
THE LAND USE ACT AND EQUITY FACTOR IN PROPERTY TAXATION IN NIGERIA*
Abstract

Statehood imposes responsibilities on the government to provide security and welfare for its citizens. To meet these societal obligations, the state demand contributions from citizens in the form of taxation, based on some normative principles and acceptable standards. Taxes are imposed on persons and properties to defray the cost of governance amongst other uses. Property tax is one of the major sources of government revenue and includes taxes on real property. In Nigeria, the Land Use Act imposes tax on landowners/users, outside other legislations levying taxes on real properties. Given the foregoing, the paper examines the provisions of the Land Use Act on property tax in line with normative principles for levying tax, particularly the equity factor in taxation. The paper interrogates the powers of the governor to impose rents, review rents, and enforce payment of rents under the Act. It also discusses the implications of the administrative structure and penalties for non-payment of rents under the Act. Using a doctrinal research methodology, the paper finds the provisions of Land Use Act on property taxation as unrepresentative, draconian, inequitable and unjust. The Act gives the governor unfettered discretion in tax management, provides harsh and inequitable penalties on tax defaulters, does not provide any tax adjudicatory system and fails to capture the whole taxable properties within the tax net, amongst others. The paper recommends a review of the tax policy under the Act to capture all taxable properties, ameliorate the harsh tax penalties, provide a tax appeal system and curtail the unfettered discretion of the governor under the Act.

Keywords: *Taxation, Property Tax, Land Use Act, Tax penalty, Tax Administration.*

1. Introduction

Government owes many responsibilities to the citizenry. Government performs a number of activities in order to maintain law and order and provide peace and security in the state. It is also the responsibility of government to provide basic needs and public utilities for members of the public; including housing, healthcare, education and public infrastructure etc. It initiates various development programmes and maintains diplomatic and friendly relation with other nations in the world. To carry out these responsibilities, government requires a sizeable amount of money and resources; and to raise the required funds, government demand contributions from its citizens in form of taxes, levies, charges and tariffs. Taxation is therefore a necessity to the security, growth and welfare of a state and its citizen. No nation can survive for long without one form of tax or the other; it is the blood that runs through the veins of the state's economy. Normatively, taxes are representative, progressive, equitable and just.¹ Taxes on real properties is one of the major source of revenue of government,² be it, tenement rates,³

* By **Akintunde OTUBU PhD**, Senior Lecturer, Department of Private and Property Law, Faculty of Law, University of Lagos, Akoka. Email: fikunmzy@gmail.com, aotubu@unilag.edu.ng. This research was principally funded from grants obtained from the Femi Okunnu Research Grant in Property Law and the paper is a subset of the funded project on Land Policy Administration in 21st Century Nigeria: Need for Reforms. The author is grateful to the Donor and the board of Trustees of the Foundation.

¹ See generally: D. Ricardo, (1821) *The Principles of Political Economy and Taxation*. 3rd Edition.(London: John Murray, Albemarle-Street) A comprehensive, readable comparison of the three editions can be found *Works of David Ricardo*, Vol. 1, ed. by Pierro Sraffa with the collaboration of M. H. Dobb, Cambridge: Cambridge University Press, 1951

² L. Helms, (1985) The Effect of State and Local Taxes on Economic Growth: A Time Series--Cross Section Approach. *The Review of Economics and Statistics*, 67(4), 574-582

³ Fourth Schedule to Constitution of Federal Republic of Nigeria (as Amended) 1999

land rents,⁴ capital gains,⁵ stamp duties,⁶ land registration charges⁷ or land use charges.⁸ In Nigeria, the Land Use Act⁹ imposes rents on land owners and occupiers under the management of the governor of the state and provides penalties for failure to pay the imposed rents. In line with the foregoing, the paper examines the provisions of the Land Use Act on property tax in line with normative principles for levying tax, particularly the equity factor in taxation. The paper discusses the normative equitable principles of taxation with a view to interrogate the powers of the governor to fix, review, and enforce payment of rents under the Act. It also discusses the implications of the administrative structure, penalties for non-payment of rents and the tax appeal procedure under the Act. The paper set out seriatim.

