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Working Paper 73

Taxation, Property Rights and the Social Contract in Lagos

Tom Goodfellow and Olly Owen

January 2018

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ICTD Working Paper 73

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Taxation, Property Rights and the Social Contract in Lagos
Tom Goodfellow and Olly Owen
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Taxation, Property Rights and the Social Contract in Lagos

Tom Goodfellow and Olly Owen

Summary

Major taxation reforms over the past decade have been interpreted as facilitating the transformation of Lagos: once widely seen as a city in permanent crisis, it is now seen by some observers as a beacon of megacity development. Most academic attention has focused on personal income taxation, which comprises the lion's share of government revenue in Lagos. Less attention has been devoted to another crucial innovation over the same period – the Land Use Charge – and other forms of tax related to property. In this paper we show how the story of property taxation in Lagos since the early 2000s is important, not only in terms of the enormous increase in collection, but because of the ways in which property-related taxes have helped to support personal income taxation and to solidify the fiscal contract between state and society more broadly. Moreover, we explore how the payment of the Land Use Charge is interpreted by taxpayers, and how it is used alongside a plethora of other documents and processes to try and shore up fragile claims to property. In a context of intensely insecure tenure, particularly but not exclusively at the lower ends of the socio-economic spectrum, both taxation and other kinds of formal and informal payments play a key role in efforts to incrementally build and solidify property rights.

Keywords: property tax; Lagos; Nigeria; tenure security; property rights; land taxation; urban governance reform.

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Acronyms, key terms and individuals

APC	All Progressives Congress, national opposition party which became ruling party in 2015. In its previous incarnations, the Alliance for Democracy (AD), Action Congress (AC) and Action Congress of Nigeria (ACN), it has run Lagos since 1999
BRT	Bus Rapid Transit, the new buslane-based transport system in Lagos
C of O	Certificate of Occupancy, the only full title recognised in Nigerian law
Fashola	Babatunde Raji Fashola, Governor of Lagos 2007-2015
FIRS	Federal Inland Revenue Service, the national tax administration
IGR	Internally Generated Revenue, within the bounds of a state
LG	Local government
LIRS	Lagos Internal Revenue Service, the Lagos tax administration
LRC	Land Records Company Ltd
LUC	Land Use Charge, the consolidated property tax
Omo onile	Group claiming inherited rights to control land in an area
PDP	People's Democratic Party, national ruling party from 1999-2015. In opposition in Lagos since 1999, and nationally since 2015
PIT	Personal Income Tax, collected by State governments
Tinubu	Bola Ahmed Tinubu, Governor of Lagos 1999-2007
Victoria Island	Growing central business district of Lagos
Waterside	A waterfront community

Introduction

Lagos is often considered one of the world's most disagreeable cities, regularly gracing lists of the top ten least liveable or worst urban centres.[1] Despite this, its fortunes are seen to be changing, to the extent that paradoxically it now also appears with increasing frequency on lists of African urban success stories.[2] A 2017 article by Cheeseman and De Gramont (2017) presents the city's trajectory in recent years as embodying a process of impressive statebuilding and institutional transformation, which can potentially offer lessons to other developing cities around the world. Central to the transformation underway have been a series of reforms to taxation that have captured international attention, and have helped to address some aspects of the city's infrastructure crisis (Gandy 2006), including waste collection and bus transport. While most analysts' attention has been devoted to the increase in Personal Income Tax (PIT), which has been the primary pillar of Lagos' enhanced revenue,[3] there is an equally interesting and important story to tell about property taxation. The ways in which the government of Lagos State has managed to crack the notoriously difficult nut of taxing property – that most lucrative and closely guarded of urban assets – offer not only lessons for elsewhere, but insights into how the social contract has been (and continues to be) renegotiated both from above and below.

In this paper, we document how the Land Use Charge (LUC) was introduced in Lagos State from the early 2000s, and how, along with other taxes related to land and property, it helped to support increases in PIT. In exploring how the various difficulties associated with property tax reform were overcome, we show how successive governors managed to navigate a powerful array of interests and obstacles to capturing land values, with impressive results. Alongside this narrative runs another, however – one in which people's understanding of the nature and purposes of the LUC has come to play an important role in relation to the constant struggle to achieve security of tenure in a city characterised by booming real estate and the ruthless pursuit of profit from land. The LUC, therefore, needs to be understood, not only in terms of its role in the vaunted Lagos tax success story, but in relation to its function as one of the means by which people attempt to deepen, entrench and solidify their rights to land. We thus advance two parallel arguments: first, that the LUC has been successfully instrumentalised by the State[4] government as a means to draw people into the tax net for other more lucrative taxes; and, second, that it has also been instrumentalised by some taxpayers as a form of incipient property right in the absence of official title. This second dimension is significant, not only in terms of how people build their fragile claims to citizenship in a society with such a complex multi-layered history of land rights, but also in terms of understanding the relatively impressive increases in compliance. While further research is needed, we make the speculative claim that, in contrast to the situation with PIT payments, compliance is not so much about tangible service delivery results, as an implicit social contract, whereby people perceive that their ability to *hold onto their property* amid the profound property insecurity which is endured by many Lagosians will be better protected if they can evidence payment of the LUC.

We begin the paper with a discussion of property taxation and some of the challenges associated with it, particularly in terms of property rights and issues of tenure. To bring this discussion to life, we provide some detail on the history of property rights institutions in Lagos, and how successive epochs in the city's evolution have affected the status of property rights today. This is followed by a discussion of how property taxation in Lagos was transformed by the introduction of the LUC from 2001. As well as providing an overview of

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1 <http://uk.businessinsider.com/the-worst-places-to-live-in-the-world-2017-8; http://www.telegraph.co.uk/travel/lists/the-least-liveable-cities-on-earth/>.

2 <http://blogs.worldbank.org/africacan/african-successes-listing-the-success-stories>.

3 See e.g. Bodea and LeBas (2016); de Gramont (2015).

4 State (upper case) is an abbreviation for Lagos State, and state (lower case) refers to the nation state.

revenue collection from the LUC and how this has changed over time, we examine the ways in which the LUC was strategically interlinked with other aspects of tax reform, how some of the initial resistance was overcome, and the rationale behind the particular approach taken to property taxation. We then explore some of the realities of the LUC in practice, including compliance rates and what influences them, landlord-tenant disputes, and the strategic ways in which the State approaches actual and potential disputes over payment, with the aim of maximising compliance whilst also attempting to increase public acceptance and support for the tax.

Following this, we move to a discussion of the other official taxes paid on property, and how these relate to the formal acquisition and transfer of property rights. We then turn to the realm of the informal, exploring the longstanding practice of making customary payments to indigenous landowners at each stage of the property development process, considering how this interacts with formal taxation, and how these practices have evolved into something that the State has increasingly sought to regulate. Finally, we consider how people use these various modes of formal and informal payment to make claims to property in the context of chronic tenure insecurity, before offering some concluding reflections.

1 Linking taxation to property rights

The potential of urban property taxation to raise local government revenue, redistribute resources and strengthen the 'fiscal contract' has gained considerable attention in recent years – including with regard to Africa (Fjeldstad and Heggstad 2012; Monkam and Moore 2015). A number of recent studies have explored the political obstacles to effective property taxation in developing countries, which are multiple and formidable (Jibao and Pritchard 2013, 2015; Piracha and Moore 2016; Goodfellow 2015, 2017). This research has highlighted the nature and importance of elite resistance to the tax in different settings, and the problematic incentives facing tax collectors and administrators. In this respect, the political economy of property taxation and the challenges this can create for implementing tax reforms are increasingly widely appreciated. There remain, however, some relatively unexplored questions regarding how property tax is understood in different settings, and how popular ideas about the meaning of this tax affect compliance, perceptions of the right to own property, and ideas of citizenship.

In many African societies today, urban growth and expansion are transforming the way land is used and understood (Braimoh and Onishi 2007; Obeng-Odoom 2009; Turok 2016). In such contexts, property taxation, and its potential both to yield substantial revenue and produce socially equitable outcomes, is not only dependent on patterns of property ownership and political resistance. It also needs to be understood in relation to normative and societally-specific conceptions about property, the various kinds of (formal and informal) payments people make in relation to property, and how these are seen as being linked to the regulation of property and rights to use it in particular ways. In many parts of Africa, the control of land, and revenue deriving from land, are constitutive of traditional political authority (Berry 2009; Sikor and Lund 2009; Lund 2011; Boone 2014). Although most often considered in relation to rural areas, this is also pertinent to urban areas, and increasingly so in the context of the continent's urban transition. For property tax to function sustainably over time in any city, some degree of acceptance and understanding of the tax is necessary – not only among large property-owners, but in society as a whole. Understanding relative successes in property taxation, therefore, requires attention to social norms and beliefs about property in land, and how these are constituted by different forms of payment linked to land use and ownership.

Most recent literature on property taxation is concerned with questions of policy design, methods of valuation and administration, equitability of outcomes and failures of implementation – rather than the question of how property taxation relates to the fundamental institution of property *rights.* Property rights are generally considered to be concerns dealt with in land law, and related legal frameworks concerning planning and property development, with taxation having little direct bearing. Indeed, taxation is predicated on an assumption of there being a clear, unambiguous owner of the property in question: it is a *consequence* of property rights, rather than *constitutive* of them. In the course of conducting our research into the Lagos property tax success story, we have found that the reality is rather different: where the legal frameworks concerning land rights are inadequate, mutable and coexistent with powerful informal norms, tax itself may come to form one of the elements in the building of a de facto property right.

In some respects, this role of taxation in promoting property rights runs deep in Enlightenment thought. Individual property ownership has an intrinsic connection with liberal democracy, and with the evolution of social contract theory. For thinkers such as Locke and Rousseau, part of the purpose of instituting a social contract through the creation of government was to enable a shift in the relationship between people and land, from the precarious realm of *possession* to the more stable institution of *property*. Yet the institution of property itself depends to a significant degree on taxation, without which the government charged with guaranteeing property cannot function. Liberal concepts of both political and economic life from the Enlightenment onwards are built on a bedrock of society conceived as property-holding individuals in free association. Taxation is therefore part of a state-building process, but, in so doing, also supports the construction and maintenance of effective property rights. More generally, raising taxes means more than states becoming increasingly effective and accountable, as highlighted by Bräutigam et al. (2008); it also means the extension of the domain of the state into new areas – tax involves the state 'getting involved'. It requires reciprocal accommodation, knowledge creation, and certainly also regulation of the *thing* being taxed, whether that be institution, type of transaction, field of activity, or commodity. Therefore taxation of property also has an inevitable role in defining property rights and the social contracts around them.

2 A brief history of property rights in Lagos

Lagos forms a particularly interesting context in which to explore the relationship between taxation on property on the one hand, and discourses and practices relating to the right to property on the other. One of the remarkable things about the recent success in raising property taxes in Lagos (detailed in the following section) is that this has happened in a context with particularly ingrained norms relating to the making of customary payments to families who claim indigenous land rights. In this sense, property taxation has had to compete, and ultimately coexist, with a range of other payments that many people are compelled to make in order to make effective use of their land. Understanding this requires situating property rights in Lagos against a long and multi-layered historical background.

