Urbanization, Land Protection and the Question of Slum Tenancy in Nigeria: A Re-Appraisal

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ABSTRACT
The hub of this work captures an understanding of the legal nature of slum occupation. A slum may be made of squatters on land and another of tenants who possess rights which can be legally protected. The research identified that there exists a distinction between squatters in slum settlements and tenants of slum settlements. The distinction being legal rather than environmental often creates hitches in effective environmental legal and policy implementations over such slums on private/communal or public owned lands. As these settlements grow on vacant lands; legally or illegally, urban policies are not very active regarding the development of these areas, as they are considered as residential areas inhabited by the very poor. This paper considers that sustainable patterns of urban plan implementations should be human rights sensitive to the housing needs of the poor, in as much as these policies are environmentally oriented to promote sustainable urbanization and development. Relocation or involuntary resettlement of slum dwellers should, as far as possible, be avoided. Slum upgrading should be the norm, with justifiable involuntary or voluntary resettlement being the exception.

Keywords: Slum, Urbanization, Tenancy, Land

1.0 INTRODUCTION
Shelter is a fundamental human need, but due to the huge capital involved in owning landed properties in Nigeria, buying a house or building one, is a privilege not many citizens can afford.1 One of the first dilemmas that poor rural migrants and very low income earners face is the question of an adequate house, as urbanization has generated a considerable flow of migrants to cities.2

Urbanization is one of the indicators of radical, physical economic and social performance that society is passing through as a result of development.3 Due to increase in technology, markets, consumptions, job opportunities and improved living conditions, many Nigerians prefer life in urban cities. This human population influx naturally causes the widening of social and economic class gaps and standards of living, causing the poor members of society to shelter themselves in unwholesome slum and squatter settlement conditions that to them; simply terminate homelessness. This paper attempts to make conceptual

3Oyesiku K, Modern Urban and Regional Planning Law and Administration in Nigeria (Kraft Books Limited, 1997) 27
clarifications in relation to the issues discussed and directs its attention to evaluating the legal nature of slum settlements in Nigeria in a bid to secure rights and interests over land use.

2.0 ELUCIDATION OF CONCEPTS

1 Urbanization

Urbanization is a process of concentration of the population in large number in an urban centre and transformation of the society involving migration and economic changes. Urban areas are defined differently in different countries, but are generally taken to be settled areas that are more populous and dense than rural settlements, and more suitable for locating administrative facilities and functions.

2 Slum

According to the Pocket Oxford Dictionary and Thesaurus, slum means ‘overcrowded and squalid back street, district, etc., usually in a city.’ It is also a house or building unfit for human habitation. A Slum can be defined as a heavily populated urban area characterized by substandard housing, inferior living conditions and usually by overcrowding. Bad housing is a major index of slum conditions. Thus, slum settlement refers to or addresses the living condition of a settlement. The simple shelters that slum dwellers construct with the help of their rudimentary building skills can be erected and re-erected at short notice. Cities like Mumbai, Port Harcourt, Dhaka, Mexico City, Cairo, Lagos, Johannesburg etc., are some of the examples where growth of slums are encroaching on a significant portion of the urban fabric.

3 Squatter settlement

It can be defined as a residential area which has developed without legal claims to the land and/or permission from the concerned authorities (private or public) to build; and as a result of their illegal or semi-legal status, infrastructure and services are usually inadequate. A squatter settlement, due to its inherent ‘non-legal’ status, has services and infrastructure below the minimum levels of basic human rights. Such services are both network and social infrastructure, such as water supply, sanitation, security, electricity, roads and drainage, schools, health centres, market places etc. The use of the word ‘squatter settlement’ unlike ‘slum’ refers to the legal position of the settlement. A squatter is a person who settles on property of another without any legal claim or title. Such person enters unlawfully and settles and cannot be called a contractual tenant or a statutory tenant, or a licensee, and has no protection under the tenancy laws or recovery of premises laws of a state.

