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A Precis of the Abuse of Power by Revenue Authorities in Nigeria and Proposals for Reform

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Abstract: The article discusses how the broad powers that are granted to the revenue authorities under the Nigerian tax laws have unfairly and negatively affected all taxpayers in Nigeria. It investigates the taxing powers of the states, the abuse of such powers and the discretionary limits of the Nigerian state tax officials. The article calls for the revamping of the current tax laws, with a view of enhancing the legal rights of taxpayers in Nigeria. It discusses the rights of taxpayers under the Nigerian Constitution, 1999, and other relevant tax laws. It is submitted that the Nigerian states sometimes abuse their taxing and discretionary powers, which in turn negatively affects taxpayers' rights. The problems encountered by taxpayers in obtaining justice given the wide powers granted to the Nigerian tax authorities are identified and discussed. Accordingly, it is recommended that certain provisions of the existing tax laws should be amended and/or expunged.

Keywords: Taxpayers' rights; abuse of power; discretionary powers; taxing powers

1. Introductory Remarks

The state's taxation powers provide a critical point of contact between the citizens and the state in relation to the protection of their rights. The exercise of these powers should provide a delicate balance between ensuring that the tax imposed by the states is collected in an efficient and effective manner and ensuring that taxpayers' rights and interests are fairly protected (Freedman & Vella, 2011, pp. 79). Many studies have been conducted on the desirability of protecting taxpayers' rights (Gencel, 2015, pp. 2-3; Tieghi, 2015, pp. 2-3; Yurtsever, 2010, pp. 334; Sawyer, 1999, pp. 1345; Christians, 2016). Most of these studies were carried out in countries that are members of Organization for Economic Development and Cooperation (OECD). These studies revealed, *inter alia*, that the level of protection offered to the taxpayers differs in OECD member countries as well as in other non-member countries (Tieghi, 2015, p. 3; Freedman & Vella, 2011, pp. 79-119; Sawyer, 1999, pp. 1345-1347; Christians, 2016). Sawyer submits that given the parlous state of the protection of taxpayers' rights in some OECD member states, the position in most developing states like Nigeria is not well balanced and statutorily protected (Sawyer, 1999, p. 1347). Nigeria has a long history of taxation challenges and abuse of taxpayers' rights (Oke, 2011/2012, p. 1). For instance, it has no special code of taxpayers' rights. This could suggest that such rights are not adequately protected (Oke, 2011/12, p.1; OECD, 2011). Moreover, taxpayers' rights in Nigeria are not codified in any specific statute or statutory instrument. For the purposes of this article, taxpayers' rights are regarded as a special sub-category of human rights (Gencel, 2016, p. 98; Tieghi,

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2015, p. 3; Yurtsever, 2010, p. 334). In this regard, it is important to note that Nigeria has adopted and ratified the African Charter on Human and Peoples' Rights of 1986 (African Charter) in accordance with section 12 of the Constitution of the Federal Republic of Nigeria, 1999 Chapter C 23 of 2004 (Nigerian Constitution, 1999). Article 29(6) of the African Charter provides that qualified individuals have a duty to pay taxes that are lawfully imposed on them by the relevant authorities. Certain rights must be provided to qualified individuals who are taxpayers to enable such rights to be upheld by the revenue authorities in Nigeria (Art. 2-26 of the African Charter, available at: <http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf>, last accessed 15 April 2019). Nevertheless, taxpayers' rights are constantly violated by the taxing authorities in Nigeria.

The relationship between the taxpayers and revenue authorities is naturally contentious. The taxpayer would like to pay as little as possible or no tax at all, while the revenue authority is willing to extract as much tax from the taxpayer as possible (Gencel, 2016, p. 98; Croome, 2010, p. 1). The revenue authorities are empowered to enforce tax laws against taxpayers (Gencel, 2016, p. 99; Croome, 2010, p. 1). Thus, the rights of taxpayers are sometimes violated owing to excessive powers that are bestowed upon revenue authorities by the extant tax laws Brink, 2017 1; Croome, 2011, p. 1; Christians, 2013, pp. 68-70; Slemrod, 2007, p. 25). Accordingly, the powers granted to the revenue authorities must be carefully exercised to avoid violating the taxpayers' rights (McLaren, 2008, pp. 141-142). The wide discretionary powers granted the revenue authorities in Nigeria, usually result in abuse of taxpayers' rights (Thompson & Gordon, 2011, p. 97). Put differently, although the broad discretionary powers are necessary for the exercise of revenue collecting function, it must be utilised carefully, fairly and in accordance with the relevant laws to curb possible abuse of taxpayers' right Freedman & Vella, 2011, p. 79. Hence, there is a need to balance the enforcement powers that are granted to the revenue authorities with adequate laws that provides for taxpayers' rights (Gencel, 2016, p. 98; Esmaeel, 2013, p. 8).