2. Concept of Taxation

A tax is a sum of money demanded from the people by a government for its support or for specific facilities or services; levied upon incomes, property, sales. It is a financial charge or other levy imposed upon a taxpayer (an individual or legal entity) by a state to fund various public expenditures amongst other uses. Ricardo¹⁰ defines taxation as ‘a proportion of the produce of the land and labour of a country placed at the disposal of the government and always ultimately paid either from capital or from the revenue of the country. Sanni¹¹ summarizes the concept of tax as a compulsory levy imposed on a subject or upon his property by the government having authority over him. It has also been referred to as a means by which governments finance their expenditure by imposing charges on citizens and corporate entities.¹²

Deducible from above definitions is the fact that tax is obligatory fee payable by members of a state from his income, property and or business, to the government of the state for various state uses. It is mandatory, compulsory, or obligatory and not discretionary; it is based on residency and not citizenship. Since it is a charge on income, property or transactions, it is ascertainable and specific; and since it obligatory, it is enforceable at the pain of penalty imposed by the law.¹³

The importance of tax to the wellbeing of the state’s economy and the citizens’ welfare cannot be over emphasized as ‘tax is the oxygen of every nation, a pre-condition for its prosperity and the price for social security between the government and the governed.¹⁴ Apart from revenue generation, tax system has been used to direct consumption pattern of the citizens, redistribute the nation wealth, encourage economic growth and provide infrastructure and amenities to the citizenry. Taxation has also been used as instrument of international politics and diplomacy.¹⁵ In fact, it has been referred to as “the price which we pay for civilization, for our social, civil and political institutions, for the security of life and

⁴ Land Use Act Cap L 5 Laws of Federation of Nigeria 2004

⁵ Capital Gains Tax Act Cap 354 Laws of Federation of Nigeria 1990

⁶ Stamp Duties Act Cap 441 Laws of Federation of Nigeria 1990

⁷ Land Registration Law Lagos State 2015

⁸ Land Use Charge Law Lagos State 2001

⁹ Cap L 5 Laws of Federation of Nigeria 2004

¹⁰ Ricardo. *Supra* n1

¹¹ A. Sanni (2007) *Tax Reforms In The Capital Market- A Welcome Development* Being a paper delivered at a Seminar organized by the Ogun State Board of Internal Revenue in Abeokuta August 2nd

¹² Business Dictionary. Retrieved June, 27, 2017 from <http://www.businessdictionary.com/definition/taxation.html>

¹³ J. M. Buchanan, (1984) The Ethical Limits of Taxation Vol. 86, No. 2, *Scandinavian Journal of Economics*, pp. 102-114

¹⁴ Sanni, n. 11

¹⁵I. Grinberg, (2016) The New International Tax Diplomacy 104 *Geo. L.J.* 1137-1196

property, and without which, we must resort to the law of force.”¹⁶ It is founded on some normative principles underpinning societal core and values.¹⁷ Thus, from whatever perspectives it is broached, taxation is desirable and inevitable in a modern state. A tax-less state is an endangered species, for it is susceptible to infrastructural decay, economic despondency and social chaos.

According to the Food and Agricultural Organisation (FAO),¹⁸ *Property tax* is an annual tax on real property. It is usually, but not always, a local tax. It is most commonly founded on the concept of market value. The tax base may be the land only, the land and buildings, or various permutations of these factors. It is that which is levied on ownership and or the use of real property by the authority having jurisdiction over the area where the property is located. It is an annual payment subject to *lex situs* and the nature of holding. It is important to note that, irrespective of the nature and quantum of tax payable, taxes are usually founded on some iconic normative principles including the principles of Equity Certainty, Convenience and Simplicity. These principles, particularly the principle of tax equity, are further elucidated hereunder.

3. Principles of Taxation

Principles of taxation are those normative principles or guidelines generally accepted by all as basic precepts that must be considered whenever specific tax laws are proposed, discussed and implemented. These principles are the parameters against which any tax policy/legislation of the state are measured in terms of their efficacy and general acceptability. Any tax regime that fails to reflect the underpinning philosophies of these principles are usually questioned and queried. The reference point on the principles of taxation is Adam Smith’s book of 1776 about the “Wealth of nations”.¹⁹ According to Kabinga,²⁰ Smith developed four principles of fair taxation, namely; that the subjects of every state ought to contribute towards the support of the government, in proportion to the revenue which they respectively enjoy under the protection of the state; the tax which each individual is bound to pay ought to be certain as to time, manner and quantum of payment otherwise it becomes arbitrary, leaving the tax payer at the mercy of the state; every tax ought to be levied at the time, or in the manner, in which it is most likely to be convenient for the contributor to pay it; and every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible, over and above what it brings into the public treasury of the state.²¹ Though Smith’s classification has been criticized,²² it remains one of the fundamental pillars of taxation guideline globally. The four principles can be subsumed under the following catchwords: *Equity, Certainty, Convenience and Simplicity*. Most economists and business scholars are of the opinion that equity plays the most important role in all these principles.²³ The principle transcends the other 3 principles as it encompasses them one way or the other. Given its importance among the principles, this paper discusses equity and principle of tax equity

