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WHETHER THE POWER VESTED IN STATES TO ENACT LAWS TO IMPOSE TAXES, FEES AND LEVIES IS CIRCUMSCRIBED BY THE TAXES AND LEVIES DECREE NO. 21 OF 1998

DR. STEPHEN L. W. NYEENENWA
HND (Env./Pub. Health); B.A., M.A., (Philosophy), LL.B., B.L., Ph.D. (Jurisprudence).

ABSTRACT

The continued reliance on the provisions of the Taxes and Levies (Approved List for Collection) Decree No. 21, 1998 (otherwise called the Taxes and Levies (Approved List for Collection) Act, Cap T2, Laws of the Federation of Nigeria, 2004) has been a cause of grave concern to States and Local Government Councils' power to generate internal revenue. The Taxes and Levies Decree No. 21 of 1998, as promulgated was an ouster to the powers of the component units of the Nigerian Federation in 1998 - 1999. This is because it was tilted against powers vested in a State House of Assembly to enact laws for the imposition, assessment and collection of "any tax", fees, levies and rates by States and Local Government Councils. This article studies this trend, and examines the 1999 Constitution side-by-side the Taxes and Levies Decree No. 21 of 1998. Our research is to reveal the basis of that ouster, to unravel the constitutionality of the Taxes and Levies Decree No. 21 of 1998 as a Federal Law, and point out how its provisions as a matter-of-factly eclipsed on the coming into effect of the 1999 Constitution. We conclude by reasoning that the Taxes and Levies Decree No. 21 of 1998 has outlived its usefulness, being a Military Decree, and its authority has become extinct with the coming into effect of the 1999 Constitution; and that its objective to curb the "excesses" of States and Local Government Councils, in mounting road blocks to collect taxes has failed.

KEY WORDS: *Hereditaments, legislative lists, taxes, levies and malady.*

INTRODUCTION

The Courts have had to entertain shades of varying contentions, having put up with supporting and counter arguments on the validity of the Taxes and Levies Decree No. 21 of 1998 (Taxes and Levies (Approved List for Collection) Act, Cap T2, Laws of the Federation of Nigeria, 2004) as the only law that superintends and regulates the revenue generating powers of the Federal, State and Local Government Councils; especially, as to what, which and how taxes and levies are to be collect and whether all the tiers of Government in Nigeria are bound to strictly adhere to the provisions of the 1999 Constitution or that of the Taxes and Levies Decree No. 21 of 1998, that is only the taxes and levies listed in the Schedule to Decree No. 21. For a start, we will chose to commence by applying serrated pieces of logic to Decree No. 21, and then go on to exposing it to major torrential articulated criticisms, and then watch it crack and fall apart to smithereens. We also look at the Constitution of the Federal Republic of Nigeria, 1999 (as amended – herein the 1999 Constitution), the overwhelming powers wielded by the Taxes and Levies Decree No. 21 of 1998, how it ordinarily towers over and above the 1979 Constitution and the fact that the said Taxes and Levies Decree No. 21 of 1998 has within it an outlay of internal control valve that restrict its field of control. Never has any law in Nigeria been so over wieldy and so assuming like the Taxes and Levies Decree No. 21 of 1998. To the duty of decimating the myth called the Taxes and Levies Decree No. 21 of 1998 (Taxes and Levies (Approved List for Collection) Act, Cap T2, Laws of the Federation of Nigeria, 2004) we now proceed.

This research work will review the provisions of the 1999 Constitution as it relates to powers vested in

the three tier of Government to enact laws for the imposition, assessment and collection of taxes, duty, stamp duty, levies, fees and rates and whether there is any constraint and to what extent. The next section will examine the Taxes and Levies Decree No. 21 of 1998 as a whole, taking time to consider what we call the inner control valves within the Decree No. 21, what their effects are on its "supernational" posture as conveyed by some decisions of the Courts, and whether it is legally possible to subject the provisions of the 1999 Constitution, the Grundnorm, to the provisions of a Decree, the Taxes and Levies Decree No. 21 of 1998. We will follow this section with a critical appraisal of what we call the four (4) maladies that attack and extinguish the constitutionality of the Taxes and Levies Decree No. 21 of 1998, and how the powers of the Federal and in particular, State Governments to enact laws for the imposition, assessment, demand and collection of any tax, levies and rates within their domain remain unaffected by the Taxes and Levies Decree No. 21.

1. REVIEW OF THE PROVISIONS OF THE 1999 CONSTITUTION.

The unbiased and positive review of the provisions of the Taxes and Levies Decree No. 21 of 1998 can only be achieved by a detailed study of the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) on what powers it allows the Federal, States and Local Governments to impose, demand, assess and collect revenues for their developmental projects. Section 1 (1) of the 1999 Constitution provides thus "This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria." The above principle was enunciated in INEC Vs MUSA (2003) 3 NWLR [Pt. 806] 7, where it was held among other things that the supremacy of the Constitution is to be tested by knowing that "where the Constitution has enacted exhaustively in respect of any situation, conduct or subject, a body that claims to legislate in addition to what has been enacted must show that it has derived the legislative authority to do so from the Constitution." It was also held in that case that where the Constitution has set the condition for doing anything, no other Act of the National Assembly or law of a state can alter those conditions in any way, directly or indirectly, unless the Constitution itself as an attribute of its supremacy expressly authorizes it. It would be swift therefore to declare that Decree No. 21 of 1998 was made outside the exhaustive provisions of the 1979 and 1999 Constitution, while the Taxes and Levies Decree No 21 was enacted when the provisions of the 1979 Constitution had been suspended vide the Constitution (Suspension and Modification) Decree No. 107 of 1993. Therefore the Military authorities that enacted Decree No. 21 had no such legislative authority to enact same.

Besides the above, the 1999 Constitution at Section 4 (2)(3)(4) gives the National Assembly the power to make laws for the Federal Government for all the matters under the Exclusive Legislative List and for matters under the Concurrent Legislative List while in contra-distinction, Section 4 (7)(a & b) provides that the House of Assembly of a State shall have power to make laws for any matter not included in the Exclusive Legislative List, for matters prescribed in the Concurrent Legislative List and matters outside both the Exclusive and Concurrent Legislative Lists. See F.R.N. V. OKEY NWOSU (2016) 17 NWLR [Pt. 1541] 226 @ 304 paras C – D. The general provisions that relate to or touch on taxation and revenue began when Section 24 (f) stated that every citizen shall 'declare his income honestly to appropriate and lawful agencies and pay his tax promptly"; continued with Section 44 (2)(a) that nothing in subsection (1) of Section 44 shall be construed as affecting any general law for the imposition or enforcement of any tax, rate or duty". Thus Section 44 rolled in taxation by payment of taxes, rates and duties wherein no other law including Decree No 21 can affect any other law made by any tier of Government for payment of taxes by property owners anywhere in Nigeria without any let or hindrance.