Tax authorities should exercise their powers lawfully and constitutionally to ensure that they collect sufficient revenue for economic growth without infringing upon the rights of all taxpayers in Nigeria (Carnahan, 2015, p. 169). Compliance with the collection of taxes should be carefully enforced through tax laws to minimise the tax burden on all taxpayers in Nigeria (Thomakos & Nikolopoulos, 2017, pp. xxv-xxvi; Nwabueze, 2010, p. 317; Esmaeel, 2013, pp. 8-13; Croome, 2010, p. 1; Fjeldstad, 2006, p. 484). This could curb bureaucracy and corruption which are sometimes perpetrated by tax authorities in Nigeria (Esmaeel, 2013, pp. 8-13; Nwabueze, 2010, p. 317; Dermatis, Evangelopoulos & Liargovashe, 2017, pp. 35-36; Fjeldstad, 2006, p. 484). Legitimate collection of revenues should be seamless, devoid of imposing needless challenges and/or legal duties on the taxpayers (Frecknall-Hughes, 2017, p. 4; Freedman & Vella, 2011, p. 79; Croome, 2010, p. 17). Moreover, taxes should be levied in such a way that they do not amount to unfair confiscation of the property and undue interference in the affairs of the taxpayers. The Nigerian revenue authorities should employ some discretionary powers in the exercise of their duties. Nevertheless, the broad discretion granted to the taxing authorities in certain instances is routinely abused in tax-related matters in Nigeria (Oke, 2011/12, p. 1). The abuse in the exercise of discretionary powers by tax authorities has somewhat led to the impoverishment individuals in Nigeria (Cogan, 2011, p. 1). Similarly, Freedman and Vella argue that legal certainty is very important in tax law in order to promote and protect the property and business interests of all taxpayers and combat the civil disorder and tax riots that usually result thereof (Freedman & Vella, 2011, p. 79; Burg, 2003, p. 433-444; see also the Magna Carta of 1215; the Bill of Rights of 1689; the Petition of Rights of 1628; the Habeas Corpus Act of 1679). The discretion of tax authorities should carefully enforced on the grounds of certainty, legitimacy, consistency, equality, and respect for taxpayers' rights (Freedman & Vella, 2011, p. 79).

Given this background, the article interrogates the available taxing powers that are bestowed on the Nigerian tax authorities. This is done to explore how such powers should be exercised without infringing on the rights of taxpayers in all Nigerian states. Accordingly, the flaws that are imbedded in the Nigerian tax laws are outlined and discussed in a bid to recommend possible measures that could be adopted to ensure that the tax authorities exercise their powers in accordance with the federal constitution (section 3 and Part I to the First Schedule of the Nigerian Constitution, 1999) and the relevant laws both at state and federal levels. In this regard, it must be noted that the federal, states and local governments operate through the Federal of Inland Revenue Service (Inland Revenue), the State Internal Revenue Service and the Local Government Revenue Committee respectively (section 4 of the Taxes and Levies (Approved List for Collection) Act Chapter T2 of 2004; sections 86, 87, 88 & 90 of the Personal Income Tax Act, Chapter P8 of 2004). However, the Customs and Excise Department collects customs and excise duties (section 4 of the Customs and Excise Management Act Chapter C45 of 2004), while the Inland Revenue collects other federal taxes.

2. Legal Sources of Taxpayers' Rights in Nigeria

The sources of taxpayers' rights in Nigeria are analysed below to unpack the inherent conflicts that usually arise between the revenue authorities and taxpayers regarding, inter alia, the abuse of taxing powers by such authorities.

2.1. The Exercise of Taxing Powers in Nigeria

Tax refers to any compulsory payment to the government that is imposed by law without direct benefit or return of value or service (Nigerian Federal Ministry of Finance, 2016, p. 1). Taxing power refers to the power of a level of government to impose a tax by its own statute and prescribe conditions for the collection of the tax either by its own agency or the agency of another level of government (Tiley & Loutzenhiser, 2012, p. 30; Mazza & Kaye, 2006, p. 641). Nigeria relies on tax revenue to provide and maintain public goods and services (Carnahan, 2015, p. 169). However, the states' taxing authorities sometimes exercise their powers in various ways that contravene taxpayers' rights. This is normally done by extracting more taxes than those designated under the Nigerian tax laws (Christians, 2016, p. 2). Both the taxing power of the Nigerian state and taxpayers' rights are derived from the Nigerian Constitution, 1999 (Part 1 of the second schedule, Part II of the second schedule; sections 4, 34-45, 162(1), 163 and 165 of the Nigerian Constitution, 1999). Other taxing powers are derived from taxing statutes and the international treaties that Nigeria has ratified. Such statutes include the Federal Inland Revenue Service (Establishment) Act, 2007 (Federal Revenue Act) and the Taxes and Levies (Approved List for Collection) Act, 2004 (Taxes and Levies Act), which are principal sources of taxpayers' rights in Nigeria. Nigeria ratified international human rights treaties such as the International Covenant on Civil and Political Rights of 1976 (ICCPR), the International Covenant on Economic, Social and Cultural Rights of 1976 (ICESCR), the African Charter and the Protocol to the African Charter on the Establishment of African Human Rights Court of 2004 (Protocol to the African Charter). Notably, the African Charter was transposed into Nigerian domestic law (see section 12 of the Nigerian Constitution, 1999).