4 Tenancy

Tenancy under common law means holding of interest in land or property by a tenant under an agreement. A tenancy may be created of an interest in land or building so that the tenant acquires a right

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4 Ibid
7 Ibid
9 By bad housing is meant dwellings that have inadequate light, air, toilet and bathing facilities; that are in bad repair, dump and improperly heated; that do not afford opportunity for family privacy; that are subject to fire hazard and that overcrowd the land, leaving no space for recreational use.
10 Taher and Arefeen (n1) 70-76.
11 Hari (n2)
13 Ibid
14 Section 47 Lagos State Tenancy Law 2011.
to some specified use or benefit or privilege attached to such land or building concerned.\textsuperscript{15} A tenancy may be created of any land or building thereof, and such tenancy shall carry with it a right of exclusive possession of the thing let.\textsuperscript{16} Possession of premises or land under a tenancy involves the following:

a. Tenant- includes a sub-tenant or any person occupying any premises whether by payment of rent howsoever or by operation of law and not persons unlawfully occupying any premises under a bona fide claim to be the owner.\textsuperscript{17}

b. Landlord- in relation to any premises means the person entitled to the immediate reversion of the premises or if the property is held in joint tenancy or tenancy in common, any of the persons entitled to the immediate reversion.

c. Licensee- is a person who came into occupation by mere permission, without the creation of a landlord and tenant relationship and has no estate or legal interest in the premises, but mere personal right to use the premises without exclusive possession.\textsuperscript{18}

d. Premises under the section 2 of the Recovery of Premises Act is defined to include
   a) A house or building or any part thereof together with its grounds or other appurtenances, and
   b) The land without any building thereon.\textsuperscript{19}

3.0 URBANIZATION AND SLUM TENANCY: SECURING RIGHTS AND INTERESTS OVER OCCUPATION OF LAND

Slum and squatter settlements in urban areas are inevitable phenomena as long as urban areas offer means for improving quality of living. Cities will continue to grow and attract migrants from rural and underdeveloped urban areas. These settlements form mainly because of the inability of city governments to plan and provide affordable housing for the low-income segments of the urban population. Hence, squatter and slum housing has become the housing solution for the low-income urban population.\textsuperscript{20} More often than not, large expanse of squatter settlement are slums, as the ‘squatting’ inhabitants can do very little to keep up with ‘adequate’ living standards. Slums are often seen as a critical environmental problem that is antithetical to development, since they promote unhealthy group association, function as refuge or hideouts for criminals, and are sources of uncontrolled income for slum landlords. However, these settlements provide shelter for new immigrants and accommodation for the poor and homeless people who have basic human rights to survival and shelter.

3.1 Slum Tenancy and Security of Tenure

Security of land and of tenure is the cornerstone of the right to adequate housing. It protects people against arbitrary forced eviction, harassment, trespassing and other threats. Residents of slum and squatter settlements and communities without legal security of tenure live in a constant state of uncertainty, which keeps them from investing time, effort or money into their homes. Globalization which provides opportunities, and functioning markets, consumers and firms also inflames urban poverty, poor urban governance and ill-designed urban policies enforcement, and the rise in slum settlements.\textsuperscript{21} Although Nigeria is known to have a fairly long history of urbanization, physical planning of cities and urban centres is a recent development.\textsuperscript{22} In slum settlements with a majority of owner- occupiers, tenure security can be provided relatively easily by granting land leaseholds or title deeds. But this occasion is often very rare. Where the settlement is largely of so-called ‘tenants’ not many systems of tenure security