We need to conceptualise the history of property rights in Lagos, not as a simple story of pre-to-post-colonial developments, but instead as marked by three different epochs, each with their own implications. First, a precolonial era marked by communal ownership and derived rights of tenure or occupancy, signified by tribute, in which the land area occupied by present-day Lagos State was a patchwork of communities, farmland and unexploited bush, with some larger centres such as Badagry and Ikorodu, and the trading town established on Lagos Island. Land ownership was vested in lineages, where men and women had use-rights to communal property but not alienable rights of sale; instead use and allocation would revert to the collective if it fell into disuse. The extended family compound was the node of

development, to which people could attach themselves by contributing labour or political support. Slaves and immigrants could gain use-rights with family consent; legitimating payment was either a tribute of produce, or a symbolic payment such as kola nut, a system known as *ishakole* that displayed continuing acknowledgement of allocation rights. Over time, sometimes these allottees and their descendants became subsidiary land-allocators in their own right, leading to contested claims.

The second epoch is the period of British colonialism, in which colonial interventions led to the advent of individual freehold, as the city of Lagos became a Crown colony from 1861 onwards. The historian Kristin Mann notes that on the eve of the British takeover, communal rights in land were already evolving under increasing population and growing urbanisation. Returnee ex-slaves from Brazil and Sierra Leone, as well as Europeans, brought their own accustomed conceptions of private and alienable property rights, and a market developed. Formal British rule then brought Crown laws and individual absolute ownership, 'which European officials identified with progress and civilisation and saw as essential to the growth of commerce' (Mann 1991).[5] And yet in creating and recognising these new forms of rights, the new colonial dispensation did not de-recognise pre-existing concepts of land tenure and title. Most people never bothered to obtain Crown grants for the land they occupied. This dual system is essentially the one that continued to underpin the development of Lagos throughout the next century, albeit punctuated by occasional large-scale planned development and alienation by government.

Thirdly, came the developmental statist approach to land in late twentieth-century Nigeria, marked by the 1978 Land Use Decree. This law was designed to replace the plethora of customary, private and Crown systems of land tenure and ownership, with a new system that vested all land rights in the state (Okpala 1982).[6] After 1978, urban land was to be given out under statutory rights of occupancy by state governors, while rural land was to be given out under customary rights of occupancy by local governments. The law officially abolished the category of freehold land; for those who held land in freehold prior to 1978 (a relatively small proportion of landowners), the freehold status was allowed to subsist, but no new titles were to be issued as freehold – only on a 99-year lease. The approval of the state was also needed for formal transfer or sale. However, due in part to the state's incomplete capacity to enforce the transformations envisaged by the law (Okpala 1982), and in part to transitional provisions written into the Act, the new system did not completely extinguish the old, but was overlaid on top of it.[7]

The evolution of land rights through these successive epochs mean that in the present day they are marked by what Bierschenk and Olivier de Sardan (2014: 221) call 'institutional layering', a common theme in post-colonial bureaucracies; it is not that one system of property ownership entirely displaces the other once the new system is brought in, but, instead, that one accretes on top of the other and coexists with it. The post-1978 period has clearly not extinguished the legal recognition of historic claims to land allocation by chieftaincy families covering much of the area of modern Lagos. Moreover, these historic

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5 Mann notes that this began within months of formal colonisation, and that by 1880 around 3,200 such grants had been made. Interestingly, she portrays governmental concern about the security of collateral on debts as one of the prime drivers of this titling, which prefigures a developmental debate which continues to this day. Mann also argues that the translation of male expression of corporately held rights into state documentation, being mediated by Western patriarchal attitudes, effectively extinguished property rights for many women, and thus eroded the ability of women in general to mobilise capital and labour, throwing up new and lasting gender inequities in spheres such as trade, in which they were otherwise prominent.

6 The stated rationales were to tidy up the multiple and overlapping systems of tenure across the country (though in northern Nigeria a 1960s land tenure law had done much the same thing), to make land more freely available for development, and to eliminate widespread fraud that had arisen from multiple sales of claims to the same land. The system, however, also enabled state central planning and alienation (of no little importance to the developing oil industry), and held the promise (only partially fulfilled, as we shall see) of sidelining the importance of other nexuses of land allocation, such as traditional rulers.

7 <http://www.nigeria-law.org/Land%20Use%20Act.htm>, accessed 10 July 2017.

claims are in themselves constituted by both the pre-colonial and colonial periods, in that the colonial encounter allocated titles based in part on pre-existing practices and claims, albeit through processes that were highly opaque and inequitable. This layering of property rights institutions is important to emphasise, because it forms the basis on which property-related taxes have to operate. Indeed, such taxes cannot be considered without an appreciation of the fact that they, too, come to form part of the patchwork of laws, processes and practices that constitute property in Lagos.

This context of highly uncertain tenure, rooted in a rich history of use-rights linked to particular forms of payment and social consent, also has to be situated in relation to the economic transformation and urbanisation of Nigeria in recent decades. Against this layered backdrop, land transactions are marked by informalisation and opportunism: processes that were accelerated equally by economic boom in the 1980s, and post-Structural Adjustment Programme decay in the 1990s. Both these processes promoted urban expansion, and made property both a commodity in high demand and a safe store of wealth, while the capacity of the state to regulate and manage fell behind (Aluko 2010). This led to a situation of plentiful disputes, resulting in a fait accompli in the form of occupation and construction as perhaps the most important form of tenure. It can also be linked to the rising prominence of a phenomenon known as *omo onile* (discussed in detail below), through which property developers and home improvers are forced to pay informal tax levies in the name of customary payments to landowning communities.

This trends were given further momentum by Nigeria's oil boom in the mid-2000s, which fuelled a property bubble – evident, above all, in Lagos. While this led to even greater demand for urban land, and inflated land prices throughout the city, the recession that set in in 2015 stimulated increased numbers of unemployed and underemployed people who sought to capitalise on land values through coercive means. Meanwhile, stock market failure and the precipitous fall of the Naira added to housing demand, while also placing a brake on supply and slowing development, with the effect that even under conditions of recession, the real estate market held relatively stable. Common with many other cities across the world, particularly in resource economies, Lagos property values have reached heights far out of proportion with earnings and GDP growth potential. This, in turn, has led to risky and opportunistic behaviour, illustrated just before we began fieldwork by the over-weekend destruction by its own family owners of one of Lagos' most famous historic buildings (and listed national monument), the Ilojo Bar (built 1851).

By 2016, therefore, the observation made by one interviewee that 'Land is the crude oil of Lagos'[8] was highly pertinent. These conditions have heightened both the salience of urban property rights and how they are regulated, and the significance of efforts to raise revenue from property. Indeed, the architects of the property boom are in many respects the same as the architects of the tax reforms that developed in parallel with it: Lagos' leaders since the early 2000s. The relationship between taxation and the boom has been symbiotic throughout; increased revenue gained by the State since the turn of the millennium has fed infrastructure development and the improvement in Lagos' international and domestic image, which has led to increased growth and investment, thus swelling the tax base. The effect on property *rights*, however, does not fit so neatly into this virtuous circle. Before returning to this question of how property rights are co-evolving with property taxation, we consider the origins and evolution of the LUC in detail.

[8] Interview with member of traditional landowning family, 5 October 2016.

3 The introduction of the LUC in Lagos

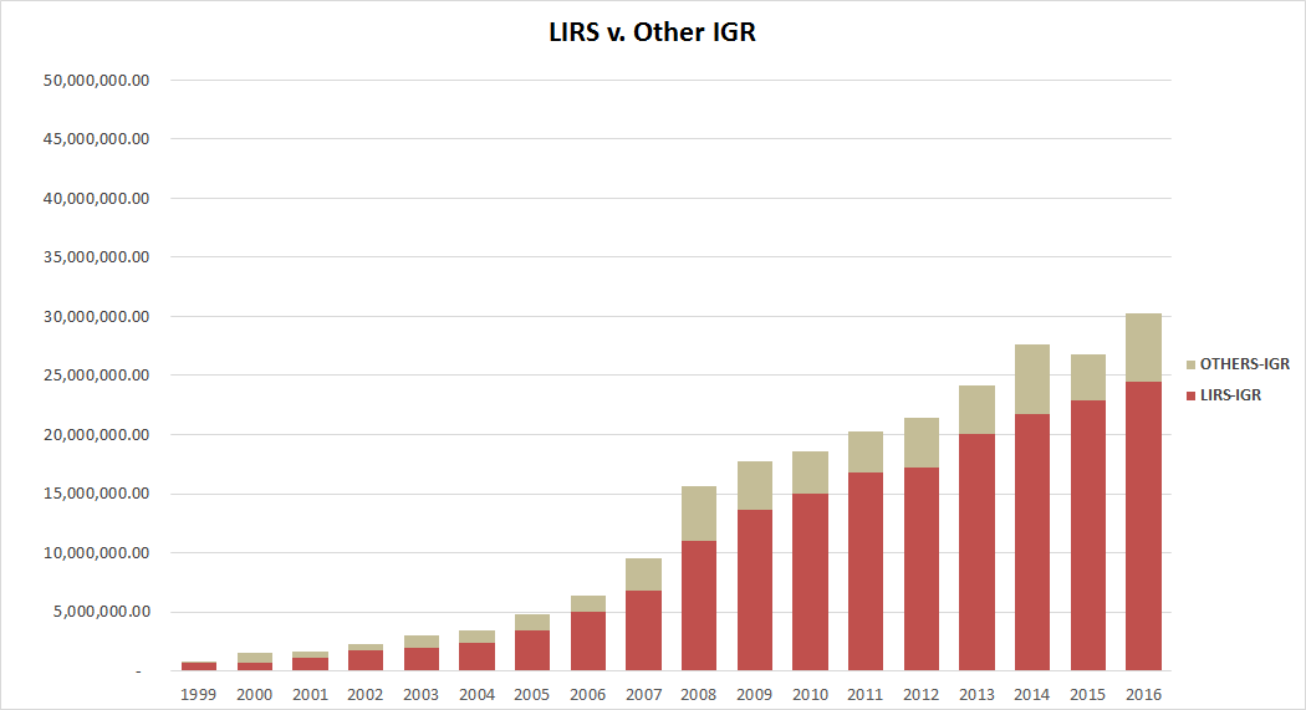
The introduction of the LUC in Lagos was part of a much broader overhaul of governance and taxation, about which there is a growing literature. Particular attention has been paid to the visionary political leadership of Bola Ahmed Tinubu, governor of Lagos State from 1999-2007, and his successor Babatunde Fashola, governor from 2007-2015 (see e.g. Fourchard 2013; Cheeseman and de Gramont 2017). The overall gains of the reform rolled out in this period are indeed impressive. Through a series of reforms involving the semi-privatisation and strengthening of taxes in the State, there was an increase in government revenue from less than NGN10 billion in 1999, to almost NGN140 billion a decade later (Cheeseman and De Gramont 2017: 458). The majority of this increase was due to reforms of the system of PIT. A focus on this tax, which in the context of Nigeria's federal constitution is devolved to the State level, was predicated on the belief that taxing the formal sector was an 'easy win' for Tinubu – his support was mainly in the informal sector, so taxing the business sector was not going to cost him too much politically (Cheeseman and De Gramont: 470). This is not to say that it was actually easy in practice, and depended on a substantial amount of political will, as major corporates attempted both indirect lobbying and court action to contest the introduction of new taxes under Tinubu.[9]

A further significant element of the general tax reform story in Lagos relates to how public support for taxation was mobilised over just a few years, indicating the evolution of a nascent social contract (Cheeseman and De Gramont: 471; see also Bodea and Lebas 2016). Through highly visible infrastructure projects, including the introduction of Bus Rapid Transit (BRT) and improvements in waste collection, as well as increased attention to security, the legitimacy of State-level taxation has been established to a significant degree. In the recent analysis provided by Cheeseman and de Gramont (2017), a crucial motivating factor for this overhaul of governance and taxation was the determination of Lagos' leaders to realise their 'mega-city ambitions', in part to attract increased investment. Linked to this was the desire to prove what the South-West of Nigeria could achieve, in the context of longstanding neglect by the Federal government and a State government controlled by the opposition.

