



## TAXATION AS A HUMAN RIGHTS ISSUE: APPRAISING THE NIGERIAN EXPERIENCE

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### ABSTRACT

*Taxation is the most sustainable and predictable source of public income for the realization of human rights-based amenities including education, healthcare and housing. This paper examined the intersection between taxation and human rights as a prelude to redressing market imbalances and historical discriminations embedded in societies for the protection of the common good. It appraised the legal frameworks at international, regional and national levels as impetus for taxation. The unconventional approaches to taxation in Nigeria which further entrenched the perception of taxation as being despicable and at variance with human rights norms with conducts such as mounting of road blocks, use of touts, violation of approved tax lists, multiple taxation among others were also examined. This paper equally examined taxation as a human rights issue especially in the progressive efforts towards the realization of economic, social and cultural rights of the citizenry. It concluded that the state's legitimacy to levy taxes derives from a civic contract which rests on the fulfilment of the rights of the citizenry and which is strengthened by the implementation of a good governance concept through participation, transparency and accountability.*

**Keywords:** Human Rights, Taxation, Taxpayer, Rights.

### INTRODUCTION

Notwithstanding the trite position that taxes are utilized in modern times to generate revenue, additionally, they are applied to fund governance, provide rights-based amenities, ensure resources redistribution, streamline consumption of certain goods, reduce inflation and stimulate economic growth among others. The United States Supreme Court in the case of *Bull v United States*,<sup>1</sup> stressed the importance of taxation when it stated that taxes are the lifeblood of

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government and their prompt and certain availability an imperious need.<sup>2</sup> The early Christians of the New Testament including Jesus Christ of Nazareth supported the payment of taxes as recorded in Matthew 22:21 thus, “render therefore unto Caesar the things which are Caesar’s, and unto God the things that are God’s”. The importance of taxation is further amplified by the fact that the usual procedure for the recovery of debts is reversed in the field of taxation and payment proceeds defence and the burden of proof, normally on the claimant is shifted to the taxpayer.

Consequently, tax is not a voluntary payment or donation. It is an enforced contribution, exerted pursuant to legislative authority and it is imposed by government. The Nigerian tax system comprises the tax policy, tax laws and tax administration.<sup>3</sup> The administration of tax in Nigeria is a function of the three tiers of government namely; the federal, the state and the local governments. Each tier has a machinery to ensure the effective assessment and collection of taxes within its jurisdiction.<sup>4</sup> Taxation has been defined as an instrument employed by government for generating public funds.<sup>5</sup> Therefore, a well designed tax system can help governments in developing countries prioritize their spending, build stable institutions, and improve democratic accountability.

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<sup>1</sup> (1935) 275 US 247 at 259.

<sup>2</sup> G. Mazzoni, Taxation and Human Rights: A Delicate Balance in P. Alston & R. Nikki, Tax, Inequality and Human Rights (Oxford: 2019)259.

<sup>3</sup> O. A. Somorin, ‘Highlights of Historical Developments of the Nigerian Tax System’, (Lagos: ASCO Publishers 2015)1.

<sup>4</sup> *Ibid.*

<sup>5</sup> J. O. Anyaduba, ‘Personal Income Taxation in Nigeria’, (United City Press 1999)32.



Furthermore, taxation is defined as a compulsory contribution to the support of government levied on persons, property, income, commodities, transactions, now at a fixed rate mostly proportionate to the amount on which the contribution is levied.<sup>6</sup> Taxation is therefore valid when all taxable articles or kinds of property belonging to the same class or category are taxed at the same rate including sufficient notice and opportunity for hearing afforded to individual subject of taxation. A tax system can operate successfully if there is certainty as to those who constitute the taxpayers. This becomes imperative since the payment of tax must be seen to emanate from an identifiable person and likewise, some tax abuse conducts which must be attributed to a known source.

Therefore, a taxpayer is an individual or business entity that is obligated to pay taxes to federal, state or local government body.<sup>7</sup> A taxpayer is generally described as one who pays taxes. He remains a critical stakeholder and primary focus of the tax system bearing in mind the responsibilities as a civic obligation and constant duty that must be discharged as at when due. This is however, not alluding to the fact that everyone especially in Nigeria pays taxes even though almost everyone is subjected to some form of taxation.