¹⁶X. Landes (2015) Why Taxing Consumption: Justifications, Objections and Social Cooperation in H. P. Gaisbauer (ed.) *Philosophical Explorations of Justice and Taxation: National and Global Issues* Springer International Publishing, Switzerland. p 101

¹⁷ R. M. Green, (1983) ‘Ethical Issues in Taxation.’ in *The Future of Tax Policy in New Hampshire*. Durham, NH: University of New Hampshire Center for Educational Field Services.

¹⁸ FAO (2002): Rural Property Tax System in Central and Eastern Europe.FAO Land Tenure Studies. Rome

¹⁹ A.Smith, (1904) *An Inquiry into the Nature and Causes of the Wealth of Nations* Edwin Cannan, (ed.) Library of Economics and Liberty. Retrieved July 10, 2017 <http://www.econlib.org/library/Smith/smWN.html>

²⁰ M. Kabinga, (2016): Principles of Taxation, paper 5 in Alt e.tal (ed.) *Tax Justice & Poverty*. Jesuit Hakimani Center. Retrieved 6 July 2017 www.taxjustice-and-poverty.org/.../05_Principles.pdf

²¹ Ibid. p5

²² Ricardo, supra n. 1

²³ W. J. Baumol & A. S. Blinder, (2012) *Microeconomics: Principles and Policy* South Western Centage Learning USA

is some details in order to prepare a basis for the discussion of the tax provision of the Land Use Act as it *vis-a-vis* the principle.

4. Tax Equity

In the words of Wells,²⁴

The essence of all taxation consists in making the burden of taxation equal upon all subjects of immediate competition; and when this principle is violated, the act of taking, or the enforced contribution, is no longer entitled to be considered taxation, but becomes at once an arbitrary spoliation or confiscation.

To understand the principle of tax equity one must appreciate the concept of equity in jurisprudence and juxtapose it with the concept of tax. The term equity derives from the Latin *aequitas*, which stands for justice, equality, and fairness.²⁵ It is often defined as (fundamental) fairness, the application of the ideal of justice, good faith, and "good conscience".²⁶ In the Græco-Roman ideal, equity represents flexibility and common fairness; it is justice emanating from morality, natural right, and reason in law.²⁷ In the field of taxation, the principles of equity apply less as a matter of law, and more as a matter of social and economic equity. In this case, equity is more a matter of economic analysis of law, and less of legal substance and fairness.²⁸ Tax equity is based on the ideal that all productive members of society should contribute to its preservation, and consequently, all its members should pay their fair share through taxation.²⁹ It expresses the idea that taxes should be fair as one of the principles that guides tax policy. In arriving at the fair share concept, tax equity is built on 2 technical sub-principles: the *benefit principle* and the *ability-to-pay principle*.³⁰ The benefit principle subscribes to the view that that all tax burdens are to be distributed in the same proportions as the benefits derived from government. Whilst the ability to pay principle anchored on the premise that "...highest taxes should be levied on those with the highest ability to pay."³¹

The ability to pay principle has two measurable scopes; a) horizontal equity, and b) vertical equity. Horizontal equity is the principle that people in similar circumstances should be treated equally by the tax system.³² The principle of vertical equity is that people in different circumstances should be treated unequally, usually so that the differences can be reduced.³³ Beyond these conceptual issues, there are divergent views as to the constituents and parameters of tax equity. In fact equity or fairness as a principle raises substantial debate on the manner in which taxes are handled. Many scholars have written extensively on this principle to help demystify it.³⁴ Whilst some believe that tax policy based

²⁴ A. D. Wells, (1898). *Journal of Political Economy*, 7(1), 93-95

²⁵G. L. Salis, (2007) *A Brief Introduction to the Principle of Tax Equity* Retrieved July 6 2017 from <http://www.aafm.us/article1967.html?id=214>

²⁶ M. Halliwell (1997), *Equity & Good Conscience in Contemporary Context*, pg. 1-3 Old Bailey Press, London,

²⁷ W. W. Buckland, [1911] 1983. *Equity in Roman Law: Lectures Delivered in The University of London at the Request of the Faculty of Laws*, Littleton, CO, USA: Rothman Publishing.