The obvious fact here is that all three tiers of government are at liberty and constitutionally required to raise funds for the running of their areas. Section 120 (1) is a restatement of Section 80 of the 1999

Constitution and provides that any internally generated revenue raised by a State under a law of the State made for a specific purpose, would not be paid into the Consolidated Revenue Fund of that State, but shall be only paid into the said dedicated account of the State. This confirms the position that the 1999 Constitution did not at any point prevent or restrict State Governments from enacting laws which would mandate them to impose taxes, levies, rates and fees in the areas within their domain, which other funds would invariably would have to be paid into the Consolidated Revenue Fund of the State Government. In this category is the Rivers State Effluent Discharge Fees provided for by Sections 36 of the Environmental Protection Agency Law, Cap 53, Law of Rivers State, 1999 (RSEPA Law). Effluent Discharge Fees, which the 1999 Constitution permit Rivers State to impose according to Sections 37 (1) of the RSEPA Law stipulates thus "For the purpose of this Law, there is hereby established a fund to be known as the EFLUNET DISCHARGE FEE UND (hereafter in this Law to be known as "THE FUND" into which shall be paid (b) any fee collected under this Law". Thus Effluent Discharge Fees shall not be paid into the Consolidated Revenue Fund of Rivers State, because it has its special dedicated fund. In addition, if it is the intention of the 1999 Constitution to allow any Act of the National Assembly to oust the powers of States to embark on internal revenue generation, then Section 162 (2) of the 1999 Constitution would not have stipulated that the National Assembly in considering proposals for revenue allocation shall consider "internal revenue generation" capability of the respective States and incomes or return accruing to or derived by the Government. To make the above guarantee above reproach, Section 162 (10) defines "revenue" as "any receipts, however described, arising from the operation of any law." This means that the power of States to generate internal revenue is inherent in the 1999 Constitution and this cannot be subverted or circumscribed by any Act of the National Assembly or Law of a State House of Assembly. This query towers above the propriety of the Taxes and Levies Decree No. 21 of 1998. In view of Section 162 (10) of the 1999 Constitution, if this power is to be abrogated, then a fundamental index necessary for drawing a valid revenue allocation formula would have been excised from the President and National Assembly, which would run contrary to the organic principles stated in the 1999 Constitution. This is why Decree No. 21 cannot rescind or appropriate from States the power donated to them, on which the President's bill to the National Assembly for distribution from the Pool Account of allocation would be based?

Then, Section 163 (a & b) of the 1999 Constitution launches the bar of limitation on the powers exercisable by the National Assembly to enact any Act for revenue generation only to "tax or duty". When contrasted with the provision of Section 44 (2)(a) of the 1999 Constitution, it is obvious that the Constitution intends to confine the three tiers of Government to distinctive areas of taxing and not a general overlapping exercise of that power. It is in tandem with the delineation that Section 165 goes on to stipulates that every State shall contribute an amount that is proportionate to its share of the taxes and duties it got as its share of the amount expended by the Federal Government in the collection of the said "taxes or duties", which are those for which the Federal Government can impose and collect for the financial year in question. This Section of the Constitution conveys the delimitation placed on the powers of the National Assembly and the categories of taxes for which the National Assembly can validly make a law and not otherwise. The 1999 Constitution in limiting the powers exercisable by the National Assembly to make laws on taxes, duties and capital gains is more expository in Items 58 and 59 of the Exclusive Legislative List under Part 1 of the Second Schedule to the 1999 Constitution, Items 7 – 10 and 18 and 19 of the Concurrent Legislative List and S. 32 of Item N, Part 1 of the 3rd Schedule of the 1999 Constitution. We reproduce these Sections below:

58. Stamp duties
59. Taxation of incomes, profits and capital gains, except as otherwise prescribed by this Constitution.
7. In the exercise of its powers to impose any tax or duty on - (a) capital gains, incomes or profits or persons other than companies; and (b) documents or transactions by way of stamp duties. The National

Assembly may, subject to such conditions as it may prescribe, provide that the collection of any such tax or duty or the administration of the law imposing it shall be carried out by the Government of a State or other authority of a State.
8. Where an Act of the National Assembly provides for the collection of tax or duty on capital gains, incomes or profit or the administration of any law by an authority of a State in accordance with paragraph 7 hereof, it shall regulate the liability of persons to such tax or duty in such manner as to ensure that such tax or duty is not levied on the same person by more than one State.
9. A House of Assembly may, subject to such conditions as it may prescribe, make provisions for the collection of any tax, fee or rate or for the administration of the Law providing for such collection by a local government council.
10. Where a Law of a House of Assembly provides for the collection of tax, fee or rate or for the administration of such Law by a local government council in accordance with the provisions hereof it shall regulate the liability of persons to the tax, fee or rate in such manner as to ensure that such tax, fee or rate is not levied on the same person in respect of the same liability by more than one local government council.
S. 32 of Item N, Part 1 of the 3rd Schedule of the 1999 (c) advise the Federal and State Governments on fiscal efficiency and methods by which their revenue can be increased. (underlined for emphasis).

The above provisions were reproduced seriatim to afford us a holistic and richer understanding of how far the Taxes and Levies Decree No. 21 seeks to denigrate the sacrosanct provisions of the 1999 Constitution. It is apparent that based on the above, the National Assembly is only empowered to make laws for imposition of stamp duties, taxes on incomes, profits and capital gains and no more. A look at Item 59 of the Exclusive List only takes cognizance of contrary provisions elsewhere in the 1999 Constitution, and no such divergent or dissimilar provision occur anywhere else in the 1999 Constitution. In this regard, it is noted that Items 7 and 8 of the Concurrent Legislative List merely restates the interrelatedness of what the Constitution itself prescribed in Items 58 and 59 of the Exclusive List. The only difference is that Item 8 of the Concurrent List further mandates the National Assembly to make laws that would regulate States in the collection of the Federal Taxes for which it had exclusive jurisdiction, that is stamp duties, taxes on incomes, profits and capital gains on behalf of the Federal Government. The concurrence between the two Legislative Lists on taxation of incomes, profits, capital gains and stamp duties is demonstrative of an unwavering restriction and limitation on the powers of the National Assembly to make laws that seek to impose general taxes on the citizenry. The 1999 Constitution, it goes without contest, expressly prohibits the National Assembly from enacting a law on any other head of revenue or taxation except for capital gains, incomes of profits of persons and payment of stamp duties on documents and transactions. Thus, if the National Assembly veers into making laws for any other item of taxation outside those for which the 1999 Constitution vests the National Assembly with powers to make laws, they become a nullity and are voided by reason of such inconsistency. See Section 1 (2) of the 1999 Constitution. In ATTORNEY GENERAL OF THE FEDERATION v. ATTORNEY GENERAL OF LAGOS STATE (2013) 16 NWLR [Pt. 1380] 249, the Supreme Court warned thus:

In effect, the Federal Government lacks the Constitutional vires to make laws outside its legislative competence which are by implication residual matters for the State Assembly. The National Assembly cannot, in exercise of its powers to enact some specific laws, take liberty to confer authority on the Federal Government or any of its agencies to engage in matters which ordinarily ought to be the responsibility of a State Government or its agencies. Such pretext cannot be allowed to inure to the Federal Government or its agencies so as to enable them encroach upon the exclusive Constitutional authority conferred on a State under its residual power.

It ordinarily flows from the provisions of Items 58 and 59 of the Exclusive Legislative List, and Items 7 and 8 of the Concurrent List that the power vested in the National Assembly to regulate the administration of the collection of stamp duties, taxes on incomes, profits and capital gains does not include arrogating to itself the power to enact laws and to allocate powers to collect any of the classes of taxes outlined in the Taxes and Levies Decree No. 21 among the three tiers of government. The purpose of this provision in the 1999 Constitution is rather to ensure that there is uniformity in the administration and collection of stamp duties, taxes on incomes, profits and capital gains, to secure the role and purpose States to fulfill their responsibility under the Constitution in that regard and to reinforce the principle of federalism.

On the contrary, Items 9 and 10 of the Concurrent Legislative List under Part II of the 1999 Constitution vests on the States powers that are the converse of what is provided for under Items 59 of the Exclusive List and Items 7 and 8 of the Concurrent Legislative List. Items 9 and 10 of the Concurrent Legislative List provide that States Houses of Assembly shall make laws for the imposition, demand, assessment, collection and administration of "any tax", fees, levies and rates. It is trite that what is not expressly included or mentioned in a statutory instrument is excluded. This principle is conveyed by the Latin Maxim, ***expressio unius est exclusio alterius*** as stated in the case of OGBUNIYA V. OKUDO (1976) 6-9 S.C. 32; PDP V. INEC (1999) 11 NWLR (Pt. 626) 200. To bring this to limelight, we propose a combined reading of Items 59 of the Exclusive List and Items 7 – 10 of the Concurrent Legislative List showing that the deliberate omission from the entries contained within Items 59 of the Exclusive List and Items 7 and 8 which dwell on taxation of incomes, capital gains and duties on documents and transactions on the one hand; and on "any tax", levies, rates and fees stated in Items 9 and 10 of the Concurrent Legislative List on the other hand draws a wall of separation between what the Constitution authorizes the National Assembly to do, and what States Houses of Assembly should do. It ordinarily follows that the express mention of taxation of incomes, capital gains and duties on documents and transactions expressly excludes any references to "any tax", levies, rates and fees. This is why vesting the National Assembly with powers to arrogate to itself authority to allocate powers to collect taxes outlined in the Taxes and Levies Decree No. 21 of 1998 between the three tiers of Government is contrary to the express provisions of the 1999 Constitution. There is no way the National Assembly could validly address an issue that has been constitutionally reserved for States and Local Government Councils and such Acts be held to be valid.

