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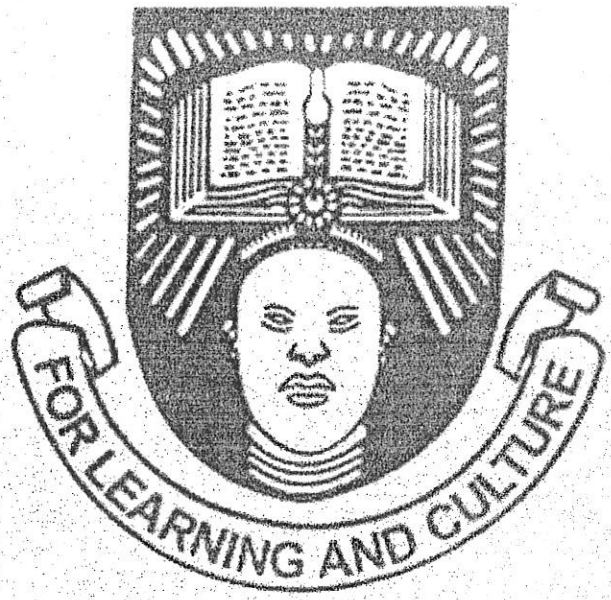
## Journal of Contemporary Legal and Allied Issues

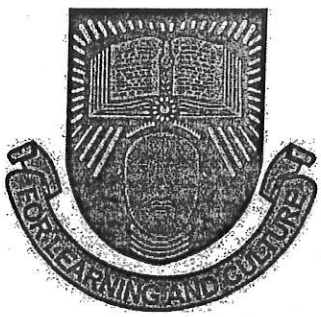
*Department of Jurisprudence and Private Law, Faculty of Law*
*Obafemi Awolowo University, Ile-Ife, Nigeria*

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# IMPROPER EXERCISE OF DISCRETION AND ABUSE OF POWER BY REVENUE AUTHORITIES IN NIGERIA: A PROPOSAL FOR REFORM

*

**OYESOLA ANIMASHAUN***

**Abstract**

*This article demonstrates how the wide grant of powers under the Nigerian tax statutes has unfairly impacted on the Nigerian taxpayers. The article appraises the taxing powers of the state, abuses of these powers and the limits of discretion of the state officials, and calls for a reconsideration of the current tax laws, with a view of enhancing the legal rights of the taxpayers. The article discusses the rights of Nigerian taxpayers under the Nigerian Constitution, 1999, and other relevant statutes. The authors argues that the state through its officials sometimes abuse its taxing and discretionary powers, thereby abusing taxpayers' rights. The paper identified the problems encountered by taxpayers in obtaining justice given the wide powers granted the Nigerian tax authorities and suggests that certain provisions of the existing tax laws be amended or expunged.*

**Keywords:** Taxpayers' rights, abuse, discretionary powers, taxing powers, Nigeria

## 1.0 Introduction

The state's power of taxation provides a critical point of contact between the citizens and the state. The power of the state to tax should be exercised in a manner by ensuring that the tax imposed by the parliament is collected in an efficient and effective manner while taxpayers' rights and interests are equally respected.[1] Many studies have been conducted on the desirability of protecting taxpayers' rights.[2] Most of these studies are carried out in countries that are members of Organization for Economic Development and Cooperation (OECD), even

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[1] J Freedman & J Vella 'HMRC'S management of the UK tax system: The boundaries of legitimate discretion" in C Evans, J Freedman and R Krever (ed) *The Delicate Balance - Tax, Discretion and the Rule of Law* (2011, International Bureau of Fiscal Documentation) 79-119 at 79.

[2] U Gencel "A survey on the perceptions of tax office staff about taxpayers' rights" (2016) 16 *Journal of Economic and Administrative Studies International* 97-112 at 98; G Tieghi "Taxpayer rights: a constitutional perspective- the Italian Taxpayer Bill of Rights 15 years on 'at the top of the world', but what about effectiveness?" (paper presented at the Inaugural International Taxpayer Conference on Taxpayer Rights, Washington, DC, 18 November 2015) 1-29 at 2&3; H Yurtsever "Anatomy of taxpayers' right: case study of Turkey" (2010) 7/5 *Pakistan Journal of Social Science* 334 at 334; JA Sawyer "A comparison of New Zealand taxpayers' rights with selected civil law and common law countries - have New Zealand taxpayers been 'short-changed'?" (1999) 32/5 *Vanderbilt Journal of Transnational Law* 1345 at 1345; A Christians "Taxpayer rights in the United States" (2016) in CAR Jiménez (ed) *Tax Law and Human Rights*, available at: <https://ssrn.com/abstract=2809750 > (last accessed 23 April 2019).

within the OECD, the level of protection offered the taxpayers differs.[3] Sawyer opined that given the parlous state of the protection of taxpayers' rights in some OECD states, the position in most developing states, like Nigeria is better imagined and should be of great concern.[4] Nigeria has a long history of taxation, and a long history of abuse of taxpayers' rights.[5] It has no special code of taxpayers' rights, thus, it is in a precarious position on the issue of protecting the taxpayers' rights.[6] Since taxpayers' rights in Nigeria are not specially codified anywhere, it is drawn from different sources. The sources include the human right laws found in the international treaties adopted by Nigeria, certain provisions in the tax statutes and the Nigerian Constitution of 1999. Taxpayers' rights are an extension or a subset of human rights, but of a specialized nature and therefore should be viewed as such.[7] Nigeria has ratified and adopted the African Charter on Human and Peoples' Rights (African Charter)[8] and by virtue of section 12 of the Nigerian Constitution, 1999, it is deemed to be part of Nigerian municipal laws. Article 29(6) of the African Charter provides that qualified individuals have a duty to pay taxes that are lawfully imposed. Accordingly, it stipulates that certain rights be availed individuals, some of these rights though, not particularly directed at taxpayers have a direct impact on taxpayers' rights.[9] Nevertheless, some of the stipulated rights are routinely violated, hence, there are deep contentions regarding respect for individual rights in the exercise of taxing powers in Nigeria.

The relationship between the taxpayers and tax authorities is naturally contentious. The taxpayer will like to pay as little as possible or no tax at all, while the tax authority is willing to extract as much tax from the taxpayer as possible, possibly over and above the amount stipulated by the law.[10] Equally, the power relationship between the tax taxpayers and the authorities is asymmetric. It places the tax authority at a vantage position *vis-a-vis* the taxpayer, as the tax establishments are 'supported with powerful authorities and procedures' while taxpayers' rights are ill-defined in many instances.[11] Thus, the authors contended that consistent effort must be instituted to ensure that the rights of the taxpayers are properly delineated in a

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[3] Tieghi *Taxpayer rights: A Constitutional Perspective- The Italian Taxpayer Bill of Rights 15 years on 'at the Top of the World', But What About Effectiveness?*, above at note 2 at 3; Freedman & Vella *HMRC'S Management of the UK Tax System: The Boundaries of Legitimate Discretion*, above at note 1 at 79-119; Sawyer *A Comparison of New Zealand Taxpayers' Rights With Selected Civil Law and Common Law Countries - Have New Zealand Taxpayers Been Short-Changed'?*, above at note 2 at 1345-47; Christians *Taxpayer rights in the United States*, above at note 2; A Christians "Taxpayer rights in Canada" (2016) in CAR Jiménez (ed) *Tax Law and Human Rights*, available at: <https://ssrn.com/abstract=2797381> (last accessed 23 April 2019).

