

Full Length Research Paper

An estate valuer's assessment of the Lagos state land use charge law 2001

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Accepted 13 October 2009

Increasing demand for provision of urban and rural infrastructures and other expenditures have dictated governments at all levels and world over to raise funds through taxation. In Nigeria, Lagos State Government passed into law land use charge on properties within its territory to increase internally generated funds. This paper assessed the provisions of the law and determined the effects on stakeholders. In doing so, a process of inferences, interviews and evaluation of the law were carried out. The study found great disadvantages of the law, and recommended appropriate basis to determine fair and equitable charge.

Key words: Landlord, land use charge, property tax, property value, tax law, tenant, Lagos state.

INTRODUCTION

The responsibility of Governments at all levels in providing infrastructure is enormous. Such infrastructure may be rural and urban referring to roads, sewers, or utility lines, and may include hospitals, schools, emergency services like fire fighters and police, sidewalks, or ponds to hold storm-water. Collins (2003) states that the infrastructure of a country, society, or organization consists of basic facilities such as transport, communications, power supplies, and buildings which make the town or city function. According to Tesfay (2008), existence of a solid infrastructure is required for national development, which cannot be achieved without good infrastructure that affects all sectors. By implication, infrastructure is important for the functioning of communities (which may be cities, town or society), individuals and companies.

Nigerian cities like Lagos, Abuja, and Port Harcourt face the challenges of increasing population that makes use of available infrastructures, which have not experienced addition to cater for concomitant increase in demand; while funds or budget allocations are far from being enough for managing them. With rapid population growth and decrease in available funds from the Federal, States and Local governments, the standard of maintenance of roads, water resources, bridges, electricity, and others have reduced to the lowest and disappointing level. There have been concerted efforts by all tiers of governments in Nigeria to increase revenue base through

various forms of taxes and payers are often confronted with paying multiple taxes. This problem is most pronounced in Lagos State and has probably dictated government's action to eliminate multiple **taxes** imposed on residents, **and** increase provisions of infrastructure through enactment of Land Use Charge Law. The main objective of the law as proffered repeatedly by the Lagos State Government is to generate additional revenue needed to develop the state that has been facing growing population without corresponding increase and improvements in physical and social infrastructure (Oserogho, 2002).

According to Affe (2008), the objective was also to devise a model that is fair to the citizens and enables government discharge its responsibilities to the people and give meaningful life to the citizens. This underscores the point why Land Use Charge was introduced by Lagos State Government to raise revenue for maintaining existing infrastructure and provide new ones. It is in line with this that this paper is set to evaluate the effectiveness of the law and come up with recommendations to assist Government and tax-payers.

THE LAND USE CHARGE LAW

The Land Use Charge Law 2001 came into force on 22nd June, 2001 and has twenty-four sections. The law, which

is now being enforced established that a land-based charge is payable on real properties situate in Lagos State, Nigeria with each local government area empowered to levy and collect the charge for its area of jurisdiction as collecting authority. Each collecting authority may delegate to the State, by written agreement, its functions with respect to collection of rates and the assessment of privately-owned houses or tenement for purpose of levying the rate.

The Commissioner of Finance is by law empowered to undertake or cause to be undertaken an assessment of chargeable properties in such areas as may be designated, and appoint property identification officers, qualified assessors and other persons considered necessary. The assessment which is to consist of inspection of a property, collection of documents and information, and taking of photographs expected to be carried out between the hours of 7.00 a.m. and 5.00 p.m. The payment of the Land Use Charge which is to be based on annual capital sum is to be paid by the owner. According to Section 5 (1) of the law, the formula for determining the annual amount payable is:

$$LUC = M \times \{(LA \times LV) + (BA \times BV \times PCR)\} \quad (1)$$

Where,

LUC = annual amount of land use charge in Naira

M = the annual charge rate expressed as a percentage of the assessed value of the property. The assessed value in this case may vary between owner-occupied residential and commercial properties at the discretion of the State Government. Commercial property refers to those that are revenue-generating.