As stated above, an examination of the 1999 Constitution, amply reveals that its provisions are at variance with and in conflict with the decisions reached by the Court of Appeal in the case of ETI-OSA LOCAL GOVERNMENT v. JEGEDE [2007] 10 NWLR (1043) 537 on the propriety of the Taxes and Levies Decree No. 21 of 1998. In holding that Eti-Osa Local Government and by extension that any attempt by it to act outside the ambit of Part III of Taxes and Levies (Approved list for Collection) Decree No. 21 of 1998 and by extension, the Lagos State Government has no power to legislate and demand whatever taxes and levies it deems fit outside the provisions of Taxes and Levies Approved List for Collection Decree No. 21 1998 was most unconstitutional and weird. To drive home our point, we ask "Does the 1999 Constitution actually oust the power vested in States Houses of Assembly to enact laws for generation of internal revenues? Also, whether such usurpation and ouster of taxing powers is directed at the all three tiers of government, or localized against State Governments and Local Government Councils? Most commentators have made it look like the purpose of Decree No. 21 was to stop States and Local Governments from continuing to use force, tax consultants and unorthodox methods in collecting taxes. Indeed, it was a laudable objective, but it flopped or the sake of its unconstitutionality and double dealing. For example, in 2013, Premium Times of 23rd June, 2013 came up with the screaming headline, "NIMASA blocks Nigeria LNG vessels again as debt crisis deepens" and made available at https://www.premiumtimesng.com/business/139434-nimasa-blocks-nigeria-lng- vessels-again-as-debt-crisis-deepens.html. The resort by Nigerian Maritime Administration and Safety Agency (NIMASA) to

unilaterally block the waterways as a means of demanding and collecting taxes such as international inbound and outbound cargo tax, Sea Protection Levy, two percent cabotage surcharge, etc, which were also taxes not contained in the Taxes and Levies Decree No. 21, led to an action for damage by the Nigeria LNG. The Federal High Court presided over by Honourable Justice M. B. Idris held that NIMASA was liable in blockading the Bonny Channel for the purpose of enforcing the payments by unorthodox means against NLNG. The Court awarded a cost of USD$315,598,823.29 as judgment debt against NIMASA in favour of the Nigeria LNG. See Vanguard of Saturday 13th October, 20 2017. Read more at: https://www.vanguardngr.com/2017/10/nlng-demands-315m-judgement-debt-nimasa/. This only captures the behavior of the Federal Government and its agencies doing exactly the converse of Decree No. 21 of 1998 including resorting to use of "strong arms tactics" to collect taxes from economic concerns and business ventures in Nigeria. (Abiola Sanni 2018: 7-8, 11 & N. Ikeyi & S. Orji 2011 – 2012: 73).

Our final port of call in examining the constitutional provisions that support States to make laws for revenue collection is to turn to S. 32 of Item N, Part 1 of the 3rd Schedule of the 1999 which states that the Revenue Mobilisation Allocation and Fiscal Commission shall "advise the Federal and State Governments on fiscal efficiency and methods by which their revenue can be increased". The fact being promoted by the 1999 Constitution is that it does not restrict any of the component units from making laws for imposition and collection of "any tax", levies and rates. The holistic consideration of the relevant provisions of the 1999 Constitution is to the effect that all three tiers of government shall enact whatever form and type of laws it deems fit for imposition and collection of any tax, fees, levies and rates as a means of increasing their revenue base. More particularly, it is the State House of Assembly, whose business it s to regulate local Government Councils that shall also regulate the liability of persons who are to pay such tax, fee and rate so that no one person is levied by more than one local government council in the said State. This balances the equation between the National Assembly and State Houses of Assembly as between the assessment, demand and collection of capital gains, incomes of profits of persons and payment of stamp duties on documents and transactions as distinct from the assessment, demand and collection of "any tax" such as fees, levies and rates. This brings the reality of the case of PDP V. INEC (1999) to blossom and thrive.

2. AN EXAMINATION OF THE TAXES AND LEVIES DECREE NO. 21 OF 1998 – AN ACT OR A LAW

We have shown so far that the 1999 Constitution empowers State Government to impose, demand, assess and collect taxes, duties, any taxes, levies and rates in order to boost their internally generated revenue. In this direction therefore, we proceed to lay bare the provisions of the Taxes and Levies Decree No. 21 of 1998. In Section 1 (1) of the Taxes and Levies Decree No. 21 of 1998, it states that "Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979 as amended, or in any other enactment or law, the Federal Government, State Government and Local Government shall be responsible for collecting the taxes and levies listed in Part I, Part II and Part III of the schedule respectively." This Section of the Taxes and Levies Decree No. 21 of 1998 deliberately elevates this law above the 1979 Constitution. (Abiola Sanni 2017: 37; N. Ikeyi and S. Orji 2011 – 2012: 89). Furthermore, Section 2 (1) of Decree, No. 21 provides thus "Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979 as amended, or in any other enactment or law, no person other than the appropriate tax authority, shall assess or collect, on behalf of the Government, any tax or levy listed in the Schedule to this Act. . . ." It also states at Section 2 (2) of the Taxes and Levies Decree No. 21 of 1998 that "No person including a tax authority shall mount a road block in any part of the Federation for the purpose of collecting any tax or levy" while Section 3 of the Decree prescribes penalty for (a) collection or levying any levy or tax and (b) mounting of any road block in contravention of Section 2 of

the Decree. The Decree hands down a N50,000.00 fine or a punishment of three years imprisonment. From the above, it is safe to infer that Decree No. 21 was directed at tackling the problem posed by the multiplicity of taxes and levies, and illicit use of unorthodox means to collect revenues. (Dr. Abiola Sanni 2012: 231). Unfortunately, the aims and intendment of makers of Decree No. 21 of 1998 have been defeated, as the enumerated mischiefs it sought to eradicate were not addressed at all nor has any been eradicated at all. (Dr. Abiola Sanni 2017: 49). Having thus failed in its bid to manage the problems that led to the enactment of the Taxes and Levies Decree No. 21 of 1998, it goes without contention that the Taxes and Levies Decree No. 21 has outlived its usefulness and ought only to be thrown into the trash bin. (Dr. Abiola Sanni 2017: 48).

