

**POLICY, LEGAL AND ADMINISTRATIVE IMPERATIVES
IN THE QUEST FOR ERADICATING MULTIPLICITY
OF TAXES IN LAGOS STATE**

**Delivered by
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1.0. INTRODUCTION

This topic reveals the intractable nature of the phenomenon called Multiplicity Of Taxes (MOT) in Nigeria despite the efforts aimed at addressing it. It also reflects the need to consider fresh interventions from the dimensions of tax policy, law and administration. MOT in Nigeria has over time attracted national and international opprobrium. In 2016, Nigeria was ranked 182 out of 190 economies on the Ease of Paying Taxes Survey¹ on the basis that there were 59 tax payments with an average tax rate of 34.3 percent which require about 908 hours to comply. By contrast, Qatar, which came first, had only 4 tax payments,² an average tax rate of 11.3 percent requiring an average of 41 hours to comply. It is possible that the Survey may have been influenced by the *Taxes and Levies (Approved List for Collection) Act(Cap T2)*³ which gave the erroneous impression that there is a long list of taxes in Nigeria.

When Professor Eddy Omolehinwa led the Board of Trustees of the Lagos State Professorial Chair on Tax and Fiscal Matters to the Governor of Lagos State on 18 April 2017, His Excellency, Mr. Akinwunmi Ambode, expressed the commitment of his administration to eliminate any incidence of MOT in the State, especially at the Local Government level.⁴ He concluded in the following audacious statement

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1. World Bank/PWC Ease of Paying Taxes Survey 2017 available at <https://www.pwc.com/gx/en/services/tax/paying-taxes-2017/overall-ranking-and-data-tables.html>, assessed on 24 October 2017
 2. Ibid
 3. Cap T2, Laws of the Federation of Nigeria 2004(as amended)
 4. Guardian Newspaper, "We'll eliminate incidences of multiple taxation-Ambode" available at <https://www.vanguardngr.com/2017/04/well-eliminate-incidence-multiple-taxation-ambode>, assessed on 24 November 2017

“I look forward to the day when the issue of multiplicity of taxes and levies will be a thing of the past in Lagos State”.⁵ It follows that if the problem of MOT persists at the end of the tenure of His Excellency, it will not be due to lack of will on his part.

Whilst the debate about MOT may be old and continuing, to the best of my knowledge this is perhaps the first intervention from the Ivory Tower to interrogate the problem holistically and proffer lasting solutions from the perspectives of tax policy, law and administration.⁶ I thank the Government of Lagos State for providing this auspicious platform for me to give voice to some of my unique ideas on this problem towards national development.

This lecture is divided into 7 parts. Following the Introduction in Part One, Part Two conceptualizes “Taxes and Levies” and MOT in the light of the peculiarities of the Nigerian tax system and articulates working definitions. Part Three interrogates the extent of MOT in Lagos State while Part Four traces the evolution of MOT in order to identify its root cause(s). When MOT started to bare its fangs, governments and stakeholders did not fold their arms. Indeed, they made concerted

5. An eye witness account. Although these exact words were not reported in the newspaper.

6. Recently, the Lagos Business School organised the Alumni Association Annual Lecture with focus on multiplicity of taxes. However, from the topic which was “The Effect of Multiple Business Regulations and Taxation on Business Growth”, there was however no emphasis on the tripod of tax system.

efforts to address the problem. Part Five analyses the shortcomings of past and current efforts to curb MOT in order to appreciate why the problem persists. Most of the problems facing the Nigerian tax system are traceable to the non-alignment of policy, law and administration. In Part Six, I discuss the appropriate mix of policy, law and administrative interventions, which, in my view, would be necessary to solve the problem on a sustainable basis. This lecture concludes in Part Seven with policy, legal and administrative recommendations for each level of government.

2.0. CONCEPTUALISING TAXES, LEVIES AND MULTIPLICITY OF TAXES

The phrase “Taxes and Levies” has become so notorious in Nigeria, that it is almost impossible to mention one without adding the other. Does a tax and a levy mean the same or different things? If they do, why use different words to describe the same thing and if they mean different things, what are the distinguishing characteristics and their significance?

Tax is a compulsory payment (levy) imposed by the legislature (by statute)⁷ for the purpose of financing the public sector for which no

7. This is why it has been generally held that taxation is statutory. See *Cape Brandy Syndicate V Inland Revenue Commissioners (1921) 1 KB 64*. Examples of statutes imposing taxes are *Personal Income Tax Act* Cap P8 LFN 2004 (as amended), *Companies Income Tax Act* Cap C21, LFN 2004 or *Value Added Tax Act* Cap V1, LFN, 2004

direct benefit is conferred on taxpayers in exchange for the payment. The bright line rule is the absence of any direct benefit. Any compulsory payment for which there is no direct benefit will qualify as a tax irrespective of the name or description; be it “charges” (Land Use Charge), “duties” (Stamp Duties, Customs and Excise duties) or “tenement”. The 2017 revised National Tax Policy's succinct definition of tax as “any compulsory payment to government imposed by law without direct benefit or return of value or a service whether it is called a tax or not” is apt.

The absence of direct benefit (*qui pro quo*) should not lead to a wrong conclusion that government could collect taxes and care less about the taxpayers or society. Such an attitude will be most unfortunate and may precipitate civil unrest. There is an underpinning principle in furtherance of the Social Contract Theory,⁸ that tax revenue is supposed to be utilised for the provision of social services and development of the society; which in Nigerian parlance includes the advancement of the provisions of the Fundamental Objectives and Directive Principles of State Policy contained in Chapter II of the Constitution of the Federal Republic of Nigeria 1999 (1999 Constitution). Thus, Oliver Wendell Holmes, Jr captured the essence of taxation as “the price we pay for civilisation.”⁹

8. J. J. Rousseau, *The Social Contract* available at https://www.ucc.ie/archive/hdsp/Rousseau_contrat-social.pdf

9. *Compania General de Tabacos v. Collector*, 275 U.S. 87 (1927)

A levy could be a verb or a noun. As a verb, levy means an imposition. As a noun, it means the amount of money payable or paid to an authority. When used as a noun, a “levy” has a wide connotation and covers all payments to government authorities including those made in exchange for the enjoyment of certain rights, privileges or benefits in form of permits, licenses and services. Hence, while all taxes are levies, not all levies are taxes.

A working definition for the purpose of this discourse is that a levy is a monetary imposition by government Ministries, Departments and Agencies (MDAs) pursuant to their regulatory powers in exchange for the enjoyment of certain rights, privileges or benefits. Levies may go by different names such as “fees” or “rates” or “charges”. Generally, they are imposed to recoup part of the costs of providing the services resulting in the direct conferment of those rights, privileges or benefits. Taxpayers who have been subjected to one tax or the other in different circumstances when earning (income tax), spending (consumption taxes), disposing capital assets (capital gains), documenting certain transactions (Stamp Duties), importing goods (Import Duties), exporting goods (Export Duties), producing goods within the country (Excise Duties), occupying /owning real property (property tax) and residing in a State (Development Levy) should reasonably expect government services to be provided at little or no cost since they are the proverbial goose laying the golden eggs which oil the wheel of the government machineries. This is not to suggest that an average taxpayer is liable to all these taxes but to show that there is an array of tax revenue streams which government can leverage on. The challenge

is to design an efficient and optimum legal and administrative framework for each of the taxes. Accordingly, payments to MDAs should be reasonable and proportionate or lesser than the actual cost of services being rendered as a deliberate policy to encourage wide range of citizens to access those rights, privileges or benefits.

For clarity, I will advocate that we disaggregate the phrase “taxes and levies” and use “levies” for all payments in exchange for the enjoyment of certain rights, privileges or benefits in form of permits, licenses and services irrespective of the name they are called. If we abide by this simple prescription, the Federal Government taxes under Cap T2, will be limited to only 8 viz: Companies Income Tax, Personal Income Tax, Petroleum Profits Tax, Value Added Tax, Tertiary Education Tax, Information Technology Tax, Capital Gains Tax and Stamp Duties while that of State Governments will be limited to 5 viz: Development Levy, Land Use Charge, Hotel Occupancy and Restaurant Consumption Tax, Animal Trade Tax and Property Tax. That of the Local Governments will be limited to only 2 viz: Tenement Rate and Wharf Landing Fee. If we add import, export and excise duties, which were omitted in Cap T2, the total number of taxes in Nigeria should be 18.