²⁸ Silas (supra) n25

²⁹ *ibid*

³⁰ S. J. Rice, (1996). *Introduction to Taxation*, pgs. 15-17. South-Western Publishing. Cincinnati, Ohio

³¹ Smith, (supra) n 19

³² D. Elkins, (2006). Horizontal Equity as a Principle of Tax Theory. *Yale Law & Policy Review*, 24(1), 43-90. The term 'horizontal equity,' as referring to equal treatment of equally well-common usage during the 1960s and 1970s, having been coined in R.A. Musgrave, *Public Finance* 160 (1959)

³³ J. Isbister, (1968). On the Theory of Equitable Taxation *National Tax Journal*, 21(3), 332-339.

³⁴ J.J. Cordes, R. D. Ebel *et al* (2005) *The encyclopedia of taxation & tax policy* (Washington, DC: Urban Institute Press,

on ability to pay principle is inequitable³⁵ others believes the contrary.³⁶ However, despite divergent views as to the content and parameters of tax equity, it indisputable that the concept explicates the general notion of fairness and equality of treatment for all parties in the same stead. Both horizontal and vertical equity laid emphasis on the fact that taxes should be paid in manner that is fair to all the parties involved. To this extent, the 2 versions of tax equity can be seen as complimentary. It also connotes a fair deal as between the taxpayers and the government. In this context it includes the idea of transparency and rule of law in the administration of tax laws in the state.

Given the foregoing analysis, the question to ponder is how the Land Use Act, as tax legislation, has fair in this circumstance. Does the Act adhere to or digress from the principle of tax equity and to what extent? Response to this and other adjunct questions are the focus of the next segment of the paper.

5. Land Use Act

The Land Use Act of 1978 is made up of fifty-two sections arranged into 8 parts. Part one treats vesting of all lands in the State; control and management of land by advisory bodies; designation of urban areas and the applicable law for the interim management of land. Part two treats principles of land tenure; powers of the government and rights of occupiers. Part three is devoted to the principles to be observed in fixing and revising rents; powers of the Governor to grant rights of occupancy free of rent or at a reduced rent; acceptance of rent not to operate as a waiver of forfeiture; penal rent and additional penal rent for unlawful alienation. In part four, the Act discusses alienation and surrender of right of occupancy and part five treats revocation of right of occupancy and compensation thereof. Part six contains transitional and other relative provisions and part seven is devoted to the jurisdiction of the High Courts and other Courts. The last part, part eight, treated a variety of issues ranging from notices, delegation of powers, power to make regulations, exclusion of certain proceedings, modification of existing laws, exemption with respect to federal government lands, validity of laws, interpretations and citation.³⁷

The Act addresses four important issues arising from the former land tenure systems in Nigeria: the problem of lack of uniformity in the laws governing land-use and ownership; the issue of uncontrolled speculation in urban land; the question of access to land rights by Nigerians on equal legal basis; and the issue of fragmentation of rural lands arising from either the application of traditional principles of inheritance and/or population growth and the consequent pressure on land.³⁸ It approaches these issues via three related strategies: the vesting of proprietary rights in land in the State; the granting of usufructuary rights in land to individuals; and the use of an administrative system rather than market forces in the allocation of rights in land. Generally, the promulgation of the Act was not motivated by any tax policy scheme as this was not part of the terms of reference of the panel on land use.³⁹ This position becomes obvious given the inelegant and inequitable tax regulations espoused in the provisions of the Act. The whole part 3 of the Act, spanning sections 16 to 20 is exclusively devoted to imposition, regulation and administration of rent on owners/occupiers of land under the Act. As a prelude to an

³⁵ Salis, (supra) n. 25; Johnson, S., & Mayer, T. (1962). An Extension of Sidgwick's Equity Principle. *The Quarterly Journal of Economics*, 76(3), 454-463.