Tax could be generally seen as the confiscation of the wealth of the rich people in order to redistribute it to the poor (Freedman & Vella, 2011, p. 79; Kades, 2002, p. 1). Taxpayers' aversion to tax payment in Nigeria is partly caused by the excessive taxes that are imposed on them by tax revenue authorities

(Oke, 2011/12, p. 1; Yurtsever, 2012, p. 334). The abuse of taxpayers' rights is not limited to Nigeria alone. In developed countries like the United States of America (USA), politically motivated tax audit and investigation were deliberately deployed against members of the opposition party. Former USA President, Richard Nixon (Republican) reportedly ordered the Internal Revenue Service through the Secretary of Treasury to investigate and audit political opponents (Democrats), because Republicans, including himself were subjected to similar audit when the Democrats were in power (Nixon, 2000, pp. 32). Similarly, Her Majesty's Revenue and Customs was criticized for using terror laws against a tax whistle-blower in the United Kingdom ("UK"; Syal, 2014). In *Regina v Inland Revenue Commission Ex parte Preston*, HL (1985) AC 835; (1985) 2 All ER 327, at 334, the House of Lords held that it is an abuse of power where the Inland Revenue gives undertakings which did not conflict with its statutory duty and eventually renege on the agreement.

It is submitted that taxpayers are liable to pay taxes to the state, and the latter is in turn obliged to adequately and fairly protect all taxpayers' rights in Nigeria (Yurtsever, 2012, p. 334). It is encouraging to note that the superiority of the state powers in tax matters, which was absolute in the past centuries is now modified by democratic governance and the adoption of separation of powers by modern governments (Yurtsever, 2012, p. 335). Yurtsever defines taxpayers' rights as rights which "authorize the taxpayer to make positive or negative demand and which provides legal protection when violated" (Yurtsever, 2012, p. 334). He also classified taxpayers' rights as rights before, during and after tax audits (Yurtsever, 2012, p. 334). However, Bentley classified taxpayers' rights as legal and administrative rights (Bentley, 2007, pp. 110 – 137). He argues that these rights are best protected legally but they there should be administrative support to the legal system including independent offices such as a taxpayer ombudsman to enforce taxpayers' rights (Bentley, 2016, pp. 313–317). The revenue authorities should exercise their discretionary powers lawfully and constitutionally to ensure that the taxpayers' rights to property, dignity, and related labour rights are adequately protected in Nigeria.

3. Reconciling Taxpayers' Rights and Taxing Power

Taxation is not a new phenomenon as sovereign states have always exercised taxing powers to perform certain basic functions which include the maintenance of law and order and the provision of public goods and services (Croome, 2010, p. 1; Croome, Oguttu, Muller, Legwaila, Kolitz, Williams, & Louw, 2013, pp. 2-4). Apart from being a source of revenue, taxation is also used for income redistribution, management of the economy and discouragement of the consumption of certain goods and services (Carnahan, 2015, p. 169; Abdulrazaq, 2015, pp. 2-3). The basis of taxation lies in the notion of sovereignty (Christians, 2016, pp. 58-61; Jinyan, 2004, p. 144). The concept of sovereignty is central to the extent and limit of the powers of a state, including its powers on taxation. Sovereign power manifests itself in three ways namely, by exercising the right of taxation; the right of eminent domain; and through the exercise of police powers (Graetz, 2001, p. 277; Barros, 2004, p. 477; Baude, 2013, p. 1745). It is crucial to note that the term "eminent domain" refers, inter alia, to the power of a state or government to appropriate private property and convert it into public use. It also refers to the sovereign state's power to acquire someone's property without his or her consent (Baude, 2013, p. 1745). Eminent domain involves the deprivation of the owner's property without his or her consent (Baude, 2013, p. 1757).

Taxation and the sovereign state's absolute right to tax its subjects have their origins in antiquity (Croome, 2010, p. 1). The right to tax forms one of the most intimate relationships between the sovereign state and its subjects (Melo, 2000, pp. 183; 186). Sovereignty is the foundation of the entitlement to a tax claim by the state against the taxpayers (Croome, 2010, p. 2). The state may exercise its sovereign