Figure 1 depicts the increases in all taxes collected by Lagos State in the period 1999-2016. 'LIRS-IGR' refers to internally-generated revenue collected by the Lagos Internal Revenue Service (LIRS), the majority of which comprises PIT. 'Other IGR' comprises taxes collected by other State government bodies, the vast majority of which is the LUC, which is collected not by LIRS but by the Ministry of Finance.

[9] Interview with Nigerian finance expert, 10 September 2016.

Figure 1 Internally-generated revenue in Lagos State, 1999-2016



Source: LIRS, Lagos State Ministry of Finance

Although the PIT story has clearly been the centrepiece of the reforms in Lagos, the introduction, implementation and careful adaptation of the LUC constitutes an important and relatively under-explored subplot. The LUC is second only to PIT as a revenue stream for the State, and in the view of some taxation experts even has the potential to be as much as PIT – or at least to double from the amount currently being collected.[10]

To understand the origin of the reforms instituted in 2001 requires some explanation of the previous system for property taxation, which was a fragmented approach involving three separate payments and two different levels of government. Under the old system, everyone in possession of a formal property title (in Lagos termed a Certificate of Occupancy ((C of O), discussed below) was supposed to pay ground rent to the State government. This, in theory, was paid by the owner of the land. In addition, 'tenement rates' were paid (by whoever was occupying the property, which was often a tenant) to the local government of the area of Lagos State in which the property was situated. Unlike ground rent, which was linked to the supposed value of the land, tenement rates were paid as a flat fee, though this varied according to the neighbourhood. In addition to these two payments was a third: the Neighbourhood Improvement Charge. This was also payable to the State government, but only in certain areas that were receiving particular kinds of infrastructure investment.[11]

The thinking behind the development of a new system of property taxation dates back to a World Bank report from the early 1990s, which suggested Lagos State was only collecting around 25 per cent of its potential in tenement rates, and less than 5 per cent in ground rent.[12] This report was largely ignored at the time, because the military government was seeking legitimacy and was averse to any rise in direct taxation that might further undermine this.[13] Once democracy was reinstalled, however, the idea of revenue as the 'lifeblood' of the state came to the fore. This was particularly relevant for Lagos, which attracts of 65 per cent

[10] Interview with LIRS official, 6 October 2016.

[11] Various interviews with State government officials, October 2016.

[12] The very low levels of ground rent collected were probably in large part due to the small percentage of property owners who actually possessed Cs of O, as discussed below.

[13] Interview with former LUC official, 7 October 2016.

of national investment income. Tinubu was head of a party that was very regionally-based and in opposition to the ruling People's Democratic Party (PDP), hence the importance of looking inward for revenue. In this context, the idea of a single unified LUC was developed, culminating in the Land Use Charge Law of 2001.

A private contractor, Land Records Company (LRC) Nigeria Ltd, was brought in to run the LUC. LRC was given control of the entire revenue generation process, from enumerating properties, issuing bills, to collection (De Gramont 2014: 49). LRC began surveying properties in the year 2000, initially focusing only on high-value commercial properties. Seven thousand properties were enumerated in the first year, which also had the effect of fuelling intense resistance to the tax. The extent of resistance, as well as the scale of the challenge of enumerating large numbers of properties in a city the size and density of Lagos, meant that it was some time before the LUC really got off the ground. Indeed, while the Lagos tax revolution in general is often seen to be an achievement of Tinubu's team (including his first Commissioner for Finance, former banker Wale Edun, and, from 2004, tax chief Tunde Fowler) the implementation of the LUC was largely an achievement of Fashola. In the words of one key player in the design of the LUC, 'Tinubu was the visionary, Fashola the actualiser'.[14] Tinubu had the idea of consolidating the various property-related taxes to address the enormous revenue gap identified by the World Bank, but, given the political difficulty always associated with major hikes in property taxation, this took some time. Fashola placed increased priority on the LUC from 2007, and gave LRC a grant to make an inventory of all properties in the State. This led to an increase in the number of enumerated properties in Lagos State from 45,000 in 2007, to 750,000 by the end of 2010.[15]

Listed property values held by the State government constitute estimates of market value based on average land values and average building values in a given neighbourhood (see Box 1). To convert the calculated property values into a register for tax purposes, the government took the market values calculated through the enumeration exercise and deducted 40 per cent of the value in order to reach a registered assessment value. However, over time, the values from this enumeration exercise inevitably became out of step with commercial values, leading the State government to issue an Executive Order in 2008 that provided for an automatic 10 per cent increase in the registered values every year, beginning in 2009 (EO/005/2008).[16]

[14] Interview with property tax expert, 7 October 2016.

[15] This figure was provided by a former LUC official interviewed on 7 October 2016; note that it differs from the official figures we subsequently collected from the Lagos State Land Use Charge office, given in Figure 3, which are substantially lower.

[16] We were, however, told by one tax official in October 2016 that this annual 10% increment was 'not being implemented' (Interview with senior tax official, 6 October 2016).

Box 1 The formula in the 2001 Land Use Charge Law for the calculation of the LUC

The 2001 Land Use Charge Law specified a formula for the calculation of the LUC that adds together the two following values before multiplying their combined value by the tax rate:

- The land area **(LA)** of the plot in square metres multiplied by the average value of a parcel of land **(LV)** per square metre in that neighbourhood

- The developed floor area of buildings on the plot in square metres **(BA)**, multiplied by the average value of medium quality buildings **(BV)** in the neighbourhood per square metre, multiplied by the Property Code Rate (**PCR**, which accounts for the building being higher or lower quality than the average, and for the degree of construction).

Where **M** denotes the annual tax rate (which varies between owner-occupier, third-party-only and commercial property), the formula for calculating the LUC is therefore the following:

LUC = M x [(LA x LV) + (BA x BV x PCR)]

The law provides for many of the usual exemptions from property taxation, such as religious buildings used exclusively for worship, buildings used by certified non-profit organisations, and public libraries. Discounts are provided for early repayment (within fifteen days). Moreover, after a specified period the charge payable increases progressively, reaching a 100 per cent increase after 105 days. If after 235 days the tax has still not been paid, the property becomes liable to receivership by the State government and can be locked shut (LUC Law 2001, Article 20).

Much of the controversy that ensued as the government tried to get the LUC off the ground in the early 2000s related to tax rates, and how different kinds of properties were to be categorised in relation to different rates. The setting and renegotiation of the rates is in itself an interesting story, which indicates the strategic ways in which the LUC was being used, and the significant amendments the government was willing to make to its original plans in order to ensure that the LUC could be successfully implemented. The most significant climbdown by government was in relation to the tax rate for commercial properties, which was initially set at 1.75 per cent of the assessed value of the property. After the LUC was introduced at this rate, in the words of Commissioner Edun, 'all hell broke loose. The great and the good of Lagos said no way, people went to court ... at the boat club, nobody talked to me, when I came to the bar everyone turned their back'.[17] In 2003, sustained lobbying by the organised private sector managed to bring about a renegotiation of the rate for commercial property down to 0.375 – less than a quarter of the original rate (Ehigiator 2003).

Another major renegotiation concerned the residential rate, which was originally set at 0.65 per cent. After negotiation, the rate for properties occupied solely by owner-occupiers was slashed to 0.0375 per cent, with the amount for third-party-only properties being more modestly reduced to 0.375 per cent (the same as the commercial property rate). While still a halving of the tax rate, this meant that the third-party-only tax rate remained ten times higher than the owner-occupier rate. The question of how to tax owner-occupiers, who argue that they are not gaining financially from the property so should not have to pay much tax on it, is often a highly contentious one – particularly given the difficulty in distinguishing 'genuine' owner-occupiers from those whose properties are effectively used exclusively by third parties. While avoiding what would have been the most politically popular response - the exemption of owner-occupiers altogether, as for example happened in Uganda in 2005[18] –

[17] Cited in De Gramont (2014: 55-56).

[18] President Museveni completely abolished property taxation for owner-occupiers in 2005 in a move to bolster his support in the run-up to the 2006 elections. See Goodfellow (2012) for a discussion.

the dramatic reduction of the owner-occupier rate played a key role in securing public acceptance of the LUC. Also significant is the fact that vacant properties are taxed at a 'vacant rate', which is the same as the owner-occupier rate. This is likely to have further reduced resistance, given the substantial number of vacant properties in high-income parts of the city. Industrial and educational rates were set at 1.25 per cent, as were mixed-use properties – properties that are not solely commercial.

The number of court cases reduced significantly after these reductions in rates, which played a major role in facilitating a more effective rollout of the new system.[19] The substantial flexibility shown by the government has also enabled them to progressively raise the rates upwards: in 2012, all rates were increased by 5 per cent, with the effect that the owner-occupier rate rose to 0.0394 per cent, the commercial and third-party-only rate to 0.394 per cent, and the industrial, educational and mixed-use rate to 0.132 per cent. While it did not entirely eliminate political resistance to the tax, the approach taken to LUC rates in Lagos appears to have been effective and astute. Without creating new exemptions, which are politically very difficult to reverse and have long-term implications, as happened in Uganda, the negotiations in Lagos involved reducing rates so substantially as to undercut major political opposition but keep all property owners in the tax base. This offered the opportunity to gradually increase the owner-occupier rate over time, whilst still retaining relatively high tax rates for third-party-only and commercial properties.

Nevertheless, effective implementation of the new system required a substantial effort in terms of civic education. Resistance did not only come from property owners, but also from local governments (LGs), who were now deprived of their own role in revenue collection linked to property through tenement rates. There were major disputes over what role LGs should play in the collection of the tax, with the State government ultimately winning the argument on the grounds that LGs would themselves be better off if the State government, with its greater capacity and authority, took full control of the LUC. The question of how LUC revenue is remitted back to LGs is, however, one of the more opaque aspects of the system. A general formula for the remittance of LUC revenue back to LGs is specified in Table 1. As is evident from these figures, the formula changed under Fashola, to the benefit of LGs who (as a whole) went from receiving just 16 per cent of the net revenue (after various deductions) to receiving 30 per cent from 2010.[20] However, exactly how this is distributed among different local governments is less clear. Although the overall amount remitted to LGs increased substantially from 2010, there is a clear sense that LGs have lost substantial financial autonomy and control under the LUC system; in the words of one tax official, 'The State government is playing big boy, giving what it wants to local governments'.[21]

Table 1 Sharing formula for the proceeds of LUC between various stakeholders

	Description of payment	Y2001-2009	Y2010-Sep 2013	Oct 2013 to date
1	Trustees' fees	0.50%	0.50%	0.50%
2	Land Use Charge Appeal Tribunal	Nil	5%	5%
3	Commission to LRC Ltd	15% (after the deduction of (1))	15% (after deduction of (1) and (2))	10% (after deduction of (1) and (2))
4	Payment to State government	84% (after deduction of (3))	70% (after deduction of (3))	70% (after deduction of (3))
5	Payment to local governments	16% (after deduction of (3))	30% (after deduction of (3))	30% (after deduction of (3))

Source: Ministry of Finance, Lagos State

[19] Interview with former LUC official, 7 October 2016.