3. THE FOUR MALADIES AND THE CONSTITUTIONALITY OF THE TAXES AND LEVIES DECREE NO. 21 OF 1998.

The Taxes and Levies Decree No. 21 of 1998 is not helpful at all if we set out to determine the extent of the taxing powers of any of the three tiers of government under the 1999 Constitution based on its provisions. Abiola Sanni 2012: 231 thinks that any attempt to trace the existence or absence of the power of any of the tiers of government to impose any type of tax or levy listed in Decree No. 21 will be misdirected. This, he say is because the Military Government that promulgated the Taxes and Levies Decree either failed or refused to differentiate between what is a "tax" and such other related terms like levy, fee and charge. According to Abiola Sanni 2017: 5, "Tax is a compulsory payment (levy) imposed by the legislature (by statute) for the purpose of financing the public sector for which no direct benefit is conferred on taxpayers in exchange for the payment." On the other hand, a levy he defines as a payment from which the payer will derive direct benefits, notwithstanding the nomenclature that the said tax is called. In the National Tax Policy, 2017, "tax" is defined as "any compulsory payment to government imposed by law without direct benefit or return of value or a service whether it is called a tax or not". On the other hand "levy" is stated to be "a monetary imposition by government Ministries, Departments and Agencies (MDAs) pursuant to their regulatory powers in exchange for the enjoyment of certain rights, privileges or benefits". (Abiola Sanni 2017: 6). Similarly, Taiwo Oyedele :2014 says that the major distinction between taxes and levies is that taxes are based on taxable profit while levies are payable without regard to taxable profit. He further added that the International Accounting Standards Board (IASB)'s International Financial Reporting Standards (IFRS) also defined a "levy" as "an outflow of resources embodying economic benefits that is imposed by governments (including government agencies and similar bodies) in accordance with laws and/or regulations". This confirms that the Military Government in making Decree No. 21 did not bother to find out that the word "tax" is different from the word "levy", and that the later has a "wide connotation and covers all payments to government authorities including those made in exchange for the enjoyment of certain rights, privileges or benefits in form of permits, licenses and services". (Abiola Sanni 2017:6) most of which fall to Local Government Councils to collect. This ignorance, he explains is why user charges and licensing fees were included in the Schedule to the Taxes and Levies Decree No. 21, not recognizing that it is wrong to describe payments made in exchange for direct benefits as taxes. This is the starting point for introducing the four irreconcilable maladies or "constitutional valves" that hold back Decree No. 21 from validly functioning as an Act of the National Assembly, a law of a State House of Assembly or Bye Law of a Local Government Council. The four maladies include:

a. The Taxes and Levies Decree No. 21 of 1998 as an existing law was not brought in tune with Section 315 of the 1999 Constitution.
b. The Taxes and Levies Decree No. 21 of 1998 was enacted to regulate the collection of the class of taxes and levies contained in the Schedule to the Taxes and Levies Decree No. 21 of 1998.

c. The Taxes and Levies Decree No. 21 of 1998 stepped beyond the mandate of the National Assembly as donated by the 1999 Constitution.
d. The Taxes and Levies Decree No. 21 of 1998 are effective only in reference to the 1979 Constitution and not the 1999 Constitution, hence it has ceased to have effect upon the coming into effect of the 1999 Constitution.

a) THE TAXES AND LEVIES DECREE NO. 21 OF 1998 AS AN EXISTING LAW WAS NOT BROUGHT IN TUNE WITH SECTION 315 OF THE 1999 CONSTITUTION

The Taxes and Levies Decree No. 21 of 1998 is a law that was promulgated by the Military Government in 1998 when it had the power to make laws on every subject matter, as a Decree to solve the problem created by recklessness of States and Local Government Councils in imposing exorbitant and multiple taxes on the citizenry. In 1999, it was mandatory to make it conform as an Act of the National Assembly if it meets the set criteria or a law of a State House of Assembly if it meets those criteria. It is stipulated by Section 315 (3) of the 1999 Constitution that:

An existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be – (a) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws; and (b)a Law by a House of Assembly to the extent that it is a law with respect to which a House of Assembly is empowered by this Constitution to make laws.

This brings to mind the fact that Decree No. 21 of 1998 survived or ought to have survived by virtue of Section 315 of the 1999 Constitution as an existing law. According to N. Ikeyi and S. Orji 2011 – 2012: 89, the Taxes and Levies Decree No. 21 of 1998 was the Military Government's response to the complaints of "multiple taxation" in terms of the number, types, and amount of the taxes, rates and levies imposed by States and Local Government Councils. The Decree was not able to restrain the "excesses" of either the Federal, States and Local Government Councils in the exercise of their taxing powers. As stated earlier, the Taxes and Levies Decree No. 21 of 1998, being a Military Decree, possesses a tinge of socialism and it is typically unitary or centrist inclined. (Eghosa Osa Ekhator 2016: 45). The essence of Section 315 of the 1999 Constitution is based on the fact that Military Decrees in their mode of enactment offend certain provisions of the Constitution in terms also of the subject matter and area of preferred coverage, hence there is the need to modify them in such a way that they are brought into conformity with the provisions of the 1999 Constitution. (N. Ikeyi & S. Orji 2011 – 2012: 93). Section 315(4)(a)(iii) of the Constitution prescribes that every law made by the Military are to be considered as existing laws. So they have to be modified by persons so appointed based on an Act of the National Assembly, which is what would have been done in 1999, the beginning of the present democratic dispensation. Unfortunately, the Laws of the Federation of Nigeria, 2004 (LFN 2004) was done without any legal backing, rather, the legal backing was retroactively given on the 25th day of May, 2007, to put the agitations that arose in the legal circles that the LFN 2004 had no legal backing. The answer was "AN ACT TO ENABLE EFFECT TO BE GIVEN TO THE REVISED EDITION OF THE LAWS OF THE FEDERATION OF NIGERIA". This means that the opportunity to have Decree No. 21 modified was lost, hence the offending provisions of the Taxes and Levies Decree No. 21 were not removed, invalidated, modified or struck out when the LFN 2004 were being collated and or revised. No such removal, invalidation, modification or striking out of offending provisions was done to the Taxes and Levies Decree No. 21 to this date. Worse still, the Courts or any competent tribunal has not done it either to this date. This is what would have made Decree No. 21 to become qualified, either to become an Act of the National Assembly or the Law of a House of Assembly of a State. See FAWEHINMI v. BABANGIDA [2003] 3 NWLR (Pt. 808) 604 & ATTORNEY GENERAL OF LAGOS STATE v.

ATTORNEY GENERAL OF THE FEDERATION [2003] 12 NWLR (Pt. 833)1. The unfortunate thing about the refusal or default of the relevant authorities to modify the Taxes and Levies Decree No. 21 of 1998 is that today, by the instrumentality of the LFN 2004, it is wrongly foisted on the entire nation as an Act of the National Assembly, when by all criteria, it is neither an Act of the National Assembly nor a Law of a State House of Assembly.

In FAWEHINMI v. BABANGIDA (supra), per KUTIGI, JSC @ p. 666, the Supreme Court stated that "It is clear therefore that although the Tribunals of Inquiry Act is an 'existing law', its application is limited and has no general application". This was because the subject matter of the Tribunals of Inquiry Act was residual to State Houses of Assembly in the same way that fees, levies and rates listed in Parts I, II and III of the schedule to Decree No 21 are residual to States Houses of Assembly. In further answer, the Supreme Court did also state that if the power to enact any statute is not provided for in the Constitution, then that issue is void *ab initio* and that rests that matter. However, the apex Court had said that if the said power exists, then care must be taken that the law enacted does not exceed the limits of the powers as provided for in the Constitution and that it does not encroach into the realms of the powers donated to the other tiers of government, in order not to invalidate and render void the ensuing law to the extent of its inconsistency thereto. The said invalidation and voiding by the Supreme Court of the Tribunals of Inquiry Act, which law is very much like the Taxes and Levies Decree No. 21 of 1998 arose out of the fact that the Tribunals of Inquiry Act like those of Decree No. 21, were made in excess of the legislative competence of the National Assembly, one that should not be relied upon as a basis to supplant or infract the rights donated to States as the second tier of Government. See FAWEHINMI v. BABANGIDA [supra]: 661. This is why we now ask, is the Taxes and Levies Decree No. 21 of 1998 in conformity with the provisions of the 1999 Constitution; was it brought in line with the provisions of the Constitution before being incorporated into the LFN 2004 and if it was not, what criteria qualified it to pass as an Act of the National Assembly?