power to tax, but that power is restrained by the fundamental rights of the people and international obligations (Loughlin, 2016, p. 70; Christians, 2013, pp. 53-54; Nagan & Haddad, 2011, p. 502; Ferreira-Snyman, 2006; Araujo, 2000, pp. 1479-1480; Martinez, 1996, pp. 1199-1200). Tax sovereignty generally suggests that the right to tax is inherently and intrinsically associated with sovereign status of each state. The state is inherently vested with the power to impose tax on taxpayers (Christians, 2009, pp. 99; 104). Sovereignty also requires that states provide the appropriate goods and services to ensure the well-being of their citizens (Potter, 2004). The traditional concept of sovereignty is now somewhat weakened by globalization, the size and reach of multinational organizations, information revolution, the phenomenon of “failed and rogue” states and supranational organizations such as the European Union (Loughlin, 2016, pp. 1-15). The power to punish the taxpayer if he defaults in paying tax is also an attribute of sovereignty which is exercised by the states’ taxing authorities (*Shittu v Nigerian Agriculture and Cooperative Bank Ltd & 2 others*, 2001, 10 NWLR (pt 721) 298). The exercise of such powers is discretionary. Discretion is defined by the Nigerian Court of Appeal as the administrator or court’s power or right to act in certain circumstances according to one’s conscience or personal judgment (*Lawal v Federal Republic of Nigeria*, 2013, 3 NWLR (pt 1342) 451 at 471). Discretion is also defined as the power or right to make official decisions based on personal judgment Saleheen, 2013, p. 100. Discretionary taxing power is granted to tax officials based on three potential reasons, namely, expertise, official responsibility and effective process in the public interest (Endicott, 2011, p. 228). However, the discretionary power that is vested in the revenue authorities should be subject to strict control and the country’s constitutional principles to prevent abuse by such authorities (Freedman & Vella, 2011, pp. 80, 83-103). Discretionary taxing powers are granted to tax officials in accordance with the taxing laws in most countries (van Schalkwyk, 2004, p. 165). It is further submitted that strict administrative mechanisms should be employed by the Nigerian revenue authorities to avoid possible abuse of the taxpayers’ fundamental rights.

Notwithstanding the concepts of social contracts and sovereignty, Nigeria addresses the issue of taxing power in its constitution (Christians, 2016, p. 5). Thus, the Nigerian Constitution, 1999 provides that the federal and the states’ parliaments shall make laws and levy taxes on the items in the exclusive and concurrent legislative lists (section 4 of the Nigerian Constitution, 1999. Although no limit was imposed on taxing power in the Nigerian Constitution, 1999, it must be reconciled with the rights of the taxpayers both at federal and state levels (Christians, 2016, pp. 5). The interplay between the revenue authorities’ taxing powers and the taxpayers’ rights should be carefully managed to combat possible abuse of such powers (Christians, 2016, pp. 5).

4. Taxpayers’ Rights in Nigeria

Taxpayers’ rights are regarded as fundamental rights that are provided in the Nigerian Constitution, 1999, international treaties adopted by Nigeria and other statutes. In light of this, the possible abuse of taxpayers’ rights by the Nigerian tax authorities and the available remedies are discussed below.

4.1. Abuse of Taxpayers’ Rights

There are a number of taxpayer’s rights enumerated in the Nigerian Constitution, 1999, the African Charter and other Nigerian taxing laws (Oke, 2011/12, pp. 1). Some of the relevant taxpayers’ rights include the right of the citizens to acquire and own immovable property provided for under sections 43 and 44 of the Nigerian Constitution, 1999 and article 14 of the African Charter; and the right to a court

order before selling the immovable property of the taxpayer under section 33(6) of the Federal Revenue Act, section 86(6) of the Companies Income Tax Act (CITA) and section 104 of the Personal Income Tax Act (PITA). Other taxpayers' rights include the right to refund of excess tax provided for under section 23 of the Federal Revenue Act, sections 49(1) and 50(1) of the Petroleum Profit Tax Act (PPTA), section 90 of the Companies Income Tax Act (CITA) and section 16(1)(b) of the Value Added Tax Act (VATA). Section 36(4) of the Federal Revenue Act provides that an individual could only be physically searched by a person of the same gender. Section 37 of the Nigerian Constitution, 1999 and section 29(5) of the Federal Revenue Act guarantees the right to privacy, while article 5 of the African Charter and section 2(2) of the Taxes and Levies Act guarantees the right of the taxpayers to dignity and freedom from exploitation. Similarly, section 36(1) of the Nigerian Constitution, 1999 and article 7 of the African Charter provides that the taxpayer has a right to a fair trial while sections 59 of the Federal Revenue Act, section 32(2) of the PPTA, section 43(2) of the Capital Gains Tax Act (CGTA) and article 7 of the African Charter provides for a right of appeal to taxpayers against the judgement of the lower courts and tribunals to the highest court in the land. Finally, section 69 of the CITA provides for the taxpayers' right to object to a revised assessment by the tax authorities. The fundamental rights of taxpayers are enumerated in Chapter IV (sections 33 to 44) of the Nigerian Constitution, 1999. These rights include the right to own property (sections 43 & 44 of the Nigerian Constitution of 1999). The Nigerian Constitution, 1999 also prohibits the state or anyone from compulsory acquisition of private property, except if it is done in accordance with the relevant laws. However, section 45 of the Nigerian Constitution, 1999 restricts and derogates from the fundamental rights in Chapter IV, where such limitation is done in the interest of defence, public safety, public morality, or public health; and for the purpose of taxation (sections 45 & 44(2) (a) of the Nigerian Constitution of 1999). These rights are sometimes violated by the state through its tax revenue authorities, and this provokes adverse reactions from the taxpayers in Nigeria. Thus, tax riots are usually caused by oppressive tax laws, the overzealous exercise of discretionary powers and general abuse of powers by the Nigerian tax revenue authorities (Beer, 1976, p. 219). Examples of tax abuse induced-riots in Nigeria include the Iseyin/Okeho tax riots, the Aba women's tax riots, the Adubi Tax Riots, the Abeokuta Women's Union (AWU) tax riots and the Agbekoya tax riots (Onor, 2017, pp. 24-35; Obasanjo, 2015, pp. 73-78; Beer, 1969, p. 48; Evans, 1929). Excessive tax burden and heavy handedness of tax officials encourage tax avoidance and evasion nowadays (Frecknall-Hughes, 2000, pp. 253-286).