[4] Sawyer *A comparison of New Zealand Taxpayers' Rights With Selected Civil Law and Common Law Countries - Have New Zealand Taxpayers Been 'Short-Changed'?*, above at note 2 at 1347.

[5] BO Oke, 'Taxpayers' rights protection in Nigeria' MA thesis, University of London (2011-2012) at 1.

[6] Ibid.

[7] Gencel *A Survey on the Perceptions of Tax Office Staff About Taxpayers' Rights*, above at note 2 at 98; Tieghi *Taxpayer Rights: A Constitutional Perspective- The Italian Taxpayer Bill Of Rights 15 Years On 'At The Top Of The World', But What About Effectiveness?*, above at note 2 at 3; Yurtsever *Anatomy of Taxpayers' Right: Case Study of Turkey*, above at note 2 at 334.

[8] African Commission on Human and Peoples' Rights' Ratification table: African Charter on Human and Peoples' Rights, available at: <http://bit.ly/1IObnUQ > (last accessed 15 April 2019).

[9] Art 2-26 of the African Charter, available at: <http://www.achpr.org/files/instruments/achpr/ banjul_charter.pdf > (last accessed 15 April 2019). Art 5,6,7,9, 14 & 21 are related to taxpayers' rights.

[10] Gencel *A Survey on the Perceptions of Tax Office Staff about Taxpayers' Rights*, at note 2 at 98; B Croome *Taxpayers' rights in South Africa* (1st ed, 2010, Juta) at 1.

[11] Gencel *A Survey on the Perceptions of Tax Office Staff about Taxpayers' Rights*, above at note 2 at 99; Croome *Taxpayers' Rights in South Africa*, above at note 10 at 1.

code, in order to make their enforcement easier. It is trite that not many taxpaying public would voluntarily abide by their tax obligations,[12] consequently, the state grants the revenue authorities massive powers to probe into the financial affairs of the taxpayers.[13] The discretionary power granted the revenue services in all jurisdictions, including Nigeria is enormous.[14] The vast powers are necessary for the exercise of its revenue collecting function, but there is no unanimity on the breadth of power to be allowed.[15] Hence, there is a need to balance the vast powers granted the state functionaries with adequate provisions for taxpayers' rights.

The importance of taxation in any polity need not be overemphasized. Tax is the most important constituent in the revenue profile of modern governments and usually generate the largest portion of public revenues.[16] It is pivotal in supporting a strong citizen-state relationship, thereby fostering an effective, accountable and stable government; and strong economic growth.[17] The need to enforce compliance with tax laws, however, create the problem of an ever-increasing dominance of government in all facet of the citizen's life, and an unwieldy bureaucracy.[18] The bureaucracy is expanding at an alarming rate, thereby utilizing a large chunk of the revenue generated for its maintenance, instead of using the tax revenue for fixing the needs of the citizenry.[19] This results in further increase in the tax burden of the citizens and sometimes unwarranted interference of the state in the affairs of the citizens,[20] and it is seen by others as a form of legitimated property sequestration, therefore requiring powerful

[12] Croome *Taxpayers' Rights in South Africa,* above at note 10 at 1; SM Brink "An investigation into the future of discretionary trusts in South Africa: An income tax perspective: Part 2" (2017) 20/1 *South African Journal of Economic and Management Sciences* at 1; A Christians "Drawing the Boundaries of Tax Justice" in K Brooks (ed) *The Quest for Tax Reform Continues: The Royal Commission on Taxation Fifty Years Later* (2013, Carswell) 53-79 at 68-70; J Slemrod "Cheating ourselves: The economics of tax evasion" (2007) 21/1 *Journal of Economic Perspectives* 21-48 at 25.

[13] J Mclaren "The distinction between tax avoidance and tax evasion has become blurred in Australia: why has it happened?" 3/2 (2008) *Journal of the Australasian Tax Teachers Association* 141-63 at 141-42.

[14] B Thompson & M Gordon *Cases and materials on constitutional & administrative law* (11th ed, 2011, Oxford University Press) at 97.

[15] Freedman & Vella *HMRC'S Management of the UK Tax System: The Boundaries of Legitimate Discretion,* above at note 1 at 79.

[16] Gencel *A Survey on the Perceptions of Tax Office Staff about Taxpayers' Rights,* above at note 2 at 98; ES Esmaeel "The impact of direct-indirect taxation on consumer" (2013) 3/6 *IOSR Journal of Engineering* 8-13 at 8.

[17] M Carnahan "Taxation challenges in developing countries" (2015) 2/1 *Asia & the Pacific Policy Studies* 169-82 at 169.

[18] DD Thomakos & KI Nikolopoulos "Preface" in DD Thomakos and KI Nikolopoulos (ed) *Taxation in Crisis: Tax Policy and the Quest for Economic Growth* (2017, Palgrave Macmillan) at xxv-xxvi; B Nwabueze *Colonialism in Africa: Ancient and Modern Africa's Inheritance from Colonialism volume 2* (1st ed, Gold Press Ltd., 2010) at 317.

[19] Esmaeel *The Impact of Direct-Indirect Taxation on Consumer,* above at note 16 at 1; Nwabueze *Colonialism in Africa: Ancient And Modern Africa's Inheritance from Colonialism volume 2,* above at note 18 at 317; Z Dermatis, P Evangelopoulos & P Liargovashe "Majority rule, rights, and taxation" in DD Thomakos and KI Nikolopoulos (ed) *Taxation in Crisis: Tax Policy and the Quest for Economic Growth* (2017, Palgrave Macmillan) at 35-36; O-H Fjeldstad "Corruption in tax administration: Lessons from institutional reforms in Uganda" in S Rose-Ackerman (ed) *International Handbook on the Economics of Corruption* (2006, Edward Elgar Publishing) 484-511 at 484.

[20] Esmaeel *The Impact of Direct-Indirect Taxation on Consumer,* above at note 16 at 8-12; Croome *Taxpayers' Rights in South Africa,* above at note 10 at 1; Nwabueze *Colonialism in Africa: Ancient and Modern Africa's Inheritance from Colonialism volume 2,* above at note 18 at 317; Fjeldstad *Corruption in Tax Administration: Lessons from Institutional Reforms in Uganda,* above at note 19 at 484.

justification.[21] The authors contend that the taxation should be levied in such a way that it should not amount to unfair confiscation of the property and undue interference in the affairs of the taxpayers.