We are firm in our resolve that Decree No. 21 is nothing but a military decree that should be discountenanced and utterly abandoned. To sustain this argument, we turn to the opening paragraph of Decree No. 21 and it says "Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979", which statement is instructive and a direct pointer to the fact that Decree No. 21 is a military tool, a presupposition that its provisions violate and contravene the provisions of the 1999 Constitution. The inclusion and continual relevance of the clause "Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979" today shows without word of mouth that it still operates as a Military Decree for a unitary state, even when it is obvious that there had not been any political decision to alter the Federal System of the governance in the country. As a matter of fact, In fact the Supreme Court condemned Military Decrees when it held in AG LAGOS STATE v. AG FEDERAL & 35 ORS (2003) 12 NWLR (Pt 833) 1, per UWAIS, J.S.C. as follows:-

By the Constitution (Suspension and Modification) Decree No 1 of 1984. . . . The Federal Military Government assumed unlimited legislative jurisdiction and exercised the power to make laws for the Federation or any part thereof with respect to any matter whatsoever. . . . It seems to me that the decree could well be suitable for a unitary system of government. That is because as is obvious to me, the main prop of the entire conception, formulation and layout of the Decree had as its background, a strong central command structure initiative. It might be argued that that was to be expected of a military government. Such argument would be valid if only if it was clear that there had been a political decision to alter the Federal System of the country.(emphasis mine).

The problem confronting the Taxes and Levies Decree No. 21 was that it was not promulgated "with respect to any matter whatsoever", hence its provisions were unusually extended to cover items on the

Exclusive and Concurrent Legislative List including those on the Fourth Schedule to the Constitution, a bizarre law at that. In AG LAGOS STATE v. AG FEDERAL & 35 ORS (supra), the Supreme Court recommended the application of the pencil rule to the Nigerian Urban and Regional Planning Decree, No. 88 of 1992, holding that to bring it in conformity with the 1999 Constitution, "The Governor of Lagos or any person appointed by any law to revise or rewrite the laws of the State [as 'appropriate authority' per section 315(4) (a)] can by order make such modifications in the text of that law (i.e. Decree No. 88 of 1992), as it stands, in the manner he considers necessary or expedient to bring it into conformity with the provisions of the Constitution." The application of the pencil rule, as enunciated by the Supreme Court, can be done by way of repeal by the Courts, omission, alteration, addition and modification of the text of the original decree, or by editing it in such a way that it agrees with the principle encapsulated in the Latin maxim "***interpretare et concordare leges legibus, est optimus interpretandi modus***" meaning that interpretations that are done in such a way as to harmonise laws with laws is the best mode of interpretation.

As it stands today, no modifications were made to the text of Decree No. 21. The primary proof that no such order to modify the text of the Taxes and Levies Decree No. 21 was made to harmonize it is that in 2004 when the Laws of the Federation of Nigeria, 2004 was collated, there was no Act of the National Assembly backing the said collation of the numerous Decrees of the Military and other such "Existing Law". Without such a law or order, what several laws that were gathered or collated as the LFN 2004 is nothing but an agglomeration or aggregate of crude decrees inherited from the past Military Government(s) from 1966 to 1999, before the advent of civilian government. In the case of Decree No. 21, this fact is further substantiated by the retention of the opening clause of Decree No. 21 of 1998 which reads "Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979". It is the fact that if Decree No 21 was modified and brought into conformity with the 1999 Constitution as amended, the opening and offensive introductory Section referenced above would have been removed, dropped and/or excised from Decree No 21, which is what would have made it fit into the nation's corpus of laws, consistent with the Constitution, the Grundnorm. The only plausible explanation we have for a law that is deemed to be an Act of the National Assembly, supposedly being enforced under Civilian and democratic governance, but which still opens with the words "Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979" is that it was meant to operate as a Military Decree, or that it was not brought into conformity with the 1999 Constitution. The inference is that if we continue to defer to the provisions of the Taxes and Levies Decree No. 21 of 1998 as the definitive law on the power vested in each of the three tiers of government to impose and collect taxes, levies and rates, then Decree No. 21 would have been passed to operate in contempt of and above the provisions of the 1999 Constitution. (N. Ikeyi & S. Orji 2012; 93). This is offensive to Section 1 (2) of the 1999 Constitution. See INEC Vs MUSA (2003) 3 NWLR [Pt. 806] 7.

Further, it is pertinent to point out that without the said modification and harmonization as demanded by Section 315 (4) of the 1999 Constitution, the Taxes and Levies Decree No. 21 is clearly a Military Decree. It neither qualifies as a law which should be deemed to be an Act of the National Assembly (being statutes dealing with matters in respect of which the National Assembly is empowered to make laws under the 1999 Constitution); nor as a law which may be deemed to be a Law of a House of Assembly (being statutes dealing with matters in respect of which a House of Assembly is empowered to make laws under the 1999 Constitution). The Courts have given their nod to the fact that the Taxes and Levies Decree No. 21 is clearly a Military Decree by inadvertently calling the Taxes and Levies Decree No 21 as "Decree 21 of 1998" in all their pronouncements. With particular reference to the case of ETI-OSA LOCAL GOVERNMENT v. JEGEDE [2007] 10 NWLR (1043) 537, the Court of Appeal per DONGBAN-MENSEM, JCA, who read the lead judgment, repeatedly referred to it as the "Taxes and Levies Decree No. 21 of 1998", in a judgment delivered in 2007 in the heart of civilian governance. Other parts of the

said judgment that re-echoed the reference to it as a decree were at p. 556, para E; p. 556, para F; at p. 557, para B; p. 557, para C – D; p. 557, para E – F; p. 559, para G; at p. 557, para H and finally at p. 558, para B – D of the judgment.

In concurrence, ADAMU, JCA, who also sat on the panel did hold that the Taxes and Levies Decree No 21 is a Military Decree, especially by his continual use of the phrase "Decree No. 21 of 1998" at p. 560, paras C – E. This is the view was also upheld N. Ikeyi & S. Orji 2012: 89, who had contended that beyond 29th May 1999, the Taxes and Levies Decree No. 21 could only have continued to exist as either an Act of the National Assembly, or a Law of a House of Assembly of State if it had been modified as stipulated by Section 315 of the 1999 Constitution and not as "Decree No. 21". It therefore follows that any act of accepting Decree No. 21 as a valid law that should or ought to regulate and allocate the powers to collect the fees listed in the schedule to Decree No. 21 is not just an aberration, but a Constitutional disaster of unimaginable proportions. It is at this point that we add that although the Taxes and Levies Decree No. 21 contains well over 55 types of taxes, only 9 of them are Federal Government taxes, while 25 items are ceded to State Governments and 21 items are allocated to Local Government Councils as revenues. It is based on this that we agree with N. Ikeyi & S. Orji 2012: 93 that were it possible to save Decree No. 21 under Section 315 of the 1999 Constitution as an existing law, with respect to Part I of its Schedule as an Act of the National Assembly, then how would it have been saved with respect to Parts II and III of the Schedule to the Decree No. 21, is it as a law of a State or as a Bye Law of a Local Government Council? This emphasizes the fact that the only option open is for the court to declare Decree No. 21 null, void and of no effect whatsoever with regard to its purported application to the nation as a whole. See FAWEHINMI v. BABAGINDA (supra). This is sufficient confirmation that the Taxes and Levies Decree No. 21 is inoperable, one that cannot be accepted either as an Act of the National Assembly, a law of a State, or even as a Bye-law of a Local Government Council since whichever option that is contemplated, a significant remainder would still be left pending. Maybe, the Taxes and Levies Decree No. 21 of 1998 is like a bat, homeless, without family tree and only fit to be discarded, a law that is void, of no effect to the extent of its inconsistency with the 1999 Constitution and a law that cannot be brought into conformity with the provisions of Section 315 of the 1999 Constitution.

b) THE TAXES AND LEVIES DECREE NO. 21 OF 1998 WAS ENACTED TO REGULATE THE COLLECTION OF ONLY THE CLASS OF TAXES AND LEVIES CONTAINED IN THE SCHEDULE TO THE TAXES AND LEVIES DECREE NO. 21 OF 1998.