The realization of human rights norms, depend on the fiscal policy and the distribution of resources available to a state. Taxation as a fundamental source of public income entails resource generation, resource allocation and the actual spending which all impact human rights norms directly or otherwise. Human rights constitute those liberties, immunities, and benefits which by

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<sup>6</sup> Tiley, 'Revenue Law', (Butterworths 1981)3.

<sup>7</sup> K. J. Oyekan, Understanding the Taxpayers Rights in the Digital Age [2020] 7(2) *Nnamdi Azikiwe University Journal of Commercial and Property Law*, 3.



accepted contemporary values, all human beings should be able to claim as of right of the society in which they live.<sup>8</sup> They are those fundamental and inalienable rights which are essential for life as human being.<sup>9</sup> Rights presuppose those conditions of social life without which man cannot be at his best or give his best. It is what is needful to the adequate development and expression of his personality.<sup>10</sup> It follows that, only right recognized and protected by the legal system that can be considered a right.

## **DOMESTIC, REGIONAL AND INTERNATIONAL LEGAL FRAMEWORK FOR TAXATION**

Taxation has always been considered somehow profoundly distinct from other areas of human endeavours, due largely to the public status of the connection between the taxpayer and those saddled with the responsibility of tax administration. This exceptional interplay toward taxation has also had distressing impact on the applicability of fundamental procedural guarantees to tax proceedings, the provision of human rights-based amenities such as education, healthcare, housing among others which revenue generation via taxation plays a pivotal role. However, taxation enjoys some forms of legal protection as a state's central fiscal policy component in form of legal framework whether at the international, regional, national and state levels.

### **The Constitution of the Federal Republic of Nigeria, 1999 (as amended)**

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<sup>8</sup> L' Henkin, Human Rights in R Bernhadt (edn) (1985) 8(1) Encyclopedia of International Law, 263.

<sup>9</sup> S. K. Kapoor, 'International Law and Human Rights', (Allahabad: Central Law Agency 2016)817.

<sup>10</sup> A. C. Kapur, 'Principles of Political Science', (Nirja Publishers and Printers 2012)108.



The Constitution remains the apex law and by far the most significant legal framework and source of income taxes in Nigeria. The CFRN 1999 also provides for the taxing powers of the various tiers of government. Section 4(2) of the Constitution specifically vests the National Assembly the exclusive legislative power to make law on items specified in the Exclusive Legislative Lists including taxation of incomes, profits and capital gains, except as otherwise prescribed by the Constitution. The states are vested with the legislative power to make law on taxation with respect to matters in the Concurrent Legislative List including the imposition of taxes or duty on capital gains, incomes and profits of persons other than companies and documents or transaction by way of stamp duties.<sup>11</sup> The above constitutional provisions make revenue generation via taxation largely statutory. Therefore, citizens are not subjects of taxation in the absence of a legislation in force. This is despite the bulk of the taxing powers residing with the Federal Government making each level of government independently responsible for tax administration within its jurisdiction.

### **Personal Income Tax (Amendment) Act 2011**

The Personal Income Tax Act regulates and governs income tax levied on the total income of individual. The PIT also involves some deductions, it is often collected on a pay-as-you-earn basis. The PITA ensures the determination of taxpayer's liabilities by outlining procedures to ascertain gross income, allowable and disallowable deductions from income in ascertaining

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<sup>11</sup> CFRN, 1999 as amended, 2<sup>nd</sup> Schedule (Item 7a, b).



taxable income, non-taxable income applicable, marginal tax rates, exemptions among others.<sup>12</sup> By Section 2(6) taxes are imposed on individuals, communities and families and on executors and trustees and also for the assessment, collection and administration of tax. Section 54(1) enjoins taxpayers to file on oath their returns within 90 days from the commencement of every year of assessment and the individual taxpayer shall calculate in his returns tax payable by him. Section 32 obligates a taxable person to without notice or demand made on him file a return of income together with a statement in writing containing the amount of income from every source of the year preceeding the year of assessment and particulars in respect the income, relief, allowances and deductions. The PITA further provides for a detailed reference to a principal place of residence for purposes of tax to the effect that where an employee has more than one place of resident for any year, the principal place of residence, where applicable, will be the location of the branch office or operational site where such individual works provided there is a minimum of 50 workers at such branch or site.<sup>13</sup>