Although the revenue authorities need to be able to employ some discretionary powers in the exercise of their duties, but the exercise of this discretion in a developing country like Nigeria leaves little to be desired. The vast discretion granted to the authorities in certain instances is routinely abused in tax-related matters in Nigeria.[22] The great number of abuse in the exercise of discretionary power by tax authorities led an author to observe that "few aspects of revenue law generate stronger feelings than the exercise of discretionary power by tax authorities."[23] Similarly, the property and business interests involved in taxation led Freedman and Vella [24] to suggest that certainty is very important in tax law, probably more than in other branches of law. This assertion is not unconnected with the history of hard-fought political battles with regards to taxation [25] and the civil disorder and tax riots that usually result thereof.[26] The benefits of discretion exercised by tax authorities can, however, be challenged by taxpayers on the grounds of certainty, legitimacy, consistency, equality, and respect for their rights.[27]

Given this background, the article interrogates the enormous powers of taxing authorities in Nigeria and how these vast powers could be exercised without infringing on the rights of the citizens, especially in a clime where illiteracy is rampant and redress in the court is extremely slow. The article discusses the flaws in the taxing statutes and other legislation, which made the abuse of taxpayers' rights possible. Since Nigeria operates a federal constitution,[28] this article discusses the instances of abuse by state officials at the local, state and federal levels. The federal, state 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.[29] However, Customs and Excise Department collects customs and excise duties[30] while the Federal Inland Revenue collects other federal taxes. This article

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[21] Freedman & Vella *HMRC'S Management of the UK Tax System: The Boundaries of Legitimate Discretion,* above at note 1 at 79; Croome *Taxpayers' Rights in South Africa,* above at note 10 at 17; J Frecknall-Hughes "Taxation and rebellion: A historical and philosophical perspective" in DD Thomakos and KI. Nikolopoulos (ed) *Taxation in Crisis: Tax Policy and the Quest for Economic Growth* (2017, Palgrave Mačmillan) at 4.

[22] Oke *Taxpayers' Rights Protection in Nigeria,* above at note 5 at 1.

[23] D Cogan "Tax, discretion and the rule of law" in C Evans, J Freedman & R Krever (ed) *The Delicate Balance: Tax, Discretion and the Rule of Law* (2011, IBFD) at 1.

[24] Freedman & Vella *HMRC'S Management of the UK Tax System: The Boundaries of Legitimate Discretion,* above at note 1 at 79.

[25] Ibid.

[25] Magna Carta of 1215; The Bill of Rights of 1689; the Petition of Rights of 1628; the Habeas Corpus Act of 1679.

[26] DF Burg *A World History of Tax Rebellions an Encyclopedia of Tax Rebels, Revolts, and Riots from Antiquity to the Present* (2003, Routledge) 1-502 at 433-444.

[27] Freedman & Vella *HMRC'S Management of the UK Tax System: The Boundaries of Legitimate Discretion,* above at note 1 at 79.

[28] Sec 3 and Part I to the First Schedule of the Constitution of the Federal Republic of Nigeria, 1999 (Nigerian Constitution, 1999) Chapter C 23 of 2004.

[29] Sec 4 of the Taxes and Levies (Approved List for Collection) Act Chapter T2 of 2004; see sec 86, 87, 88 & 90 of Personal Income Tax Act, Chapter P8 of 2004.

[30] Section 4 Customs and Excise Management Act Chapter C45 of 2004

highlights the abuse of powers by the tax authorities and inter alia, recommend measures that could be employed by the relevant authorities to remedy these flaws in Nigeria.

## 2.0 Taxing Power in Nigeria

The Nigerian state needs revenue to rule and maintain public goods, and the most reliable source of revenue is taxation.[31] However, the act of governing leads the state to act in a way that contravenes individual rights, namely, by extracting funds from individuals for common good, irrespective of the individual's agreement to the sacrifice.[32] Tax is defined as any compulsory payment to the government, imposed by law without direct benefit or return of value or service.[33] 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.[34] Both the taxing power of the Nigerian state and taxpayers' rights are derived from the Nigerian Constitution, 1999.[35] Other sources are certain taxing statutes and the international treaties that Nigeria has adopted. The Federal Inland Revenue Service (Establishment) Act, 2007, (The Federal Revenue Act) and the Taxes and Levies (Approved List for Collection) Act, 2004, (Taxes and Levies Act) are principal sources of taxpayers' rights. Nigeria ratified international human rights treaties such as the International Covenant on Civil and Political Rights (1993), International Covenant on Economic, Social and Cultural Rights (1993), and the African Charter (1983) and the Protocol to the African Charter on the Establishment of African Human Rights Court (2004). The African Charter has been passed into law in Nigeria hence, forms part of the domestic law.[36]

Tax is seen by the ultra-right as confiscatory of the wealth of the affluent to redistribute wealth in favour of the poor. [37] Taxpayers' aversion to tax payment in Nigeria is partly accounts for the wide powers granted the tax authority, and this power is sometimes abused.[38] It is observed that since the taxpayers have liability against the state it is fair that they should have rights against the state because the state as the tax creditor is in an enhanced position.[39] The dominance of the state in tax matters, which was absolute in the past centuries is modified by democratic governance and the adoption of separation of powers by modern governments.[40] Yurtsever [41] classified taxpayers' rights as rights before, during and after tax audits. Bentley,

[31] Carnahan *Taxation Challenges in Developing Countries,* above at note 17 at 169.
[32] Christians *Taxpayer Rights in the United States,* above at note 2 at 2.
[33] Nigerian Federal Ministry of Finance (2016) *National tax policy of Nigeria* at 1.
[34] J Tiley & G Loutzenhiser *Revenue Law: Introduction to UK Tax Law; Income Tax; Capital Gains Tax; Inheritance Tax* (7th ed, 2012, Hart Publishing) at 30; SW Mazza & TA Kaye "Restricting the legislative power to tax in the United States" (2006) 54 *The American Journal of Comparative Law* 641-70 at 641.
[35] 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.
[36] Sec 12 of the Nigerian Constitution, 1999.
[37] Freedman & Vella *HMRC'S Management of the UK Tax System: The Boundaries of Legitimate Discretion,* above at note 1 at 79; E Kades "Drawing the line between taxes and takings: the continuous burdens principle, and its broader application" (2002) 97 *Northwestern University Law Review* at 1.
[38] Oke *Taxpayers' Rights Protection in Nigeria,* above at note 5 at 1; Yurtsever *Anatomy of Taxpayers' Right: Case Study of Turkey,* above at note 2 at 345.
[39] Yurtsever *Anatomy of Taxpayers' Right: Case Study of Turkey, at* note 2 at 334.
[40] Id at 335.
[41] Id at 344.

however, classified taxpayers' rights into as legal and administrative rights.[42] The latter scholar maintained that these rights are best protected legally but, that it is equally important that there should be administrative support to the legal system including independent offices such as a taxpayer ombudsman. [43] Taxpayers' rights were therefore defined as the rights which "authorize the taxpayer to make positive or negative demand and which provides legal protection when violated".[44]

How can the state exercise its power to tax without tramping on the taxpayers' rights to dignity, property, and security of his person? Equally, how can individuals ensure that their rights to property, dignity, and rewards from their labour are protected under the law? These questions shall be addressed in subsequent sections.