The phrase “Multiplicity of Taxes” (MOT) is neither a term of art nor an established tax concept. The term seems to be peculiar to the Nigerian fiscal lexicon. According to the National Tax Policy 2012, multiple taxation occurs “where the tax, fee or rate is levied on the same person in respect of the same liability by more than one State or Local

Government Council.”¹⁰ With due respect, this definition is too narrow to the extent that it implies that MOT occurs only with regard to State and Local Government taxes and absolves the Federal Government of any complicity.

From the general usages by stakeholders, MOT can be said to manifest in at least four ways. First, it refers to the various unlawful compulsory payments being collected by the State and Local governments without appropriate legal backing through intimidation and harassment of the payers. Collection is characterised by the use of stickers, mounting of roadblocks by dubious revenue Agents/Consultants including motor park touts.¹¹ It would appear that the first scenario is almost exclusive to the Local Governments apparently due to lack of well-established and workable system for collection of taxes and levies at that level. Recent developments have however shown that some Federal MDAs have been resorting to various forms of “strong arms tactics” to exert undue pressure to collect levies allegedly due from some companies. Consultants to some Federal MDAs have gone as far as blockading companies or cause the National Assembly to summon corporate bodies under the guise of oversight functions.¹² These types of unorthodox revenue drives are motivated more by private interests,

10. See the *National Tax Policy 2012*, p.78 para 6.o.

11. See the *Main Report of the Study Group on the Nigerian Tax System in Nigeria Tax Reform in 2003 and Beyond*, July 2003 (Hereinafter referred to as “The 2003 Tax Study Group”) pp 286-290.

12. See the news report titled “NIMASA blocks Nigeria LNG vessels again as debt crisis deepens” available at <https://www.premiumtimesng.com/business/139434-nimasa-blocks-nigeria-lng-vessels-again-as-debt-crisis-deepens.html>. Accessed 24 July 2017

unsustainable and blight the country's effort at attracting foreign investment.

Second, MOT refers to cases in which various government agencies charge exorbitant amounts for licences and permits ostensibly in their bid for revenue drive. In *Registered Trustees of Association of the Licensed Telecommunications Operators of Nigeria & Ors v. Lagos State Government & Ors*¹³ some telecommunication companies challenged certain sections of the *Lagos State Infrastructure Maintenance and Regulatory Agency Law, 2004* on the basis that the Law amounted to imposition of tax on their operations. Justice Auta of the Federal High Court had this to say:

“The IMRA Law, from the name it looks very innocent. From the contents of the law, the driving force is just to make money for the State, as the State has numerous laws dealing with the issue of urban planning.”¹⁴

The learned Judge went on to expose the revenue objective of the Law:

“What the Lagos State is doing is to create an agency that will get its own share of the booty, as their counsel said that their operators are making billions of Naira.”¹⁵

13. ALL NTC Vol 6 p. 203

14. *Ibid*

15. *Ibid*

Third, MOT refers to where the same level of government imposes two or more taxes on the same tax base. A good example is payment of multilayer levels of taxes under Companies Income Tax or Petroleum Profits Tax and Tertiary Education Tax and Information Technology Levy by companies. MOT manifests in this sense exclusively at the federal level. The first layer of taxation of income of companies in Nigeria is a tax of thirty per cent of the *net profit* of companies under the Companies Income Tax Act¹⁶ The second layer is a tax of two per cent of the *assessable profits* of Nigerian companies under the Tertiary Education Trust Fund (Establishment, Etc) Act¹⁷ (Education Tax). The third layer is Information Technology Tax of one per cent of the gross profit of certain companies.¹⁸ I believe that the emerging tax reform in Nigeria will find a way to streamline these taxes and balance competing interests in order to improve its ranking on the Ease of Paying Taxes Index.

Fourth, MOT refers to situations where a taxpayer is faced with demands from two or more different levels of government either for the same or similar taxes. A good example here is the administration of the Value Added Tax (VAT) and Hotel Occupancy and Restaurant Consumption Tax simultaneously. MOT manifests in this manner only

16. Cap C20, Laws of the Federation of Nigeria 2004 (as amended)

17. No. 16 of 2011

18. A.O. Sanni “*Technology Tax – Emergence Of Quadruple Taxation Of Companies Income In Nigeria*” (unpublished)

in Lagos State. I also believe that the emerging tax reform in Lagos will find a way to streamline these taxes and balance competing interests.

Viewed from these broad perspectives, it can be seen that none of the three levels of government is free from blame. The danger in construing MOT narrowly is that intervention will not be broad based. As a fall out of the narrow perspective of MOT as a matter for State and Local governments fiscal relation, there has been no concerted effort at the centre aimed at addressing the important issue of which level of government has power to impose and administer VAT under the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The Federal Government should not fight shy of confronting this issue which lies at the heart of fiscal federalism in faithful obedience to the provisions of the Constitution.

MOT infringes the cardinal principles of taxation. Granted that government requires revenue to discharge its responsibilities to the citizens, this cannot be done in a haphazard, arbitrary and capricious manner. A taxpayer is entitled to know and determine in advance how much he is obligated to pay and in what circumstances. This underscores why certainty is the first principle of taxation.¹⁹ MOT makes the tax regime uncertain, discourages investment and

19. T.G. Lambert, *Some Modern Principles of Taxation – Adam Smith Revisited*, A paper delivered at the Third Annual Convention of the Congress of Political Economists in Rio de Janeiro, Brazil, in January 1992, available online at http://www.cooperativeindividualism.org/lambert-ian_on-adam-smith.html (last accessed January 2011).

negatively affects the position of Nigeria on Ease of Paying Taxes and Ease of Doing Business rankings. There are reports of corporate taxpayers who have moved their operations out of Lagos State to either neighbouring states or countries on account of multiplicity of taxes and rising costs of doing business.²⁰

It suffices to say however that the mere existence of different taxes by different levels of government is not synonymous with multiple taxation. In a federal system of government, it is typical to have Federal, State and Local Government taxes. This truism was lucidly expressed in the National Tax Policy 2012 thus:

“Multiple taxation in Nigeria first needs to be defined before it is tackled. The word multiple connotes “numerous”, “several”, “various” etc. A certain level of multiplicity is unavoidable in a Federal structure as each tier of government may want to charge certain taxes, fees, charges as may be applicable. The only aspect of multiplicity that is avoidable and for which the Constitution itself abhors is that where the tax, fee or rate is levied on the same person in respect of the

20. See “Why companies will continue to leave Nigeria for Ghana” available at <https://www.dailytrust.com.ng/sunday/index.php/business/703-why-companies-will-continue-to-leave-nigeria-for-ghana>, and “As Nigerian coys move to Ghana” available at <https://www.vanguardngr.com/2009/08/as-nigerian-coys-move-to-ghana/>

same liability by more than one State or Local Government Council.”

Having established what is MOT and what is not, we can now beam the searchlight on the extent to which it exists in Lagos State.

3.0. INTERROGATING THE EXTENT OF MULTIPLICITY OF TAXES IN LAGOS STATE

The answer to the question how many taxes exist in Nigeria and Lagos State in particular, should be an easy one. Following the basic principle that taxation is statutory, the correct approach should be to count the number of specific federal and states laws enacted mainly for taxing purposes. Going by this approach, the number of taxes will be relatively few compared to the over 120 “taxes” listed in Appendix IV of the Report of the Tax Study Group 2003.²¹

Cap T2,²² as amended, gives a false impression that there are 55 taxes and levies in Nigeria. Also, the drafters of the Act seem to be at a loss on the basic distinction amongst taxes, fees and charges. How else can one explain the inclusion of user charges, permit and licensing fees to the items contained in the Schedule to the Act? Thus items such as off and on liquor licence fee, slaughter slab fees, marriage, birth and death

21. The 2003 Tax Study Group listed over 120 taxes in Appendix IV of its Report. See Tax Study Group Report, pp 313-314.

22. Supra note 3

registration fees, naming of street registration fees, right of occupancy fees, domestic animal licence fees, bicycle, truck, canoe and cart fees, radio and television licence fees, vehicle road licence fees, public convenience, sewage and refuse disposal fees, customary burial ground permit fees, signboard and advertisement permit fees or "rates" such as shops and kiosk rates, tenement rates are included in the Schedule. Even, payment for wrong parking which is clearly a fine was called a charge! It is incorrect, misleading and may be counter-productive administratively to describe payments made in exchange for direct benefit as taxes in view of the general aversion to taxes.