[20] Interview with former LUC official, 7 October 2016.

[21] Interview with tax official, 6 October 2016.

Perhaps partly because of the jealousy of LGs, aggrieved by the loss of revenue-raising powers, it is still very common for LG representatives to come and claim tenement rates from property owners and occupiers, despite the fact these were officially abolished by the 2001 Act. There are various explanations for this: while some people viewed the claims for tenement rates by LGs as purely fraudulent, preying on the ignorance of many people about the new system,[22] others stress that the main claims being made by LGs are for arrears of tenement rates, which according to the law they are still entitled to claim.[23] The law does also allow for LGs to continue collecting tenement rates until properties have been assessed and valued for the LUC.

Public acceptance of the new system began to increase,[24] and consequently the amount of tax collected dramatically increased from the late 2000s. In 2008, LUC retrieved NGN1.7 billion, which rose the following year to NGN2.2 billion, and the year after that to over NGN3 billion. However, aware they could still do better, the Fashola government initiated a new strategy in 2012 that involved opening more offices and trying to bring collection closer to the properties. With this increased commitment to the LUC, the whole operation increased in scale – 348 staff were employed in 18 zonal offices within the State as of 2013, and staff claim that management reforms 'have contributed to a clearer sense of corporate purpose, increased staff benefits, and improved overall morale and commitment' (de Gramont 2014: 50). Interestingly, while LRC (a private company) was still responsible for the whole revenue collection and administration process, the Fashola reforms underline the extent to which this remained firmly under State direction. Not only was the engine driving the new tax system clearly the State Governor's office, but Fashola played a key role in ensuring that the implementation of the entire process was effective from start to finish. He governed the process through a mantra of '3 Fs': follow up, follow through and feed back, and even published his own mobile phone number in the newspapers, urging people to provide feedback as a way of 'crowdsourcing' data. He would reportedly systematically forward all messages he received to relevant staff in LRC, demanding timelines and feedback. The CEO of LRC had his phone number published on tax demand notices to ensure that feedback would go directly to the top.[25]

The 2012 reforms led to a step change in collection from NGN3.8 billion in 2011 to NGN6.3 billion in 2012, rising again to NGN7.2 billion in 2013. The amount collected remained around the same in 2014. Overall, almost NGN40 billion was generated through the LUC in the period 2007-2014.[26] Revenue dipped significantly in 2015, the most recent year for which data was available. There are a number of possible reasons for this. Probably the most significant is that 2015 was an election year. Personnel involved in the administration of the LUC were open about the fact that they simply stopped enforcing payments that year – since the PDP (now in opposition) had made a manifesto pledge to reduce the LUC, the ruling APC were anxious not to inflame this issue.[27] More generally, it was stated that 'in election years, we don't enforce'. While not an official policy, this appeared to be a very unambiguous and widely understood principle.[28] Also significant, however, was the change in political situation after the election in 2015, in which the APC gained power nationally, and a new

22 Interview with property developer, 30 September 2016.

23 Interview with tax official, 6 October 2016.

24 The degree to which this increased acceptance was due to tangible improvements in services and infrastructure is a moot point. As we suggest below, the most dramatic changes to the city in terms of new infrastructure, improved waste collection and security are for the most part associated with increases in PIT, which is also a State-level tax and generates far more revenue. It is likely that expenditure linked to the LUC did also make a difference in some areas, though most interviewees did not distinguish between services funded by PIT and those funded by LUC. As our research did not include a focus on expenditure specifically linked to LUC, we cannot comment authoritatively on the difference it made to people's lives. In any case, as we argue in Section 4, the most common reason given for compliance was a sense of civic duty, also often linked to perceptions of enhanced citizenship and tenure security.

25 Interview with former tax official, 7 October 2016.

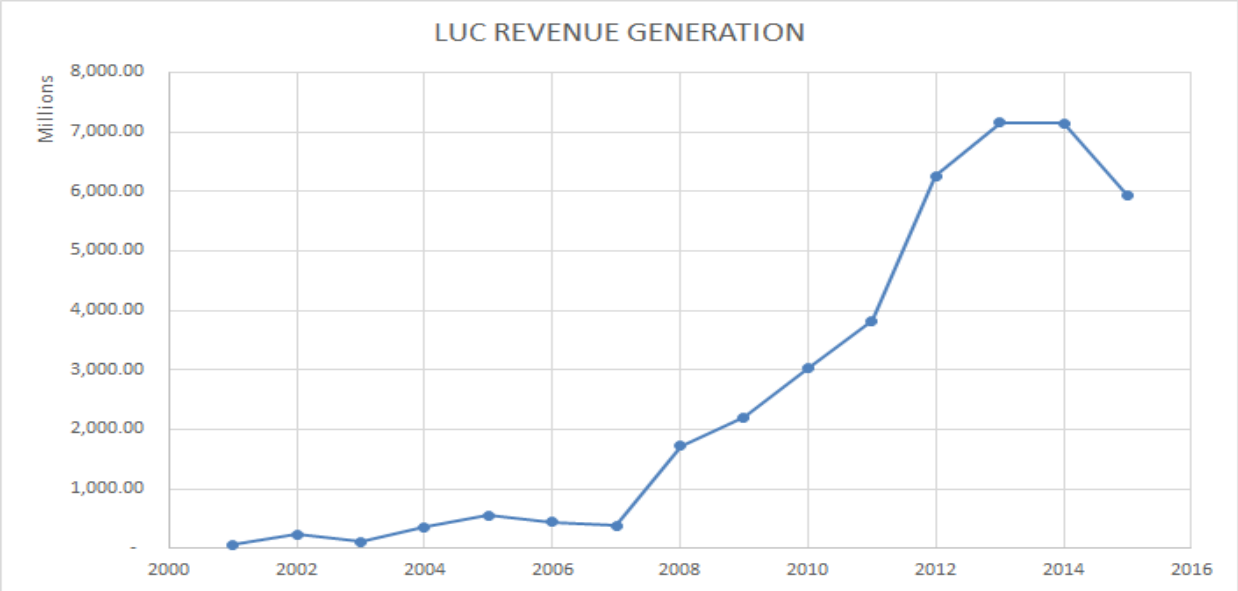
26 Data collected from the Ministry of Finance at Lagos State, February 2017.

27 Interview with LUC official, 17 February 2017.

28 Interview with LUC official, 17 February 2017.

governor, Akinwunmi Ambode (also APC) replaced Fashola in Lagos State. This led to a changeover of key personnel in control of the LUC, and some friction in terms of handover of data and continuity of the system, which in the view of some respondents was a likely cause of reduced revenue.[29] Figure 2 depicts LUC collection over the entire period 2001-2015.

Figure 2 LUC revenue generation, 2001-2015



Source: Ministry of Finance, Lagos State

4 The LUC in practice: compliance, disputes and negotiation

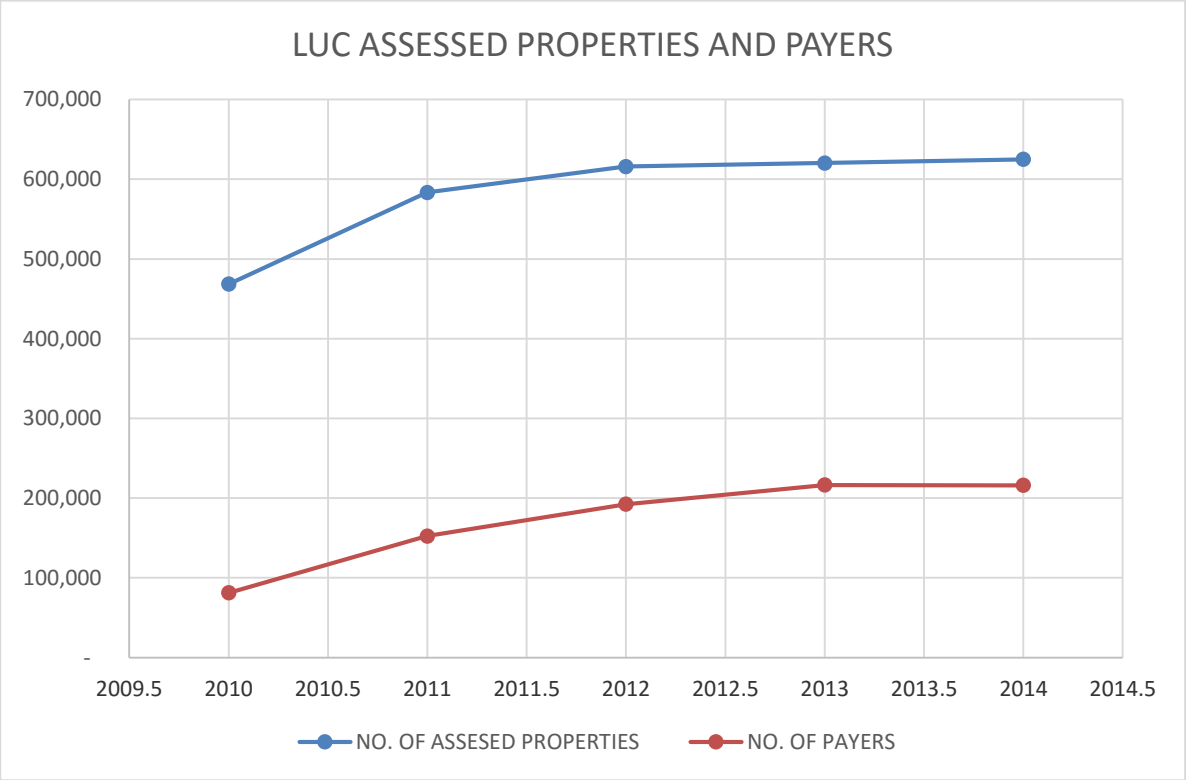
Although considered a success overall, the establishment of the LUC did not come easily, and the system is has been beset with problems, resistance and conflict over payments. One of the impressive aspects of the Lagos property tax story is the way it has continued to evolve in response to such difficulties. Sometimes this happened through conscious efforts to address problems from above, but evolution also occurred through more organic processes that led the tax to become widely embedded in the public imagination as a legitimate tax. These perceptions of legitimacy take variable forms. In some cases, they derive from the association of the LUC with a generally developmental regime at State-level that is seen to be delivering some results (even if these have no clear link to the LUC itself). For others, particularly those in more marginalised areas, acceptance of the tax tends to be founded more on the hope that services and a degree of recognition might be extended to these areas in future. Indeed, some people in such areas have taken increased ownership of their LUC payments as a form of bureaucratic recognition that bolsters their claims to citizenship and – crucially here – property. This is a theme we return to in detail later in the paper.

In terms of measures to streamline the system from the top-down, the government has created specific institutions, such as the LUC Tribunal, with the aim of dealing with payment disputes in a way that is timely, fair, and helps to re-emphasise the benefits of paying. Before examining some of the disputes and conflicts associated with the tax and how they are resolved, it is worth first considering overall levels of compliance. These increased significantly from the late 2000s, more or less in parallel with the overall increases observed

[29] Interview with former LUC official, 7 October 2016.

under Fashola. Figure 3 illustrates for the period 2010-2014 the overall number of properties assessed for the LUC, relative to the number of properties on which tax was actually paid.

Figure 3 LUC-assessed properties and taxpayers, 2010-2014



Source: Ministry of Finance, Lagos State

Figure 4 shows the corresponding compliance levels, illustrating that the compliance rate doubled in just three years, from 17.4 per cent in 2010 to 34 per cent in 2013.