LA = the area of the land parcel in square metres

LV = the average value of a land parcel in the neighborhood, per square metre in Naira

BA = the total developed floor area of building on the plot of land in square metres, or the total floor area of apartment unit in a building where apartment has a separate ownership title

BV = the average value of medium quality buildings in the neighborhood, per square metre in Naira

PCR = the property code rate for the building and which accounts for the building being of higher or lower value than the average buildings in the neighborhood and which also accounts for the degree of completion of construction of the building.

$$(LA \times LV) + (BA \times BV \times PCR) = \text{the assessed value of the property} \quad (2)$$

The law also provides that the annual charge rate for each financial year will be set by the Commissioner for Finance and published in Official Gazette and widely-read newspapers in the State, and the value of property code rate set and be revised by the Commissioner with the approval of the House of Assembly.

However, the law exempted some properties from payment of Land Use Charge, such properties are: those owned and occupied by religious bodies and used exclusively for public worship or religious education; cemeteries and burial grounds; recognized and registered institution or educational institute certified by the Commissioner for Finance to be non-profit making; those used as public library; those specifically exempted by the Executive Governor by notice published in the State Government Official Gazette; palaces of recognized Obas and Chiefs in the State.

In addition, partial relief may be granted to a property that is: occupied by a non-profit making organization and used solely for community games, sports, athletics or recreation for the benefit of the general public; and those that are used for charitable or benevolent purpose for the benefit of the general public and owned by the State, Local and Federal Governments or non-profit making organization. However, exempted or partly exempted property will become liable for Land Use Charge if the use of the property changes to one that does not qualify for exemption or where the occupier changes to one that does not qualify for an exemption. It is provided that if land use charge status of a property changes, a land use charge imposed in respect of that property will be pro-rated such that the charge is payable only for the part of the year in which the property or part of it is not exempted.

Apart from these, Sections 10 and 11 state that the collecting authority, that is, the local government area, may declare any person including occupier of chargeable property to be the agent of the property owner and such person will become liable for payment of the charge on behalf of the owner from moneys due by him or becomes due by him for payment to the owner. The payment of the charge will become recoverable from the agent where the owner defaults in payment. Section 11 states that the agent will be indemnified against the owner for such payment made by him.

The law envisages that disputes may arise from its implementation and so provisions were made for Assessment Appeal Tribunal which consists of at least fifteen members with three members constituting panel of the Tribunal to hear appeal in respect of amount that the appellant is liable to pay, impose fines and penalty including attachment of persons' goods. The law stated further that the charge payable would be increased by 25% if the charge is not paid within 75 calendar days after demand notice has been served, it will increase by 50% if not paid within 105 days, and by 100% within 135 days, and if it remains unpaid after 135 days, the property would be liable to receivership by the Lagos State Government or appointed agent until all outstanding taxes, penalties and administrative charges are paid.

Essentially, the law states that with effect from date that land use charge is levied on a property, all other laws that impose tax on properties (the assessment, land rate,

neighbourhood improvement charge and tenement rate laws) would cease to apply to such property. A supplement to the law, known as Supplement to the Lagos State of Nigeria Official Gazette Extra-ordinary No. 41, Vol. 34 of 13th December, 2001 Part B was enacted. The supplement stated the annual land use charge rates payable on assessed value of a property as follows - Owner-occupied residential property - 0.5%; owner-occupied pensioner's property - exempted from land use charge; industrial premises of manufacturing concerns - 0.5%; residential property/commercial - 0.65%; commercial property used by occupier for business purposes 1.75%; and family compounds – exempted from land use charge. In case of non-compliance, obstruction of the law enforcement officials, and damage of property identification plaques, defaulters will be liable to penalties of up to One hundred thousand Naira (N100,000) or three months imprisonment; while properties exempted from land use charge will be liable to other rates or charges under other existing laws.

THEORETICAL FRAMEWORK

Land use charge is a form of taxation, the objective of which is to finance public spending and an analysis of taxes can be viewed within the framework of economic objectives of government. The basic criteria by which a tax is judged relative to another tax or hypothetical neutral tax are effects on the supply and allocation of resources, whether it is equitable, whether it is a good stabilizer, and whether it is costly from an administration point of view (Newell, 1977).