\textsuperscript{15} Synger (n1) 138
\textsuperscript{16} Ibid
\textsuperscript{17} Section 47 Lagos State Tenancy Law 2011.
\textsuperscript{18} Anyafuluede (n12) 30
\textsuperscript{19} S 2 of the Recovery of Premises Act LFN 2004
\textsuperscript{20} Taher and Arefeen (n1) 70-76
\textsuperscript{21} Mahabir R and Others ‘The Study of Slums as Social and Physical Constructs: Challenges and Emerging Research Opportunities [2016] (3) (1) \textit{Regional Studies, Regional Science}, 399-419
\textsuperscript{22} Oyesiku (n3) 30
exist, to benefit the poor and vulnerable occupants of such land. Tenancy is secure and can be protected except where such occupation of land against public law or policy or for unlawful purpose, making it void and money or other payments made in connection with such occupation of land is not recoverable by action: ‘ex turpi, cause non oritur actio’. Any person(s) who occupy land under an interest held against the bona fide owner’s interest are not tenants of such owner. Where a slum settlement is made up of squatters and not tenants, such occupation of land is illegal, and the legal provisions relating to recovery of premises, or the rights and privileges attached to lawful occupation of land do not avail such slum squatters. The onus is on such a slum squatter or such trespasser who claims to be a tenant or licensee to prove the lawful occupation, as the material part of the statutory notice for eviction requires the tenant to quit and deliver up possession of the premises, ‘which you hold of me as a tenant thereof’.

In other cases, slum settlements are made up of licensees and not squatters. In a license, the licensee occupies the property at the pleasure of the licensor who may come upon the land at any moment he wishes without committing a trespass. However, it may be difficult to distinguish a tenant as defined under the tenancy laws or the recovery of premises laws of states, from a licensee. The substance of the agreement (if any) and the acts which the grantee is expected to do on the premises or land should be considered. The difference between a contractual tenant and a licensee remains largely in the exercise of “exclusive possession”; which the licensee does not have. The licensee has a mere right to possession, which a squatter does not have.

### 3.2 Slum Occupiers’ and the Right to Housing

Adequate housing is fundamental to survival and to living a dignified life with peace and security. The right to adequate housing was recognised in the 1948 Universal Declaration on Human Rights and is entrenched in a number of international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR).

In Sande v Abdulahi, Justice Kayode Eso regarded human rights as,

> Not just mere rights. They are fundamental. They belong to the citizen. These rights have always existed even before orderliness prescribed rules for the manner they are to be sought.

Adequate housing requires access to basic services such as potable drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage, refuse disposal, site drainage and emergency services. Social housing is virtually non-existent in Nigerian cities, and private landlords typically demand high rent. Waterside settlements in the city of Port Harcourt, Lagos, and other coastal

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23 Smith IO, *Practical Approach to Law of Real Property in Nigeria* (Revised edn, Ecowatch Publications Nigeria Limited, 2013) 261; Section 143 Landlord and Tenant Law, Laws of Enugu State, Cap 101, 2004. Tenant includes any person occupying premises, whether on payment of rent or otherwise but does not include a person occupying premises under a claim to be the owner of the premises. See Sections 29 and 42 Rivers State Recovery of Premises Law Cap 75 laws of Rivers State 1999


25 Anyafulude (n12) 37


27 Anyafulude (n12) 31


29 [1989] 4 NWLR (Pt 2) 387 at 418-419


31 Centre on Housing Rights and Evictions (n28) 5

cities in Nigeria have a long history and tradition. Most of these slums exist on government land, and a large number on private lands, where slumlords reign supreme. Most urban city state governments have at one time or the other employed forceful eviction of slum dwellers (squatters and licensees) from public lands for environmental or economic reasons.

While Wigwe unidentify that compulsory acquisition requires striking a balance between the public need for land on one hand, and the provision of land tenure security and protecting private property rights on the other hand, Uduechi expressed that there are numerous purposes for which land could be acquired for public use. Such land may be acquired for exclusive government use or for general public use. Public purposes may include sanitary improvements, reclamation, establishment of a new town or the extension or improvement of existing township. But as described earlier, where the slum dwellers are licensees or more still; squatters, the issue of ‘compulsory acquisition’ does not come into play, over state-owned lands. The challenges and legal battles often occur where governments in the interest of development evicts slum dwellers on private or communal land against the interests of community or traditional slum landlords who benefit from the unwholesome living conditions of slum settlements.

