

# Spaces for Change | S4C

Memorandum submitted to the 6-man ad-hoc committee on the

## Lagos State Land Use Charge Law 2018



### PART A: INTRODUCTION TO THE LAGOS STATE LAND USE CHARGE LAW, 2018<sup>1</sup>

On January 28, 2018, the Lagos State House of Assembly passed the Land Use Charge Law (LUCL), 2018, with the aim of increasing the revenue generation base of the state. The LUCL came into force on February 8, 2018, and among other things, seeks *‘to provide for the consolidation of property and land based charges and make provisions for the levying and collection of Land Use Charge in Lagos State and for connected purposes.’*<sup>2</sup> The Lagos State Government (LASG) has, accordingly, described the law as *a consolidation of all property and land based charges payable under land rates, tenement rates and neighborhood improvement charges.*<sup>3</sup>

The new law dramatically increased the land use charges property owners and occupiers of leaseholds are to pay on their property in Lagos State, provoking anger and public disapproval. Corporate properties are to pay more while those owned by religious bodies and recognized traditional rulers enjoyed certain exemptions.

The law repealed and replaced the Land Use Charge Law (2001), Volume 5, Chapter (CAP) L61, Laws of Lagos State 2003; Neighborhood Improvement Charge Law (1986), Volume 5, CAP N4, Laws of Lagos State 2003, as well as the Land Rates Law (1984), Volume 5, CAP L59, Laws of Lagos State 2003. Consistent with the intentment of this law to consolidate existing

<sup>1</sup> © Authors: Victoria Ohaeri, Aizighode Obinyan and Fisayo Ajala

<sup>2</sup> Long title of the LUCL 2018

<sup>3</sup> See LASG Statement: <https://lagosstate.gov.ng/blog/2018/03/09/on-the-new-lagos-land-use-charge-law-2018>, 2018.

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### Summary of Proposals

In sum, S4C calls on Lagos State Government to:

1. **Review the procedure for the passage of the Land Use Charge Law, 2018 (LUCL):** This law was passed without prior consultation or engagement with the stakeholders that may be potentially affected by the law.
2. **Clarify certain terms used:** The term ‘property’ is ambiguous lumping together distinct real estate holdings such as vacant land, buildings, and leaseholds.
3. **Evaluate the implication of the law on access to housing/shelter:** Taking into account the huge housing deficit in the country, it is highly probable that property owners will transfer tax burdens to unintended groups such as tenants and low-income groups, thereby limiting access to housing.
4. **Make the LUCL more favorable to owners/occupiers of commercial properties:** Higher charges slammed on corporate properties and the requirement for prompt payment for land charges will not only increase the cost of doing business, but also make the business climate in the state unfavorable.
5. **Sustain certain amendments of the LUCL:** The deletion of the reference to a particular company, AlphaBeta Consulting, to monitor revenues collected from the land use charge, is a welcome development.

legislation governing land use charges, LUCL 2018 repealed the following state laws:

- a. The Land Use Charge Law (2001): This law imposed a land-based charge payable on all ‘real property’. Real property refers to (i) parcel of land, (ii) improvement, (iii) parcel of land and improvement, (iv) wharf or pier. Owners of chargeable real property were liable to pay, but occupiers could be made agents by the collecting authority (the local government area) with set-off claims against the owner indemnified under the Law.
- b. Neighborhood Improvement Charge Law (1986): This law requires private estates to pay improvement charges. The charges also apply to developed or undeveloped property or land in Lagos State not owned by the State or Federal government or their agency. This law prescribed that the charge should be computed the same way the ground rent is computed for state government estates under the Land Rates Law. This charge arises and will accrue where the State government provides infrastructure for neighborhood, or plans to, or manages a neighborhood.
- c. Land Rates Law (1984): This law provides for development charges to be paid on allocated land in Lagos State. The development charge and the associated premium are paid only once on a piece of allocated land, whereas the ground rent is payable annually on an allocated piece of land, and the sum is spread over a number of years.

### Similarities between LUCL 2001 and LUCL 2018

LUCL 2001 and the LUCL 2018 are similar in many respects, particularly as regards property assessment, property exemptions, land use charge notices, discount for early payment, appeal procedure and conditions, and the fund set up by the Commissioner of Finance. Differences include the property owner



as the payor under the LUCL 2001 whereas the LUCL 2018 targets the owner and the occupier of a lease up to and exceeding 10years as the payors. In addition, LUCL 2018 applies a different rate for properties used for commercial purposes. All commercial property will be assessed at 0.76% of the property value, as against the previous charge of 0.394%.<sup>4</sup>

LUCL 2001 computes land use charge using the formula:  $LUC = M \times [LA \times LV] + (BA \times BV \times PCR)$ <sup>5</sup> whereas the LUCL 2018 prescribes the formula (Land Value + Building Developments) x Relief Rate x Charge Rate. The new formula introduces depreciation rate, relief rate, and even considers the average construction value of medium quality buildings and improvements on the neighborhood in the computation of the charge payable. A novel aspect of the LUCL 2018 is the introduction of self-assessment. This would allow property owners and occupiers, with the help of

<sup>4</sup><http://nigeriarealestatehub.com/luc-new-law-amendment-highlights-changes-previous-legal-regime.html/> accessed on March 26, 2018.