The second malady that completely annihilates and extinguishes the claims to universality, legality and constitutionality of the provisions of the Taxes and Levies Decree No. 21 of 1998 is the fact that Decree No. 21 was made to regulate only the class of taxes and levies listed in Parts I, II and III of the Schedule to Decree No. 21. The Taxes and Levies Decree No. 21 was made in 1998 as a universal code, as a standard of measurement of, and a bar to the powers of States to enact laws for the imposition of taxes and levies and fees within its areas of domain. This can be deduced from the internal construction and use of language in Decree No. 21 itself. A brief incursion into the fabrics of the said law will do here. First, we come to see that Section 1 (1) of the Taxes and Levies Decree No. 21 provides thus "the Federal Government, State Government and Local Government shall be responsible for collecting the taxes and levies listed in part I, part II and part III of the schedule respectively." The above provision was repeated in Section 2 (1) of the Taxes and Levies Decree No. 21 as follows "no person other than the appropriate tax authority, shall assess or collect, on behalf of the Government, any tax or levy listed in the Schedule to this Act." These are the principal sections of Decree No. 21, showing the variety and category of taxes and fees for which Decree No. 21 covers and which are to be collected by the Federal, State and Local Government Councils. The sphere of control of Decree No. 21, according to Sections 1 (1) and 2 (1) of Decree No. 21 only revolves around those items listed in Parts I, II and II of Decree No. 21 of 1998 and

no more. The wordings of Sections 1 (1) and 2 (1) of Taxes and Levies Decree No 21 of 1998 are plain and ordinary and ought to be given their ordinary and literal interpretation. See DANKWAMBO v ABUBAKAR 2016 2 NWLR [Pt. 1495] 157 at 180 - per KEKERE-EKUN, JSC at paras D – E, H.

We have thus demonstrated that Decree No. 21 only regulates the class of taxes and fees listed in Parts I, II and III of the Schedule to the Taxes and Levies Decree No. 21 of 1998, therefore, Decree No. 21 cannot by any stretch of imagination be extended to cover controlling, managing or overseeing the ousting or curtailing of the powers vested in States Houses of Assembly to make laws for the various States and also for Local Government Councils to impose, assess, demand and collect fees, levies and taxes provided for them in Items 9 and 10 of the Concurrent List and in the Fourth Schedule. See Edori Daniel Simeon, Edori Iniviei Simeon and Idatoru Alapuberesika Roberts 2017: 53). It would be tantamount to judicial suicide and recklessness to seek to extend and stretch the provisions of the Taxes and Levies Decree No. 21 of 1998 to cover the control and regulation of any class of taxes and levies not envisaged in Parts I, II and III of the Schedule to the Taxes and Levies Decree No. 21 of 1998. Furthermore, nothing except the express provision of the 1999 Constitution to the contrary can make Decree No. 21 the superlative legislation that should checkmate or regulate the Constitutional rights vested in Federal, States and Local Governments to make laws which authorize them to impose, demand and collect fees and levies within their domains. See Section 4 (7) and Section 32 of Item N of Part 1 of the 3rd Schedule to the 1999 Constitution.

In other to further demonstrate that Taxes and Levies Decree No. 21 is not meant to cover taxes not listed in Parts I, II and III of the Schedule to this law, we seek solace under the case of BAYTIDE (NIG.) LTD. v. ADERINOKUN (2014) 4 NWLR [Pt. 1396] 164 @ 200 para H per IYIZOBA, JCA wherein it was held that the express mention of one thing is the exclusion of the other. When we collapse the principle we elicit from this case onto Sections 1 (1) and 2 (1) of the Taxes and Levies Decree 21, we expose a gamut of legislative inhibition, inherent limitation and internal restriction which becomes the control knob to the door of the Taxes and Levies Decree No. 21 of 1998. This is what binds over, limits and confines the control of Decree No. 21 to only the collection by the three tiers of Government of only the fees listed in Parts I, II and III of the Schedule to the Taxes and Levies Decree No. 21 of 1998 and not those external to those stated in Decree No. 21.

Within the illuminative light of this principle, stated in the Latin maxim, ***expressio unius est exclusio alterius***, then every other tax or fee listed in other laws and statutes of ether the Federal or State Governments are totally unaffected by the operation and control of the Taxes and Levies Decree by reason of their not being listed in Parts I, II and III of the Schedule to Decree No. 21 of 1998. See Section 120 and 162 (2) (10) of the 1999 Constitution. It shows that Decree No. 21 cannot be accorded a super-national legal status, one whose control automatically overruns, surpasses and supersedes the provisions of the 1999 Constitution. More to our avowed reliance upon the Latin maxim, ***expressio unius est exclusio alterius***, there is no known principle of law or decided case which allows one enactment to totally annihilate, overshadow, subjugate and to be lorded over every other law including those that deal with different subject matters except where the principal law has "completely, exhaustively and exclusively covered the space" when made in its constitutionally guaranteed areas. The Counsel for the Appellant in the case of ETI-OSA LOCAL GOVERNMENT v. JEGEDE (supra) @ p. 556 paragraph H was right to contend that "each tier of government is free to impose taxes under whatever name depending on the social, economic and fiscal realities of the level of government at a particular point."

The fact about it is that the Taxes and Levies Decree No. 21 is not magically imbued with supernational powers, which automatically robs off, erodes, drains and appropriates powers constitutionally bequeathed to States Houses of Assembly to make laws for the imposition, assessment, demand and

collection of levies, rates and taxes of whatever sort within its domain. Regrettably, the principle of covering the field cannot apply to the constitutional vires to apportion the power to collect taxes between the Federal, States and Local Government Councils. This, according to N. Ikeyi & N. Orji 2012:86, stems from the fact that after the Constitution has exhaustively provided for an item by expressly spelling out the extent and limit of the powers exercisable by each tier of government on a subject matter, no tier of government can claim competence to make any laws on that subject matter without showing how that power accrues to it. In essence, no tier of government is allowed to make any law on an item that has been expressly reserved for the other tier(s) of government in the concurrent list under the guise that if one tier was the first to make made such law, that it would cover the field. When this happens, then anything hitherto done to the contrary would translate into a challenge to Section 4(4)(a) of the Constitution, hence it would end up as a nullity and void. It is the case that Decree No 21 state did not in any way completely, exhaustively and exclusively cover the field, for if this question arises, then one would ask, "which space?," the Taxes and Levies Decree No. 21 was not also made to foreclose, negate or invalidate the enactment of other laws and regulations by the Federal, States and Local Government Councils for the same subject covered by the Taxes and Levies Decree No. 21 of 19998, that is, for the assessment, demand and collection of taxes, fees and levies by any of the three tiers of Government. This as stated by N. Ikeyi & N. Orji 2012:86, even if Decree No. 21 had attempted to cover the field, that provision would not have had any adverse therapeutic effect on the unconstitutionality of Decree No. 21, so it would have still remained null and void. See Section 1 (3) of the 1999 Constitution. The fact that Decree No 21 opens with the words "Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979", goes to show that the protective fence presumably built around the Taxes and Levies Decree No. 21 against the 1979 Constitution is that which works only for the fees listed in part I, II and III of the Decree 21 and does not extend to fees and levies listed in any other laws.

c) THE TAXES AND LEVIES DECREE NO. 21 OF 1998 STEPPED BEYOND THE MANDATE OF THE NATIONAL ASSEMBLY AS DONATED BY THE 1999 CONSTITUTION.

The third malady is exposes how the Taxes and Levies Decree No 21 of 1998 exceeded the mandate donated to the National Assembly by the 1999 Constitution and which further made it to fail to qualify as a law made by the National Assembly or House of Assembly of a State. The powers to make laws to increase internally generated revenue, to enable either of the three tiers of Government assess, demand and collect taxes are amply provided for in the 1999 Constitution. It is primarily to be understood that the 1999 Constitution does grant sufficient powers to all the three tiers of government, especially the Federal and State Governments, to explore more ways to not only generate, but to increase their internally generated revenue. See Sections 24 (f); 44 (2)(a); 163 (a & b); 162 (2) (10); Sections 80 & 120 and S. 32 of Item N, Part 1 of the 3rd Schedule of the 1999 Constitution. This power is shared among the three tiers of government; Federal, State and Local Government and no other tier has the power to scuttle the powers donated to the other tiers of government by the same Constitution. This is because "It is the limit set under relevant provisions of the Constitution that define and determine the frontiers of the laws that can be enacted. That is the hallmark of Constitutional democratic governance which is seen as a reflection of the power granted by the people to meet their aspirations, and none else". So it was stated in FAWEHINMI v. BABANGIDA [2003]: 651.