Land use charge is a form of property tax, according to Havey (2000), "it is usual for local property taxes to be levied *ad valorem* and bases of assessment may be net annual value (NAV), capital value or site-value". When net annual value is the basis of assessment, it is likely to be determined as follows: Gross annual value - the yearly rent that the property might reasonably be expected to be let on a determined rate and statutory deductions are made for maintenance and insurance to give the net annual value. Compared with site-value basis, NAV has certain advantages, namely, because the base includes buildings as well as land, the yield is higher especially for properties whose building cost is a high proportion of the total cost. It is easier to assess, since in a free market, rents are been calculated by comparison with what is passing on similar properties. The defects include: it falls on the building as well as on land; it tends to be more regressive as regards houses which are occupied by the poor as well as the rich. Another defect is that Net Annual Value is not neutral as regards building improvements which are taxed and in the long run capital moves to untaxed uses.

Using the capital value basis, tax is the value of premises if sold freehold in the open market given a willing seller and provided that capital value equals net

annual value capitalized at the relevant rate of interest, it will produce an equivalent base for taxation as net annual value (Newell, 1977).

According to Richmond (1975); Britton, et al (1980); Millington (1982); Ajayi (1998); and Kalu (2001), Capital Value is market value and it is the amount of money which may be obtained for an interest at a particular time from those individuals who are able and willing to purchase it. It is the price arrived at under an open market normal financing, non-cohesive, and non-monopolistic condition; while, it is the best price at which an interest in a property might reasonably be expected to fetch by private treaty at a particular date assuming willing seller, reasonable period within which to negotiate the sale, taking into account the nature of the property and the state of the market, and that the property will be freely exposed to the market (N. I. E. S. V., 1985). Similarly, rent is an annual or periodic payment for the use of land or land and buildings (Britton et al, 1980).

The net income receivable from property (that is rent) is normally taxable, and it is often considered that tax is on the person not the property so that the tax on income is often ignored in calculation of capital value (Richmond, 1975); and "...tax is payable on the profit rent (Richmond, 1975; Ajayi, 1998). The import of these statements is that tax are based on income which a property owner obtains from his property and not on capital value in the case of income that is receivable in perpetuity while it is based on profit rent in the case of income receivable for limited period.

The basic economic principle is that the open market price will increase in the long run if there is higher demand for a good or service. Similarly, the higher the outgoings in form of tax liability the higher will be the rent that landlord will demand for a given property on the long run. In this regard, where initial capital costs cannot be set off against tax liability whereas maintenance expenditure can be, this will increase additional expenditure on maintenance rather than initial construction (Lean and Goodall, 1977).

In respect of supply of properties, Harvey (2000) states that in the short-run, the stock of rented houses is fixed and the new rates will be borne by landlords for net rent will fall; and in the long run supply of houses is more elastic since, assuming no planning consent is required, owners will adapt them to other uses or simply not replace them as they wear out, switching to lower-taxed and profitable forms of investment. The tax burden is then passed on to the tenants, the extent of which depends upon the relative elasticity of supply and demand.

The questions that arise therefore are what will be the long-run effects of the provisions of the land use charge law on the open market values of affected properties? Is the basis for calculating the charge reasonable? What basis is fair and reasonable? In view of the foregoing, it has become imperative to evaluate the effectiveness of the Lagos State Land Use Charge Law of 2001, and

Table 1. Default Rates amongst tenants in Lagos metropolis.

Period of defaults	No. of respondents	%
1 – 6 months	12	10.00
Between 6 and 12months	86	71.67
More than 12 months	22	18.33
Total	120	100.00

Table 2. Estate surveyors and valuers' opinion on the land use charge law.

Options	No. of respondents	%
Advantageous	2	1.67
Indifferent	18	15.00
Disadvantageous	100	83.33
Total	120	100.00

recommend the best option that will truly be fair to the citizens and yet enable government discharge its responsibilities to the people. The paper attempted to answer the questions by examining the provisions of the land use charge law, determine effects on property values, and overall implications on stakeholders in the short- and long- run.

MATERIAL AND METHODS

The Lagos State of Nigeria Official Gazette No. 20 Volume 34 dated 25th June 2001 containing the Land Use Charge Law was perused for understanding of the provisions while an evaluation of the law was carried out with process of inferences used in interpreting and making deductions, devoid of its legal jargons. In addition, questionnaires were administered on estate surveyors and valuers, who are organized part of the stakeholders to ascertain their opinions about the law. The other stakeholders - tenants and landlords are not organized into body corporate and their populations are indeterminate consequently questionnaires were administered on few of them.