Figure 4 LUC compliance, 2010-2014

Source: Ministry of Finance, Lagos State

Although 35 per cent is still far from an optimal level of compliance,[30] the increase over this period has been impressive. Analysts have already pointed to the ways in which infrastructure roll-out has helped create the impression that the government is delivering on its promises, thereby facilitating compliance (De Gramont 2014; Bodea and LeBas 2016). However, although most residents can see the overall changes in the city at large, such as introduction of the BRT, if there is an association made between these changes and taxation, it is generally with PIT. Across the socio-economic spectrum, it seems clear (although we do not have quantitative evidence) that many people perceive little if any tangible benefit from having paid the LUC specifically. For example, despite claiming to pay up to NGN30 million across his various properties, one high-end real estate developer lamented that 'as a private property developer, [the LUC] has few tangible benefits because you still have to provide your own infrastructure'.[31] In a different context entirely, all residents interviewed in one of the city's many threatened waterfront communities likewise stated that they had seen no evident difference in infrastructure or services as a consequence of paying the LUC (or indeed any other tax). Changes that are perceptible in the city at large are neither seen as benefitting such communities, nor as linked to the LUC.

It is interesting that, despite the lack of tangible benefits, such communities are willing or even keen to pay the tax, contributing to the increase in compliance observed above. In those waterfront communities where paying the LUC was the norm (which was not the case in all of them), the purpose of the tax was seen to be bringing improvements in roads, water provision and electricity. Although community members saw no evidence of services improving even after paying the tax for several years, they continued to pay in the hope that services would improve. In this respect, the LUC was perceived as legitimate by community representatives, and as representing the promise of future improvements. This may seem somewhat counterintuitive, in the sense that the lack of apparent service improvements to date might be seen as more likely to *discourage* payments than encourage them. However, it is important to note that in many more marginal communities the LUC had only recently been introduced, and its very introduction was widely perceived as bestowing some recognition on the community that might yield future benefits. Payment of the tax was seen as a route through which to cement their own legitimacy as citizens; in the words of one representative, 'it's our civic responsibility; we have done our part, now it's time for government to do their part'.

In this particular community, property registration plaques had been put in place for the first time in October 2016. Prior to this point, despite many properties paying the LUC, the government had not installed these on the grounds that 'it's a waterfront community'; in other words, plaques would be seen as conferring legitimacy on the community and some degree of permanence to its presence there. By the same token, the presence of these plaques today seems to have strengthened people's willingness to pay the tax, notwithstanding the lack of improvement in services. Thus while there was initially some consternation in the community about the purpose of the plaques, because little information was provided about what they were for, once their function became apparent they bolstered the view among LUC payers that payment of the tax constitutes some recognition of the legitimacy of their settlement. Indeed, as we discuss further in Section 6, there was a clear link between paying the LUC and the effort to shield themselves from eviction by the State government.

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[30] Unfortunately this data up to 2014 is the latest we have available, so we cannot comment on what has happened to compliance levels in the few years since. It is also notable that de Gramont's (2014: 49) study refers to compliance having risen to 'around 66% of expected revenue'. Without further research we cannot resolve this inconsistency. It seems, however, likely to be because her data is a measure of revenue relative to expected revenue, while ours is the number of taxpayers as a proportion of the number of properties assessed for payment. As we received this data after returning from the field, we were also unable to clarify whether there is a one-to-one ratio between the figures on registered properties and those on actual LUC payers – in other words, because one taxpayer might own several properties, it may be that the compliance level is significantly higher than 35%. Given these uncertainties, the most important thing about these figures and graphs are the unequivocal *increases* they show, rather than the exact compliance as a percentage.

[31] Interview with property developer, 3 October 2016.

The question of affordability of the payments was also a significant issue. In a community such as the waterfront settlement discussed above, people typically paid NGN2,000-5,000 annually in LUC, depending on the nature of their property, with some exceptional properties paying up to NGN16,000. To many of these community members this was a substantial burden, particularly since their livelihoods were being severely constrained by recent policies banning the informal sand business on which they depend. Interestingly, while this was never corroborated by tax officials and beyond the realm of official policy, there was scope for some discretion when it came to the amount actually charged to taxpayers (even aside from any favours that might be sought through bribes). One source suggested that older taxpayers were given a discount 'to make it affordable', but there do not appear to be official rules about this. It was even suggested that other kinds of informal discount might apply, including ones linked to 'Lagosian' identity and status. One source from a wealthy background said that she wrote to the LUC office and succeeded in getting her mother's payments reduced from NGN21,000 to NGN5,000, partly on grounds of age, and partly because she was a 'true' Lagosian, from a known and respected family.[32]

The affordability issue is complicated by the question of which individuals associated with a property in practice actually pay the LUC. Although in law it is clear that the owner of the property is responsible for paying the LUC, in reality the matter of who pays, and how this links to the supposed benefits flowing from the tax (including any perceived link to property rights), is rather more fluid. Some landlords simply refuse to pay, but since the government has the authority to physically block access to the property after a period of non-payment, tenants often have no choice but to make the payment themselves. To avoid this, many tenants now demand a clause in their rental contract about the landlord paying the LUC, though in some cases the opposite occurs, with owners specifying in a contract that the tenant should pay. There are numerous disputes in which tenants complain that the owner is supposed to be paying but hasn't, resulting in the sealing off of the property. In these situations, the LUC Tribunal can issue a letter making the tenant 'an agent for the LUC', enabling them to legitimately deduct the LUC from the rent that they pay the landlord.[33] This mechanism provides a means for the State to extract the LUC even where landlords are remote and untraceable, and also helps to establish grounds for political solidarity between the State and the tenant class in Lagos. For some tenants, paying the LUC, even when not the property owner, and then making a corresponding deduction from their rent *backed by the State*, is appealing, as it establishes reciprocal relations with the State and may promote a greater sense of security of tenure.

Conflicts relating to the LUC range far beyond landlord-tenant payment disputes, as the work of the LUC Tribunal testifies. The Tribunal, which despite being initiated by the 2001 LUC Act took a decade to emerge given the complexities of establishing the tax system, deals primarily with disputes relating to assessment of the property itself. These include disputes over valuation, classification (i.e. whether the property is properly considered commercial, residential or mixed-use), and exemption (e.g. whether a place is legitimately denoted as a place of worship, or actually serves a commercial function). There is a fair amount of negotiation possible in the tribunal process, particularly when it comes to penalties for late payment. If owners have not paid, but can claim a good reason, their penalties are sometimes waived, and staggered payments can also be agreed. In the event that a dispute is not resolved, the threat of sealing the property as a last resort can be very effective. In cases where this actually takes place, the gate into the property is literally chained and padlocked. More commonly, the threat of this is enough to get people to pay, due to the humiliation associated with having one's property sealed off, particularly in wealthy neighbourhoods. Nevertheless, in December 2016 alone the State actually sealed off around

[32] Interview with lawyer, 30 September 2016.

[33] Interview with LUC tribunal representative, 17 Feburary 2017. This is also formally established in the LUC Law (Clause 11).

500 properties, mostly in the middle-income bracket.[34] This practice is particularly common in middle- and high-income areas, hence the fact that compliance is better among higher-end properties (De Gramont 2014: 49).

This account of some aspects of how the LUC works in practice illustrates that payment of the tax needs to be understood sociologically. This does not just mean considering the broad role of the tax in building state-citizen relations (which in theory is a function of all taxation), but interrogating how a tax specifically on land and property constitutes and reshapes the relationships between property, citizenship and social status. In bringing all recurrent payments on land and property under one increasingly streamlined revenue instrument, the State has had to position itself clearly relative to landlords and tenants, while the latter have to bargain more explicitly with each other about who is making payments to the State and why.

Meanwhile, the growing legitimacy of taxation in general in Lagos has eased the path of the LUC, which in turn has influenced the broader fiscal contract, albeit in varying ways among different sectors of society. For wealthy elites, the high visibility of their property means that compliance is virtually unavoidable, and non-payment could result in social humiliation. This has promoted broad acceptance of the tax regardless of perceived benefits, and perhaps even started to instill the idea that it is a minor redistributive tax on wealth, rather than being linked to direct benefits. However, the State uses this tax to leverage more substantial revenue: through its link to property, the LUC is used as a tool to identify high net worth individuals, in order to bring them into the tax net for PIT.[35] Therefore, while the LUC is insignificant enough to the wealthy to be worth paying solely in exchange for avoiding humiliation, once registered for it their wealth becomes more visible and they are less able to evade more substantial payments in the form of PIT. For those less fortunate, payment of the LUC is part of an incremental acquisition of a 'higher state' of citizenship, and a perceived way of exerting some moral pressure on the State to deliver on its promises of a more secure and better-serviced future. However, to fully understand how taxation and the processes linked to it affect people's conception of property and their rights to it, we need to see the LUC as part of a broader web of payments. The other relevant payments can be broadly considered as formal and informal, and we consider each of these in turn.

5 Other taxes, laws and official documentation relating to property

The LUC is not the only form of tax that people pay in relation to property in Lagos. As in much of the world, non-recurrent taxes on property acquisition and transfer exist that are significant not only in revenue terms, but with regard to how they relate to property rights. Indeed, these taxes are intrinsically linked to the question of property ownership, and are paid by people in pursuit of State recognition that a property right has been transferred. The most basic way in which this transfer of property is officially recognised is through the issuing of a Deed of Assignment, stamped by the Attorney General and Commissioner for Stamp Duty. To acquire a Deed of Assignment it is necessary to pay in tax a percentage of the registered value of the property, based on a list of average property values per metre squared in a given neighbourhood.[36] This tax is generally referred to as 'governor's consent',

[34] Interview with LUC tribunal representative, 17 February 2017.

[35] Interview with tax official, 6 October 2016.

[36] Note that this list of properties is compiled in a document called 'Fair Market Value of Land and Buildings', which is entirely separate from the register of property values used for the LUC. The reasons for this are unclear, and officials noted that they were trying to streamline the two registers.

but actually there are four different types of consent, depending on the type of land concerned.

The first of the four taxes on transfer of title is *private* consent, which is paid when a private individual transfers their property to another individual. The second is *deemed grant* consent, which relates to land that was held prior to the 1978 Land Use Act under customary law, and is paid in order to acquire a reversionary leasehold interest in that land. The third is called *regularisation* consent, which involves paying for the 'release' and recognition of title by individuals occupying land that is officially government-owned, but not yet committed to a government scheme. The fourth and final is consent on *State* land, and is paid when acquiring land that is part of a formal Lagos State government scheme (i.e. land that has been expropriated and committed to a scheme for property development).

Although the consent fees paid under each of these four categories are often treated as one lump sum based on a percentage of the listed property value, they break down into four elements: i) the governor's consent fee itself, ii) capital gains tax, iii) stamp duty, and iv) a registration fee. These are almost always all paid by the *purchaser* of the property. Therefore, contrary to the logic of capital gains tax, which is usually paid by a property seller whose equitable interest in property has increased during the period of ownership, all of these taxes and fees are paid by the purchaser in one lump sum. In fact, by law, it is the property seller who is supposed to pay this entire sum, but in reality the converse happens 'because you can't find the seller'.[37]

These consent fees have changed dramatically in recent years. Until 2016 the overall fee was set at 15 per cent of the registered property value in order to further boost revenue.[38] However, the government then took the decision to radically cut the tax to 3 per cent.[39] This was another strategic move to try and bring people into the tax net; in making such a drastic cut in property transfer taxes, the State government was hoping a larger percentage of people would come forward and declare property transfers for tax purposes, thereby registering a payee number and 'then we could catch them for PIT'.[40] It was perceived to be worth sacrificing most of the income from consent fees in order to use property transfers as a way of finding people who have not paid PIT – or, more specifically, rich people who have not paid PIT. Even without knowing the exact value of the property, the basic knowledge gained through registering property transfers can be taken as a proxy for broader wealth and income, and can force people into the PIT net by withholding the Deed of Assignment until they have a registered a tax payee number.