3.1. Lagos State Taxes

In view of the constant complaint of MOT in Lagos State, it is important to consider the actual number of taxes in the State. A review of the Laws of Lagos State will reveal that the State has only 9 tax laws namely:

- (i) Stamp Duties Law (1972 WRL)²³
- (ii) Produce Sales Tax Law (1972)²⁴
- (iii) Trade Cattle Control and Tax Law (1977)²⁵
- (iv) Sales Tax Law (1982)²⁶

23. Cap S10, *Laws of Lagos State of Nigeria, 2015*

24. Cap P9, *Laws of Lagos State of Nigeria 2015*

25. Cap T5, *Laws of Lagos State of Nigeria 2015*

26. Cap S2, *Laws of Lagos State of Nigeria 2015*

- (v) Neighborhood Improvement Charge Law (1986)²⁷
- (vi) Education Development Levy Law (1989)²⁸
- (vii) Land Use Charge Law (2001)²⁹
- (viii) Wharf Landing Fees Law (2009)³⁰
- (ix) Hotel Occupancy and Restaurant Consumption Law (2009)³¹

A careful review of the above however will reveal that only three of them, that is, the Hotel Occupancy and Restaurant Consumption Law, the Land Use Charge and Wharf Landing Fees Law are currently being administered in the State. Some of the tax laws have become either obsolete or overreached by federal statutes and should have been omitted during the revision of the Laws of Lagos State in 2015. There is much to be said about a situation where the Laws of Lagos State 2015 still contain a number of tax laws which have become obsolete or impliedly repealed. It is recommended that the Executive should initiate Bills to repeal those laws.

In practice, taxes in Lagos State can be classified into the following categories:

- (i) Federal taxes administered by the State for its account

27. Cap N2, Laws of Lagos State of Nigeria 2015

28. Cap E1, Laws of Lagos State of Nigeria 2015

29. Cap L79, Laws of Lagos State of Nigeria 2015

30. Cap W3 Laws of Lagos State of Nigeria 2015

31. Cap H8, Laws of Lagos State of Nigeria 2015

- (ii) State taxes administered by the State for its account
- (iii) Local Government Taxes administered by the State jointly for the State and Local governments.

3.1.1. Federal Taxes Administered by the State for its Account

There are three taxes imposed by the Federal Government but whose administration is delegated to the State Boards of Internal Revenue while the power of the Federal Inland Revenue Service (FIRS) in respect of those taxes is limited to the residents of the Federal Capital Territory. The taxes are:

- (i) Personal Income Tax ;
- (ii) Capital Gains Tax and
- (iii) Stamp Duties .

The Federal Government determines the legal framework for the imposition and administration of these taxes. Thus, Lagos State or any State in Nigeria has no power to alter the rate or penalty prescribed under the enabling statutes. In view of item 59 on the Exclusive Legislative List of the Constitution³² which vests the National Assembly with power to impose tax on income, any State law which purports to impose tax on income of individuals is arguably null and void to the extent of its inconsistency with the Personal Income Tax Act³³ (PITA). In

32. Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as Amended)

33. Cap P8 Laws of the Federation of Nigeria 2004 (amended)

Institute of Human Rights & Humanitarian Law v Attorney General of Rivers State,³⁴ Opara J of the High Court of Rivers State declared the Social Services Contribution Levy imposed on all persons who live, work or do business in Rivers State null and void. The learned judge upheld the right of the Non-Governmental Organisation to institute a public interest litigation on the ground that the Law would amount to double taxation on its staff and persons who live in Rivers State.

Since Personal Income Tax, Capital Gains Tax and Stamp Duties are federal taxes, the enabling laws should contain mechanisms to ensure that a taxpayer is liable to tax only in one State. The notorious aspect touching on double taxation, however, is the practice of some States including Lagos to disregard the tax clearance certificate of other States produced by non-residents while insisting that the non-resident must nevertheless pay tax and obtain tax clearance of the State where the transaction is taking place. While Lagos State had long stopped indulging in the practice, there is however still a wrong perception that it still persists. Indeed, a case of first impression lasting longest.

Another complaint is that some States including Lagos State are more aggressive in enforcing the provisions of the various Acts. It is common for taxpayers on the same level in federal employment to say that they pay higher taxes in Lagos than their colleagues in other States. With due sense of responsibility, while all the State Boards of Internal Revenue

34. ALL NTC Vol 9 p. 1

(SBIR) are administering the same law, their understanding, depth and approach may produce different results. There is nothing wrong in principle for a tax authority to relentlessly seek to implement the provisions of an extant law, provided it is done with fairness and impartiality. For instance, the Lagos Internal Revenue Service (LIRS) recently issued about 13 Public Notices communicating its views on avoidance techniques being exploited by high net worth individuals. Issues such as these do not touch on multiplicity of taxes. Some stakeholders have expressed reservations about the validity of the position taken by LIRS, while some aggrieved taxpayers have approached the court to ventilate their grievances.

3.1.2 State Taxes Administered for its Account

These are taxes administered by the Lagos State Internal Revenue Service or other agencies for the account of the State.

(i) Hotel Occupancy and Restaurant Consumption Tax

This tax popularly known as consumption tax imposes 5percent of the total bill for the use or possession or the right to use any hotel, hotel facility, restaurant or event center or purchase of consumable goods located within Lagos State. The tax is a product of the determination of Lagos State Government to ensure that it exercises legislative and administrative control over intra-State supply of goods and services within the tourism/hospitality sector. It is administered and collected by the LIRS. The State commenced the collection of the tax after its Sales Tax Law was declared null and void in the case of *Attorney General Lagos State v Eko Hotels Limited*.³⁵ The Consumption Tax Law

35. ALLNTCVol6 p.333

has been challenged in a number of cases with conflicting decisions on its validity. In *Mas Everest Hotels Ltd & Anor v. Attorney-General of Lagos State*³⁶ Oshodi J of the Lagos State High Court held that the tax was constitutional while the Federal High Court in *Prinzel Court Limited v. Attorney-General of Lagos State & 2 Ors*³⁷ held that the Consumption Tax Law was void for its inconsistency with constitutional provisions as well as the Value Added Tax Act.³⁸ The Supreme Court has however affirmed that it is within the legislative competence of Lagos State to enact Consumption Tax Law. In the case of *Attorney-General of Federation v Attorney-General of Lagos State*³⁹ the Supreme Court stated thus:

Accordingly, the laws enacted by the Lagos State Government, that is to say:

a.....

b.....

c. Hotel Occupancy and Restaurant Consumption Law No. 30 Volume 42 Lagos State of Nigeria Official Gazette of June 23, 2005 are not in conflict or inconsistent with the Nigerian Tourism Development Act Cap N137 LFN. They are valid and constitutional and I so hold

A number of other States have introduced consumption tax following

36 ALLNTC Vol 7 p. 93

37. ALLNTC Vol 7 p. 213

38. Cap V1, Laws of the Federation of Nigeria, 2004 (as amended)

39. ALL NTC Vol 8 p. 425

the Lagos State model.

3.1.3 Taxes Administered by the State for Local Governments

There are two local taxes which are administered by Lagos State agencies on behalf of the local government.