In this direction, it is only the National Assembly is empowered to enact laws that to regulate the collection and administration of the taxes under Item 59 of the Exclusive List for "Taxation of incomes, profits and capital gains", which power is explained in Items 7 and 8 of the Concurrent Legislative List. The said power donated to the National Assembly did not include making laws for all manner of taxes, or as the Constitution calls it "any tax", but is limited to the taxation of incomes, profits and capital gains, and stamp duties on transactions. The caveat in this provision can only be enlarged or curtailed where

the 1999 Constitution so expressly provides in the alternative. It is therefore obvious that Items 7 and 8 of the Concurrent Legislative List is not in the alternative, but intended to serve as a guide to the National Assembly in the optimum performance of their mandate under Item 59 of the Exclusive List to the 1999 Constitution, and not to add to their power. This is why N. Ikeyi & S. Orji 2012: 83 declared that:

The provisions of items 7 and 8 of the concurrent list merely provide a guide for the exercise of the powers of the National Assembly under the provisions of items 58 and 59 of the exclusive list. A close look at the powers of taxation of the National Assembly under the Constitution as aforesaid shows that the powers therein are limited to the types of taxes specified in items 58 and 59 of the exclusive list, i.e. stamp duties, capital gains tax and income tax (which is typically a tax on profits). They do not extend to the power to impose all manner of taxes, which may be imposed by a government on its citizens. It would therefore seem that these other taxes, which are not specifically enumerated in the Constitution, are reserved to the states under their residual legislative power.

The above position cannot be faulted. This is because Item 7 under the Concurrent Legislative list provides that the National Assembly shall exercise its taxing powers by imposing tax or duty on (a) Capital gains, incomes or profits or persons other than companies and stamp duties on documents or transactions. In this direction, the National Assembly is the body possessed of the sole powers to prescribe the conditions under which (i) Personal Income Tax; (ii) Capital Gains Tax and (iii) Stamp Duties are to be collected by States to ensure that a taxpayer is liable to paying the prescribed tax in only one State and that the said payment covers him throughout all the States of the Federation. (Abiola Sanni 2017: 16, 17). On the other hand, it is the House of Assembly of a State that has the requisite powers to enact laws that would impose "any tax", rates and levies pursuant to Items 9 and 10 of the Concurrent Legislative List under the 1999 Constitution, and this duty also covers making laws for taxes collectable by Local Government Councils pursuant to the Fourth Schedule. Therefore, it is a House of Assembly of a State that is Constitutionally empowered to make laws for the imposition and collection of rates and other taxes, that are positioned to prescribe conditions under which these taxes, rates and fees are imposed, assessed and collected by the Local Government Councils to ensure that such fees, rates and taxes are not levied by more than one Local Government on any one person in that State. Thus the Taxes and Levies Decree No 21 runs afoul of Section 4 (7) of the 1999 Constitution and should not be allowed to stsnd. In the case of F.R.N. V. OKEY NWOSU (2016) 17 NWLR [Pt. 1541] 226 @ 304 paras C – D, the Supreme Court per NWEZE, JSC held that the 1999 Constitution in Section 4 (6) vests legislative powers of a State of the Federation in the House of Assembly of the State. By subsection 7 of the same section, the Assembly is empowered to make laws for the peace, order and good government of the State and any part thereof with respect to any matter not included in the exclusive legislative list and any other matter with respect to which it is empowered in accordance with the provisions of the Constitution." In addressing this anomaly, Abiola Sanni 2017: 13-14 said that:

The drafters of the Act seem to be at a loss on the basic distinction amongst taxes, fees and charges. How else can one explain the inclusion of user charges, permit and licensing fees to the items contained in the Schedule to the Act? Thus items such as off and on liquor licence fee, slaughter slab fees, marriage, birth and death registration fees, naming of street registration fees, right of occupancy fees, domestic animal licence fees, bicycle, truck, canoe and cart fees, radio and television licence fees, vehicle road licence fees, public convenience, sewage and refuse disposal fees, customary burial ground permit fees, signboard and advertisement permit fees or "rates" such as shops and kiosk rates, tenement rates are included in the Schedule. Even, payment for wrong parking which is clearly a fine was called a charge.

The Taxes and Levies Decree No. 21, it is sad to note, drifted away from the Constitutional threshold for a law that would qualify as an Act of the National Assembly by seeking to regulate the collection of

taxes, fees and charges that are reserved for States and Local Government Councils under the Fourth Schedule to the 1999 Constitution. The objectives, even if beneficial, that prompted the promulgation of the Taxes and Levies Decree No. 21 of 1998 violates the 1999 Constitution which empowers a House of Assembly to legislate for the imposition, assessment and collection, by its local government councils, of any of the taxes not reserved to the Federal Government. (N. Ikeyi & S. Orji 2012; 83). The said breach of the constitutional provisions did extend to the collection of liquor license fees, slaughter slab fee, naming of street fee, domestic license fees, customary burial ground fees, public convenience fees and wrong parking fees, which are traditionally Local Government responsibilities. This incursion was totally out of place and N. Ikeyi & S. Orji 2012: 83 admits that the power vested in the National Assembly does not extend to the power to impose all manner of taxes which may be imposed by a government on its citizens, because this power is reserved for states under their residual legislative power, except during Military government because of its distinctively unitary and centrist outlook on governance. The views of N. Ikeyi & S. Orji 2012: 83 on this re-echoes the reason for the Supreme Court's decision in FAWEHINMI v. BABANGIDA [2003] 651, that "It is the limit set under relevant provisions of the Constitution that define and determine the frontiers of the laws that can be enacted.".

Accordingly, the Taxes and Levies Decree No. 21 of 1998 in its wild goose chase and incursions into areas and legislating on items strictly reserved for States and Local Government Councils grossly overstepped the bounds set for an act of the National Assembly, unless as a Military Decree, hence an existing law, but which was modified as such. The power vested in the National Assembly is strictly enumerated, while the powers donated to States House of Assembly is residual, non-specific and unenumerated in scope and extent. The power vested in the National Assembly does not cover the power to impose and collect sundry taxes and levies generally (which is the subject matter of the Act), which power is rather vested in a House of Assembly of a state. The Taxes and Levies Decree No. 21 of 1998 should have ceased to have force or to be included among our corpus of laws upon the coming into effect of the 1999 Constitution for stepping beyond the mandate donated to the National Assembly as donated by the 1999 constitution.

d) THE TAXES AND LEVIES DECREE NO. 21 OF 1998 IS EFFECTIVE ONLY IN REFERENCE TO THE 1979 CONSTITUTION AND NOT THE 1999 CONSTITUTION

The fourth malady that grounds the foundation and Constitutionality of the Taxes and Levies Decree No. 21 of 1998 and which forces it to a retreat is that the Taxes and Levies Decree No. 21 of 1998 is primarily effective and repressive in relation to the provisions of the 1979 Constitution. In 1998 when the Taxes and Levies Decree No. 21 was promulgated, Section 7 sub-section (5) of the 1979 Constitution which was earlier suspended by the Constitution (Suspension and Modification) Decree No. 1 of 1984 was re-suspended by the Constitution (Suspension and Modification) Decree No. 107 of 1993. This means that the 1979 Constitution was ineffective, made redundant and moribund as it affects the powers vested in the component units of the Federation. This also affected the powers vested in States prior to promulgating the Taxes and Levies Decree No. 21 of 1998 as the Military Government took leave to make laws for every subject matter for all the country as one unit. However, Decree No. 21 ceased to have any effect as an Act of the National Assembly upon the coming into effect of the 1999 Constitution. As stated elsewhere, the Taxes and Levies Decree No. 21 of 1998 has features that bespeak the marks of a central Military command structure, attributes which the Taxes and Levies Decree No. 21 still carries with to this day. One such feature is that contained in its opening section which provides thus "Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979 as amended," itself a military legacy handed down and integral to Decree No. 21 of 1998. This is clearly demonstrable of the fact that Decree No. 21 was enacted to operate over and above the 1979 Constitution and to act in superiority to Laws of the National Assembly and Houses of Assembly without recourse to

the limitations set for the subject matter contained in the 1979 Constitution. However, what criteria that determined the validity of Decree No 21 under the 1979 Constitution would not hold under the 1999 Constitution which was not in operation in 1998 when the 1979 Constitution was suspended by the Constitution (Suspension and Modification) Decree No. 107 of 1993 and cannot be made to suffer the fate meted out to the 1979 Constitution by Military fiat in 1998. This shortcoming thus rules out the significance and import of the Taxes and Levies Decree No. 21 as no other law would and can take precedence over the 1999 Constitution. This is a principle that has been severally stated. In INEC v. MUSA (2003) 3 NWLR [Pt. 806] 7, where it was held that-