Section 8 of the Customs and Excise Management Act provides that customs officers shall have the power of police officers. The Customs and Excise Department has further powers to search premises of accused persons, as well as the power of detention, seizure, and condemnation of goods of such persons (section 147, 167-174 of the Customs and Excise Management Act). Customs officials sometimes use their powers unjustly as indicated in *Abibatu Mogaji & Others v Board of Customs & Excise & Another* (1982, p. 552). In this case, the court criticized customs officials for the harassment of traders in the markets, using horse whips, tear gas, guns and other lethal weapons on the pretext of looking for prohibited goods. The arbitrary seizure of the traders' goods without adequate inquiry was also criticised by the court. Despite the court decision, customs officials still harass traders in the markets and motorists on the roads, confiscating their properties and disposing it at a huge discount to their cronies and proxies (Akinfenwa, 2017). Most of the cases of infringement of taxpayers' rights by tax authorities are not subject of litigation due to illiteracy, poverty and high cost of litigation in pecuniary and other costs (Odeku & Animashaun, 2012, pp. 6754-6764). The referral of tax-related cases from the High Court to the Supreme Court most times takes over twenty years. For instance, in *Ariori and others v Elemo and others* (1983) 1 SCNLR, the case was decided at the Supreme Court after twenty-two years of filing the case. Thereafter, the Supreme Court ordered a trial *de-novo* (commencement of the hearing of the case

afresh) at the court of first instance. Thereafter, the Supreme Court ordered a trial *de-novo* (commencement of the hearing of the case afresh) at the court of first instance. There are also other cases that took inordinate long time before final judgement (*Maja v Samouris* (2000) 7 NWLR (pt 765) 78, was only settled after nine years; *Obasohan v Omorodion* (2001) 13 NWLR (pt 728) 298, was settled after sixteen years; *Ekpe v Oke* (2001) 19 NWLR (pt 721) 341, was also settled after seventeen years; *Onagoruwa v Akinyemi* (2001) 13 NWLR (pt 729) 38, was settled after twenty-one years; *Nwadiogbu v Nnadozie* (2002) 12 NWLR (pt 727) 315, was settled after twenty-three years). Due to these delays, most potential litigants would rather suffer in silence than approaching the courts. It is submitted that tax cases should be fast-tracked by the courts to curb the abuse of taxpayers' fundamental rights. This follows the fact that the Nigerian tax laws have often failed to adequately protect the taxpayers' rights. The Personal Income Tax (Amendment) Act 20 of 2011 amended sections 36 and 52 of the Personal Income Tax Act Chapter P8 of 2004 (Principal Act) in a bid to enhance the protection of taxpayers' rights, but it failed to do so. These provisions should be carefully enforced to ensure that taxpayers do not suffer double jeopardy of the presumptive tax regime in Nigeria (UNESCO "Literacy Rate-Action Plan Nigeria" (2012) available at: <<http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ED/pdf/Nigeria.pdf>> (accessed 9 February 2019). The amended section 36 of the PITA provides that if the income of a taxpayer cannot be ascertained or the tax records are not properly kept, such taxpayer shall be assessed under presumptive tax regime. On the other hand, section 52 of the PITA provides a penalty for any taxpayer that does not properly keep updated tax records.

In cases of suspicion of tax fraud, the Inland Revenue is authorized to carry out inspections, searches, seizures, obtain evidence, or break into premises of the accused persons (section 29-36 of the Federal Revenue Act). However, the Federal Revenue Act provides that the search of the accused persons should be carried out on a gender sensitive basis in accordance with Nigerian Constitution, 1999 to avoid the violation of such persons' fundamental rights (section 36(4) of the Federal Revenue Act). Any infraction of this provision does not affect the admissibility of any evidence relevant to the case in question (section 14 and 15 of Evidence Act, 2011; Okoli & Umeche, 2011, pp. 81-90). This rule of evidence could reduce the protection intended under the provision of section 36(4) of the Federal Revenue Act. Moreover, section 23 of the Federal Revenue Act which provides for refund in case of excess payment by taxpayers is usually difficult to be utilized in Nigeria. Prior to the introduction of the Federal Revenue Act, no refund was possible and that tantamount to abuse of taxing powers on the part of the Nigerian tax revenue authorities. Although this Act has been applauded as innovative, very few taxpayers have successfully claimed their tax refunds to date due to undue delays, bureaucracy and other related challenges (PwC 2023; Abdulrazaq, 2016, pp. 54; Oke, 2011/12, pp. 32-35). This abuse has placed many taxpayers in a precarious position of being unable obtain their tax refunds in local and convertible currencies (Olokooba, Awodun, Akintoye & Abubakar, 2018, pp. 192-198). In *Interplay v Ukraine* (2007), the European Court (commenting on a similar provision) held that delaying VAT refunds is an abuse of taxpayer's rights. We argue that the tax authorities are not entitled to excess tax and keeping it is an abuse of the taxpayers' rights.