(i) Land Use Charge

Land Use Charge (LUC) is payable annually on the value of all real properties situated in Lagos State. The objective of the Law is to consolidate all taxes, rates and charges payable under the Land Rates Law,⁴⁰ the Neighborhood Improvement Charge Law and the Tenement Rates Law in Lagos State.⁴¹ The Law makes each Local Government the collecting authority within its territory while each Local Government is empowered to delegate the collection to the State. To this end, there is a Memorandum of Understanding (MOU) between the State and all the Local Governments on the sharing of the revenue. This is remarkable. LUC was a product of tax reform initiated by Ahmed Bola Tinubu administration in 2001. The tax faced a lot of legal challenges mainly on the ground that it was a usurpation of the power of the Local Governments. However, following series of stakeholders' engagement and reduction of the rate, LUC can be said to have come to stay in Lagos State as legal battles seemed to have been rested. The extent to which

40. Spent and Omitted under the Laws of Lagos State of Nigeria 2015

41. See Preamble to the Land Use Charge Law Cap L79, Laws of Lagos State of Nigeria 2015

the MOU which under-guard the administration of LUC could endure is not certain as it takes only one dissentient Local Government to throw a spanner in the wheel of the administration. A number of other States have also introduced LUC following the Lagos State model. However, in the case of *Grinaker v Attorney General of Rivers State*,⁴² the Rivers State Property Tax was declared as null and void. According to the court, a State law that empowers the State to perform the functions constitutionally reserved for the Local Governments is in conflict with the provisions of the constitution. The Court concluded that a State law that seeks to divest the local governments of their constitutionally recognised function is unconstitutional.

(ii) Wharf Landing Fees

Wharf Landing Fees are payable on goods brought into any local government in Lagos State from the ports. The highest fee payable under the Law is N1,000 per a 40-foot container or truck or heavy-duty vehicle. A 20-foot container attracts a fee of N500 while a car attracts a fee of N300. The fees are payable by any person in possession of goods on which the wharf landing fee is chargeable whether as owner, shipper, transporter or agent. Payment is made to the collecting authority established or designated in accordance with the provisions of the Law when any items or consignments are transported from the Lagos Ports into the local government areas of Lagos State. The Wharf

42. All NTC Vol 9 p. 79

Landing fee was introduced to compensate and enable the state raise substantial revenue to tackle the problem of poor road infrastructure which is caused by frequent and intense vehicular activities from the Port.

There is an inherent danger of the Law conflicting with the trade and commerce clause⁴³ under Exclusive Legislative List in the 1999 Constitution, unless the collection is restricted to the Port in which case the cooperation of the Federal Government is required. This is because a vehicle may pass through several local government councils and areas within Lagos State before getting to its destination.⁴⁴ There is no gainsaying the fact that Port cities usually witness a flurry of commercial activities which may overstretch their infrastructure. When ships berth at the Port and the consignments are transported to various destinations across the country, the Port areas and their environs are faced with immense challenges. For example, the roads (main and access roads) will witness greater rate of deterioration and require frequent repairs. Crime waves may be more prevalent and the surrounding areas susceptible to traffic congestion, etc. Ordinarily, due to externalities created by Port activities, federal interventions are usually required because it is unfair to shift all the burden of financing the infrastructures on the locality just as it will also be unfair for the

43. Item 62(a) of the Exclusive Legislative List of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

44. For example, a vehicle going to Apapa from Ikorodu will pass through Apapa, Surulere, Kosofe and Ikorodu local government areas.

locality to seek to impose taxes on out-of-state users of the Port. This is perhaps one of the reasons why Ports are usually designated federal matters in a federation, including Nigeria.

Some may argue that Port location also confers some unique opportunities such as heavy federal presence, high population density, location and localisation of industries which may positively impact on the revenue of the locality. While this point may be valid, it still does not detract from the need for federal assistance in order to alleviate the extra fiscal burden that besets Port areas and thereby discourage any tendency on their part to exact their pound of flesh on out of state users of the Ports. In my view, it is better for Lagos State to leverage on its political affinity with the ruling party to intensify its campaign for special grants for Lagos State as a former federal capital territory in place of Wharf Landing Fee.

4.0 EVOLUTION OF MULTIPLICITY OF TAXES

It was Soren Kierkegaard who said “Life can only be understood backwards; but it must be lived forwards”.⁴⁵ In order to develop the appropriate responses to the menace of MOT, we need to trace how and why it crept into the Nigerian tax system rather than its manifestations.

45. Available at https://www.brainyquote.com/quotes/soren_kierkegaard_105030, accessed of 24 November 2017

One of the consequences of military incursion into the Nigerian political system is the relegation of taxes to the background. The remote cause of MOT can be traced to the gradual erosion of fiscal powers of the states through various Decrees and the near total dependence of the states on federal allocation while the immediate cause is the desperate search for new revenue head other than taxes with significant revenue yield.

Under the 1963 Constitution, the Regions were entitled to significant portions of the revenue from import, excise duties, export duties, mining royalties and rents. Beginning from April 1975, the Federal Military Government promulgated series of Decrees which, inter alia, gradually reduced the percentage due to the States and mandated that all the revenue of the Federal Government be paid into the Distributable Pool Account (DPA) now known as the Federation Account;⁴⁶ fixed lower uniform personal income tax rates and granted more generous reliefs throughout the federation;⁴⁷ abolished the cattle tax (*jangali*) which was the traditional source of revenue for the Native authority in the North,⁴⁸ and made Local Governments entitled to share in the revenue in the DPA.⁴⁹

46. *Constitution (Financial Provisions, etc.) Decree No. 6 of 1975* amended section 136-141 of the 1963 Constitution.

47. *The Income Tax Management (Uniform Taxation) Decree No 7 of 1975*

48. In order to "bring some relief to the cattle owner on his capital and encourage him to keep his cattle within the country. See text of 1975/6 Budget broadcast (Lagos: Federal Ministry of Information)

49. Following the recommendation of Aboyade Panel, this was given a legislative backing in section – of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

These changes gradually increased the financial strength of the Federal Government *vis-a-vis* the States; reduced the fiscal disparities among the States on the basis of revenue derivation principle, increased the amount of revenue accruing to the DPA; thereby enhancing the capacity of the Federal Government to achieve a greater measure of fiscal equalization among the States. The worst effect of these developments on the States in the context of this discourse was that they reduced the incentive for States to embark on increasing their Internally Generated Revenue (IGR). Therefore, States were financially tied to the apron strings of the Federal Government which was collecting most of the country's revenue and sharing same with the States every month. By the time the Second Republic commenced under the 1979 Constitution, the States had become so dependent on the federal allocation that the question of States being autonomous and independent in line with the classical theory of federalism was nothing but a farce. The efforts by the States to shore up their revenue through the introduction of Sales Tax were caught by constitutional cobweb culminating in the landmark decision of *Attorney General of Ogun State v. Alh. Ayinke Aberuagba. & Ors*⁵⁰ which nailed the coffin on the States' Sales Tax.

In the 1990s, the effect of neglecting the machinery for IGR at States level started to manifest as a result of the global financial crisis which also negatively affected the amount of revenue allocated to the States

50. ALL NTC Vol 3 p. 17, (1985) NWLR (Pt 3) p. 395

from the Central government. Many of the States started experiencing negative economic downturn due to dwindling revenue.⁵¹ It was time for desperate search for solutions. Some smart tax consultants approached the Military Administrators of some States with an irresistible offer on the prospect of significantly increasing their IGR in consideration of agreed commission on the increment. Niger State was perhaps the first to farm out its tax administration to private tax consultants under the Accelerated Revenue Generation Programme (ARGP). The consultants significantly invested in human and material resources and pursued their tasks with zeal and determination with the full backing of the Military Administrators. They started implementing certain provisions of the tax laws which had become dormant due to lack of use including taxation of benefits-in-kind⁵² foreign income of residents in the currency of payment,⁵³ regular tax audit,⁵⁴ invoking provisions on power to distrain,⁵⁵ deemed income,⁵⁶ charging interest and penalty.⁵⁷

51. See F Izendomi, "Eliminating Multiple Taxation in the Capital Market - The Capital Market Perspective". Available online at <http://www.secure.irs-ogun.org/downloads/ORIGIN%20OF%20MULTIPLE%20TAXATION.pdf>. Site visited on 19th September, 2011.