There are three hundred and twenty-five registered firms of estate surveyors and valuers in Lagos metropolis and appropriate sample of the firms' population was determined using the Bartlett et al's (2001) model. The model recommends appropriate minimum sample size with level of confidence set at 95%. Using the model, one hundred and fifty firms were sampled and one estate surveyor selected from each firm for interview. The respondents were prompted to express opinion about the land use charge generally and particularly in terms of its non-consideration for default in rent payment. Questions were asked on default rates in rent payment, advantages and disadvantages of the Land Use Charge Law, and adequacy or otherwise of the amount imposed as Land use charge, reliability of the basis of valuation imposed by the law, convenience of direct deductions by estate surveyors from rents due to the Landlords, and the short- and long-run effects of the law on property values in Lagos State.

ANALYSIS AND DISCUSSION

In evaluating the Land Use Charge law, total of 150 estate

surveyors and valuers in Lagos metropolis were randomly selected for administration of questionnaires. Out of this figure, one hundred and 20 (representing 80% of the total number of questionnaires) were returned.

In expressing their opinions about the default rates in rent payments by tenants in properties that the estate surveyors manage in Lagos metropolis, hundred per cent of the respondents remarked that tenants do not always pay rent regularly. Details of their responses are shown in Table 1.

From Table 1, more than ninety percent of the respondent estate surveyors and valuers in Lagos metropolis have problem collecting rents from tenants of properties they manage and that tenants fall into arrears of six months and more.

In determining the advantages and disadvantages of the law from the perspectives of the estate surveyors and property owners, their opinions were summarized in Tables 2 and 3.

From Table 2, majority of the respondents regarded the Law as disadvantageous. About 83% of the respondents considered holding the agents liable to be of great disadvantage; 90% of them considered long-run increase in rental values to be a disadvantage, while all the respondents agreed that making defaulters' properties come under receivership is a disadvantage, while about 92% of the respondents considered the use of capital values as basis for annual tax liability to be a wrong approach. On the other hand 95.8% of the respondents considered the law as an advantage stating that it would prevent multiple taxes being levied on properties. This is summarized in Table 3.

From Table 3, about 82% of the respondents stated that the Law would assist in reduction and or prevention of property tax evasion by ensuring that its administration, assessment and collection, are much easier. In addition, 83% opined that appointment of Managing Agents to remit such rent direct from monies due to the landlords would make it easier and prompt remittance would thus be encouraged. On the other hand, 93% stated that the amount of tax was rather too high. About 92% responded that this was partly because the basis of assessment of the tax is the capital value and payable annually.

The respondents' opinions of the long-run implications of the Law are shown in Table 4.

About 80% of the respondents were of the opinion that it would discourage property investors from going into new investment in Lagos State. 65% of the respondents opined

Table 3. Estate surveyors' opinion on advantages and disadvantages of the law.

Options	Number of respondents (percentage in parenthesis)	
	Advantages	Disadvantages
Making the agents liable	20 (16.67)	100 (83.33)
Imposition of penalties for delayed settlement	15 (12.50)	105 (87.50)
Liability to receivership after four to five months	0 (0.00)	120 (100)
Using annual capital sum as the basis for the amount to be paid.	10 (8.33)	110 (91.67)
Long-run increase in rental value	12 (10.00)	108 (90.00)
Prevention of multiple taxes	115 (95.83)	5 (4.17)
Help reduce or prevent tax evasion	98 (81.67)	22 (18.33)
Ease of administration, assessment, collection, and encouragement of prompt remittance	100 (83.33)	20 (16.67)
The amount charged is too high:		
Yes		112 (93.33)
No		8 (6.67)

Table 4. Respondents' opinion on long-run effects of the law.