Likewise, the state and local governments are not excluded from undue violation of taxpayers' rights. Tax officials of most Nigerian states are in the habit of sealing up the business premises of the taxpayers against the extant laws. In *AM Shittu v NACB Ltd & 2 others* (2001) 10 NWLR (pt. 721) 298, the court held that the action of the Jigawa State Board of Internal Revenue of closing and sealing up the offices of the plaintiff was an unauthorized method of enforcing tax liability. Section 96 of the PITA empowers the relevant tax authority to distrain property but not to seal up premises of the taxpayers for non-payment of tax. Despite the express provision of the law and the court decisions that sealing of business premises is illegal, it has continued unabated. For instance, it was reported that Inland Revenue

authorities sealed up business premises of some taxpayers in Lagos and Port Harcourt in May 2018 (Ekeghe, 2018).

The issue of violation of taxpayers' rights by revenue officials does not exclude the local government councils. For instance, in *Fast Forward Sports Marketing Limited v The Port Harcourt City* (Suit No FHC/PH/C8/220/2008 of 28 April 2010), the court held that the local government cannot collect taxes and levies outside those specified in the Taxes and Levies Act. Similarly, Apapa Local Government Council in Lagos State imposes a mobile advertisement on any organisation that has its names and logo on its vehicle (Vide Apapa Local Government Vehicle Mobile Advertisement Bye Law No 1, 1999) and its officials apprehend vehicles on the roads to enforce this law. This action was challenged in *SDV Nigeria Ltd and Others v Apapa Local Government Council* (2010), where the court restrained Apapa Local Government from enforcing the Vehicle Mobile Advertisement Bye-Law No. 1, 1999 (Ugbe, Oyedokun & Jack-Osimiri, 2018, pp. 1-33). Similar decisions were reached by different states' High Courts in *Cornerstone Insurance Plc v Surulere Local Government & Mushin Local Government* (Suit No M/64/2001 of 27 June 2001), *Eti Osa Local Government v Rufus Jegede & Another* (2007 LPELR-CA/L/453/2002) and *Schlumberger Nigeria Limited v Obio/Akpor Local Government Council* (Suit PHC/1206/2007 of 10 November 2015). We argue that the corporate bodies and individuals who had paid these sundry fees and taxes that were eventually declared illegal are entitled to a refund. The relevant legislation should be amended to enact provisions that obliges tax authorities to pay damages and refund excess taxes to affected taxpayers.

Taxpayers' rights are also violated by tax officials that employ violence and other barbaric measures such as blocking roads in a bid to collect tax. The other challenge is the reliance on draconian laws such as the Wharf Landing Fee Laws of Lagos State 5 of 2009, which imposes tax on any item or consignment transported from any seaport through the local government councils in Lagos State. The stated laws empower tax officials to stop any vehicle conveying the goods for the purpose of inspection in terms of section 4 of the Law violates section 2(2) of the Taxes and Levies Act. In this regard, it must be noted that the Nigerian Constitution, 1999 provides that if any law enacted by the House of Assembly of a State conflicts with any law validly made by the National Assembly, the latter prevails (section 4(5) of the Nigerian Constitution, 1999). Thus, the constitutionality of the Wharf Landing Fee Laws of Lagos State is in doubt because it is only the federal National Assembly that could impose taxes and fees on goods or consignment transported by the sea into any state (sections 4(2); (3) & (4); 68 of the Nigerian Constitution, 1999; Items 36 & 68 of the second schedule to the Nigerian Constitution, 1999, Item 36, deals with maritime shipping and navigational matters; Salau & Atilola, 2009, pp. 1-4). The issue here is that the taxpayers are forced to pay both customs duties and wharf landing fee for the same item. Accordingly, taxpayers that are forced to pay the wharf landing fees should be refunded.

4.2. Abuse of Taxpayers' Rights and the Revenue Authorities' Exercise of Discretion

The Nigerian revenue authorities have discretion in relation to the application or non-application of the law to certain persons and the interpretation of the law. They also have discretion in the application of legislation and litigation and how to deal with cases of ambiguous provisions. Nonetheless, the state officials often exercise their wide powers to the detriment of the taxpayers. The Minister of Finance by executive fiat increased VAT from 5 to 10 percent which was later withdrawn after a public outrage (Abdulrazaq, 2011, p. 1). The Minister's conduct was unlawful since the increase of taxes was not instituted through the parliament (Abdulrazaq, 2015, pp. 31).