### **Companies Income Tax Act C21 LFN 2004**

The Companies Income Tax Act is the principal law that regulates the taxation of companies in Nigeria. Companies income tax is imposed on the profit of a company from all its sources and it is also imposed on foreign companies operating a business in Nigeria. Section 1 of the Act provides for the establishment and constitution of the Board whose operational arm shall be known as the Federal Inland Revenue Service. Section 3 of Act empowers the Board to collect

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<sup>12</sup> O. Paschal, Legal and Institutional Frameworks of Taxation in Nigeria, <[https:// www.academia.edu](https://www.academia.edu)>legal-and-institutionalframeworks-of-taxation-in-Nigeria >accessed 28 April 2024.

<sup>13</sup> PITA, 2011 s 8.



tax from companies and account for same. By Section 9, each year of assessment tax shall be payable at the rate specified upon the profit of any company accruing in, derived from, brought into, or received in Nigeria in respect of any trade, dividends, rent or premium, source of annual profits or any amount of profits or gains arising from acquisition and disposal of short-term money instruments. Section 23(1) (9) exempts from corporate income tax the profits of any Nigerian company in respect of goods exported from Nigeria provided that the proceeds from that export are repatriated to Nigeria and used exclusively for the purchase of raw materials, plant, equipment and spare parts.

### **ECOWAS Common External Tariffs (ECOWAS CET) 2008**

The ECOWAS Common External Tariff is one of the instruments of harmonization being adopted by Economic Community of West African States (ECOWAS) to strengthen and deepen its common market in accordance with Article 3 of the ECOWAS Revised Treaty. Article 4 of the West African Economic Market Union (WAEMU) provides for the harmonization of member states' tax legislation in order to ensure the good functioning of the market.<sup>14</sup> Consequently, member states' tax bases and rates are expected to avoid being distortionary so as not to impact the intention of the policy makers of WAEMU CET Treaty. WAEMU also aimed at the simplification of customs duties within WAEMU in the face of a proliferation of duties and taxes, high tariff dispersion and relatively high overall tax levels, believed to increase the incentive for fraud.<sup>15</sup>

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<sup>14</sup> CITN, Taxation, Technology and Business Disruptions (Lagos: Chartered Institute of Taxation of Nigeria).

<sup>15</sup> Guideline 11.1, FIRS Information Circular, No.2021/18.



## **The African Continent Free Trade Area Protocol on Trade in Goods 2018**

The African Continental Free Trade Area (AFCFTA) is a trade agreement aimed at creating a common/single market for goods and services across the African region. It is also aimed at the elimination of trade barriers and harmonization of tax laws and policies across the member states.<sup>16</sup> As a key objective, AFCFTA seeks to harmonize tax rates, elimination of double taxation, and the adoption of common tax rules and regulations.

## **Council Directive on Administrative Cooperation in the Field of Taxation (European Union 2021/514 2001)**

The European Union tax law and fiscal policy does not have as its fundamental objective, the raising of revenue through collection of taxes. Rather, the fiscal policy and tax law are formulated to accord with the central policy objective of the European Union, which has much to do with the intra-market potentials of the member states. However, certain taxes constitute revenue component for the European Union budget including; VAT, customs and excise duties which are collected by member states and remit to the European Union budget. Pursuant to Articles 113 and 115 of the EU Charter, and in order to accommodate the initiative of the EU in the field of tax transparency, Council Directive (EU) 2021/514 was introduced in accordance with the special legislative procedure to enable tax authorities of the member states to have broader set of cooperation tools at their disposal, to detect and tackle forms of tax fraud, tax

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<sup>16</sup> AFCFTA, Art. 8.



evasion and tax avoidance. Article 31 of the Directive mandates member states to communicate information to another member state for tax purposes, including authorisation for the use of such information for other purposes in so far as it is allowed under the national law of both member states.

