

6<sup>th</sup> April, 2018

**Mr. AKINWUNMI AMBODE**

**Executive Governor of Lagos State**

**Lagos State House**

**Alausa, Ikeja,**

**Lagos State.**



4:13pm

Dear Sir,

**LETTER OF DEMAND FOR THE TOTAL ABROGATION OF THE LAGOS LAND USE CHARGES**

HEDA is writing this letter to demand for the total abrogation of the Lagos Land Use Charge which has raised a lot of controversies in the whole of Lagos State.

Human and Environmental Development Agenda (HEDA Resource Center) is a non-governmental and non-partisan human rights and to provide leadership in advancing human rights and environmental protection in public policy and programs.

We refer to the recently amended Land Use Charge Law of 2018. Citizens of the State have experienced increment in the Land Use Charges, vehicle license and court process filling fees. This newly amended law has generated controversies since the period of its amendment especially as relates to its implementation and enforcement. The unilateral and sudden increase in the Land Use Charge rates especially in this period of biting economic hardship is at best misconceived and expropriatory in nature, and this has led to lots of debate and even protests.

Some days back, the Lagos State Government reduced the commercial charges by 50 per cent and reduced charges of owner-occupier with third party –including industries and manufacturing concerns by 25 percent. We are not demanding for a reduction, we are demanding for a total abrogation of the newly amended Land Use Charge.

The amendment of the law is not constitutional. Section 3(6) and 8 of the 1999 Constitution as amended establish the fact that the Local Government Area is a creation of the Constitution. At

the same time, Section 7 of the Constitution provides for the Administration of the Local Government. Section 7(5) provides for the function of the Local Government which provides

*"The functions to be conferred by Law upon local government council shall include those set out in the Fourth Schedule to this Constitution."*

The implication of this is that the functions listed in the Fourth Schedule of the Constitution can only be added to, and House of Assembly of a State cannot derogate from them. A look at the functions of a local government council as listed in the Fourth Schedule to the Constitution includes collection of rates, radio and television licences (Paragraph 1(b) of the Fourth Schedule). Of utmost interest is paragraph 1(j) of the Fourth Schedule to the Constitution, and it provides thus:

*"1. The main functions of a local government council are as follows –*

*(j) assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State...."*

From the above provision, it's clear that the House of Assembly plays only one role under paragraph 1(j) of the Fourth Schedule to the Constitution: to prescribe the rates. Anything outside this is *ultra vires* the House of Assembly and, therefore, unconstitutional.

It is a trite position of the law that the House of Assembly can exercise only so much of power as is conferred on it by the Constitution; in this regard, to prescribe the rate. Where the House of Assembly of a State, by its law, seeks to add to, remove from, limit or otherwise modify the provision of the Constitution, the law of the House of Assembly becomes inconsistent with the Constitution and is, to the extent of such inconsistency, void *ab initio*. Section 1(3) of the 1999 Constitution as amended. Section 3 of the Land Use Charge provides,

*"Each Collecting Authority may delegate to the State, by a written agreement, its functions with respect to the assessment of privately owned houses or tenement for the purpose of levying and collection of such rates as may be prescribed under this law."*

The above provision of the Law interferes with the provisions of Paragraph 1(j) of the Fourth Schedule to the Constitution by making the constitutional function of the local government councils in Lagos State assignable to the State. The Lagos State House of Assembly used section 3 of the Law to add a technical proviso to Paragraph 1(j) of the Fourth Schedule to the Constitution.

Therefore, the Lagos State House of Assembly has transcended its constitutional role under Paragraph 1(j) of the Fourth Schedule, which is to prescribe the rates and nothing more.


Applying the foregoing to the Lagos State Land Use Charge Law, 2018, Section 3 of the state Land Use Charge modifies section 1(j) of the Fourth Schedule to the Constitution by purporting to allow the Local Government Council delegate to the State the constitutionally vested function of the local government council as enshrined in Paragraph 1(j) of the Fourth Schedule to the Constitution

In the same vein, the law violates a lot the taxation principle which is predicated on economic success of the people. Taxation is in relation to the overall performance of the economy. Government cannot take action on taxation without putting economic success of the people into consideration and in this case, it is obvious that the economy is not buoyant and so there is no justification for such taxation.

It is on the bases of the above mentioned that we are demanding for a total abrogation of the Lagos Land Use Charge within seven days after which we will process to take legal action on the matter. Take this as our pre-action notice.

Thanks.

Yours Faithfully,



*[Handwritten signature]*

**Olanrewaju Suraju**

**(Chairman)**