³⁶ Elkins, (supra) n. 32

³⁷ O. A. Fatula, (2012): *Fundamentals of Nigerian Real Property Law*. Africrib Press Ibadan p172

³⁸ A. L. Mabogunje Land Reform In Nigeria: Progress, Problems & Prospects available at: siteresources.worldbank.org/EXTARD/Resources/336681.../mabogunje.pdf accessed 01/07/2017

³⁹ It is however arguable that the reference to 'trust' in the preamble to the Act and the liberal interpretation of section one of the Act on 'use and common benefit of all Nigerians' can be taken to have included the issue of taxation in the making of the Act.

analysis of the tax policy of the Act *vis a vis* the principle of tax equity, it is imperative to treat some preliminary issues which impacts on the outcome of this discourse.

The Act in section 1, vests all lands in the State in the governor in trust, for the common benefits of all Nigerians and subjugates every land owner to a right of occupancy regime; thus expropriating all lands in the state. Sequel to the foregoing, section 5 of the Act empowers the governor to grant, whether or not in an urban area, *statutory rights of occupancy* to any person for all purposes; grant easements appurtenant to statutory rights occupancy; demand and revise rental for any such land *granted to any person* at such intervals as may be *specified in the certificate of occupancy*; or where no intervals are specified in the certificate of occupancy at any time during the term of the *statutory rights of occupancy*. The governor is also empowered under the section to impose and revise penal rent for a breach of any covenant/condition in a certificate of occupancy requiring the holder to develop or precluding him from alienating the right of occupancy without requisite consent. Whilst section 5 empower the governor to grant statutory right of occupancy to any person for all purposes, section 6 vests the powers to grant customary right of occupancy in the local government. Furthermore, section 34 and 36 on transitional provisions recognises the continued existence of prior land rights subject to conditions in certain circumstances,⁴⁰ and gives the holder of such right the discretion to subject his holding to the right of occupancy regime.⁴¹ In all, the Act created a dual right of occupancy system: statutory and customary. It also divided land administration into urban land, under the governor and non-urban land, under the local government. The dual systems of rights and administration have profound impact on the inability of the Act to adhere to the principle of equity in taxation as discussed below:

Fix rents

The governor under section 5(1) c & d of the Act has the power to impose and review rent/tax on any such land *granted to any person* under section 5(1)a. It is important to note that there is no corresponding power in the local government in respect of customary rights of occupancy granted by it; though there is a spurious provision in section 42(2) empowering the local government to sue for recovery of rents in respect of customary rights of occupancy.⁴² By virtue of the foregoing provisions, only holders of statutory rights of occupancy granted by the governor under section 5(1) of the Act are liable to pay rent. All others: holders of actual grant of customary rights of occupancy; deemed holders of customary rights of occupancy and deemed holders of statutory rights of occupancy are implicitly excluded from this tax. This argument is further reinforced by the fact that the assessed rent/tax in question is exclusively stated in the certificate of occupancy issued in respect of a grant of occupancy. Thus, where there is no certificate evidencing the grant (such as the case of deemed right holders), the land owner has no obligation to pay land rent irrespective of his holdings. This statutory position is at variance with the principle of tax equity which postulates that equals should be treated equally in taxation matters.

In Nigeria today, the acreage of land covered by statutory right of occupancy and certificate of occupancy is less than 3% of all land holdings in the country.⁴³ The import of this is that some land owners are made to pay tax whilst others are excluded contrary to the tenet and principle of tax equity. In economic terms, a lot of tax receivables are being lost to inefficient tax administration policy under the Act. The tax system excludes the taxable majority from the tax net.

⁴⁰ The half-hectare rule

⁴¹ Section 34(5) Land Use Act

⁴² The pertinent question is, how do you expect the local government to recover a rent it has no statutory power to levy and which has not been levied on land owners?

⁴³ P. O. Adeniyi, (2011) *Improving Land Sector Governance in Nigeria- Implementation of the Land Governance Framework*. Abuja. World Bank

The governor is also empowered under section 17 of the Act to grant a statutory right of occupancy free of rent or at a reduced rent in any case in which *he is satisfied* that it would be in the *public interest* to do so. He may also, at his discretion, withdraw the privilege and imposed rent on the property. However, the ‘concept of ‘public interest’ remains nebulous; the conditions precedent to governor’s satisfaction and the categories of beneficiaries of governor’s discretion are unspecified by law and/or regulations; he alone determines who to benefit or not. It goes without saying that when application of rules or regulations is discretionary, equals may not be treated equally. The fairness in the application of the rules is lost to the rules of the thumb by the governor contrary to the principle of tax equity.