Opinion	Options	
	Yes	No
It will discourage investors in real estate	95 (79.17)	25 (20.83)
Ogun State and other neighbouring states will benefit from spill-over effects of the law	78 (65.00)	48 (55.00)
Housing problems will be compounded through increased rent arising from transfer of tax liability to tenants	69 (57.50)	51 (42.50)
Rates of default in rent settlement will increase	99 (82.50)	21 (17.50)
Increase in court cases between government to enforce the law, and between property owners and tenants	112 (93.33)	8 (6.67)

that the spill-over effect of the tax will impact positively on Ogun State as investor will most likely relocate. This, according to about 58% of the respondents, will further compound the woes of tenants in Lagos State because the weight of the tax will be shifted to them. Also, 99% were of the opinion that, on the long run, the housing problems of the citizens residing in the State and defaults in settlement of rents will worsen while 93% were of the opinion that there would be increase in the number of litigations between government and defaulters, and between property owners and tenants in enforcing the law.

A critical look at the law showed that the formula in Equation 2 indicates that value of land will be added to the estimated value of building to arrive at capital value. This implies the adoption of the Cost Method of Valuation. The method, according to Richmond (1975) and Ajayi (1998), is inappropriate. Apart from the fact that the cost method will increase the amount on which the tax will be based, taxes are expected to be charged on Net Income of income-generating goods or services. The appropriate basis should be the investment method that considers net annual rental income on which to determine the appropriate land use charge that is payable annually. Capital value compounds the annual

net rental income receivable. The common basis of property taxes is annually, which is the periodic payment for the use of land or land and buildings.

By charging tax on capital value, it means that all annual periodic payments now and in perpetuity or for as long as the lease endures (if leasehold) is being compounded far into the future and owners are made to pay the amount now. This is contradictory. If the land use charge is to be paid annually then the basis for calculation should be the net annual rent, because capital value is actually the net annual value compounded in perpetuity or over the term (if leasehold). Why should landlord be made to pay land use charge as if he is selling his property 'annually'? If the law truly desires to be "fair to the citizens" charging the tax based on capital value is not appropriate. The law also provides that any person including occupier of chargeable property could be declared as the agent of the property owner and such person will become liable for payment of the charge on behalf of the owner from moneys due by him or becomes due by him for payment to the owner; and that the payment of the charge will become recoverable from the agent where the owner defaults in payment. This provision will cause serious damage to estate surveyors