The Constitution is Supreme, and the validity of any provision will be tested by the following interrelated propositions, that is: (a) All powers, legislative, executive, and judicial must ultimately be traced to the Constitution; (b) The Legislative power of the legislature cannot be exercised inconsistently with the Constitution where it is so exercised; it is invalid to the extent of such inconsistency. (d) Where the Constitution has enacted exhaustively in respect of any situation, conduct or subject, a body that claims to legislate in addition to what has been enacted must show that it has derived the legislative authority to do so from the Constitution. Where the Constitution sets the condition for doing a thing, no legislation of the National Assembly or of a state can alter those conditions in any way, directly or indirectly, unless the Constitution itself as an attribute of its supremacy expressly so authorized.

Further, it is because the Taxes and Levies Decree No. 21 of 1998 was left out and not modified pursuant to the provisions of Section 315 of the 1999 Constitution that it has continued to be referred to and to carry the noxious badge and nomenclature as "Decree No. 21 of 1998". As explained earlier, the Taxes and Levies Decree No. 21 of 1998 fails to qualify either as an Act of the National Assembly or a Law of a House of Assembly of a State. Since it was not subjected to modification by an appropriate authority, or to the repeal or invalidation of the offending provisions by the court or any other competent tribunal upon an application thereto, it remains a non-law. (N. Ikeyi & S. Orji 2012: 78). There indeed does not exist any ground for the continual reference to, or acceptance of the Taxes and Levies Decree No. 21 of 1998 as the foundation for all the taxing powers of the constituent parts of the Federation Republic of Nigeria because the provisions of the 1979 Constitution expired and were lost on the coming into reckoning of the 1999 Constitution. This simply restates the obvious, that Taxes and Levies Decree No 21 of 1998 as at 1998 was promulgated as a superior Military Decree to the 1979 Constitution. In the case of KNIGHT FRANK & RUTLEY NIG. v. A.G. KANO STATE (1998) 7 NWLR [Pt. 556] 1 @ 20 para C – D the Supreme Court per UWAIS, CJN did declare as follows "It is significant to point out that the suspension of the provisions of Section 7 sub-section (5) of the 1979 Constitution by the Constitution (Suspension and Modification) Decree No. 1 of 1984 has no bearing on this case because the contract entered into by the parties in November, 1983 to have effect from 13th November, 1980 predated the 1984 Decree. So that at that time the contract agreement was executed the provisions of the Constitution in question were extant and applicable." This restates similar facts in that the provisions of the Taxes and Levies Decree No. 21 of 1998 is ineffective and voided by its inconsistency with the 1999 Constitution to which all other laws made after the 1979 Constitution lapsed. It is therefore the position of this work that the provisions of the Taxes and Levies Decree No. 21 of 1998 are only effective in reference to the 1979 Constitution and not the 1999 Constitution which was not in existence in 1998.

CONCLUSION

In this work, our extensive and exhaustive analysis of the Taxes and Levies Decree No. 21 of 1998 made us to place it under the magnifying glasses of the 1999 Constitution and decided cases. The allocation of taxing powers between the three tiers of government to merely serve as avenues for the collection of the taxes listed in Parts I, II and II of Decree No. 21; the express provisions of the 1999 Constitution which

allows State Governments to make laws for "any taxes" without restrictions were also examined. Also, we took pains to ascertain the unconstitutionality of Decree No. 21 vis-a-vis the areas of conflict and convergence with the 1999 Constitution. Armed with these, we logically deduced that the power to legislate on the power to impose and collect sundry taxes and levies generally, which is the subject matter of Decree No. 21 is not a power that is vested in the National Assembly, but it is one vested in the House of Assembly of a State. We opted for ATTORNEY GENERAL OF THE FEDERATION v. ATTORNEY GENERAL OF LAGOS STATE (2013) 16 NWLR [Pt. 1380] 249, where it was echoed that "The National Assembly cannot, in exercise of its powers to enact some specific laws, take liberty to confer authority on the Federal Government or any of its agencies to engage in matters which ordinarily ought to be the responsibility of a State Government or its agencies." This means that the National Assembly cannot assume the role to legislate on the allocation of the power to collect sundry taxes and levies such as off and on liquor licence fee, slaughter slab fees, marriage, birth and death registration fees, naming of street registration fees, right of occupancy fees, domestic animal licence fees, bicycle, truck, canoe and cart fees, radio and television licence fees, which are fees which if the National Assembly make laws on, would grossly run contrary to, infringe and violate the extant provisions of the 1999 Constitution, as any such Act would be null and void and of no effect whatsoever. In its form, therefore Section 315 cannot operate to enable Decree No 21 to continue to have effect either as an Act of the National Assembly or as a Law of a House of Assembly. It is simply impossible (N. Ikeyi & S. Orji 2012: 87).

We further established that the Taxes and Levies Decree No. 21 of 1998 is affected by four (4) maladies, that is that the Taxes and Levies Decree No. 21 of 1998 as an existing law was not brought in tune with Section 315 of the 1999 Constitution; that it was enacted to regulate the collection of only the class of taxes and levies contained in Parts I, II and III of the Schedule to the Taxes and Levies Decree No. 21 of 1998; that the Taxes and Levies Decree No. 21 of 1998 stepped beyond the mandate vested in the National Assembly by the 1999 Constitution and that the Taxes and Levies Decree No. 21 of 1998 is only effective in reference to the 1979 Constitution and have no effect on the 1999 Constitution. These four maladies work together to invalidate the Taxes and Levies Decree No. 21 of 1998, which ceased to have effect upon the coming into effect of the 1999 Constitution. In effect, we deduced that the power to legislate on the allocation of the power to collect sundry taxes and levies generally, which is the subject matter of Decree No. 21 is not a power that is vested in the National Assembly, and that the National Assembly cannot assume a role not allocated to it under the 1999 Constitution.

We therefore conclude that the Taxes and Levies Decree No. 21 of 1998 when confronted by the four (4) maladies elucidated herein, immediately beats a fast retreat into oblivion. We conclude that because the Taxes and Levies decree No. 21 of 1998 was not modified and brought into tune with Section 315 of the 1999 Constitution, that the attempt by the Military to hijack and share the powers to collect the class of taxes listed in Pars I, II and III of Decree No. 21, hence stepped beyond the mandate vested in the National Assembly by the 1999 Constitution. That the Taxes and Levies Decree No. 21 of 1998 by its conception and layout was intended to operate with reference and effective deference to the provisions of the 1979 Constitution and not the 1999 Constitution. These four maladies work together to extinguish the Taxes and Levies Decree No. 21 of 1998 illegally foisted on States and Local Government Councils and hence cannot have any effect anywhere in the Federal Republic of Nigeria upon the coming into effect of the 1999 Constitution. Therefore, Decree No. 21 of 1998 is null and void and of no effect whatsoever because in its structure, Section 315 of the 1999 Constitution cannot operate to enable Decree No 21 to continue to have effect either as an Act of the National Assembly or as a Law of a House of Assembly.

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