Aggressive efforts of governments at different times to deal with the socio-environmental problem of slum settlements has yielded little efforts, as plans put forward by existing administrations to tackle the problems often meet stiff opposition from the residents of these settlements and the owners of such lands who claim to have private rights over or in such lands. The social, economic and environment problems associated with these settlements are unending and often conflict with the right to shelter, and the question of what should be done to manage the conditions of such rising slum settlements is far from being answered.

3.3 Protecting Slum Occupiers and Land Owners in an Era of Development.
How has the law impacted on slum development, in protecting rights and tenure for lawful occupants, and in addressing the environmental challenges? Protecting slum occupiers has become a sustainable human rights development. Sustainable development is development that meets the needs of present generations without compromising the ability of future generations to meet their needs. It is concerned with the achievement of multiple environmental and development objectives, and today’s practices of urbanization must comply with the principles of sustainable development.

Promoting equitable, socially viable and stable human settlements is inextricably linked to eradicating poverty. Poverty has various manifestations, including homelessness and inadequate housing. Poverty entails more than the lack of income and productive resources to ensure sustainable livelihood. Its manifestations include hunger and malnutrition, limited access to education and other basic services, social discrimination and exclusion, as well as lack of participation in decision making.

In achieving security of tenure and protection of slum rights, the Indian (Odisha) Property Rights to Slum Dwellers Act 2011, which is a model act to provide for a comprehensive property rights legislation for slum dwellers, establishes the mechanism for its implementation, and provides for facilitation of inclusive growth and slum-free cities, including basic amenities and affordable housing to the slum-dwellers; as well as defining the functions of State and Local governments in respect of according property rights to slum dwellers.

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36 Ibid, 42
37 Olanrele OO and Agbato SE, ‘Land Right Registration and Property Development for Poverty Eradication and Slum Clearance in Nigeria’ [2014] (14) (2) Journal of Design and Built Environment, 4
The formation of slums is inevitable with rapid urbanization. Not only are strategic planning and intervention major issues in agenda to manage rapid urbanization, but city governments are not effectively linking the economic development path to implications for urban growth and consequent housing needs.

National approaches to informal settlements have generally shifted from negative policies such as forced eviction or benign neglect to more human rights friendly approaches. Approach that has been receiving considerable attention from various government and public authorities has been the ‘enabling’ approach, where instead of taking a confrontationist attitude, strives to create an enabling environment, under which people using and generating their own resources, could find unique local solutions for their housing and shelter problems. These include more positive policies and legal measure, such as ‘self-help’, ‘assistance’ and slum upgrading, enabling rights-based policies in order to improve squatter settlement conditions.

4.0 CONCLUSION

Most slum homes and squatter settlements households belong to the lower income group, either working as wage labour or in various informal sector enterprises. As these settlements grow illegally on vacant private or public lands, or (in other cases) legally on private or communal land, urban policies are not very active regarding the development of these areas, as they are considered as a residential area in an urban locality inhabited by the very poor. Slums are usually characterized by urban decay, high rates of poverty, and unemployment. They are commonly seen as breeding grounds for social problems such as crime, drug addiction, alcoholism, lack of basic services, substandard housing or illegal and inadequate building structures, overcrowding and high density, unhealthy living conditions and hazardous locations, poverty and social exclusion, insecure tenure, high rates of mental illness, and suicide. But in spite of all these issues, people still choose to live in slum settlements.

What should be done?

Government should engage in developing new urban areas by making land infrastructure available; promote good urban governance systems; establish enabling institutional frameworks involving all partners; implement and monitor pro-poor city development strategies; encourage initiatives of slum dwellers and recognize the role of women who are home builders. For slum policies to be successful, the kind of apathy and lack of political will that has characterized both national and local levels of government in many states in Nigeria needs to be reversed. Relocation or involuntary resettlement of slum dwellers should, as far as possible, be avoided, except in cases where slums are located on physically hazardous or polluted land, or where densities are so high that new infrastructure (especially water and sanitation) cannot be installed. In-situ slum upgrading should be the norm, with justifiable involuntary or voluntary resettlement being the exception.

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38 Taher and Arefeen (n1)
39 Ibid
40 Hari (n2)
41 Taher and Arefeen (n1) 70-76


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