<sup>5</sup>M = annual charge rate as a percentage of assessed value of property

LA = area of land

LV = average value of parcel

BA = total development floor area of building on the plot of land in square metres

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

PCR = property code rate for the building. The assessed value of property is =  $[LA \times LV] + (BA \times BV \times PCR)$ .

certified valuers, to be able to calculate and know the charges payable in advance. In effect, citizens need not wait for demand notices before they can compute and make payments.<sup>6</sup>

### Concerns about the new LUCL 2018

SPACES FOR CHANGE, like many other public and private institutions in Lagos State, is deeply concerned about certain provisions of this law. The areas in dire need of serious parliamentary reconsideration and review are as follows:

#### a. Inadequate Stakeholder Consultation

The new law was passed without prior consultation and engagement with the range of persons and institutions to be affected by the law. More so, the civil society was unaware of the new law and therefore, was unable to make inputs, create public awareness, especially among the predominant low-income populations that may be affected by the new rates.

**Public hearings on bills should not be an afterthought or a rubber stamp to State government intent; rather they should be a forum for appraisal and critique of State propositions towards inclusive governance.**

In response to the widespread disapproval that greeted the passage of the bill, the Lagos State House of Assembly hastily conducted a public hearing<sup>7</sup>, with participation limited to representatives of the organised private sector (OPS) and manufacturing associations. Conducting public hearings prior to the passage of a piece of legislation is a statutory requirement. It should not be an afterthought or a vehicle for rubber-stamping the state government's intent. Public hearings make inclusive governance possible in that they afford the public an opportunity to appraise and critique the state's legislative propositions.

#### b. Unclear Definitions - Section 1 (Interpretation Section)

- I. The term 'property' is ambiguous. It lumps together distinct real estate holdings such as vacant land, buildings, improvement on land, leaseholds. Lagos State can improve access to land through innovative policies that treat e.g. property tax as distinct from land tax. It is also noteworthy that prior to the LUCL, there were no charges on undeveloped land save for Ground Rent which was aimed at eliciting development. Introducing this definition and imposing higher rates will be counterproductive as it is likely to discourage land banking necessary as a pipeline for future developments. It will also cause a further increase in cost of undeveloped land as the charge increments get passed to buyers.<sup>8</sup>
- II. The term 'pensioner' appears limited to pensionable employment in the civil service. It is therefore imperative to expand the definition of 'pensioners' to include other range of retirees/pensioners such as the Lagos State inhabitants who worked for federal institutions, retirees of corporate and non-profit organisations in the state

<sup>6</sup><https://newtelegraphonline.com/2018/03/lluc-one-law-many-controversies/> accessed on March 23, 2018.

<sup>7</sup> Lagos State House of Assembly conducted a public hearing on the Lagos State Land Use Charge (Amendment) Bill, 2018 on March 27, 2018

<sup>8</sup> Mr. Gbadebo Adejana, Managing Director/Chief Executive Officer of Realty Point Limited.

among others<sup>9</sup> This recommendation has been adopted in the Lagos State Land Use Charge (Amendment) Bill, 2018 (hereafter, “Amendment Bill, 2018”).

### **c. The New LUCL Constricts the Functions of the Local Government Council**

Section 3 of the LUCL 2018 constricts the functions of the local government council set out in the Fourth Schedule of the Constitution of the Federal Republic of Nigeria, 1999<sup>10</sup>. The Schedule empowers the local government council (LGC) to undertake the “assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the Houses of Assembly of a State”.<sup>11</sup> The LUCL 2018, however, authorizes the collecting authority (LGC) to contractually delegate to the State, the assessment of privately-owned houses or tenements for the purpose of levying and collection of such rates. The LUCL 2018 goes further to establish a collection fund for the charges, including bank accounts and an administration system.<sup>12</sup> This Section could open the doors for the state government to usurp the Council’s statutory obligations, including the misappropriation of the Council’s revenue.

### **d. The Need to Specify the Government Agency Authorised to Enter Property**

Section 8 of the Law empowers authorized officers to enter into a property to conduct an assessment and determine the amount payable as land use charge. This Section needs to specify the duly authorised government agency or officers that can undertake this task. This is necessary to avoid duplication of functions and databases. This would also prevent regulatory overlap as citizens engage with various state agencies on the same records and for similar purposes.