52. Sections 4 and 5 of the Personal Income Tax Act, Cap P8 Laws of the Federation of Nigeria 2004 (as amended)

53. Section 54 of CITA

54. Section 65 of CITA

55. Section 104 of the Personal Income Tax Act, Cap P8, Laws of the Federation of Nigeria 2004 (as amended)

56. Section 54 of the Personal Income Tax Act Cap P8 Laws of the Federation of Nigeria 2004(as amended)

57. Sections 76 and 77 of the Personal Income Tax Act, Cap P8, Laws of the Federation of Nigeria, 2004 (as amended)

Apart from statutorily stipulated taxes, the tax consultants also beamed their searchlight on other revenue generating handles such as grant of Certificate of Occupancy (C of O), Governor's consent, permits and licences and started reviewing the rates and fees payable for different governmental services ostensibly to reflect the economic realities of that time. In some cases, the rates and fees were skewed too high. New revenue heads such as “business premises levy” and “development levy” payable by corporate bodies were arbitrarily introduced without proper legal basis. The private tax consultants were able to inject a dose of dynamism into tax administration during this era notwithstanding that some of their practices were unorthodox and raised serious issues of rule of law. The revenue objective was paramount to the States.

In the course of time, other States gradually bought into ARGP or similar schemes by other private tax consultants and improved on the Niger State experiment. Some of them did not only make use of the police and the military during their tax drive but actually appointed military officers as head of revenue generation Task Force.⁵⁸ Consequently, the practice became pervasive and the State Revenue Boards were idle and practically redundant.

A number of taxpayers resorted to legal actions by challenging the

58. See the facts of *Lagos State Internal Revenue Board v First Bank Plc ALL NTC Vol 3 p. 425 at 413* where one Major Olufemi was reportedly the head of the Lagos State Tax Force of the Recovery of Taxes.

constitutionality of some of the taxes and exercise of power by the Tax Consultants.⁵⁹ However, most of the actions failed on technical grounds that the validity or otherwise of Edicts cannot be challenged, a development which emboldened the private tax consultants to create new revenue heads, thus elongating the list of levies.

5.1. APPRAISAL OF PAST EFFORTS TOWARDS ERADICATING MULTIPLICITY OF TAXES

As part of the responses to curb the menace of multiplicity of taxes, the Joint Tax Board [JTB] issued a Circular attaching a list of taxes collectible by each tier of government and directed States not to go outside the list. Virtually all the States ignored the Circular and continued with business as usual. The JTB went back to the drawing board to enact the contents of the Circular into law as *Taxes and Levies Approved List for Collection Decree*.⁶⁰ The Decree provided, *inter alia* that:

- the Decree expressly provides that it has overriding effect on the provisions of the Constitution,⁶¹
- prohibits any other person, other than the appropriate tax

59. See *Anambra State Motor Manufacturing Company Limited (ANAMCO) V Attorney General for Enugu State ALL NTC Vol 3 p. 469*; *First Bank of Nigeria Plc V The Attorney General and Commissioner for Justice, Anambra State ALL NTC Vol 4 p. 437*.

60. *No. 21 of 1998* which later became Cap T2 Laws of the Federation of Nigeria 2004 (as amended) Supra note 3

61. Section 1 begins with the phrase “Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979, as amended, or in any other enactment or law...”

authority from assessing or collecting any tax or levy listed in the Schedule on behalf of the Government;

- members of the Nigeria Police Force shall only be used in accordance with the provisions of the tax laws;
- prohibits any person, including a tax authority, from mounting a road block in any part of the Federation for the purpose of collecting any tax or levy.
- prescribes the amount chargeable as development levy and business premises levy
- imposes penalties for contravening the law and render any offender liable on conviction to a fine of ₦50,000 or imprisonment for three years or to both such fine and imprisonment
- vests the Minister of Finance with power to amend the Schedule to the Act.

Following the enactment of Cap T2, States stopped charging more than the prescribed amount for the development levy, business premises levy and business premises renewal levy. The enactment of Cap T2 undoubtedly posed serious challenges for the operation of the private tax consultants but certainly not sufficient to eliminate their activities. Since the hunters have learnt how to shoot without missing, the birds also learnt how to fly without perching. The consultants devised a new method whereby they were given offices within the same premises as

the SBIR where they carry out their operation and got the SBIR to issue the staff of the private tax consultants identification cards of the SBIR. In order to fulfill the letters of the law, assessments were prepared by the consultants for the signature of the Chairman or other relevant officers of the SBIR. The consultants were therefore able to seamlessly carry on their operation as if they were part of the SBIR.

The JTB returned to the drawing board and mobilized towards the amendment of the Personal Income Tax Act (PITA) to establish a Board of Internal Revenue for each State and prescribed the composition of the Board⁶² following which all the States eventually constituted their BIRs. Lagos State even led the way by establishing LIRS under a separate State law and granted it a measure of autonomy; a model which a number of other States⁶³ have now borrowed.

In the course of time, the activities of consultants spread to the Local Government⁶⁴ councils in Nigeria. In order to check this development, the JTB also initiated an amendment of PITA to establish a Revenue Committee for each Local Government and a Joint State Revenue Committee (JSRC) for each State. The JSRC comprises the Heads of the Revenue Committee of each local government. The JSRC was to play at

62. See section 87 of the *Personal Income Tax Act*, Cap P8 Laws of Federation of Nigeria, 2004. The provisions were inserted into PITA vide the *Finance (Miscellaneous) Taxation Provisions Decree (No. 31) 1996*

63. Examples of the States are Kaduna, Rivers, Edo, Adamawa, Kogi, Osun, Abia and Enugu

64. *Ibid*, Section 90. The provisions were inserted into PITA vide the *Finance (Miscellaneous) Taxation Provisions Decree (No. 31) 1996*.

the State level the kind of role that JTB is playing at the federal level.

In 2010, the Lagos State Government enacted Local Government Levies (Approved Collection) Law⁶⁵ basically in line with the provisions of Cap T2. Only the 16 levies listed in the Schedule to the Law can be collected as well as any other levies approved by the Joint State Revenue Committee. The Law also prohibits mounting of road blocks/road closures for purpose of revenue drive. The significant departure from Cap T2 is contained in Section 6 which provides for the appointment of revenue agents upon the recommendation of the Local Government Revenue Committee. The JSRC is empowered to set specific criteria which should be applied by all LRCs in considering a revenue agent for appointment.

At this point it would seem that a firm structure for tax administration had been established at both the State and Local government levels, especially in Lagos State to keep MOT at bay. Attempts by States and Local government to impose and or collect any revenue item, which are not contained in the Schedule to Cap T2, were declared illegal, null and void in a number of cases, instituted by taxpayers. In some of the cases, the Local governments affected did not even bother to put up appearance in court; obviously because of the legal odds against them.⁶⁶

65. Ch L91, Laws of Lagos State of Nigeria 2015

66. *Mobil Producing Nigeria Unlimited (M.P.N.U.) v. Tai Local Government Council and 2 Ors.* ALL NTC Vol 5 p. 241 *Eti-Osa Local Government v. Mr. Rufus Jegede* ALL NTC Vol 6 p. 251, *Mama Cass restaurant ltd. and others v. Federal Board of Inland Revenue & Attorney General of Lagos State* ALL NTC Vol 6 p. 97

Notwithstanding the seemingly robust statutory framework and judicial pronouncements, complaints of MOT have not abated. The JTB recently built a coalition involving the National Council of States which culminated in the amendment of Cap T2 in 2015 via the Schedule to the Taxes and Levies (Approved List for Collection) Act (Amendment) Order, 2015. The Order amended Parts I,II and III of the Schedule to Cap T2 thus:

- (i) increasing the items collectible by the Federal Government in Part I from 8 to 9 by adding “National Information Technology Development Levy”;
- (ii) removing the upper limit of N10,000 and N5,000 prescribed for business premises registration and renewal fees in urban areas and N2,000 and N1,000 in rural areas thereby allowing each state to fix the amount;
- (iii) increasing the items collectible by the States in Part II from 11 to 25 by adding the following 14 items:
 - a. Land Use Charge, where applicable;
 - b. Hotel, Restaurant and Event Centre Consumption Tax, where applicable;
 - c. Entertainment tax, where applicable;
 - d. Environmental (Ecological) Fee/Levy;
 - e. Mining, Milling and Quarrying Fee, where applicable;
 - f. Animal Trade Tax, where applicable;
 - g. Produce Sales Tax, where applicable;

- h. Slaughter or Abattoir Fee (Where State finance is involved);
 - i. Infrastructure Maintenance Charge or Levy, where applicable;
 - j. Fire Service Charge;
 - k. Property Tax, where applicable;
 - l. Economic Development Levy, where applicable; (Kogi)
 - m. Social Service Development Levy, where applicable; (Rivers' case law)
 - n. Signages and Mobile Advertisement, Jointly collected by States and Local Governments);.
- (iv) increasing the items collectible by local government in Part III from 20 to 21 by adding “Wharf Landing Fee, where applicable”;

Contrary to the reasonable expectation of the Organised Private Sector and Small and Medium Size Business Enterprises that the items in the Schedule to Cap T2 would be reduced, they were increased by 16 from 39 to 55. A careful review of the list would reveal that the modification has the prospect of reversing some of the significant gains recorded in the past including pegging the amount chargeable for business premises registration and renewal fees. It would appear that the amendment has vindicated the States and Local Governments which imposed or introduced some of the taxes hitherto declared as null and void by various judicial pronouncements on the basis that they were not

contained in Cap T2. Hence, all that is required by any State which seeks to impose any of these taxes will be to enact an appropriate law to that effect. Once this is neatly done, any aggrieved taxpayer will have to look for other possible grounds of challenging the imposition apart from the standard defense that they were not in Cap T2.

The States which had enacted tax laws on subject matters that were included in the Schedule to Cap T2 would see the development as a vindication of their position and that the Federal Government is finally coming to terms with the fact that the residual power of the State is only limited by the provisions of the Constitution and not any federal statute including Cap T2. The States which are yet to introduce the taxes and levies, which Cap T2 now expressly permits, may now be encouraged to do so. It is only a matter of time before virtually all the States in Nigeria would have 25 taxes and levies and all Local Governments would have land use charge.

I now pause to consider the likely effect of the Ch L91 enacted by Lagos State in 2010 to curb MOT at the Local Government level. Although inspired by the same ideals which underpin Cap T2, Ch L91 can be distinguished from Cap T2 in the following regards:

- the Law focuses on Local government levies thus implying that MOT exists only at the Local government level;
- the levies collectible by Local government were reduced from

20 to 16 by adding “Parking Fee” and deleting the following 5 items:

- Wrong Parking Fees
 - Religious Places Establishment Permit Fees
 - Right of Occupancy Fees
 - Signboard and Advertisement Permit Fees
 - Cattle Tax (Indication that Cattle Tax is not needed in Lagos State)
- The Local Government Authority shall issue a Demand Notice in respect of taxes listed in the Schedule. Where a person is liable to two or more of the levies a single demand note indicating the amount due on each of the levies may be issued,
 - Section 6 provides for the appointment of revenue agents upon the recommendation of the State Joint Revenue Committee (SJRC). The SJRC is empowered to set specific criteria which should be applied by all Local Government Authorities in considering a revenue agent for appointment;
 - Imposing a fine of N500,000 (Five Hundred Thousand Naira) Only or imprisonment for three years or both for the offence of mounting a road block road closure;
 - Criminalises failure to pay levy due to a Local Government Authority and impose a liability to pay twice the amount of levy in default and in case of a corporate body renders every director, manager, or other employee who is responsible for the default

to a fine of N50,000 (Fifty Thousand Naira Only) on conviction or six months imprisonment or both and

- Combined reading of sections 1(3) and 13 of the Law makes the levies collectible in Lagos State open ended by providing in section 13 that: “Nothing in this Law shall be construed as prohibiting a Local Government Authority from enforcing penalties stipulated for breach of its bye law-laws or charging fees as may be approved by the State Joint Revenue Committee for the use of Local Government Properties, public utilities established and maintained by the Local Government, or services rendered by the Local Government or its officials to particular individuals and organizations.”

While Cap T2 and Ch L91 have helped in generally curbing the proclivity of States and Local governments to introduce new levies without proper legal backing, a critical review of some of their contents would reveal why they have not been able to put an end to MOT.

Part of the strategies for curbing MOT include establishing revenue agencies for the States and Local government and prescribing their compositions and functions under PITA.⁶⁷ This approach is a carryover from the military era which cannot fit into the framework of the 1999

67. Section 85A-B of PITA.

Constitution.⁶⁸ It is submitted that the Federal Government cannot lawfully establish revenue agencies for the States and dictate the membership of such agencies. These matters, in my view, are the prerogatives of each State. Some States⁶⁹ have asserted their independence by enacting laws establishing their Boards of Internal Revenue under their own laws which will enable each State to seize initiatives to amend the law as it may consider appropriate from time to time, through its House of Assembly instead of going to the National Assembly.

A statutory provision is incapable of overriding that of the 1999 Constitution in view of Section 1(3) of the 1999 Constitution, which entrenches the doctrine of constitutional supremacy. Sections 1(1) and 2(1) of Cap T2 open with the phrase “Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979, as amended...” which seeks to give the provisions of Cap T2 overriding effect above the Constitution. Thus, by listing the Value Added Tax in Part I of the Schedule to the Act is sufficient to make it a federal tax. Also, by enumerating the taxes collectible by the States in Part II would override the provisions of section 4 of the 1999 Constitution which make the taxing power of the State residual. Whereas the States are

68. The Federal Military Government usually had power to enact laws on any subject matter whatsoever irrespective of whether the matter was hitherto within the residual power of the States. See the Constitution (Suspension and Modification) Decree No. 107 of 1993.

69. Lagos States and Adamawa States have enacted their laws while some other States are at different stages of the legislative process. See Tax Administration Law of Lagos State No. 1 of 2007, Adamawa State Board of Internal Revenue Law No. 4 of 2007, Adamawa State of Nigeria.

entitled to impose any taxes which are neither on the exclusive legislative or concurrent list under the 1999 Constitution including consumption tax on intra State supplies of goods and services. It is submitted that no matter how many taxes a State may choose to impose within the limits of its power under the Constitution, no federal statute could validly circumscribe the power of the States in a manner not envisaged by the 1999 Constitution. Little wonder that both the federal and some states have enacted new taxes which the 2015 amendment had now taken account of and incorporated into Cap T2. The point that is being made is that it is futile for a statute to seek to circumscribe the exercise of taxing powers of either the Federal or State government in a manner, which the 1999 Constitution does not provide for.

Section 2(2) of Cap T2 provides inter alia "...and members of the Nigeria Police Force shall only be used in accordance with the provisions of the tax laws". This provision clearly aimed at arresting the practice whereby consultants were deploying truckload of Mobile Policemen during distraining exercise. Long after the private consultants have quitted the scene, officers of the various SBIRs have continued to use members of the police when distraining. Without such, it is difficult if the exercise could have recorded the measure of success that the States are experiencing. Section 104(4) expressly permits the officer levying the distress to call "any police officer" for assistance who is duty bound to comply. Section 104(4) of PITA provides:

"The Judge may, on application made ex-parte,

authorize such officer referred to in subsection (3) of this section in writing to execute any warrant of distress and, if necessary, break open any building or place in the day time for the purpose of levying such distress and he may call to his assistance any police officer and it shall be duty of any police officer when so required to aid and assist in the execution of any warrant of distress and in levying the distress. (Emphasis mine)

In view of the above, it would have been better, in my view, to amend Section 104 of PITA in a manner, which will address the perceived mischief of using “a truck load” of policemen instead when the law provides for “any police officer”. Another mischief that could have been dealt with is to expressly provide that section 104 shall apply to individuals who are the taxpayers under PITA and not corporate persons who are agents of collection. Such an amendment would have forestalled the decision in *ITV v Edo State Board of Internal Revenue*⁷⁰ which I believe was given *per incuriam* and made the SBIR to resort to civil and criminal procedure which balance the interests of the SBIR and agents of collection.