Review rents

The governor is exclusively empowered to review rents in respect of statutory rights of occupancy granted by him under section 5(1). This position is incontestable given the fact that the governor’s power to impose and review rents does not extend to other rights of occupancy in the system and since no rents has been fixed or imposed on those other holdings. The economic consequences of this fixed and restricted powers of the governor is humongous; it restricts the quantum of properties made subject to the taxing powers of the governor. This invariably impacts negatively on the internally generated revenue (IGR) of the state and tilts against the ethos of tax equity. When reviewing the rent, the governor is expected to take into consideration rent previously fixed in respect of any other like land in the immediate neighbourhood, and shall have regard to all the circumstances of the case. He is also expected to discountenance the impact of capital investment on the land when arriving at the rent or its review.⁴⁴ Whilst this approach seems to recognise and apply the principle of tax equity, in that properties in similar situation are treated equally and fairly; the approach is a self justification approach since there was no objective standard of property evaluation before fixing the rent payable in the first instance. Thus, where the initial fixing of the rent is unfair any subsequent review based on the initial standard cannot be equitable. The Act also give unfettered power to the governor to determine the rent review circle, particularly where such is not stated in the certificate of occupancy issued in evidence of the grant.⁴⁵ The discretionary powers of the governor in the application of the rules call into question the equitability of its application.

Enforcement and penalty for nonpayment of rents

The issue of tax equity is more pronounced in the provisions of the Act dealing with enforcement of payment of rents and penalties for nonpayment. The Act provides in section 19 that the governor may impose a penal rent, at his discretion, in order to recover the fixed rent on the property; impose penal rent for breach of terms in the certificate of occupancy; and for breach of section 22 and 23 of the Act. In some instances, the payment of the fixed and or penal rent will not prevent the governor from revoking a right of occupancy.⁴⁶ More fundamental is the provision of section 32 of the Act which provides that the revocation of a statutory right of occupancy shall not operate to extinguish any debt due to the government under or in respect of such right of occupancy. The import of the provision is that a holder of right of occupancy, whose right is revoked by virtue of section 19 for failure to pay rents /penal rents, shall still be obliged to pay the accrued rents irrespective of the revocation of his rights. In fact, the Act under certain circumstances confer powers on the Governor to revoke or compulsorily acquire land and land rights without compensation; for example, where there is a breach of any of the provisions deemed to be contained in the certificate of occupancy (including obligation to

⁴⁴ Section 16 Land Use Act

⁴⁵ Section 5(1)d Land Use Act

⁴⁶ Section 19(5) Land Use Act

pay rent);⁴⁷ where there is a breach of any terms in the certificate of occupancy or special contract made by the Governor;⁴⁸ and where a person to whom a certificate of occupancy is issued refuses or neglects to accept and pay for such certificate.⁴⁹

These powers of the governor are not only unfair to the landowner, but smacks of executive tyranny and proprietary injustice since the landowner is not given any opportunity to be heard and make representation in his own defence. The landowner is made to suffer double jeopardy of losing his land at the same time being made to pay the rents that warranted the revocation of his right in the first instance. Revocation of right of occupancy for failure to pay rents unjustly enriches the state at the expense of the land owner and a disincentive to property investments. It is an overkill to revoke a right of occupancy simply because the owner fails to pay rent. It is inequitable. It is questionable whether the rent due is equal to the value of the property revoked. It is also inequitable for the governor to exercise absolute discretion in matters of rent review and the payment circle. The provision of this section portends a risk of executive and government circumvention of private property rights. The power granted under this section can be used for political ends by the Governor. The provision makes the Governor the law giver and enforcer at all times. This is equivalent to executive judgement which is contrary to the tenets of separation of powers and the rule of law. It is one of the incidences of insecurity of title and tenure under the Act as it leaves the holder of the right of occupancy at the mercy of the Governor.⁵⁰ It is however to be noted that the governor may also enforce the payment of the accrued rents on the land by taking out a process in the magistrate court⁵¹ after serving notice on the landowner in line with the provisions of sections 19(3) and 44 of the Act.