### **e. High Probability that Unintended Tenants will Bear the Tax Burden**

Section 9 requires property owners and occupiers of leaseholds to pay land use charge. It is highly probable that property owners would transfer the burden of paying high land charges to tenants through increases in rental costs. Although the statutory requirement for only property owners and occupiers of leaseholds to pay land use charge evinces legislative intent to exclude tenants from the charge, the absence of a monitoring mechanism may render enforcement impracticable. Taking into consideration that demand outstrips the supply of housing, property owners will continue to have greater bargaining power to determine property and rental costs. In consequence, the soaring rental values will place the housing stock beyond the reach of many, with disproportionate impact on the low-income populations.

### **f. Review of Property Exemptions**

Section 12 of the LUCL 2018 exempts certain property from paying the charge. They include property owned by a religious body for worship or religious education.<sup>13</sup> Others listed in Paragraphs b – f are public cemeteries, public library, palaces of recognised Obas, etc. Religious bodies typically own/occupy large expanses of land in the State and also own a vast array of businesses on the land. Exempting religious bodies from paying the land use charge gives undue

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<sup>9</sup> See Part 2 (herein) which discusses the provisions of the Lagos State Land Use Charge (Amendment) Bill, 2018.

<sup>10</sup> See also paragraphs 9-10 of the concurrent legislative list in the 1999 Constitution

<sup>11</sup> Paragraph 1 (item j)

<sup>12</sup> Section 27

<sup>13</sup> Sub-section 1(a)

preference to religious bodies in the real estate market. This is not only a loss of revenue to the State, but also contrary to the intendment of the revenue-driven law. We take the view that this exemption should be extended to citizens within the low-income bracket (specifically earning less than N100,000 per annum) and property occupied or owned by non-governmental organisations (NGOs) or other institutions that are not operating for profit. Granting reliefs or exemptions to property occupied or owned by NGOs should not lie at the Commissioner's discretion. This is necessary to prevent abuse and targeting of specific organizations, especially those demanding public accountability.

#### **g. Procedure for Remediating Assessment**

**Increase notice period to 60 days:** Section 24 of the LUCL 2018 prescribes the remediation procedure for persons aggrieved about the assessment made under the law. The time allowed for an appeal is 30 days after the delivery of the Demand Notice.<sup>14</sup> Owners of certain property may reside abroad or be temporarily away from the state. Increasing the time allowed for appeal to at least 60 days will afford aggrieved persons adequate time to make appeal arrangements.

**Make the conditions of appeal less onerous:** The conditions for appeal have been described as onerous. One of the conditions of appeal listed under Section 26 of the LUCL 2018 is that the aggrieved must have paid 25% of the assessed charge into the State Land Use Charge Account. The requirement for prior payment of the imposed charges preempts the outcome of the appeal, and defeats the objective of fair hearing and good faith. Where appeal determines that charges were wrongfully assessed, this places an additional burden on the aggrieved to recover payment made. The procedure for recovering payments made into state coffers is notably bureaucratic and lengthy.

**Default fines should not be punitive:** We further recommend that the calculation of fines slammed on defaulting owners and occupiers<sup>15</sup> should be based on arithmetic progression and not geometric progression. This is because the land use charge is not a punitive charge on ownership and occupation of land. Therefore, default fines need not be too exorbitant in ways that disincentivise real estate development in state.

#### **h. Contracts to Third Party Consultants**

Article 2 of the Rules Governing the Distribution of the Lagos State Land Use Charge provides that *Alpha Beta or any other designated person (s) or corporate body who has the responsibility of monitoring the incoming revenue of the State through the collecting banks, shall provide a report to the Accountant-General of the State.*

- I. This Article makes reference to a particular company to be charged with the responsibility of monitoring the incoming revenue of the State. In line with due process and best practice considerations, this selective reference to a private company should not be inscribed in the law.
- II. This entire Article is recommended for deletion as the State can validly endorse third party experts/consultants to carry on such assignments without express inclusion of same in the law.

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<sup>14</sup> See Subsection 2

<sup>15</sup> See Section 31 of the LUCL, 2018

- III. To prevent monopoly and state capture, we recommend that third party consultants so contracted following a transparent selection procedure, should be given time limits to monitor revenue.