### **United Nations Model Double Taxation Convention between Developed and Developing Countries 2021**

The United Nations Model Tax Convention forms part of the sustained global efforts geared toward the elimination of double taxation by international trade partners and sovereign states. However, the UN Model Tax Convention favours the retention of the doctrine of source country taxing rights under a tax treaty which basically implies that the taxation rights of the host country of investment take precedence far and above those of the residence country of the investor. The UN Model Tax Convention also seeks to encourage tax treaties between sovereign states in order to contribute to the furtherance of the development aims of developing countries.<sup>17</sup>

Additionally, the treaties seek to improve cooperation between taxing authorities in carrying out their functions, including the exchange of information with a view to preventing avoidance or evasion of taxes by assistance in the collection of taxes.<sup>18</sup> Article 1(2) allows for the imposition of taxes on income and capital on behalf of a contracting state or of its political subdivisions or local authorities, irrespective of the manner in which they are levied. Furthermore, the

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<sup>17</sup> UN Department of Economic and Social Affairs Financing for Sustainable Development Office, United Nations Model Double Taxation Convention between Developed and Developing Countries 2021, <<https://www.ffdoffice@un.org>> accessed 29 April 2024.

<sup>18</sup> *Ibid.*



Convention stipulates the imposition of taxes on total income, capital or on elements of income or of capital, including on gains from the alienation of movable or immovable property, wages or salaries paid by enterprises, as well as taxes on capital appreciation.<sup>19</sup>

## UNCONVENTIONAL APPROACHES IN TAX COLLECTION

Multi-dimensional challenges abound with tax recovery procedures especially in sub-Sahara

Africa. Notable challenges include; use of aggressive methods in tax collection, violation of approved list of taxes, destruction of tax defaulters' goods, multiple taxation among others. These perhaps accounts for some of the unwholesome conducts by tax officials, notwithstanding the prohibition by the various tax laws and policies, being despicable and at variance with human rights principles.

### i. Use of Aggressive Methods in Tax Collection

The use of aggressive procedures and uncivilized methods in tax collection entails a resort to the use of “touts”, who very often resort to violence and abuse at the least provocation and mounting of road blocks all in an efforts to collect tax. By Section 2(3) of the Taxes and Levies (Approved List for Collection) Act,<sup>20</sup> these uncivilized methods are clearly prohibited. In *Okechukwu v Anigbogeon*,<sup>21</sup> the plaintiff was unlawfully arrested and locked up in a motor van. The defendant contended that as a tax collector, he was absolved of any criminal liability. The Court held that the defendant was liable because it is not the function

<sup>19</sup> UN Model Tax Convention, Article 2(2).

<sup>20</sup> Cap T2.

<sup>21</sup> (1973)3 ECCLR 159.



of tax collectors to arrest and detain citizens in order to collect rate. The above decision is in *intan dem* with human rights norms as provided for by the law and are part of the personhood of the taxpayers.

## ii. Violation of Approved Lists of Taxes

This manifests in the usurpation of some of the taxes and rates meant for the local government, or introducing some novel but illegal taxes through states laws.<sup>22</sup> All the tiers of government have been found to be culpable in the violation of the approved lists of taxes by exceeding their jurisdiction and levy taxes outside of the approved lists of taxes. In *Bamidele v Commissioner for Local Government and Community Development(Lagos State) & Another*,<sup>23</sup> the Court considered the imposition of market stallage fees by the state government to be a usurpation of a function exclusively reserved for local governments. Similarly, *Knight Frank & Rutley v A. G. Kano State*,<sup>24</sup> the Supreme Court held that since rating and assessment of private houses or tenements for the purpose of levying rates are one of the functions exclusively reserved for local government under the Constitution, it was *ultra vires* for the government to engage the services of two accounting professional firms to perform that responsibility.

## iii. Distrain of Tax Defaulter's Goods

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<sup>22</sup> E. Udoaka and G. Ene, Critique of the Illegal Approaches to Taxation in Nigeria [2021] 10(2) *Port Harcourt Journal of Law*, 322.

<sup>23</sup> (1994)2 NWLR (Pt. 328)568.

<sup>24</sup> (1998)7 NWLR (Pt. 556)37.



It is common practice for tax agencies to seize the goods of tax defaulters, to secure the payment of the tax owed.<sup>25</sup> Distrain is authorised under Section 104(1) (b) of the Personal Income Tax Act. However, it is illegal to distrain or seize anybody's goods for non-payment of tax or levy without a Court Order to that effect. In *Fast Forward Sports Marketing Limited v The Port Harcourt City Local Government Council*,<sup>26</sup> the Court stated that; 'No law authorized the distrain or seizure of goods by the Local Government Council for non-payment of taxes without an Order of Court even when the taxes demanded are legal.