## 3.0 Reconciling Taxpayers' Rights and Taxing Power

Taxation is not a new phenomenon as states and indeed sovereign from the time immemorial have always exercise powers to tax in order to perform certain basic functions which include the maintenance of law and order and the provision of public goods.[45] 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. [46]

The basis of taxation lies in the notion of sovereignty.[47] 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: by exercising the right of taxation;[48] by the right of eminent domain; and through the exercise of police powers.[49] 'Eminent domain is the sovereign's power to acquire property without the owner's consent.'[50] Eminent domain, like taxing power, involves deprivation of property without the consent of the owner.[51]

"Taxation and the sovereign's absolute right to tax its subjects have their origins in antiquity.[52] The right to tax forms one of the most intimate relationships between the sovereign and its subjects."[53] Sovereignty was the foundation of the entitlement to exact claim by the state

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[42] D Bentley *Taxpayers' Right: Theory, Origin and Implementation* (1st ed, 2007, Kluwer *Law* International) at 110 – 37.

[43] D Bentley "Taxpayer rights in Australia twenty years after the introduction of the taxpayers' charter" (2016) 14/2 *eJournal of Tax Research* 291 at 313-17.

[44] Yurtsever *Anatomy of Taxpayers' Right: Case Study of Turkey,* above at note 2 at 334.

[45] Croome *Taxpayers' Rights in South Africa,* above at note 10 at 1; B Croome, A Oguttu, E Muller, T Legwaila, M Kolitz, RC Williams, & C Louw *Tax Law: An Introduction* (1st ed, 2013, Juta) at 2-4.

[46] Carnahan *Taxation Challenges in Developing Countries,* above at note 17 at 169; MT Abdulrazaq *Revenue Law and Practice in Nigeria* (3rd ed, Malthouse Law Books, 2015) at 2-3.

[47] Christians *Drawing the Boundaries of Tax Justice*, above at note 12 at 58-61; L Jinyan "Tax sovereignty and international tax reform: the author's response" (2004) 52/1 *Canadian Tax Journal* at 144.

[48] MJ Graetz "Taxing international income: inadequate principles, outdated concepts, and unsatisfactory policies" (2001) 54/3 *Tax Law Review* 261-336 at 277.

[49] D B Barros 'The police power and the takings clause' (2004) 58/2 *University of Miami Law Review* at 477.

[50] W Baude, 'Rethinking the federal eminent domain power' (2013) 122 *Yale Law Journal* 1741 at 1745.

[51] Id at 1757.

[52] Croome *Taxpayers' rights in South Africa,* above at note 10 at 1.

[53] GM Melo "Taxation in the Global Arena: Preventing the Erosion of National Tax Bases or Impinging on Territorial Sovereignty? ('A critique of the OECD's Report-Harmful Tax Competition: An Emerging Global Issue')" (2000) 12 *Pace International Law Review* at 183 &186.

against the resources of its subjects.[54] The state may exercise its sovereign power to tax, but that power is restrained by the fundamental rights of the people and international obligations.[55] Tax sovereignty generally suggests that the right to tax is inherently and intrinsically associated with sovereign status, as the state is inherently vested with the power to impose tax and that the power is absolutely vested in the sovereign.[56] Sovereignty also requires that states provide the appropriate political and social goods and services to ensure the well-being of their citizens.[57] The traditional concept of sovereignty is however weakened by globalization, the size and reach of multinational organizations, information revolution, the phenomenon of 'failed and rogue' states and supranational organizations like the European Union.[58] The power to distrain the taxpayer of his property if he defaults in paying tax is also an attribute of sovereignty.[59] The exercise of the power to distrain by the taxing authorities is discretionary. Discretion is defined by the Nigerian Court of Appeal to mean an administrator's or court's power or right to act in certain circumstances according to the official's conscience or personal judgment.[60] Discretion is also defined as the power or right to make official decisions based on personal judgment.[61] Discretionary power is granted tax officials based on three potential reasons, namely, expertise, official responsibility and effective process in the public interest.[62] However, Freedman and Vella cautioned that discretionary power vested in the revenue authorities should be subject to strict control and the country's constitutional principles,[63] in order to prevent abuse by the revenue authority.[64] Discretionary powers are granted tax officials by taxing statutes.[65] The authors submit that there should be strict administrative mechanisms for controlling the use of discretionary powers in tax matters in Nigeria, as the delay in judicial review puts the taxpayers in an unpleasant predicament.

Notwithstanding the concepts of social contracts and sovereignty, few countries leave the issue of taxing power to chance or any theory; but would rather provide for it in the constitution.[66]

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[54] Croome et al *Tax Law: An Introduction,* above at note 45 at 2.

[55] M Loughlin "The erosion of sovereignty" (2016) 45/2 *Netherlands Journal of Legal Philosophy* at 70; Christians *Drawing the Boundaries of Tax Justice*, above at note 12 at 53-4; WP Nagan and AM Haddad "Sovereignty in theory and practice" (2011-2012) 13/2 *San Diego International Law Journal* at 502; MP Ferreira-Snyman "The evolution of state sovereignty: a historical overview" (2006), available at: <http://uir.unisa.ac.za/bitstream/handle/10500/3689/ Fundamina%20Snyman.finaal.pdf> (last accessed 10 December 2019); FR Araujo 'Sovereignty, human rights, and self-determination: the meaning of international law' (2000) 24/5 *Fordham International Law Journal* at 1479-1480; LP Martinez 'Of fairness and might: the limits of sovereign power to tax after Winstar' (1996) 28 *Arizona State Law Journal* at 1199-1200.

[56] A Christians 'Sovereignty, taxation and social contract' (2009) 18/1 *Minnesota Journal of International Law* at 99 & 104.

[57] D Potter 'State Responsibility, Sovereignty, and Failed States' (2004), available at: <https://parlinfo.aph.gov.au/parlInfo/search/ display/display.w3p;query=Id:%22media/pressrel/WS1F6%22> (last accessed 25 December 2019)

[58] Loughlin *The Erosion of Sovereignty,* above at note 55 at 1-15.

[59] *Shittu v Nigerian Agriculture and Cooperative Bank Ltd. & 2 others.* (2001) 10 NWLR (pt 721) 298.

[60] *Lawal v. Federal Republic of Nigeria* (2013) 3 NWLR (pt. 1342) 451 at 471.

[61] AM Saleheen "The use of discretion in taxation: the case of VAT in Bangladesh" (2013) 11/1 *eJournal of Tax Research* 97 at 100.

[62] T Endicott *Administrative Law* (2nd ed, 2011, Oxford University Press) at 228.