The Federal Revenue Act gave wide and extensive powers to Inland Revenue authorities. They have investigative power and are empowered to demand information relating to tax from a third party including a bank, as well as the names and addresses of new customers and including those with a deposit of 10 million Naira and above currently standing to their credit (section 28(1) & (2) of the Federal Revenue Act. Inland Revenue authorities may compel a third party to provide information or produce documents specified in the written notice in order to ascertain the taxpayers' financial position (section 27 of the Federal Revenue Act). In terms of section 26(2) of the Federal Revenue Act, the Inland Revenue may call for returns, books, documents, and information from any person or organization to establish the financial affairs of the investigated person without giving any notice set out in the Act. This is compounded by section 47(6) of the PITA which provides that officials of the Inland Revenue may request "any information". The taxpayers' right to a notice before a request is made to the third party is sometimes violated by this provision since it gives the Inland Revenue the right to access "any information", which is vague and open to abuse. The Federal Revenue Act provides that Inland Revenue has the power to investigate or cause an investigation to be conducted to ascertain the violation of any tax law, even if such violation has not been reported to the Inland Revenue (section 35(3) of the Federal Revenue Act). Under this Act, an investigation may be conducted "at all reasonable times" (section 29(1) of the Federal Revenue Act). Section 103 of Personal Income Tax Act (PITA) empowers the tax officials to enter premises of investigated persons during daylight hours, whereas section 61 of the Companies Income Tax Act (CITA) empowers tax officials to enter premises of investigated persons at any time. This could result in incidents of overzealous and/or fraudulent officers abusing the tax provisions. Interestingly, an official of the Inland Revenue should be indemnified against any liability they incurred in defending any proceeding the Public Officers Protection Act, whether civil or criminal if the proceedings were brought against them in an official capacity (section 58 of the Federal Revenue Act).

Section 61 of the CITA violates the taxpayers' right to privacy under section 37 of the Nigerian Constitution, 1999. In *Independent Television/Radio (ITV) v Edo State Board of Internal Revenue (ESBIR)* 2014, the Edo State Board of Internal Revenue filed an *ex parte* motion with the State High Court, *inter alia*, for an order to distrain upon the land, premises, and moveable properties of ITV. The High Court granted the relief sought. The agents of ESBIR sealed up the whole premise and drove away other co-tenants who were not affected by the court order. Furthermore, in an affidavit deposed by the staff of ITV, which was uncontested, ESBIR levied the distraint at around 4 am, beating up the staff and vandalizing the property of the appellant. Levying distress at 4 am is not a proper exercise of discretion by the tax revenue authorities in our opinion. The levying of distress should be conducted during daytime except if there is a reasonable reason to believe that the taxpayer is transferring assets out of the premises.

In *Margaret Chinyere Stitch v Attorney General of the Federation (AGF)* (1986, pp.1007) the court held that the officials of the Ministry of Commerce's deliberate and malicious refusal to issue import licence to the Mrs. Stitch for an imported luxurious car for twenty-seven days until import duties increased from 331/3 percent to 500 percent was an improper exercise of discretion and abuse of power. At the time when the case was determined the customs duty had been further increased to 800 percent.

Tax Appeal Tribunal (TAT) which is a creation of the Federal Revenue Act violates one of the basic canons of justice- *nemo iudex in causa sua* (no man should be a judge in his own cause) (section 59(1) Federal Revenue Act). In terms of this Act, it is the Minister of Finance who specifies by official gazette, the number of zones to be created and matters that fall under the tribunal's jurisdiction (4th Schedule, para. 1(2) of the Federal Revenue Act). The Commissioners of the TAT are equally appointed and can

be removed by the Minister of Finance (4th schedule, para 2(1) &5(3) of the Federal Revenue Act). However, it appears that the TAT is not independent enough to protect taxpayers' rights.

The courts have also reprimanded the tax authorities for the abuse of their discretion with regards to the best of judgment (BOJ) assessment on several occasions. The courts also held that the BOJ should not be arbitrary, excessive, punitive or capricious (*Nigerian Breweries Plc v Lagos State Internal Revenue Board* (2001) JELR 57703 (CA); (2002) 5 NWLR (pt 759) 1; *Lagos State Board of Internal Revenue v Odusemi* (1979) 3 LRN 119 HC; *GM Akinsete v Senior Inspector of Taxes, Akure* (1976) NTC 109; *Effiong Uwah Itah v CIR* (1976) NTC 73; *Ola v Federal Board of Inland Revenue* (Unreported) Suit No. FRC/1A/73; *Income Tax Commissioner v Badrias Ramrai Shop* (1937) LR 64; Nlerum, 2012, p. 111). For instance, the Federal High Court in *MI. Nig. Ltd v Eti-Osa Local Government Council & Another* (Suit No. FHC/L/CS/106/2010 of 2 March 2012), held that although the radio and television levies were within the local government's approved list, they were abused by the local authority since the plaintiff did not have a radio/television within its premises. Furthermore, the state tax revenue authorities abuse their powers by imposing levies, fines, taxes, and penalties arbitrarily and unlawfully. The Lagos State Internal Revenue Service (LIRS) had to abolish the additional two hundred and fifty thousand Naira distraint fine on tax-evading companies after a protest (Adebowale, 2015, *The Eagle Online Daily*, available at: <<https://theeagleonline.com.ng/lagos-abolishes-distraint-fine-on-tax-evading-firms/>> accessed 9 February 2019).