Administrative structure and tax appeal procedure

As earlier discussed, tax equity includes general equitable and fair application of tax regulations. In general terms, it involves the application of principles of fair hearing and representation in tax matters and administration founded on the maxim: ‘no taxation without representation.’⁵² It is thus part of tax equity for the taxpayers to be acquainted with certainty of tax and a well structured administrative and tax appeal system. This is to ensure fair and equitable dealings at resolving any issue arising from the administration of the tax policy and regulations. The Land Use Act provides no tax administrative and or any appeal system in all its 52 sections. Part 3 of the Act on rents⁵³ vests exclusive and unfettered powers in the governor in the implementation and administration of the tax provisions. Although the Act set up a innocuous committee under section 2 to advise the governor on the management of lands under his care, its mandate does not extent to issues on rents/property taxation. The governor remains the ‘lord of manor’ and unquestionable personage in the administration of the Act. An aggrieved tax payer under the Act has no statutory or administrative respite to ventilate his grievance since there is no provision in the Act to facilitate the process. Unfortunately, the Act has no linkage with the general regulations on tax appeals⁵⁴ or any other redress system to which an aggrieved party may have recourse. Curiously however, section 46(2)b of the Act which empowers the governor to make regulations on

⁴⁷ Section 28(5) Land Use Act

⁴⁸ Section 28(5) (b) Land Use Act

⁴⁹ Section 28(5) (c) Land Use Act

⁵⁰ A. Otubu, (2014) Democratic Land Governance and the Land Use Act In Nigeria - Need for Reforms. *3IFJR* 679-702

⁵¹ Section 42(1) Land Use Act

⁵² James Otis Biography. Com available at: <https://www.biography.com/people/james-otis-9430449> accessed 04/07/2017

⁵³ Sections 16-20 Land Use Act

⁵⁴ For example: section 59 Federal Inland Revenue Service (Establishment) Act 2007

modalities for rent review has never been put into use by the governor, even if in ‘lip service’ to the provisions of the Act. The non inclusion of any meaningful administrative and tax appeal procedures in the Act speaks volumes its military antecedence. Authoritarian and tyrannical tendencies are the hallmarks of military oligarchy and these are reflected in the unwieldy powers vested in the governor under the Act. It is also trite that where there is dictatorial tax policy, equality and fairness are bound to suffer.⁵⁵

6. Summary of findings and Recommendations

The development of a state depends on the management of its resources both human and capital. The indispensability of taxation to the economic wellbeing of a state and its citizen cannot be overemphasized. The tax inflow of the nation goes a long way at solving the socioeconomic problems of the state. Taxation is thus desirable in any state that needs growth and same should be equitably levied and collected from all taxable heads and assets in the state including land. With respect to the Land Use Act the paper found that its property taxation policy fails the tax equity principle. The tax provisions in the Act are unrepresentative, draconian, inequitable and unjust. The Act gives the governor unfettered discretion in tax management, provides harsh and inequitable penalties on tax defaulters, does not provide any tax adjudicatory system and fails to capture the whole taxable properties within the tax net, amongst others

In response to the above findings, the paper recommends a uniform tax policy under the Act covering all segments of land holding class which brings every taxable land into the tax net, including empowering the Local Government to fix rents on lands within their jurisdictions.⁵⁶ It also recommends the review of the powers of the governor in the administration of the tax policy under the Act by establishing clear indices for tax valuation and review. The establishment of a tax appeal system or a linkage to existing tax appeal system is *sine qua non* to fair and equitable tax system and same should be implemented under the Act. The draconian penalties for non payment of rent resulting in revocation of land rights should be jettisoned and be replaced with a state lien on the property and a right of the state to ask for judicial sale of the property to offset outstanding liabilities.

⁵⁵ L. Kayaga (2007) Tax Policy Challenges Facing Developing Countries: A Case Study Of Uganda. LLM thesis Queen’s University Kingston, Ontario, Canada

⁵⁶ The Lagos state Land Use Charge Law which applies to all lands in the state irrespective of whether the land is covered by certificate of occupancy or not is commendable and it is hereby recommended to other states of the federation as a model and rectification of the lacunae created by the Land Use Act in this respect.