[63] Freedman and Vella above at note 1 at 80.

[64] Id 83-103.

[65] L van Schalkwyk 'The discretionary powers of the commissioner for the South African Revenue Service – are they constitutional?' (2004) 12/2 *Meditari Accountancy Research* 165-183 at 165.

[66] Christians *Taxpayer Rights in the United States* above at note 2 at 5.

Thus, the Nigerian Constitution, 1999 provides that the federal and the states' parliaments shall make laws, including levying taxes on the items in the exclusive and concurrent legislative lists.[67] Although no limit was imposed on taxing power in the constitution, it must be reconciled with the rights of the citizens in the constitution.[68] The interplay of the articulated rights belonging to both the state and the people creates a dynamic interaction leading inevitably to contestation.[69]

## 4.0 Abuse of Taxpayers' Rights in Nigeria

There are a number of rights enumerated in the Nigerian Constitution, 1999, the African Charter and Nigerian taxing statutes that have direct bearing on taxpayers' rights and this rights are routinely violated by tax officials.[70] Some of the relevant rights include collective right of the citizens to natural resources and property under Article 21(1) of the African Charter; the right of the citizens to acquire and own immovable property, provided for under sections 43 and 44 of the Nigerian 1999 Constitution 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 Companies Income Tax Act (CITA)[71] and section 104 of Personal Income Tax Act (PITA). Other rights are the right to refund of excess tax provided for under different taxing statutes including section 23 of the Federal Revenue Act, sections 49(1) and 50(1) of Petroleum Profit Tax Act (PPTA),[72] section 90 of Companies Income Tax Act (CITA) and section 16(1)(b) of Value Added Tax Act (VATA).[73] Under section 36(4) of the Federal Revenue Act, an individual could only be searched by a person of the same gender. Sections 37 of the Nigerian 1999 Constitution and 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 1999 Constitution 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, 32(2) of PPTA, 43(2) of Capital Gains Tax Act (CGTA)[74] and Article 7 of the African Charter provides for a right of appeal against the judgement of the lower courts and tribunals to the highest court in the land. Finally, Section 69 of CITA provides for right to object to a revised assessment by the tax authorities.

The fundamental rights of the citizens are enumerated in Chapter IV (sections 33 to 44) of the Nigerian Constitution, 1999. These rights include the right to own property. [75] The Nigerian Constitution, 1999 also prohibits the state or anyone from compulsory acquisition of private property, except in accordance with the provisions of the law. Section 45 of the Nigerian Constitution, 1999, however, restricts and derogates from the fundamental rights in Chapter IV

[67] Sec 4 Nigerian Constitution, 1999.
[68] Christians *Taxpayer Rights in the United States* above at note 2 at 5.
[69] Ibid.
[70] Oke *Taxpayers' Rights Protection in Nigeria,* above at note 5 at 1.
[71] Companies Income Tax Act, Chapter C21 of 2004.
[72] Petroleum Profits Tax Act, Chapter P13 of 2004.
[73] Valued Added Tax Act, Chapter V1 of 2004.
[74] Capital Gains Tax Act, Chapter C1 of 2004.
[75] Sec 43 & 44 of the Nigerian Constitution of 1999.

in the interest of defence, public safety, public morality or public health; and for the purpose of taxation.[76]

These enumerated rights are sometimes violated by the state, which provokes adverse reactions from the taxpayers. The literature is replete with tax riots typically occasioned by oppressive tax laws, the overzealous exercise of discretionary powers and general abuse of powers.[77] Tax abuse induced-riots in Nigeria include the Iseyin/Okeho tax riots, the Aba women's tax riots [78] and the *Adubi* Tax Riots.[79] Others are Abeokuta Women's Union (AWU) tax riots[80] and the *Agbekoya* tax riots.[81] Similarly, excessive tax burden and high handedness of tax officials encourage tax avoidance and evasion nowadays.[82]

Section 8 of Customs and Excise Management Act [83] provides that customs officers shall have the power of police officers. The Customs and Excise Department also has the power to search premises,[84] the power as to detention, seizure, and condemnation of goods.[85] Unfortunately, the powers granted the Customs department is too wide it provide for seizure and condemnation of goods – where? - at the borders? on the road? In the shops or at the consumers'' home? The law failed to specify this clearly. Thus, the Customs officials used these powers unjustly in *Abibatu Mogaji & ors v Board of Customs & Excise & anor.*[86] 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; and the arbitrary seizure of their wares without adequate inquiry. 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, usually to cronies and proxies.[87] Most of these cases of infringement of rights by tax authorities are not subject of litigation due to illiteracy, poverty and high cost of litigation in pecuniary and other costs.[88] The journey from the High Court to the apex court, the Supreme Court takes over twenty years in certain instances, thereby making eventual victory or defeat stale. For instance, in *Ariori and others v Elemo and others,* [89] the case was decided at the Supreme Court after twenty-two years of filing the case. The Supreme Court thereafter ordered a trial *de-novo* (commencement of the hearing of the case afresh) at the court of first instance, the high court. There were also other instances of cases that took

[76] Sec 45 & 44(2) (a) of the Nigerian Constitution of 1999.
[77] C Beer *The Politics of Peasant Groups in Western Nigeria* (1st ed, Oxford University Press,1976) at 219.
[78] M Evans "Aba Women's Riots (November-December 1929)" available at: <http://www.blackpast.org/gah/ aba-womens-riots-november-december-1929> (accessed 29 October 2019).
[79] T Falola *Colonialism and Violence in Nigeria* (1st ed, Indiana University Press, 2009) at 84, 89-92.
[80] SO Onor "Decolonizing Nigerian Women: A Historical Necessity" (2017) 5/3 *International Journal of History and Philosophical Research* at 24-35; O Obasanjo *My watch vol. 1* (1st ed, 2015, Prestige) at 73-78.
[81] Beer *The Politics of Peasant Groups in Western Nigeria* above at note 77 at 48.
[82] J Frecknall-Hughes "The concept of taxation and the age of enlightenment" in J Tiley (ed) *Studies in the History of Tax Law* (2000, Hart Publishing) at 253-286.
[83] Customs and Excise Management Act Chapter C45 of 2004.
[84] Sec 147 Customs and Excise Management Act Chapter C45, 2004.
[85] Id, sec 167- 174 Customs and Excise Management Act.
[86] (1982) 3 NCLR 552.
[87] G Akinfenwa "Sour tales of customs' raid on markets, communities" (12 March 2017) *The Guardian Daily*, available at: < https://guardian. ng/ sunday-magazine/sour-tales-of-customs-raid-on-markets-communities/> (last accessed 9 February 2019).
[88] K Odeku & S Animashaun "Poverty, human rights and access to justice: reflections from Nigeria" (2012) 6/23 *African Journal of Business Management* at 6754-6764.
[89] *Ariori & others v Elemo & Ors.* (1983) 1 SCNLR.

inordinate long time before final judgement.[90] Due to the delay as shown above, most potential litigants, would rather suffer in silence rather than approaching the court. The authors submit that tax cases bordering on abuse of taxpayers' rights should be fast-tracked by the courts as it could adversely affect the taxpayer's life; lateness in delivering judgement may lead to the taxpayer's bankruptcy.