#### **iv. Double or Multiple Taxation**

Double or multiple taxation normally generates disagreement and litigation, rather than payment. Incidentally, this challenge has happened repeatedly in Nigeria, and there have been numerous litigations on this in the past.<sup>27</sup> In *A. G. Lagos State v Eko Hotels Limited*,<sup>28</sup> the Court held that VAT and Sales Tax are the same, and that the imposition of both VAT and sales tax will create double taxation. The above decision is in line with the National Tax Policy which clearly discourage multiple taxation in whatever guise.

### **HUMAN RIGHTS ISSUES IN TAXATION**

Taxation is at the heart of society's ability to protect its citizens. In fact, it is the balance between collective and individual rights that determines whether a society is fundamentally unequal since

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<sup>25</sup> E. Udoaka (n22).

<sup>26</sup> (2011)4 TLRN 45 at 53.

<sup>27</sup> *A. G. Ogun State v Aberugba* (1985)1 NWLR (Pt. 3) at 413; *A. G. Abia State v A. G. Federation* (2006)6 NWLR (Pt. 1005)21 among other cases.

<sup>28</sup> (2008) All FWLR (Pt. 398)259.



tax impact collective and individual rights depending on the tax policy. Human rights are commonly divided into economic, social and cultural (ESC) rights or civil and political rights.<sup>29</sup> The economic, social and cultural rights have a progressive realization, while most civil and political rights are of an immediate effect.<sup>30</sup> The ESC rights are expressed in form of freedoms, privileges and entitlements that individuals and communities require to live a life of dignity, specifically rights to food, housing, healthcare, education, cultural identity among others. Civil and political rights may be categorized as encompassing the rights of physical and spiritual autonomy, right to fair treatment and the rights to participate fully in the political process.<sup>31</sup>

However, most ESC rights and civil and political rights are dependent on each other, making it essential that both types of rights are viewed equally important and considered to have the same legal status. It is imperative to note that the obvious nature of tax policy as a human rights policy becomes clearer when three characteristics are considered;

First, the progressive fulfilment of ESCR depends on the extent to which resource generation via taxation are made available and channelled towards the realisation of economic, social and cultural rights. This implies that the state remains at the forefront of implementing policies aimed at limiting the leakage of tax resources thereby enhance inclusive economic development of the people.<sup>32</sup>

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<sup>29</sup> M. J. Tuazon and M. Stenlind, The Role of Taxation in the Fulfilment of Human Rights and Sustainable Development. [www.oru.diva-portal.org](http://www.oru.diva-portal.org)>record accessed 27 April 2024.

<sup>30</sup> UN Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 3: The Nature of States Parties Obligations (Art. 2, para 1 of the Convention).

<sup>31</sup> S. Joseph, Civil and Political Rights, <<https://www.lawexplodes.com>>accessed 20 April 2024.

<sup>32</sup> E, Oriz-Ospina and M. Rosex, 'Taxation' <<https://ourworldindata.org>>taxation >accessed 26 April 2024.



Second, tax policies have a redistributive function with the potential to redress social, economic and gender inequalities. Consequently, the main structure of the taxation system taking into cognizance all direct and indirect taxes, can be broadly categorised as progressive and regressive in nature and provides insight into the priorities set by a state.<sup>33</sup> It is through the tax system that market imbalances and historical discriminations embedded in societies can be regulated and the common good protected.

Third, the state's legitimacy to levy taxes derive from a civic contract which rests on the fulfilment of the rights of the citizenry and which is strengthened by the implementation of a good governance concept through participation, transparency and accountability. It is imperative to note that a state's fiscal compliance with its human rights obligations cannot be assessed independent of its *modus operandi* in resource generation via tax, resource allocation and the actual spending.

The obligations to generate resources via taxation within human rights norms contain several obligations that are all related to resources for the fulfilment of the human rights principles aforesated. These obligations include; obligation to take steps; seek and provide international assistance and cooperation; and devote the maximum available resources to realize human rights.