Cap T2 seeks to prohibit the States from engaging private tax consultants in the administration of State taxes. To what extent is this constitutional or feasible? Following the prevalent use of consultants by

70. All NTC Vol 9 at p.422

SBIRS, it is now generally agreed that tax authorities are free to delegate tax collection provided that the core function of raising assessment shall not be delegated. It is against that background that section 12(4) of the Federal Inland Revenue (Establishment) Act provides that:

“The Service may appoint and employ such consultants, including Tax consultants or accountants or accountants and agents to transact any business or to do any act required to be transacted or done in the execution of its functions under this Act.

Provided that such consultants shall not carry out duties of assessing and collecting tax or routine responsibilities of tax officials.”

In the same vein, section 6 of Ch L91 expressly provides for the appointment of revenue agents at the local government level upon the recommendation of the State Joint Revenue Committee which shall prescribe guidelines for their operations. It is therefore clear that the Federal Government cannot dictate to the States on what their policy choices should be on the appointment of private tax consultants.

Business Premises Registration Fee and Business Premises Renewal Fee, among others, ought not have been included in Cap T2 in the first instance not being taxes. However, rather than removing them altogether, the Modification Order of 2015 merely deleted the upper limit of N10,000 and N5,000 chargeable for registration and renewal respectively. The limitation must have been removed on the basis of

recognition of the autonomy of each State to determine the appropriate rate. This development is an admission that Cap T2 encroached on the fiscal powers of the States.

Mounting of roadblock is a lawless and archaic method of tax collection, which deserves to be condemned, in the strongest term. According to the Tax Study Group Report, 2013:

“Highways are forcefully blocked and motorists harassed and forced to pay exorbitant amounts which are clearly unconstitutional. This “Toll Gate” approach combined with use of police and security agents under the umbrella of organizations like JORA is a serious impediment and a disincentive to law abiding tax payers.”⁷¹

In *Okechukwu v Anigbogu*,⁷² the plaintiff was arrested and locked in a van during a rate drive. The court rejected the argument that the defendants acted under the Divisional Administration Edict of 1971, as amended and held that the provisions of the Edict did not authorize the defendants to arrest or detain a citizen in order to collect or receive rates. Kanyip had rightly submitted that section 2(1) of Cap T2, must have had cases like *Okechukwu v Anibogu* in mind.⁷³ If the relevant

71. See p. 55 para 4.13.3

72. [1973] 3 ECSR 159.

73. B.B. Kanyip, “Reflections on Tax Policy, Law and Administration in Nigeria;: Matters Arising (Unpublished) Paper delivered at the Stakeholders Conference on Tax Dispute Resolution in Nigeria organised by Teem House Consulting, the Nigerian Institute of Advanced Legal Studies and the Tax Appeal Tribunal which held at Transcorp Hilton Hotel, Abuja from 3rd – 4th November 2014.

provisions of Cap T2 and Ch L91 have been enforced, a number of people would have been convicted and jailed to serve as a deterrent to others. The fact that the practice is still endemic is proof that the enforcement of the law has been lax. A careful review of criminal law will reveal the existence of sufficient law to deal with problem of this nature. Even in the absence of any specific legislation those perpetrating such acts could have been prosecuted for unlawful assembly or conduct likely to cause breach of peace.⁷⁴ Therefore, beyond the express criminalization of mounting of road blocks, solving this menace calls for a more vibrant action on the Governor, Chairman of each Local Government and the Nigerian Police Force.

The Tax Study Group 2003 had recommended that the Fourth Schedule of the Constitution should be amended. According to the Report:

“The Fourth Schedule of the 1999 Constitution which has given powers to Local Government to control and regulate many items should be urgently amended to expressly limit the taxing powers of Local government to tenement rate on private houses, capitation rate and clear-cut user charges for services directly beneficial to the payers. This is because the words “control and regulate” as used in the Fourth Schedule has been misinterpreted by Local governments as granting them taxing powers for virtually every type of business as shown in

74. Section 69 of the Criminal Code

Appendix IV with over 120 types of Local Government taxes. Unless this major constitutional amendment is made to restrict Local Government's taxing powers, the lawlessness and confusion will continue and cripple the national economy.”⁷⁵

This recommendation however misses the point. Regulatory power is inherent to any government, otherwise there would be no means of controlling activities within their territories. The real problem, in our view, is not with the Fourth Schedule but the needless reference to user charges and fees in the Schedule to Cap T2 and Ch. L91. among other factors. The Fourth Schedule to the Constitution has a clearly laudable objective which is to prescribe irreducible minimum functions which every State must confer on their Local governments in their respective Local government laws. While States are at liberty to exceed the threshold, it appears that no State has been able to meet the irreducible minimum in practical terms.

6.o. POLICY, LEGAL AND ADMINISTRATIVE IMPERATIVES

Improvement on a country's ranking on the Ease of Paying Taxes Index requires conscious and deliberate efforts to address some of the key performance indices, which are usually taken into account in the survey. To this end, the revised National Tax Policy, 2017 had recommended a tax system of few taxes without double taxation:

75. See pp.313-314

2.2.6 Reduction in the Number of Taxes

(i) Taxes should be few in number, broad-based and high revenue-yielding. The administration of the taxes should also be simplified for ease of enforcement and compliance.

ii. Avoidance of Multiple Taxation

Taxes similar to those being collected by a level of Government should not be introduced by the same or another level of Government. The Federal, State and Local Governments shall ensure collaboration in harmonizing and eliminating multiple taxation

Consequently, the Federal Government should take steps to streamline the Companies Income Tax, Tertiary Education Tax and Information Technology Tax into a single tax while ensuring that the relevant agencies are well financed to continue to discharge their responsibilities.

The Federal Government should also come to terms with the fact that an important aspect of VAT on intra State supply of good and services is essentially within the taxing powers of the State. It is therefore ultra vires the Federal Government to continue to impose and collect VAT on intra-State supply of goods and services. Hence, the Federal Government should yield the power to administer VAT on intra-State supplies to the States. As more States introduce their consumption tax

alongside with the VAT following the Lagos State model, the problem of MOT will be exacerbated. States who desire to continue with the federally administered VAT should be able to work out the modalities for such arrangement while a State like Lagos and few others who desire to stand alone and administer their consumption tax should be free to do so.

Lagos State should internally resolve the MOT arising from the concurrent administration of VAT and its consumption tax. It should take an informed decision on whether to stay with VAT or go the whole hog in implementing its consumption tax. If it chooses the latter which to me is a better option, the base of the consumption tax should be widened beyond the tourism and hospitality sector. This will require an amendment of the charging clause of the Hotel Occupancy and Restaurant Consumption Law to include all taxable intra-State supply of goods and services.

Lagos State should urgently prepare and send 5 Bills to the House of Assembly repealing the Stamp Duties Law, Produce Sales Tax Law, Trade Cattle Control and Tax Law, Sales Tax Law and Neighborhood Improvement Charge Law in order to align the number of taxing statutes with the actual number of taxes being collected in practice.

Two separate words; “Taxes” and “Levies” gradually became fused into one phrase “Taxes and Levies”. In the wake of the activities of

private tax consultants, levies became astronomically high and constituting heavy burden on the people. The natural effect was that only the few people who were able to afford the exorbitant fees could access and enjoy various government services which had become somewhat “commercialized”.

Government should recognize and make its tax authority the prime revenue agency and discourage the current practice whereby virtually all MDAs seems to be competing for an imaginary “revenue generation trophy” which sometimes results in occasional inter-agency rivalry and distortion of the system. There should be a deliberate policy to enable the critical mass of the populace access the various services being provided by the MDAs. The main objective of Government's intervention in perfection of land title, obtaining Governor's consent, obtaining license and permits for various items is for regulation (standard setting and control of behaviour) purposes and not revenue generation. Accordingly, the amount of fees chargeable by MDAs should not impose unnecessary burden on the people.