The tax laws often, failed to take the rights of the taxpayers into consideration. The Personal Income Tax (Amendment) Act, 2011[91] inserted a new subsection '(6)' to amend Section 36 of the Principal Act [92] and also, Section 52 of the Principal Act is amended in sub-section (1). The import of these two provisions is that the taxpayers suffer double jeopardy of presumptive tax regime and imposition of a penalty for the same offence of not keeping proper record; notwithstanding the high illiteracy level of the citizens. Adult literacy rate is said to be 56.9% in Nigeria.[93]

In cases of infraction or suspicion of tax fraud, Inland Revenue is authorized to carry out inspections, searches, seizures, obtain evidence, or break into premises, etc.[94] However, the Federal Revenue Act forbids the search of a person to be carried out by a person of the opposite gender.[95] Where this provision is breached, it can only be the basis for an action for assault. But such an infraction will not affect the admissibility of any evidence so illegally obtained, once the evidence is relevant to the case.[96] This rule of evidence reduces the protection intended under the provision of section 36(4) of the Federal Revenue Act. Also, the provision of section 23 of the Federal Revenue Act which provides for refund in case of excess payment by taxpayers is yet to be utilized. Prior to the introduction of the Federal Revenue Act, no refund was possible, which was an abuse of power. Although this new provision has been applauded as innovative, in spite of this, no taxpayer has been given a refund.[97] This abuse has placed many taxpayers in a precarious position of being inaccessible to huge funds in local and convertible currencies standing to their credit, thereby affecting their cash flow.[98] In *Interplay v Ukraine,*[99] the European Court (commenting on a similar provision) held that delaying VAT

[90] *Maja v Samouris* (2000) 7 NWLR (pt. 765) 78 – the case was decided after nine years; *Obasohan v Omorodion* (2001) 13 NWLR (pt 728) 298- the case was decided after sixteen years; *Ekpe v Oke* (2001) 19 NWLR (pt 721) 341- the case was decided after seventeen years; *Onagoruwa v Akinyemi* (2001) 13 NWLR (pt 729) 38 the case was concluded after twenty-one years;. *Nwadiogbu v Nnadozie* (2002) 12 NWLR (pt 727) 315- it was concluded after twenty-three years!

[91] No. 20 of 2011.

[92] Personal Income Tax Act Chapter P8 of 2004.

[93] UNESCO "Literacy rate-action plan Nigeria" (2012) available at: <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ ED/pdf/ Nigeria.pdf> (last accessed 9 February 2019).

[94] Sec 29-36 of the Federal Revenue Act.

[95] Sec 36(4) of the Federal Revenue Act.

[96] Sec 14 and 15 of Evidence Act, No 18 of 2011; PN Okoli & C Umeche "Attitude of Nigerian courts to illegally obtained evidence" (2011) 37 *Commonwealth Law Bulletin* at 81-90.

[97] MT Abdulrazaq "Cases and Materials on Nigerian Taxation" (1st ed, 2016, Eastern Book Company) at 54; Oke *Taxpayers' Rights Protection in Nigeria,* above at note 5 at 32-35.

[98] SM Olokooba, M Awodun, OD Akintoye & SA Abubakar "Taxpayers' right to refund under the Nigerian law: a right in fact or privilege in camouflage?" (2018) 9/2 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* at 192-198.

[99] ECTHR (9 January 2007) Application No. 803/002.

refunds is an abuse of taxpayer's right. The authors maintained that the tax authority is not entitled to excess tax and persistence in keeping it is an abuse of the taxpayer's right.

Likewise, the state and local governments are not excluded from undue violation of taxpayers' rights. Tax officials of the states are in the habit of sealing up the business premises of the taxpayers' against the extant laws. In *A.M Shittu v NACB Ltd & 2 others*,[100] the court held that the action of the Jigawa State Board of Internal Revenue, closing and sealing up the offices of the plaintiff is an unauthorized method of enforcing tax liability. Section 96 of PITA empowers the relevant tax authority to distrain and not to seal up premises for non-payment of tax. Despite the express provision of the law and the court decisions that sealing of business premises is illegal, it continued unabated. It was reported that Inland Revenue sealed up business premises in Lagos and Port Harcourt in May 2018.[101]

The issue of violation of taxpayers' rights by revenue official does not exclude the local government councils. In *Fast Forward Sports Marketing Limited v The Port Harcourt City*,[102] 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 organization that has its names and logo on its vehicle[103] and its officials apprehend vehicles on the roads in order to enforce this law. The action was challenged in *SDV Nigeria Ltd and ors v Apapa Local Government Council.*[104] The court restrained Apapa Local Government from enforcing the Vehicle Mobile Advertisement Bye-Law No. 1, 1999. Similar decisions were reached by different states' high courts in *Cornerstone Insurance Plc v Surulere Local Government & Mushin Local Government,*[105] *Eti Osa Local Government v Rufus Jegede & another*[106] and *Schlumberger Nigeria Limited v Obio/Akpor Local Government Council.*[107] A poser here is that, are the corporate bodies and individuals who had paid these sundry fees and taxes that were eventually declared illegal entitled to a refund? The authors thus opine that there should be new provisions in the appropriate taxing laws stating that taxpayers' who had been illegally fleeced should be entitled to a refund through administrative channels. The law should further provide that if the appropriate tax authority failed to pay and the matter comes up for judicial review, the damages to be paid the aggrieved taxpayers would be punitive and not nominal.

Another violation of taxpayers' right is the ever-present tax officials employing violence and blocking the road in a bid to collect tax. A typical example is the Wharf Landing Fee Laws of Lagos State.[108] The Law imposes tax on any item or consignment transported from any seaport through the local government councils in Lagos State. The law vests the officials of the collecting authority with the power to stop any vehicle conveying the goods for the purpose of

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[100] (2001) 10 NWLR (pt. 721) 298.
[101] N Ekeghe "FIRS Shuts Firms in Lagos, Abuja, Benin over Tax Default" (17 August 2018) *This Day Daily*, available at: <https:// allafrica.com/stories/ 201808170322.html.> (last accessed 9 November 2020).
[102] Suit No FHC/PH/C8/220/2008 of 28 April 2010 (unreported) Federal High Court.
[103] Vide Apapa Local Government Vehicle Mobile Advertisement Bye Law No 1, 1999.
[104] RO Ugbe, GE Oyedokun & U Jack-Osimiri "Public purpose litigation in taxation disputes' resolution" (2018) 2 *Tax Academy Research Journal* 1-33 at 24.
[105] Suit No M/64/2001 of 27 June 2001 (unreported) Magistrate Court of Lagos State.
[106] (2007) LPELR-CA/L/453/2002.
[107] Suit PHC/1206/2007 of 10 November 2015 (unreported) of High Court of Rivers State.
[108] No 5 of 2009.

inspection. This Law creates the following legal problems. First, maintaining checkpoints on federal roads as provided for under section 4 of the Law violates section 2(2) of Taxes and Levies Act. Second, 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.[109] Third, the constitutionality of the Law 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.[110] The issue here is that the taxpayers are forced to pay both customs duties and wharf landing fee for the same item. Further, taxpayers who were forced to pay the tax should expect no refund, even if the tax is declared illegal; however, they may not be required to pay any longer.