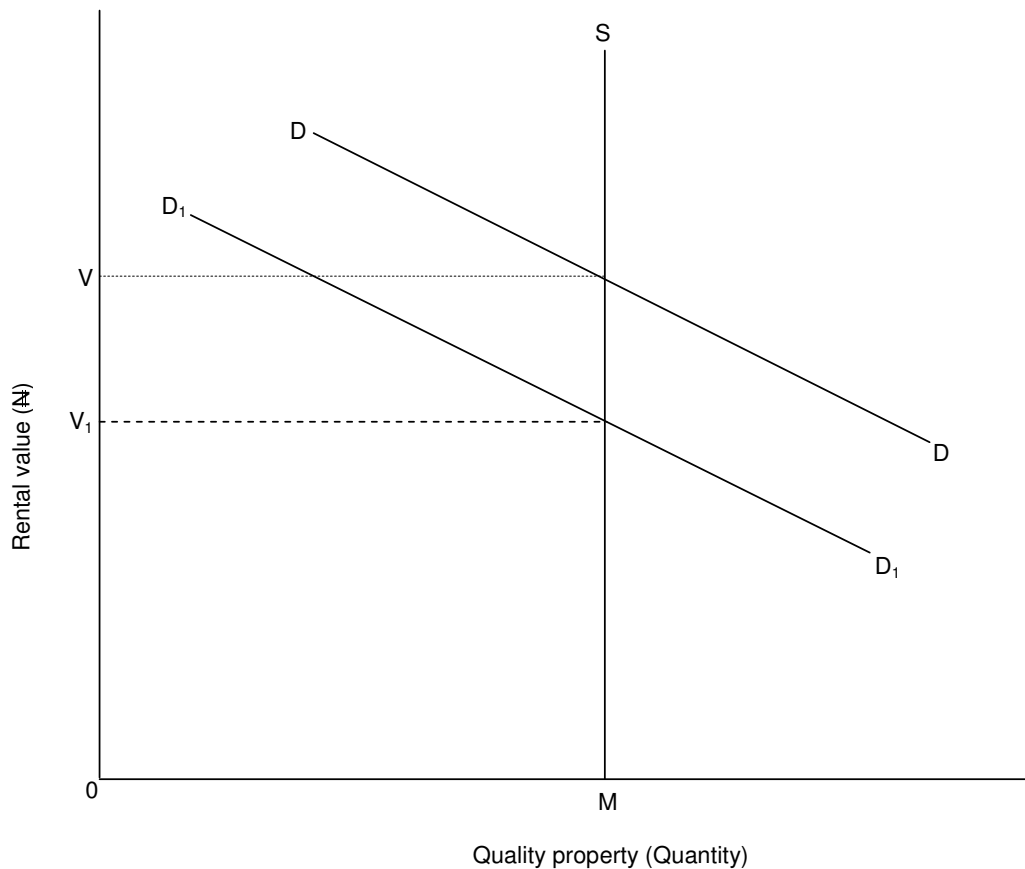


Figure 1. Illustration of the short-run effect of land use charge.

and valuers. One wonders how a law would hold occupier responsible for the misdemeanor of his landlord or the estate surveyors for his clients. This provision appears to be vindictive.

The study found that the law neither provided nor give allowance for risk of tenants' default in rent payment as it is the case in Lagos State. It has become common tales amongst estate surveyors and valuers of default in rent payments by tenants. The penalties imposed on delayed settlements of Land Use Charge are too harsh against the background of many tenants falling into arrears of rent payment of up to twelve months or more. Where will the landlord get money to pay? It will therefore be counter-productive for Government to impose penalty on landlords and estate surveyors for late settlements of Land Use Charge. More so, it is impracticable for estate surveyors and valuers to assume the duty of the landlords for the payment and remittance of tax when Government has forcibly imposed such duty on them against the consent of their clients. It is envisaged that many landlords might dispense with the services of estate surveyors and valuers who dare make deductions for Land Use Charge without their authorization.

The effects of Land Use Charge in the short- or long-runs may be illustrated graphically. Figures 1 and 2 illustrate the short- and long- run effects of land use charge on property values. In the short-run, initially the net rent will be OV . If taxes are now imposed on the tenant in an *ad valorem* basis, the net rent drops to OV_1 and demand curve shifts to D_1 . In the short run, landlords will receive the net rent which falls from OV to OV_1 . The landlord will initially bear the incidence of land use charge in anticipation of making up through regular rents payment at the prevailing rates.

Having managed to bear the short-run incidence, the landlord will most likely react and cause long-run effects in terms of rent and quality of properties available in the open market.

In the long run, supply of quality properties will be more elastic and some of the burden will be passed to the tenant. VV_2 of the rate of burden is shifted forward to the tenant and V_1V backwards to property owner. The total rates paid being $(OV - OV_1) \times OM$; and quality and available rented housing will decrease from OM to OM_1 , as shown in Figure 2.