Thus if a property transfer is recorded in a high value part of the city, such as Ikoyi or Victoria Island, using this information to register the purchaser for PIT is itself a substantial achievement. The value of the property itself is almost immaterial – indeed, the State government seems to have taken a strategic decision to leave aside the issue of capturing actual market values and capital gains, which are always immensely problematic and time-consuming, in favour of using these taxes as a tool for maximising PIT coverage. Land officials explicitly stated that 'we aren't interested in the purchase price' when they tax property transfers,[41] just the registered value based on a neighbourhood average. Following a similar logic, they have also decided to disregard the law on capital gains tax, which states that it should be 10 per cent of profit on the property, in favour of a much more pragmatic flat fee of 0.5 per cent of the registered property value.

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37 Interview with land official, 5 October 2016.

38 8% of this was the consent fee itself, with 2% being capital gains tax, 2% stamp duty and 3% registration fee.

39 This breaks down as 1.5% for the governor's consent fee, 0.5% capital gains tax, 0.5% stamp duty and 0.5% registration fee.

40 Interview with tax official, 6 October 2016.

41 Interview with land official, 10 February 2017.

The payment of taxes on property transfer has thus been downgraded to *an indicator of high net worth*, rather than something intrinsic to the property in question. Meanwhile, when it comes to property *rights,* paying these taxes and acquiring a Deed of Assignment does not in itself resolve the issue of title. A Deed of Assignment is recognised by government as an equitable interest, but does not bestow a legal interest. For that, it is necessary to acquire a Certificate of Occupancy (C of O). Acquiring one of these involves a significant number of bureaucratic processes that can be laborious as well as expensive, in addition to paying the relevant consent payments for a Deed of Assignment.

Even if people have come forward to pay their consent taxes, the vast majority of land transactions, tenancies and occupancy rights in this city of up to 20 million never reach the C of O stage, which represents the 'gold standard' (and technically the only) form of legally-recognised property right that can be issued. The cost of acquiring a C of O – not so much in the issuing of the official documents, which has no cost in itself, but the various processes needed to get to that point – is prohibitive for many. You are also required to have no PIT arrears in order to be eligible for a C of O. Acquiring the information needed to successfully process a C of O is also extremely laborious, necessitating the submission alongside the Deed of Assignment of various documents relating to the purchase of the land, historical information on land rights and use, photographs and survey information. The documents are carefully vetted and need to be signed off by as many as nine different people. While in theory the process can take as little as thirty days, an official involved in processing Cs of O reported that this had never happened, and around 80 per cent of applications face problems that cause major delays.[42]

Even in the highest-performing year of 2016, only 2,282 persons obtained C of O approvals in Lagos State. This means that for the vast majority of Lagosians involved in obtaining and developing land, the C of O remains a semi-mythical and distant ideal; in the lacuna thus created, each paper milestone on the journey towards a C of O becomes its own property right by proxy, with its differently leverageable powers. This includes not only the Deed of Assignment (for those who have paid the official consent fees in order to get one), but the survey plan from a registered surveyor and any documents relating to planning permission. Thus, as we were informed while presenting an earlier version of this paper in Lagos, 'when you get your pink copy, you will take your family there [to the land] and pray' – when the pink carbon copy of a certified plot and plan is registered with the government surveyor, this in itself becomes a milestone achieved and worthy of thanksgiving.

Interestingly, however, it is not only the cost and difficulty of having a C of O processed that accounts for the low number of people actually in possession of such documents. Additional data obtained by the authors (not reproduced here for considerations of space) show that far from all of those issued are immediately collected by the applicants. Many landowners with access to the highest form of title are therefore 'sleeping over their rights'.[43] This is likely to be because most of the property owners who have got to the point of having their C of O finalised are not in situations of imminent threat to their tenure security, so there is no urgency for them to collect the documents. However, it may also be because of the need to pay other informal payments to acquire the C of O, even if there is no official cost associated with collecting it.

In the widespread absence of Cs of O, every payment made and every official document received linked to the acquisition, demarcation, exchange and use of property can come to take on a meaning beyond a fiscal interaction or fee paid for services rendered. While it is extremely hard for most people to acquire a C of O, documents evidencing rights to property are highly prized, given the degree of insecurity of tenure and the strength of demand for

[42] Interview with land official, 10 February 2017.

[43] Interview with land official, 5 October 2016.

land in the city. Consequently, anything committed to paper that can indicate official recognition of some claim to the property becomes part of the jigsaw in the effort to assemble property rights.

Moreover, although having a C of O is the greatest form of legal security of tenure that is attainable, this does not necessarily translate into de facto tenure security. Even the few who do possess a C of O are not safe from contesting claims: crucially important in the Lagos context are historical claims made by indigenous landowners, or people claiming to be such, to pre-existing rights to the land. Linked to such claims are a realm of informal payments and levies rooted in traditional custodianship of land, which coexists with the various formal payments documented thus far. The role of these informal payments is integral to any understanding of how property rights operate in practice in Lagos.

6 Ancestral claims and the phenomenon of *omo onile* payments

'They say that Lagos is "no man's land", but it's not. It used to belong to somebody.' [44]

The payment of levies to groups of people who claim the status of a traditional community or authority with longstanding ancestral rights to the land is common across cities in Southern Nigeria, though is referred to in different ways depending on the context. Often termed *Ajagungbales* (land grabbers) in Ogun State, and (mis)claiming the title of Community Development Association (or CDA) in Benin City, in Lagos these groups usually go by the term *omo onile.* This is loosely translatable as 'children of the land', and in its literal sense is associated with indigeneity and bona fide land rights – though, in reality, as one journalist put it, in Lagos 'the name *omo onile* is synonymous with parasites, hoodlums and enemies of progress who enjoy reaping from where they have not sown'.[45]

In many parts of the city, where *omo onile* groups are making a claim to a particular plot of land (regardless of the historical legitimacy of this claim, which can vary widely) they will come to the plot to demand payment from a prospective property developer at each stage of the property development process. Thus, for example, the laying of foundations, building of each successive floor of the building, and laying of roof tiles, will all be associated with payment of a specific levy. These payments can amount to very substantial amounts of money and are entirely unregulated (notwithstanding the recent move towards some form of control in the new law, discussed below). As one official noted, 'you basically have to pay *omo onile* for every truck of materials that comes in'. [46]

There is a significant degree of ambiguity over the use of the term *omo onile,* and the term has become so pejorative that few people would self-identify with it. Nevertheless, historical claims to land that pre-date the colonial period are pervasive in Lagos, among very different sectors of contemporary society. At the elite end of the spectrum, Lagos families with longstanding claims (which they actively maintain by making clear their expectations that they should benefit from any use of that land by current official owners) distance themselves from the practices associated with 'the lowly *omo onile*' who are considered 'thugs'.[47] This idea of a disreputable youth preying on land is contrasted with the 'respected good Lagos

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44 Interview with member of historic Lagosian family, 5 October 2016.

45 'Omo onile: Miscreants who are as powerful as the state', *Nigerian Tribune,* 16 July 2016 <http://www.tribuneonlineng.com/omo-onile-miscreants-powerful-state/>.

46 Interview with land official, 5 October 2016.

47 Interview with middle-class Lagosian, 30 September 2016.

families' that do not have to resort to violence. The latter depict themselves as the 'true Lagosians', in contrast to 'Lagosians by decree' – they identify as original settlers who have claims to land with deep historical and social legitimacy, rather than those whose claims are rooted in post-colonial legal developments.[48] This reference to decree refers above all to the 1978 Land Use Decree, which, through its act of mass dispossession, ushered in a major new chapter in the *omo onile* narrative, generating a plethora of new grievances that could be framed around malleable discourses of indigeneity.

Even those considered by others to be lowly *omo onile* often have well-developed claims to the legitimacy of their activities. Many of these likewise distance themselves from the now-toxic term *omo onile.* As with the good Lagos families, the imputed legitimacy of their claims comes from being a member of the family that was among the first settlers on that piece of land. Interestingly, recourse to the early colonial period is one way in which these rights are asserted and defended, with one claimant citing an 1860 colonial judgement and stating that 'the colonial master really helped the families to determine the boundaries of their land'.[49] In the words of another member of a family claiming indigenous rights to 18.7 hectares of Lagos land, 'I'm not a land-grabber, I'm fighting for my rights. I don't call myself *omo onile.* If you do that, people see you as coming with touts ... my family don't do that'. This claimant, while clearly not being from what Lagosian elites would consider a 'respected, good Lagos family', also distanced himself from hoodlums associated with the idea of *omo onile.* Such families argue that there is a new form of 'contemporary land-grabbers' who do not belong to a historic family at all, and are often hired hands of criminal interests. This particular phenomenon, which is seen as the lowest and least legitimate form of *omo onile*, has rapidly gathered pace over the last decade.[50]

The payments made to *omo onile* claimants are rarely straightforward one-off affairs, and are complicated by the large and hierarchical nature of families claiming traditional authority over the land in question. For example, it is not uncommon to have to make payments to a lower-level *omo onile* boss, as well as the 'big *omo onile* boss'.[51] This is exacerbated by the fact that the 'original' *omo onile* have their claims to a particular piece of land fragmented among many descendants. This also exerts an upward pressure on payments claimed from property developers, since the family elders have to distribute resources among an ever-growing number of people. One member of a family with longstanding land claims referred to having to distribute resources to around 200 people, making reference to a 'tree' that dates back to 1860.[52] It usually falls to the elders to decide how the resources from these payments are distributed; for example, the active *omo onile* are likely to retain a greater share than more passive members of the family.[53] Disputes within families over such payments, and how they should be distributed, are rife.

Anyone hoping to build property on land in Lagos that may be affected by *omo onile* claims (which is a large proportion of land in the city, though difficult to specify precisely), has to factor this in as a major cost from the outset. These practices are so informally institutionalised as to be comparable with taxes in terms of their effect on investment behaviour and viability. As one real estate developer put it, 'You pay taxes in the UK to benefit the poor, here we pay an idiot'.[54] Getting around the problem of *omo onile* payments is challenging and unpredictable. For the wealthy, one option is to purchase land that has already been allocated to a government scheme (thereby making it easier to get a C of O), or to purchase land from a developer who has already negotiated with *omo onile* claimants.

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48 Interview with middle-class Lagosian, 30 September 2016.

49 Interview with indigenous land claimants, 5 October 2016.

50 Interview with indigenous land claimants, 5 October 2016.

51 Interview with NGO representative, 30 September 2016.

52 Interview with NFA, 5 October 2016.

53 Interview with lawyer, 5 October 2016.

54 Interview with property developer, 3 October 2016.

Even these are not a guarantee of absolute security if the *omo onile* making claims to the land do not feel they have been adequately compensated.