## 5.0 Abuse of Taxpayers' Right and the Revenue Services' Exercise of Discretion in Nigeria

The powers granted the Nigerian tax authorities are vast and usually accommodate the exercise of discretion. The discretion could be exercised in many ways including the followings- discretion as to application or non-application of the law to certain persons and discretion as to the interpretation of the law. Others are discretion in the management of application of legislation and litigation, and discretion on how to operate in cases of ambiguous provisions or grant of wide powers. The state officials, often exercise its wide powers to the detriment of the taxpayers. The Minister of Finance by executive fiat increased VAT from 5 to 10 percent.[111] It took a vehement public outrage for the circular to be withdrawn.[112] The illegality of the Minister's act is predicated on the fact that it is trite that taxation is statutory; the imposition and increase of taxes is the exclusive preserve of the legislature, as there is no common law of taxation.[113]

The Federal Revenue Act, 2007 gave wide and extensive powers to Federal Inland Revenue. Part of its investigative power is its mandate to demand information relating to tax from a third party including a bank [114] and the names and addresses of new customers and including those with a deposit of 10 million Naira and above currently standing to their credit.[115] Federal Inland Revenue may compel a third party to provide information or produce documents specified in the written notice in order to ascertain the taxpayers' financial position and the taxpayer is not privy to the request or the information given.[116] Under section 26(2) of the Federal Revenue Act, Inland Revenue may call for returns, books, documents, and information from any person or organization about 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 Service may request "any information". The right of the taxpayers' to notice

[109] Sec 4 (5) of the Nigerian Constitution, 1999.
[110] Sec 4(2) (3) & (4) of the Nigerian Constitution, 1999; and Items 36 & 68 of the Second Schedule to the 1999 Constitution, Item 36 deals with maritime shipping and navigational matters; See also Sec 68 of the Nigerian Constitution, 1999; see S Salau & B Atilola "Wharf Landing Fees of Lagos State 2009: An appraisal" (2009) 14/10 *Nigerian Tax Note* at1-4.
[111] MT Abdulrazaq "Reflections on the powers of the minister of finance to increase the tax rate under the VAT (Amendment) Act 2007" (2011) 16/3 *Nigerian Tax Note* at 1.
[112] Ibid.
[113] Abdulrazaq *Revenue Law and Practice in Nigeria* above at note 50 at 31.
[114] Sec 28(2) of the Federal Revenue Act.
[115] Sec 28(1) of the Federal Revenue Act.
[116] Sec 27 of the Federal Revenue Act.

before a request is made to the third party is violated and the blanket provision that gives the service the right to access any information is vague, offensive and obnoxious which opens the taxpayers to abuse. The Federal Revenue Act provides that Inland Revenue has the power to investigate or cause an investigation to be conducted in order to ascertain violation of any tax law, whether or not such violation has been reported to Inland Revenue.[117] Under this Act, an investigation is to be carried out 'at all reasonable times'.[118] The pertinent question here is when is a reasonable time? The Personal Income Tax Act (PITA) empowers the tax officials to enter premises of investigated persons during daylight hours,[119] whereas section 61 of the Companies Income Tax Act (CITA) empowers tax officials to enter premises of investigated persons at any time. The last provision may result in incidents whereby overzealous or fraudulent officers abuse this provision. Interestingly, an official of the Inland Revenue apart from the general protection afforded public officers by the Public Officers Protection Act,[120] is to be indemnify "out of the assets of the Service against any liability incurred by him in defending any proceeding, whether civil or criminal" [121] if the proceeding is brought against him in an official capacity.

It seems that section 61 of CITA violates the taxpayers' right to privacy under section 37 of the Nigerian Constitution, 1999. The case of *Independent Television/Radio (ITV) v Edo State Board of Internal Revenue* (ESBIR)[122] is instructive. Edo State Board of Internal Revenue filed an *ex parte* motion with the State High Court, praying the court, inter alia, for an order to distrain upon the land, premises and moveable properties of ITV. The High court granted the relief sought and ESBIR. The agents and privies of ESBIR at about 4 am, sealed up the whole premise and drove away other co-tenants who were not affected by the court order, however, distress does not involve sealing up of a company. Furthermore, in an affidavit deposed to by a staff of ITV, which was uncontested, ESBIR levied the distress at around 4 am, beating up the staff and vandalising the property of the appellant. Levying distress at 4 am is not a proper exercise of discretion in our opinion. We opine that the law should be amended stating the time allowed to levy distress, which must be during daytime, with a caveat that distress should only be levied at any time, if there is reasonable reason to believe that the taxpayer is transferring or about to move assets out of jurisdiction.

In *Margaret Chinyere Stitch v Attorney General of the Federation (AGF)* [123] also, the court held that the officials of the Ministry of Commerce 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 this time when the case was determined the customs duty had been further increased to 800 percent. The time and money spent on prosecuting this case is better imagined.

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[117] Sec 35(3) of the Federal Revenue Act.
[118] Sec 29(1) of the Federal Revenue Act.
[119] Sec 103 of PITA.
[120] Chapter P 41 of 2004.
[121] Sec 58 the Federal Revenue Act.
[122] (2014) LPELR -23215(CA).
[123] (1986) 5 NWLR (pt 46) 1007.

Tax Appeal Tribunal (TAT) which is a creation of the Federal Revenue Act[124] violates one of the basic canons of justice- *nemo judex in causa sua* (no man should be a judge in his own cause). Under the 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.[125] The Commissioners of the TAT are equally appointed [126] and can be removed by the Minister of Finance.[127] These provisions put in question the independence of the TAT and is likely to shake the confidence of aggrieved taxpayers.

The Courts had also on several occasions reprimanded the tax authorities for the abuse of their discretion with regards to the Best of Judgment (BOJ) assessment. The Courts had persistently held that it must not be arbitrary, excessive, punitive or capricious.[128] Also, the Federal High Court in *M. I. Nig. Ltd v Eti-Osa Local Government Council & Another,* [129] held that although the radio and television levies were within the Local Government's approved list but condemned the abuse by the local authority in that the Plaintiff did not have a radio/television within its premises, it was not liable to payment of the levy by the Local Government.