#### i. Duplication of Existing Law

The Tenement Rates Law (1989) CAP T2, Laws of Lagos State, 2003 provides for the levying and collection of tenement<sup>16</sup> rates on tenements and buildings in the state and for other connected purposes. The LUCL 2018 duplicates this existing law. Specifically, Sections 6-8 duplicates some of the authority and functions of the Lagos State Valuation Office established at Section 1 of the Tenement Rates Law. The Valuation Office assesses rateable property and establishes zonal offices at each Local Government Council. We must also reiterate that [the target payors of the charge under the LUCL 2018 are property owners and occupiers of property under lease of up to 10 years and above.](#)

#### j. Poll: Comments from Other Urban Stakeholders

- I. “If the state government is out on an aggressive revenue drive, it should not be done in a manner that will further wreck the already poor and struggling majority in the State,” Action Democratic Party (ADP)
- II. The Adesina Ogunlana-led Nigerian Bar Association (NBA), Ikeja branch, argues that the new charges will lead to further impoverishment of over 17,000,000 (17 Million) Lagosians. NBA has urged the government to be sensitive in implementing policies that would gravely affect the residents of the State.
- III. The Manufacturers Association of Nigeria (MAN) observed that stakeholders were not consulted before the decision to increase the charges was made. They argue that the increase would contribute to the collapse of many companies in Lagos State. The price of locally-made goods will increase, and become unaffordable, with implication on the bottomline of local companies.<sup>17</sup> ‘The State would be setting a bad precedent for other States if the law stands’, says MAN’s President, Frank Jacobs.

## PART B: STATE GOVERNMENT RESPONSE TO PUBLIC OUTCRY: LAGOS STATE LAND USE CHARGE (AMENDMENT) BILL, 2018

Following the outcry against the LUCL 2018 especially the hikes in land use charges, the State government responded through the media promising among others:

- a reduction in the land use charge by at least 50% (fifty percent)
- introduction of installment payment of the land use charge, and
- deletion of late payment penalties prescribed in the principal law

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<sup>16</sup> This refers to ‘lands with building on it which is held or occupied as a distinct or separate holding or tenancy or any wharf or pier but does not include land without buildings’.

<sup>17</sup> <http://sunnewsonline.com/how-land-use-chargell-affect-tenants/>, and <http://thenationonline.net/lagos-state-land-use-charge-true-story/> accessed on March 23, 2018.

The Lagos State Government convened a public hearing on the LUCL 2018I on March 27, 2018. SPACES FOR CHANGE and other stakeholders submitted this memorandum to the state legislature and addressed the state lawmakers at the hearing.

## Observations in the Lagos State Land Use Charge (Amendment) Bill, 2018

- a. **Definition and Annual Relief Rate:** In the amendment to Section 1 of the LUCL 2018, the term, pensioner, is now broadly defined as S4C recommended. However the Annual Relief Rates to which this term relates has been deleted vide *Amendment to the Schedule* in the Amendment Bill, 2018. At the public hearing, a member of the House of Assembly verbally clarified that the intendment of the legislature is to present the Annual Relief Rates at a later date with prior approval of the state legislature. We suggest that this Schedule be retained as part of the LUCL 2018 as it is the main balm assuaging the impact of the arbitrary increment in the land use charge on state residents.
- b. **Omission to reduce land use charge rates:** The State government's promise to reduce the land use charge by 50% is not reflected in the Lagos State Land Use Charge (Amendment) Bill, 2018. The main reason for the amendment was to effect the reduction in the land use charge. The omission is significant and should be remedied urgently.
- c. **Duplication of Tenement Rates Subsists:** The Lagos State Land Use Charge (Amendment) Bill, 2018 makes reference as in the principal law to 'tenement' which is a category of rate being managed under the Tenement Rates Law (1989) CAP T2, Laws of Lagos State, 2003. This law is not expressly repealed under the LUCL 2018 and thus exists as a duplication of law and agencies on tenements.
- d. **Reduction of Members of the Tribunal:** Under the LUCL 2018, the tribunal established to consider appeals consists of 9 members drawn from various sectors and professions in the State (namely, legal practitioner, town planner, land surveyor, estate valuer, and 2 persons from the private sector, among others). However, the Lagos State Land Use Charge (Amendment) Bill, 2018 proposes a reduction in the number of members from 9 to 4 without specifying the particular sectors and professions that would no longer be in the Tribunal.

### Conclusion:

The urgent review of the LUCL, 2018 together with the Lagos State Land Use Charge (Amendment) Bill, 2018 is imperative. The Lagos State Land Use Charge (Amendment) Bill 2018, does not adequately address the range of concerns expressed by a broad spectrum of urban stakeholders in the state. Additional legislative review is needed to cure the numerous defects, inconsistencies and duplications in the law, in order to bring it in harmony with the State's vision of sustainable development.



Figure 1: SPACES FOR CHANGE and members of the Communities' Alliance against Displacement (CAD) convened a community outreach on the new Land Use Charge Law, 2018 at Okobaba community, Mainland Local Government Area, Lagos State | March 22, 2018.



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