From the perspective of people making these claims for levies, one of the main problems is that, when government acquires land under the provisions of the 1978 Land Act (which is an ongoing process), the compensation provided is often considered highly insufficient. In other words, the compulsory acquisition value provided bears no relation to market value. A further source of grievance fuelling *omo onile* claims is the fact that land acquired by government for some kind of public purpose is often then actually used for commercial purposes. Given their belief in their historic claims to the land, *omo onile* groups feel they should benefit from the increased value being gained from the land when it is used commercially.[55] It is this that underpins the claim that 'government is the chief land-grabber', with the State using the discourse of criminal *omo onile* activity to undercut all traditional claims to land.[56]

There is a sense among families with claims to traditional authority that *Obas* (kings) in Lagos have progressively lost many of their traditional roles, including in relation to justice provision and peacemaking. This contrasts with the way in which those roles still apply in surrounding areas of South-Western Nigeria. The determination to maintain and claim rights over land is therefore especially intense in Lagos, where it is one of the few aspects of social life in which traditional leaders are still able to exert authority.[57] This has made clamping down on *omo onile* activities in relation to land a tricky issue politically, and finding ways to accommodate them has been an important imperative. In this respect, the *omo onile* phenomenon has been allowed to grow, and in certain respects has been stimulated by being tacitly condoned by government. Some sources even suggest that the State government actually charges businesses less in local business rates due to an informal recognition that they will have to make *omo onile* payments.[58]

The continuing, and increasingly complex, network of claims, transactions, enforcements and occasionally violence surrounding the *omo onile* phenomenon has itself prompted a governmental intervention intended to settle the issue decisively. This was coming on-stream as we did our first fieldwork in September 2016, in the form of the State Assembly's passing what is usually called 'the Land Grabbers' Act'.[59] The Act became big news, partly because a similar law passed simultaneously in Ogun State that re-endorsed the death penalty, mandating it for homicide in the course of any land-occupation-related violence.[60] The decision to develop this law was ostensibly prompted by the rapid escalation of demands for payment by *omo onile* groups in the context of Nigeria's mounting economic crisis, and, in an event that finally tipped the balance, the killing of a government official who was trying to settle a land dispute on 16 October 2015. At this point the State government 'felt it was getting out of hand',[61] and a new law criminalising the forceful occupation of land was deemed necessary. In the words of a member of the Lagos State Special Task Force established to implement the new law, it was becoming 'like the Middle Ages, where you start to acquire land by force'.[62]

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55 Interview with indigenous land claimants, 5 October 2016.

56 Interview with indigenous land claimants, 5 October 2016.

57 Interview with indigenous land claimants, 5 October 2016.

58 Interview with NGO representative, 30 September 2016.

59 The official title of the act is '*A law to prohibit forceful entry and illegal occupation of Landed Properties, violent and fraudulent conducts in relation to Landed Properties in Lagos State and connected purposes'*, gazetted 9 September 2016.

60 Although the focus of our paper is the political economy of land within the administrative boundaries of Lagos State, readers should note that in many ways the most dynamic land frontier is that into which Lagos' urban sprawl has spread in contiguous areas of neighbouring Ogun State, and where that State's administration is currently taking a strong governance and investment interest in land matters. The capital punishment clause is largely symbolic, as the penalty is already possible for homicide in Nigeria.

61 Interview with land official, 5 October 2016.

62 Interview with member of 'land-grabbers' Task Force, 13 February 2017.

The main intended function of the 2016 Act is to attempt to move the locus of legal action from the civil courts, which have been long clogged with land cases as documented above, to the criminal arena. In the process the State administration transforms itself from an uninterested bystander, to a prosecuting party enforcing a stance in order to maintain the peace. The new law was promoted to the public as a way to stop the social nuisance of entrepreneurial *omo onile* activities, and, therefore, catered primarily to an intended audience of putative property developers and home improvers rather than 'sons of the soil' or indigene families.[63]

However, the reality of how the law is being used is informative (and it is actively being used, rather than remaining on the statute books as a signal). We, as researchers, had initially thought that this kind of legislation fitted a narrative of increasing State control and State-led capital development – that it would function as a way for the State to enforce its own primacy over alienated State land. However, the Lagos Attorney General's office explained that disputes on land that had been acquired by Lagos State for government schemes constituted no more than 25 per cent of the 1,002 cases they had registered to date.[64] Instead, the large majority see the State government being brought in as party to individual disputes to enforce peace and the status quo ante pending resolution of court cases. The law thereby becomes a new piece in the existing jigsaw of tactics and claims, functioning to pause the action at a point where one claimant feels sufficiently empowered or endangered on the ground to want to resort to it.

The most interesting detail however is buried in Section 11 of the Act. To contextualise this, recall our initial observation that to tax something entails the State entering an inevitable obligation to regulate it, and to take positions on evolving realities pertaining to that thing – which in this case is property. Section 11 of the 2016 Act is where the State shows where it wants to draw the limits to its hegemony; where it shies away from contending with custom and social forces, stating that:

> A person shall not, whether for himself or acting as an agent, demand any fee or levy in respect of construction activities on any property, disrupt or obstruct construction works *provided that the provision of this Section shall not be interpreted to preclude land-owning families under the authorisation of the family head to demand for the customary fee for possession* (in the name of foundation levy) from buyers. (Our emphasis).

In other words, far from banning the activities of *omo onile*, the Act seeks to regulate and streamline them, steering them into the path of an accepted and legalised, but subdued and domesticated, part of the property development process. A series of submissions to the Attorney General's office on the importance of the legacy of *ishak'ole* (tribute in kind rent) led to the practical decision that the formalisation of property rights and streamlining of development will not replace and extinguish, but accommodate and tidy up, the system of customary claims. This takes us back to an acknowledgement of the meld between historical epochs, combining and layering, so that now for the first time the law, with an eye to its social legitimacy and workability, acknowledges social payments as well as State taxes.[65] The law

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[63] This in itself marks another instalment in transformations and contestations of political accountability between the kind of traditional or indigeneity-based public to which most Nigerian State administrations feel themselves primarily accountable on one hand, and the civic or general public on the other, which in the country's cosmopolitan commercial capital is in fact larger.

[64] Interview with member of 'land-grabbers' Task Force, 13 February 2017.

[65] And, in the process, this clause represents a fightback by the indigene section of the public mentioned above, even within the enactment of a law ostensibly angled against them. Of course, inevitably this new process itself entails further stand-taking and regulation; thus the Attorney General's representative enlarged on the next instalment of work already in progress as being the registering of agreed family heads to eliminate impostors (and, of course, there will be some in dispute that will need to be settled), and of the spreading of a new norm that a customary fee should be clearly nominal rather than profiteering (in this regard it should be noted that awareness of the actual provisions of the new law have

can be interpreted as something that legally legitimises *omo onile* payments, rather than criminalising them.

7 Formal and informal payments and the endless pursuit of tenure security

Understanding property taxation in Lagos – including with regard to why people do or do not pay, how they negotiate who pays, and how they feel about paying – clearly cannot be separated from the full range of other payments people make on their land and property. On one level, given the extent to which people are expected to make informal social payments that can be very substantial and are backed by the threat of violence, it is surprising that people are willing to pay the LUC at all – especially when they believe they get nothing in return. Yet, from another perspective, it is the presence of unofficial payments, and the inaction of the State, that explains *why* they pay. What situating property tax in relation to other property-related payments reveals is that on one level paying the LUC is just another way of trying to keep other claimants to the land off your back (be they *omo onile* groups or the State government itself).

It is very clear in strictly legal terms that payment of the LUC does not affirm ownership of the land in any way. As discussed above, it is often tenants that end up paying it: a certificate of payment could be issued to anyone, regardless of tenure, and there is little attempt to establish proof of title before the LUC is collected. Unlike the process of paying 'governor's consent' and working towards the acquisition of a C of O, which are partly about attempting to clarify title, the LUC is (from a government perspective) just a way of generating revenue. However, this does not mean that the LUC has no significance as an indicator of property rights on the part of people who pay it. In fact, officials involved in land governance at Lagos State affirmed that people sometimes bring receipts for their LUC payments, as well as for payment of ground rent or tenement rates in the past, as evidence of their land rights.[66] Contrary to the official government perspective, members of vulnerable groups, in particular, cling to the significance of LUC payments – and the documentation they receive as a consequence of paying, including the letters that Lagos State issues to good citizens who repeatedly pay on time – as tokens of tenure security.

Members of the waterfront community discussed above, where paying the LUC is well established, including through the recent installation of plaques, affirmed that they do believe paying the LUC helps them in their efforts to avoid eviction. Indeed, in the context of the government's decision to shut down the sand business on which their community depends economically, people continued to pay the LUC despite their anger, 'because it should at least stop us from getting evicted'.[67] Specifically, it is the use of the letter affirming consistency in payment that some people felt would stop them getting evicted. One property owner in this community, when asked a broad question about her relationship to government, brought up the issue of the LUC good citizen payment letters and her hope that it would increase her security, without even being asked specifically about it. Others echoed this sentiment, stating that they had been paying the LUC for three years, and, despite no improvement in services, would continue to pay because they feel it will protect them from being evicted.

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spread slowly, with even leading members of a landowning family engaged in a dispute unaware of Section 11 when interviewed in April 2017).

66 Interview with Lagos State land official, 13 February 2017; interview with LUC tribunal representative, 17 February 2017.

67 Interview with property owner in a waterfront community, 14 February 2017.

There are also some cases in which not only communities themselves but official procedures have used the LUC as an indicator of tenure. One such example is the case of the Badia eviction in 2012. In the case of this particular mass eviction initiated by the State government (which was admittedly an unusual one, being indirectly linked to a World Bank community project), the question of whether or not households had an LUC receipt played a significant role in determining what kind of compensation households were eligible for. Lagos State was forced by the World Bank to pay compensation to tenants as well as landlords in this settlement, which mainly comprised tenants. People used their LUC receipts to prove occupancy, in order to claim compensation for relocation. While this was not intended to prove ownership of the land, the fact that LUC was used as a proxy for legitimate occupancy indicates the broader role that such payments play in people's efforts to claim some rights to their property, in a highly uncertain terrain where absolute ownership is the privilege of very few.

It is not only LUC payment receipts and good citizenship letters that play this role. In some settlements residents do not even possess these, let alone a Deed of Assignment or C of O, so try to find other ways to evidence documentarily what they believe to be legitimate claims. In a second waterfront community where we conducted interviews, the LUC was not paid at all by residents; they had never been asked to pay it and received no State services at all. This, however, underscores their vulnerability to eviction. The land on which this community was based had been largely constructed by themselves, reclaimed from the lagoon and built up with waste materials, This land, however, abutted a substantial territory owned by a major chieftaincy family in Lagos, to whom the community paid tribute. This was a fragile agreement, and any documentation relating to these payments was of little value in terms of recognition by the State, being a form of traditional tribute essentially akin to *omo onile* payments.

The community had been tacitly tolerated for decades by the National Inland Waterways Agency, and made very few official payments of any kind. In the absence of official tax receipts linked to their property, the community clung to a trading licence that they possessed collectively as some evidence of their legitimacy.[68] This had no explicit link whatsoever to land or territory, yet was an official document evidencing an official payment, which in their minds denoted a certain legitimacy to their presence. This echoes broader findings from research conducted by others in waterfront communities, which found that people use documents ranging from bills for basic utilities, television and radio licences, to informal documents recording property transfers, in their efforts to build a claim to their land.[69]

These narratives of the use of a range of payments and documents to claim property rights are indicative of the pervasive insecurity that affects many residents of Lagos, and how ideas of rights, claims, transience and permanence are invoked and reshaped by people's practices. In the words of one former resident of a waterfront settlement: 'There is nothing like a feeling of tenure security when it comes to Lagos. At any time you can be denied. But if you are in a community, we are like one big family. This gives you social security but not tenure security – this has to come from government'.