Furthermore, the state abuses its powers by imposing levies, fines, taxes, and penalties at will and would revert to the status quo ante only after protest. The Lagos State Internal Revenue Service (LIRS), for instance, had to abolish the additional two hundred and fifty thousand naira distrain fine on tax-evading companies after a protest. Hitherto, defaulting companies must pay the distraint fine before their offices are re-opened. [130]

The extant and discretionary powers conferred on the tax authority is in excess of their requirements to execute the job. The routine violation of the taxpayers rights could be reduced in a society with low literacy level and the introduction of the TAT in order to fast track tax cases have also been faulted and as shown above the judicial process is slow.

## 6.0 Limit to Discretion in Taxing Powers in Nigeria

Tax law is essentially statutory and the powers of the state to exact tax are limited by the different statutes,[131] however, the tax authorities enjoy certain discretions which are capable of being abused as state earlier in this article. The powers granted tax authorities, for instance, to enter any premises for the purpose of investigation at any time under section 61 of CITA is opened to abuse by the tax authorities. Furthermore, the court has stated that the following

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[124] Sec 59(1) of the Federal Revenue Act.
[125] 4th Schedule, para 1(2) of the Federal Revenue Act.
[126] 4th schedule, para 2(1) of the Federal Revenue Act.
[127] 4th schedule, para 5(3) of the Federal Revenue Act.
[128] *Nigerian Breweries Plc v Lagos State Board of Internal Revenue* (2001) FWLR pt. 72 @ 1972. (2002) 5 NWLR (pt 759) 1; Lagos *State Board of Internal Revenue* v Odusemi (1979) 3 LRN 119 HC; *G. M. 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; FE Nlerum 'Reflection on the Attitude of the courts to tax incentive mechanism in Nigeria' (2012) 1/1 *Nigerian Institute of Advanced Legal Studies Journal of Business Law* at 111.
[129] Suit No. FHC/L/CS/106/2010 of 2 March 2012 (unreported) Federal High Court.
[130] S Adebowale "Lagos abolishes distrain fine on tax evading firms" (15 July 2015) *The Eagle Online Daily,* available at: <https://theeagle online.com.ng/lagos-abolishes-distrain-fine-on-tax-evading-firms/> (last accessed February 9, 2019).
[131] MT Abdulrazaq *Nigerian Revenue Law* (1st ed, Malthouse Law Books, 2005) at 10.

action by the tax authority as void:[132] failure of the tax authority to serve the taxpayer the statutory notice requesting it to render its tax returns sequel to assessment under section 68 of CITA; [133] failure to reject the taxpayers' tax return before raising an estimated assessment;[134] assessment by the authority based on repealed law; [135] partial and unreasonable assessment;[136] erroneous assessment cannot be salvaged by any saving provision in any enactment;[137] where the assessment constitutes an abuse of power;[138] wrong rejection of taxpayers returns[139] and non-fulfillment of some other conditions precedent to assessment,[140] among others. In *Oando Supply and Trading Ltd v FIRS,*[141] it was rightly held in our view 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.

## 7.0 Recommendations

There is a need to amend some of the provisions of the extant laws bearing in mind that the rights of the taxpayers are constantly and routinely violated. For instance, section 23 of the Federal Revenue Act should be amended so that Federal Inland Revenue pays interest on refund that it fails to pay at the appropriate time; Wharf Landing Fee Law of Lagos State should be expunged for the reasons stated above. Section 36 (6) of PITA should be amended to remove the double jeopardy of presumptive tax regime and penalty for taxpayers who did not keep a proper account, taking cognizance the percentage of the Nigerian population that is illiterate. We also advocate that section 96 of PITA be amended so that damages be paid to taxpayers' whose premises are illegally sealed up. The law should also be clear as to when distress to be levied on taxpayers' property, or when to enter his premises, rather than the blanket grant of "anytime"[142] or "at all reasonable times".[143] We recommend that distress should be levied on taxpayers' in daytime between 7am and 7pm only, except if the authorities could prove that there is a reasonable reason to believe that the taxpayer is transferring or about to transfer assets out of Nigeria.

There is also a need for an effective judicial process to adjudicate on tax issues as aggrieved taxpayers show strong reluctance to seek legal redress due to some of the cogent reasons adduced below- delay in justice delivery, illiteracy and poverty, and unwillingness to execute laws favourable to taxpayers such as refund of excess tax paid. There is need for proper training of tax officials and the employment of professionals to man tax offices in order to reduce the observed instances of violation of taxpayers' rights. The authors advocate for the office of tax ombudsman to help taxpayers in addressing instances of abuse of their rights. We also propose

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[132] MN Umenweke & AR Aladegbaiye "Challenges of Tax Assessment and Imposition in Nigeria" (2011) 2 Nigerian Journal of Business and Corporate Law at 43-45.
[133] *Fashogbon v Layade* (1999) 1 NWLR (pt 628)543; *Lanto v Wowo* (1999) 7 NWLR (pt 610) 227.
[134] *Reiss & Co. Nig Ltd v FBIR* (1977) 3FRCR 251.
[135] *Northern Nigeria Investment Ltd. v FBIR* (1976) FRCR 93(HC).
[136] *Okupe v FBIR* (1974) 1 All NLR 314 SC; *Lagos State Board of Internal Revenue v Odusemi* (1979) 3 LRN 3 HC.
[137] *Fleming v London Produce Co. Ltd.*(1968) 44 TC 582 HC.
[138] *FBIR v Rezcallah* (1962) 1 All NLR 1.
[139] *Gamini v CIT Colombo* (1952) AC 571 PC.
[140] *Mobil Oil Nig. Ltd. v FBIR* (1977) 3SC 53.
[141] (2011) 4 TLRN 128-129.
[142] Sec 61 of the Companies Income Tax Act (CITA)
[143] Sec 29(1) of the Federal Revenue Act.

that a taxpayers' charter that specifically addresses taxpayers' rights should be inserted into the taxing statute. Finally, we recommend that punitive, rather than nominal damages be awarded by the court to taxpayers whose rights have been violated.

## 8.0 Conclusion

The paper delineates instances of abuse and improper exercise of discretion by the federal, state and local government officials in Nigeria. It is argued that some of the powers are too wide and in excess of the requirement of the officials to judiciously exercise their responsibilities. Thus the powers granted the officials should be reduced in order to cater for the rights of the taxpayers. Further, the authors implore the Nigerian policymakers to restructure tax administration using 'with taxpayer' approach rather than the current 'despite taxpayer' approach and to organize their tax administrations to be taxpayer-focused.[144] This is in order to move from a relationship of antagonism between the taxpayers and tax administrators to a stable service environment based on trust.[145]

[144] GÇ Gerger, A Gerçek, Ç Taşkın, F Bakar, & S Güzel "Determining the factors that affect taxpayers' perspective on tax administration: research in Turkey" (2014) 6/1 *International Journal of Economics and Finance Studies* at 18.

[145] Bentley *Taxpayer rights in Australia Twenty Years after the Introduction of the Taxpayers' Charter*, above n note 43 at 304.