The incidence of tax will shift to the tenants in the long

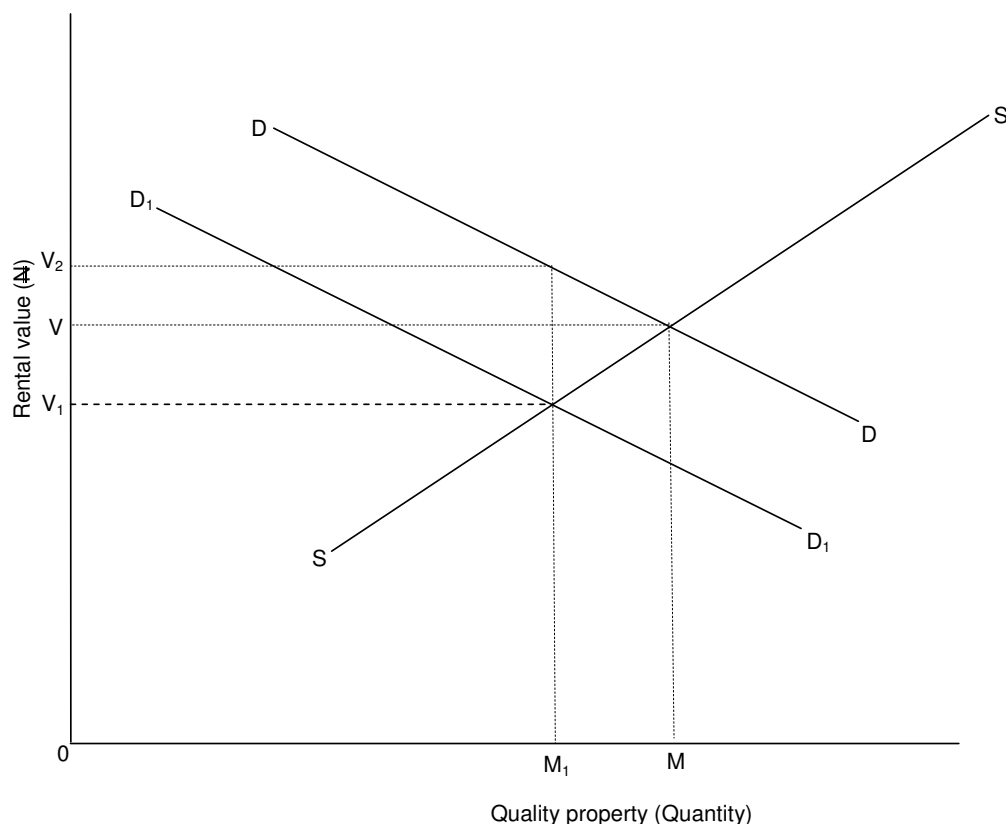


Figure 2. Illustration of the long-run effect of land use charge on quality of properties.

run in terms of increased rent (OV_2) from OV_1 , and expectedly the tenants will react by refusing to pay such rent. The amount available for maintenance will decrease to OM_1 from OM . The scenario will not stop at that as parties may resort to litigations; while landlord will demand to eject the tenants the tenants may apply for landlord's compliance with provisions of the Law that regulates rent payable on residential properties in Lagos State. The Rent Tribunals and High Courts will experience influx of litigations involving landlords and tenants, and government and property owners.

RECOMMENDATIONS AND CONCLUDING REMARKS

The capital value basis of calculating the land use charge is inappropriate. The annual value represented by the open market rental value per annum will be the best and fair charge on the owner since the tax is payable on annual basis. Except otherwise the government intends to amend the law to make it payable once-and-for-all only then will the Capital Value basis will be regarded as appropriate. The law should be amended to state that determination of the charge be based on annual open market net rental value to make it fair and equitable.

Provision must be made for default or delayed rent

payment. The existing provision for penalty for delayed settlement of the land use charge is inconsiderate. Many tenants in Lagos State do not pay rent as at when due, many in arrears of six months or years. Imposing penalty according to number of months that payment is delayed does not consider landlords' and estate surveyors' plights in collecting rent from tenants in Lagos state. Consideration must therefore be given to delays and defaults in rent payment. If Lagos State Government insists on prompt payment of Land Use Charge, then there should be provisions to protect the landlord against incurably bad tenants who are so many in the Lagos state.

It is recommended that the estate surveyors and valuers should not be put under compulsion to make deductions for land use charge from rents collected on behalf of his clients, and neither should he be held liable. They must obey law as well as satisfy their clients for continued patronage. They will become the grass amidst two fighting elephants! The State Government on one hand and the landlords (their clients) on the other hand. If they disobey their clients' patronage may be lost and if they disobey the law the penalty would be grievous. The question is: will estate surveyors and valuers earnestly obey the law that sets to take away food from their tables? Definitely, no. For Lagos State Government to succeed in this task, the estate surveyors and valuers

must be taken into confidence by appointing them to determine the appropriate annual values on a net annual-basis of valuation and also collect and remit land use charge. Through the involvement of the estate surveyors and valuers, the Lagos State Government will succeed in enforcing the Law.

It is a good thing for Lagos State Government to raise funds through property tax as applicable all over the world to finance physical and infrastructural developments and make life meaningful to the citizens. However, in giving "meaningful life to the citizens" the implication of inappropriate taxes in the short- and long- run, especially on the poor Lagos dwellers and tenants must be considered as paramount. In the short run, the landlords may be cowed into paying the charge but on the long run they will increase the rents. Also on the long run, there will be increased incidences of defaults in rent payments, litigations between landlords and tenants will increase, this will lead to congestion in courts and the "meaningful life to the citizens" that is anticipated might become a mirage and a source of great concern to the citizens with adverse effects on their social and economic well-being.

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