The interface between tax law and the taxpayer is also capable of bringing about the violation of human rights norms via taxation. Therefore, this requires protection at the constitutional level aimed at constraining the actions of the executive and the legislature, particularly, the prohibition

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<sup>33</sup>*Ibid.*



of retroactive and confiscatory taxes, the requirement of conformity to the territoriality principles, allocation of tax jurisdictions between the levels of government to prevent harmful tax competitions between authorities, prohibition of multiplicity of taxes on same tax base.<sup>34</sup> It is to be noted also that the correlation between taxation and the protection of taxpayers' rights as human rights allow the state to generate sufficient resources via taxation which is in turn allocated and spent to ensure the actualization of taxpayers' human rights in the provision of rights-based amenities such as healthcare, housing, education among others.

Taxation policies have the potential to reduce income and wealth inequalities, depending on their level and progressiveness.<sup>35</sup> This become crucial considering the position that inequality have been shown to slow the pace of poverty reduction, create intergenerational poverty traps through uneven access to economic crises with enormous consequences on the realization of human rights-based norms in the present and for overcoming the intergenerational transmission of poverty.<sup>36</sup>

Generating revenue via taxation for the realisation of human rights is a straightforward way in which government revenues can facilitate compliance with human rights obligations by providing resources that are needed for public goods such as healthcare and education. It follows that failure to tap the tax bases effectively by most states means widespread inability to guarantee human rights-based amenities to the citizenry.

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<sup>34</sup> F. Luga, Taxpayers' Rights in the Context of Democratic Governance (2002) *ids Bulletin* <<https://www.academia.edu.ng>>accessed 12 April 2024.

<sup>35</sup> F. Sarstagh, D. Coady and S. Gupta, 'Income Inequality and Fiscal Policy, IMF Staff Discuss Note, (2010) 11.

<sup>36</sup> M. Sepulveda, Taxation and Human Rights (2014) <<https://www.researchgate.net/publication/327755773>> accessed 28 April 2024.



According to the World Health Organization and the United Nations International Children Emergency Fund, more than one billion individuals in developing countries still do not have access to adequate sanitation such as toilet or latrine.<sup>37</sup> This scenario obviously has enormous health implications for such individuals and has been said to cause death and disease, particularly among children. Additionally, many children especially in the rural areas lacks access to education because adequate school systems are not guaranteed due to the lack of financial resources premised on ineffective taxation systems, corruption and mismanagement of government revenues thereby limit the resources available for the fulfilment of children's rights.

Tax as a human rights issue is also premised on the fact that it reflects better than all the ministerial statements and white papers and the real priorities of government. It can be seen clearly the activities it chooses to incentivise, those that it opts to deincestivise, the groups that it decides to privilege, and the groups that it chooses to ignore or penalize.<sup>38</sup>

## CONCLUSION

Resource generation through taxation must comply with basic human rights principles and the state is obligated to take affirmative action or special measures to prevent, diminish and eliminate the conditions and attitudes that cause or perpetuate systemic or *de factor* violation of human rights norms through progressive tax system with real redistributive capacity that preserves, and progressively increases, the income of poorer households. This implies that

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<sup>37</sup> P. Hathi, S. Hague, L Pant, Place and Child Health: The Interaction of Population Density and Sanitation in Developing Countries (2022) <<https://www.doi.org/10.1001/813524-016-0538>>accessed 28 April 2024.

<sup>38</sup> P. Alston, 'Tax as a fundamental Human Rights Issue, CESR International Strategy Meeting (2015) <https://youtube/yd.RGFP7066A> accessed 28 April 2024.



affirmative measures aimed at ensuring the provision of rights-based amenities such as education, healthcare and housing should be the topmost priorities of the state in revenue generation via taxation in tackling structural inequalities.

## **RECOMMENDATIONS**

1. Adherence to human rights principles in tax policy formulation and implementation should be inculcated into tax administration in Nigeria.
2. Elimination of unconventional approaches to tax collection should be ensured in order to encourage self-compliance to payment of tax by taxpayers.
3. Progressive tax policies should be encouraged in order to ensure the realization of rights-based amenities for the citizenry.
4. Affirmation measures should be put in place in order to eliminate leakages in revenue generation and sure up the state's revenue capacity.