5. The Limitation of the Nigerian Revenue Authorities' Discretionary Powers

Tax law is essentially statutory and the powers of the state to impose and collect tax are limited by the different statutes (Abdulrazaq, 2005, pp. 10). The powers granted to tax authorities to enter any premises for the purpose of investigation at any time under section 61 of the CITA are open to abuse by the tax authorities (Umenweke & Aladegbaiye, 2011, pp. 43-45). Any failure of the tax authorities to serve the taxpayer the statutory notice requesting it to render its tax returns sequel to assessment under section 68 of the CITA (*Fashogbon v Layade* (1999) 1 NWLR (pt 628)543; *Lanto v Wowo* (1999) 7 NWLR (pt 610) 227); failure to reject the taxpayers' tax return before raising an estimated assessment (*Reiss & Co. Nig Ltd v FBIR* (1977) 3FRCR 251); tax assessment based on repealed law (*Northern Nigeria Investment Ltd v FBIR* (1976) FRCR 93(HC)); and partial and/or unreasonable assessment is treated as unlawful conduct (*Okupe v FBIR* (1974) 1 All NLR 314 SC; *Lagos State Board of Internal Revenue v Odusemi* (1979) 3 LRN 119 HC). Thus, any erroneous assessment cannot be salvaged by any saving provision in any enactment (*Fleming v London Produce Co. Ltd* 1968 44 TC 582 HC). Where the tax assessment constitutes an abuse of taxing power (*FBIR v Rezcallah* 1962 1 All NLR 1); wrong rejection of taxpayers returns (*Gamini v CIT Colombo* (1952) AC 571 PC) and non-fulfilment of some other conditions precedent to assessment (*Mobil Oil Nig. Ltd v FBIR* 1977 3SC 53), the conduct of the tax revenue authorities will be null and void. In *Oando Supply and Trading Ltd v FIRS* (2011 4 TLRN 128-129), it was correctly held that a period of 90 days is deemed to be reasonable time within which the Inland Revenue is expected to issue its decision, failure of which will amount to an implied or deemed notice of refusal to amend or issue such decision.

6. Recommendations

Some provisions of the tax laws should be amended to enhance the protection of the taxpayers' rights. For instance, section 23 of the Federal Revenue Act should be amended so that Inland Revenue pays interest on refund that it fails to pay at the appropriate time. The Wharf Landing Fee Laws of Lagos State should be expunged since they are unconstitutional as earlier stated above. Section 36(6) of the PITA should be amended to avoid the possible double jeopardy of presumptive tax regime and penalty for taxpayers in Nigeria. It is further submitted that section 96 of the PITA should be amended so that damages be paid to taxpayers' whose premises are illegally and unconstitutionally sealed up by the taxing authorities. This and related laws should be clear regarding when distress should be levied on taxpayers' property, or when to enter his or her premises. In other words, the terms "anytime" or "at all reasonable times" that are employed when referring to the levying of distress by tax authorities on taxpayers should be expunged from the relevant tax laws to avoid further confusion (section 61 of the CITA; section 29(1) of the Federal Revenue Act). The distress should be levied on taxpayers' during the day, except if the tax authorities could prove that there is a reasonable believe that the taxpayer in question is transferring or about to transfer assets out of Nigeria.

The relevant courts should timeously and effectively adjudicate tax-related cases to promote and protect aggrieved taxpayers' rights in Nigeria. Moreover, proper training should be provided by the government and other stakeholders to tax officials to enable them to conduct their duties professionally, lawfully, and constitutionally to avoid possible violation of taxpayers' rights in Nigeria. The office of tax ombudsman should be established to help taxpayers in addressing instances of abuse of their rights by the Nigerian tax revenue authorities. A taxpayers' charter or code that specifically provides for taxpayers' rights should be statutorily enacted in Nigeria. The relevant courts should award administrative, punitive, and other damages to taxpayers whose rights are violated by tax revenue authorities in Nigeria.

7. Concluding Remarks

As discussed above, some instances of abuse and improper exercise of discretion by the federal, states and local government tax officials are still prevalent in Nigeria. Some of the taxing powers are too wide and arbitrarily employed by tax authorities to violate taxpayers' rights. Accordingly, the Nigerian policymakers should consider amending their tax laws in line with the recommendations stated above (Gerger, Gerçek, Taşkın, Bakar & Güzel, 2014, p. 18). This approach could improve the relationship the between the taxpayers and tax revenue authorities (Bentley, 2016, p. 304). The policymakers should consider introducing a taxpayers' code which will be made available in English and the local languages in Nigeria. This code should specify the rights and obligations of all taxpayers. The taxpayers' code should be vigorously promoted among all persons in Nigeria to encourage compliance. The policymakers should also consider introducing the office of the tax ombudsman in Nigeria to promote tax compliance among all taxpayers.

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