The reality is that for many, the social security that comes from community is not sufficient to maintain claims to space, and once communities are uprooted even this may be severely weakened or ruptured. Meanwhile, the tenure security that 'has to come from government' exists only in the form of C of O, which the vast majority lack the means to acquire, either for financial reasons, lack of knowledge, or because the land which they are claiming as their own is too contested to allow for such a title to be issued. Simplistically, we could see this

[68] Community interview at waterfront community, 14 February 2017.

[69] Interview with legal NGO, 9 February 2017.

privileging of certain intrinsically inaccessible documents as the empowerment of a State-backed patrician- and middle-class on one side, and the dispossession of customary rights-holders and vulnerable marginal communities on the other. In the most egregious cases that certainly seems to be at least part of the story, as, for example, is evident in the recent ongoing waves of brutal evictions on the Lagos waterfronts in 2016-17.[70] It would also be naïve to deny that many of those who are well-placed to access State processes have profited from the existing tenure insecurity and the legal measures ostensibly intended to deal with it.

To focus on this class dynamic alone, however, would be to miss something very important in the story of this city. The antagonists in these fights are rarely as clearly demarcated as separate classes. Tenure insecurity is something that virtually everyone in Lagos has in common. While the most vulnerable and marginalised suffer it to a much greater extent, it is not only the vast majority who lack Cs of O that suffer from insecure tenure; this apparent gold standard issued by the government is itself fallible on a number of fronts. The story of a wealthy middle-class family we interviewed, who purchased land in a city suburb through a government scheme (supposedly the safest, most official way of accessing land, in which conflicting claims and *omo onile* should not be a concern) were also struggling to solidify and assert their claim. Far from being free from contesting claims, this family had been fighting a battle with multiple other would-be stakeholders, including a group of *omo onile* claimants. This dispute, like so many others, was rooted in the acquisition of land by government under the 1978 Land Act, and the belief on the part of the pre-existing traditional landholders that they had been inadequately compensated. In the lengthy hiatus between government acquisition and the release of land onto the formal market, these *omo onile* had proceeded to sell parts of the land themselves on to third parties (some of whom subdivided and sold again), while the State 'officially' sold to the family we interviewed. Such situations are not uncommon, and, as land continues to change hands, the task of tracing the critical 'illegitimate' juncture that gave rise to multiple conflicting claims becomes ever more challenging. In this case, the possession of a C of O did little to prevent the middle-class family from court battles, forced entry, violent episodes, and the cost of providing their own private security on the plot over an extended period.

More remarkable still is the fact that in Lagos' dynamic and insecure property world, the same people who are developers fighting *omo onile* in one place, are often the *omo onile* fighting the State in another. Thus, the middle-class Lagosian family described above are not only engaged in this dispute over some suburban land they purchased through a government scheme, but at the same time are fighting a court case *against* Lagos State regarding government alienation of family lands on Lagos Island (in the central, oldest part of the city) for which they feel they were inadequately compensated in the past. Lagos State government, as the inheritor of its military-era predecessors, lays claim to large parts of Lagos Island and other areas that are also the home turf of the old patrician families whose historical claims to citizenship primacy are one of the consistent planks of Lagos political sociology.[71] These families, as well as securing footholds in the city's continual expansion, fight a rearguard action predicated on their own historical grievances of land alienation for development. A member of one such family commented that 'some people made sacrifices for Lagos to become what it is today', before adding wryly that 'sometimes we too exhibit *omo onile* behaviour'.[72]

Simplistic approaches to property titling, and its effects on investment and economic stability and growth, simply cannot hold up in this kind of environment, because they are predicated

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70 See e.g. <https://www.theguardian.com/cities/2017/may/31/destroyed-community-lagos-nigeria-residents-forced-evictions-demolitions>, accessed 25 September 2017.

71 Thus, politicians and political parties, such as the APC, are situated in tension between two social constituencies: the significant patrician family basis of their elites, and the more numerous non-indigene civic public voter base.

72 Interview with lawyer, 5 October 2016.

on the assumption that property rights can be made straightforward in any context, subject to a few generic measures. The most powerful and famous articulation of the idea that land titling will work economic wonders appears in the work of Peruvian political economist Hernando de Soto (1989, 2000), who made the persuasively linear argument that formalising the currently mainly informal systems of property tenure in the developing world would unleash huge reserves of land collateral for grassroots capital development. As is now well known, these arguments have been hugely influential in the development of land reform around the world. However, besides its explicitly capitalising aim, de Soto's work has been criticised on a conceptual level for sidelining the material fact of inequality of access to property, its teleological and ahistorical approach to global history, its assumption that it is possible or even desirable to individualise all land titles, and the risks it would pose to basic survival assets for the poor.[73] It has also been criticised on the grounds that it generalises far beyond what the evidence can reliably indicate (Woodruff 2001), and sidelines the considerable empirical evidence that access to land collateral is far from the most significant predictor of access to credit in poor communities.

Perhaps most significant of the critiques of de Soto here are those that question his assumption that the informal systems that he recognises as effective and would hope to formalise are in any way linear and singular, given that systems of differential or relative use and allocation rights abound (Cousins et al. 2005; Musembi 2007). Van Gelder (2010) argues for the significance of a distinction between legal security, de facto security and perceived security of tenure. Indeed, the very idea (on which so much international development policy and discourse has been based) that we know what security of tenure fundamentally *is* can be questioned (Obeng-Odoom and Stilwell 2013). However, all of these critiques still presuppose something basic on the other side of the equation: that a formal property right established in law is itself an entity – a clearly defined object which either does or does not exist. Our analysis of Lagos builds on this critical literature, but also, we believe, showcases something different: that even in the formal sphere, a property right is inherently processual. Moreover, the idea that de facto security can be identified as distinct from legal and perceived tenure security becomes problematic where the three are so intertwined, and the links between security and rights to a property are so fundamentally unsettled.

For tenure security to exist as a social fact requires a bundle of qualities to be effectively evident in sufficient degree – legal title, social legitimacy, active enforceability, and material presence on the ground. In this conception, legal title is an additional attribute of a property right, albeit usually the most powerful one, rather than being the conversation-ending negation of informality itself. We therefore build on the above literature by arguing that even a formal property right inhabits a spectrum. At the most secure end of this spectrum might be a freehold property with an issued and collected Certificate of Occupancy, a long-established and wholly-owned building on the site, and no traditional landholder, family or governmental claims against it. At the most insecure might be LUC receipts or a State-approved pink copy of a building plan of a hastily-built shared-ownership structure. Or, as we discovered, it might even be just a trading licence for a workers' co-operative built on physically marginal or even self-created land leased from a chieftaincy family via a workers' cooperative, but besieged by rival claims from State and Federal governments. And for most people, it might be virtually anything in-between.

[73] For evidence-based counter-arguments, see Hendrix (1995), Payne (2001) and Musembi (2007).

8 Conclusions

When undertaking this research into how property tax reform fits into the vaunted taxation and governance reforms of Lagos State over the past decade and a half, we stumbled on something unexpected, which brought a new dimension to the research. This was a simple story relayed to us by someone whose mother would call up her tenants repeatedly (even when abroad) to make sure they had collected the receipts for LUC payments, despite the fact that these are not routinely checked and have no obvious value in relation to service provision. This strength of emphasis on paying the LUC, and retaining evidence of payment, seemed out of step in a city where so much about land and property remains in the sphere of the informal. As we explored more stories about how and why people paid, it became clear that in a context, not of selective dispossession, but generalised property insecurity, Lagosians have latched on to the regulatory and recording potential that tax certification offers as a way to establish a paper trail that also documents their citizenship, a way to make property claims 'thicker' and more provable.

The property tax story in Lagos is interesting and instructive in many other respects. Property taxes have a fundamentally different relationship to the social contract and public engagement with the State than personal income taxes, which are harder to collect and rely more on quasi-voluntary compliance, especially in a context of limited capacity, coercion and information availability as is the case in Lagos (see Bodea and LeBas 2016; Cheeseman and De Gramont 2017). The identification of properties to tax, negotiations over cateogorisation and rates, and resolution of disputes over who pays – the very administrative processes of property tax collection itself – are themselves re-appropriated and repurposed by both the State and the public as a strategically valuable public good.

From a governance and administration perspective, the LUC and other taxes relating to property have provided an important entry point for further building the Personal Income Tax base, and, more generally, knowing the population, their assets, and their behaviour when it comes to property and how they use it. From a political perspective, the process of re-negotiating tax rates with different groups of users, and finding ways to arbitrate between landlords and tenants, have allowed for the use of the LUC as a tool for building and consolidating political alliances in the city. In the fluid field of play of ownership, rights and entitlement, any intervention which provides State recognition proves of utilitarian value beyond what its designers imagined. Thus, just as the LUC has for the State the secondary value of expanding the tax net for PIT, the public are themselves deriving a secondary value of enhanced tenure security. In revealing something interesting about how new systems of property tax in Lagos are 'pulled' by their utility to the public in a context of property rights insecurity, as well as being 'pushed' by government policy, we believe this case also offers a meaningful contribution to the ongoing debates over formalisation and property rights.

Our conclusions on the strategic uses of the LUC were supported by the founders of the Land Records Company Ltd, who noted that two things happened while rolling out the system of LUC registration. First, registrants pre-empted the additional value of LUC as property right via State recognition in their expression of their own fears of insecurity: landlords seeing a tenant's name on the LUC demand would call LRC to complain, alleging that the company was trying to reassign their property (and, lest this fear seem irrational, bear in mind the slow mutation of tenancy to ownership which Mann records in early expanding Lagos (Mann 1991)). Secondly, because of the additional costs and complications of obtaining a C of O, LRC employees began to note cases of the LUC demand notice itself being touted as a matter of record: a claimed de facto property right.[74]

[74] LRC presentation at Nigeria Tax Research Network workshop, Transcorp Hilton, Abuja, 13 September 2017.

In contrast to both mainstream literature on the value of titling, and much of the critical literature on the perverse effects and difficulties of implementing it in practice, we found that formal property rights in Lagos are not something that you either do or do not have. The reality is that they are claims made more real over time. As a claimant, once you have a start on them, your work is to deepen them, entrench them, solidify them. It is effectively a system of rights by instalment. In other words, property rights here are not a 'digital' system of zeros and ones, haves and have-nots, but 'analogue' – a system of degree and gradation wide open to innovative action. Rather than being something you do or do not have, they are something you have to actively build and maintain, with the deployment of a mixed bag of legal, economic, social and political assets to make your claim on property 'thicker'. Taxation plays an often under-recognised role in this process. Even if this is relatively small, once we start to see tax in this light, as well as being a governance and revenue-raising instrument, our understanding of how and why property tax reforms fail or succeed is significantly deepened.

The Enlightment social philosophers cited at the beginning of this piece revealed the essential circularity of property rights. Tax payments are needed to sustain the government that is required to protect a property right; but a property right must itself be guaranteed by government in order to legitimise such taxation. Moreover a social contract, embodied in government, is needed to establish that property right. In other words, property rights, taxation and government co-constitute one another, and can only evolve iteratively, in tandem. Present-day Lagos shows the complexities of that process in action.

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