is that the State House of Assembly shall prescribe rates for privately owned houses or tenement but Local Government is conferred with powers of collection of the said rate. In support of this view the court held in *Shell Petroleum Dev. Co. Ltd v Burutu Local Government Council*³⁵, that any provision in a law made by a state legislature providing for assessment of any property not coming within privately owned houses or tenements is ultra vires, null and void. In the instant case, the court further held that the Respondent (Burutu Local Government Council) was wrong in assessing and levying rates on oil storage tanks or tank farm and oil pipelines as they are not privately owned. The Constitution specifically restrict the power of a local government to assessment of privately owned houses or tenements for the purpose of levying rates, the power conferred on the State Legislature in paragraph 9 of the 2nd Schedule restricts the State Legislative power to only making laws of a local government council to assess privately owned houses or tenements. Thus, the responsibility for collecting property tax which is applicable to Land Use Charge is clearly a very important one since effective collection performance is a vital element of a successful property tax system. Considering section 2(2) of the Lagos State Land Use Charge Law which empowers each Local Government Area in the State to be the collecting authority and section 13(1) and (2) of the said Law which authorized the Commissioner for Finance to issue in each financial year a Land Use Charge Demand Notice with respect to every chargeable property, the question then arises as to who delivers the demand notice? Is it the assessor appointed by the Law or the Local Government whose authority to levy and collect has been taken over by the commissioner under section 14 of the Law? It is important in the principle of taxation to separate the assessment and collection functions to demonstrate impartiality on the part of those responsible for those two main elements of the property tax system which is applicable to Land Use charge. It therefore becomes pertinent for the law maker to amend the law so as to clearly state the body or appropriate person on whom the duty to serve the demand notice is conferred on. However, the operational link is needed to pass information between those responsible for assessment and those dealing with tax collection.

7. If occupier of land has exclusive right over the property wont it be a breach of right conferred on the property for him to be taxed on the said property?

Despite the argument concerning the unconstitutionality of the Land Use Charge Law, the said Land Use Charge Law is also said to be invalid as a result of certain provisions of the Land Use Act³⁶. Section 14 of the Land Use Act provides inter alia as follows: '...the occupier shall have exclusive rights to the land the subject to the statutory right of occupancy against persons other than the Governor'. Section 50 of the Land Use Act defines an 'occupier' as follows: '...any person lawfully occupying land under customary law and a person using or occupying land in accordance with customary law and includes the sub-lessee or sub-lessee of a holder'. From the above provision, it is inconsistent with the occupier's exclusive right to land for Lagos and Anambra States respectively to impose a charge or encumbrance on the said land to secure the payment of a tax imposed by the state law. It is equally inconsistency with the occupier's rights to make the land over which they have exclusive rights liable to enforcement pursuant to Section 27(2) of the Land Use Charge Law³⁷. However, since payment of tax is seen as a civic duty³⁸, once would suggest that the law maker should follow the procedure for amendment to amend our law so as to enable property tax payment to be legitimate. The fact that the procedure provides for amendment has not been followed it will be improper to tax a property owner as it will amount to invasion into his personal right.

Furthermore, to substantiate the point made above may we consider the constitutional provisions. By virtue of section 315 (5) (d) of the Constitution, the Land Use Act shall not be altered or modified except in accordance with the provision of section 9 (2) of the Constitution which provides for mode of altering the provisions of the Constitution i.e the Land Use Act to be validly altered must comply with laid procedure for alteration or amendment of the Constitution. The imposition by the Lagos and Anambra State Governments of a charge or encumbrance on the exclusive rights of the occupiers 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 is therefore unconstitutional, null and void.

8. Conclusion

There is paramount need for state government to follow the law. Constitution is still our *grund norm* as such must be complied with. To ensure that there are checks and balances, each arm of government shall recognize the existence of each autonomous body and same shall be treated with utmost respect. No arm of government should be allowed to take over powers that belong to another. More so, on the part of law drafter if an existing provision is standing on her way in generating additional revenue from land as in the case of provisions of Land Use Act 1978, there is a formal procedure as provides by the law for alteration and or amendment. Same must be followed accordingly and not otherwise.

³⁵ 2000 1 NRLR 1.

³⁶ Cap L5 Laws of Federation 2004.

³⁷ Lagos State Land Use Charge Law 2020

³⁸ Section 24 of the Constitution as amended