I recommend that the provisions of *Utilities Charges Commission Act*⁷⁶ should be extended to levies chargeable by federal MDAs while Lagos State House of Assembly should enact a similar Law at the State level. Before the privatization of the various utilities such as water,

76. Cap U17 LFN 2004

transportation by rail, air and sea, telephone and postal services, the providers were not allowed to vary or increase their tariff without the approval of the Utilities Charges Commission established under the Act. The objective of the Act is to ensure that providers of essential public services do not unduly exploit the citizenry by the imposition of exorbitant charges, rates and fees for these services. Therefore, it is the function of the Commission to evaluate, on a continuing basis, trends in tariffs charged by any of the public utilities listed in the Second Schedule⁷⁷ to the Act with a view to providing such information as would enable the Federal Government determine permissible increase.

Reduction of regulatory fees is not likely to appeal to the MDAs, unless they are well funded to discharge their functions (subject of course to budget constraint). If the quantum of allocation to MDAs is largely determined by the level of their respective IGR, MDAs with little revenue generation potentials but significant socio-political capital may be negatively impacted.

Government should pursue a policy objective of ensuring that bureaucratic and administrative bottlenecks are eliminated in accessing government services such that those who require the

77. The public utilities referred to in the Act are as follows: (a) National Electric Power Authority (NEPA), (b) Nigerian Telecommunication Ltd. (NITEL); (c) Nigerian National Petroleum Corporation (NNPC), (d) Nigeria Airways (Domestic Operations), (e) Nigerian Railway Corporation, (f) Ferry Services Organisations, (g) Nigerian Ports Authority, (h) Road Transportation Organisations, (i) Nigerian Postal Services (NIPOST), (j) such other public utilities as may be determined, from time to time, by the Commission.

services of MDAs do not necessarily have to go through middle men or agents (within and outside the civil service) unless they so wish. For example, if the administrative process of registering and perfecting land title in Lagos had followed the above prescription, it is highly probable that more property owners would have been able to register their titles. The socio-economic importance of having up to date official records of ownership of land and how they are transferred cannot be over emphasised. It will minimize fraudulent transactions relating to land and also facilitate access to facilities from banks and other financial institutions, as more people will have title documents in respect of their properties. The availability of such information for use by the tax authority would undoubtedly enrich tax administration.

The National Assembly should repeal *Cap T2*. A statute which seeks to clarify the taxes collectible has ended up befuddling the issue. Besides the fact that Sections 1(1) and 2(1) which are the two key provisions on which the legislation rests are patently inconsistent with the provisions of section 4 of the 1999 Constitution, the statute in my opinion has outlived its usefulness. Justice Kanyip had echoed the same prescription as follows:

“The thing to do is for Decree 21 of 1998 be repealed, not because it is bad law, but because in certain respects it cannot stand the constitutional test under the 1999 Constitution. In fact in terms of purpose, the Decree is

well intended.”⁷⁸

The same is recommended for Lagos State with regard to Ch L91. Nothing will be lost if the statutes are repealed since the mischiefs which they sought to cure have not been addressed and could actually be more effectively tackled through other means which had been discussed in this Lecture.

There is an urgent need to strengthen our administrative agencies and position them to deliver effective and timely services. To do this, the following must be put in place to strengthen the Local Government system to enable it perform the array of services which the drafters of the Constitution envisaged for Local Governments in Nigeria and ensure that they have sufficient revenue to perform their services.

In the short run, each local government or Local Council Development Area (LCDA) should establish a Special Administrative Unit to regularly monitor occurrences or complaints about illegal collection of levies within its territory and liaise with the law enforcement agencies to decisively deal with the problem. Anyone caught flouting the law should be prosecuted and if found guilty appropriately penalised to serve as a deterrent. Alternatively, Lagos State could adopt the model used to curb the menace of land grabbers by setting up an independent body saddled with the responsibility of decisively dealing with the

78. *Supra* note 73

abuse of taxing and regulatory powers at the Local Government level.

Enduring solution to the problem of MOT at the Local Government level will require a policy shift which will entail recognizing and reinforcing the primary role of local government in service delivery to the people at the grassroots. Appropriate policy and legal framework should be developed to ensure that the Local Government system is reformed and strengthened to make them play the dynamic role which the drafters of the 1999 Constitution envisaged for them. The House of Assembly will have to do more than merely listing the functions of the local government in the Fourth Schedule of the 1999 Constitution in the Local Government Levies (Approved Collection) Law.⁷⁹ A dynamic legal framework should be developed on how each of the functions would be performed.

7.0. CONCLUSION

We have, in this discourse, unraveled MOT as a phenomenon that manifests in different ways within the structure of the Federal, State and Local Governments. It is clear that all levels of government are complicit in feeding this problem through wrong policy choices in revenue generation by MDAs. The former practice of buck-passing where the Federal blames the State and the State blames the Local Government is no longer tenable. It behoves on each level of government to accept responsibility and take the recommendations in

79. Supra note 65

this Lecture seriously.

We have identified the confusion inherent in the continued usage of the phrase “Taxes and Levies” especially in the context of Cap T2 and Ch L91 and advocated that the word “tax” should be employed only with regard to compulsory payments made to government for which there is no direct benefits while “levies” should be used to describe all other forms of payments for which the payer enjoys some direct benefits irrespective of their nomenclature as fees, charges or rates. This is basically to ensure that levies by MDAs are not set so high as to give them a colouration of taxes.⁸⁰ A taxpayer who has discharged his civic obligations to government in form of various taxes should not be confronted with another onerous burden in the nature of levies when accessing rights, privileges and benefits from government in the nature of licences, permits and grants. I have recommended that the provisions of *Utilities Charges Commission Act*⁸¹ should be extended to levies chargeable by federal MDAs while Lagos State House of Assembly should enact a similar Law at the State level

80. Sanni, A.O., “Taxation in the Guise of Administrative Charges – Imperative of Curbing Abuses of Regulatory Power for Revenue Purposes in Nigeria”, Faculty of Law, UNILAG, Current Law Series, 2006, Vol. 1, pp.1-41.

81. Supra note 76

82. Supra note 1

A good tax system requires sound regulatory framework to track as many taxable activities as possible, monitor and enforce compliance. Accordingly, there must be reliable data which is updated periodically on residents (individual and corporate entities), traders and business persons (individual and corporate entities), acquisition and disposal of assets, sale of goods, rendering of services (by professionals and non-professionals), instruments being generated in the course or in pursuance of transactions, importation, exportation, local production of goods, manufacturers, occupiers/owners of real properties and identities of those occupying business premises.

Data can be mined from various MDAs which the relevant tax authority can utilize for the purpose of tax administration to generate significant revenue. In other climes, focus on revenue generation is usually on review of the existing tax laws to expand the base and block loopholes for evasion and avoidance. This is preferable to turning MDAs to revenue agencies and geometrically increasing the rate of fees and charges for their services.

Our discourse on the evolution of MOT traced the phenomenon to the activities of private tax consultants which started in Niger State under the ARGP in the bid by States to shore up their IGR through new revenue heads. The phenomenon later spread to other States and Local

Governments like wildfire.

We have also considered the various attempts in the past to address the problem. We highlighted JTB's noble efforts through federal legislations to establish a Board of Internal Revenue for each State, a Revenue Committee for each Local Government and a Joint State Revenue Committee in every State. Lagos State on its part demonstrated an uncommon political will to combat MOT by enacting its version of Cap T2. Unfortunately, in spite of all these efforts, MOT remains intractable like a cat with nine lives. In 2015, JTB being undaunted attempted another intervention by amending Cap T2, which ended up increasing the number of items in the Schedule from 39 to 55 thus exacerbating the problem.

All the problems associated with the phenomenon, which has defied solution for almost three decades, cannot be exhaustively addressed in a one-hour presentation. I do hope that my suggestions will set a new tone for the engagement by stakeholders. With every level of government playing its part, I am hopeful that MOT will soon be a thing of the past in Lagos State and Nigeria.

Distinguished Ladies and gentlemen, I thank you for your attention.