



Land and development in Nigeria: An appraisal of slum tenancy

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Abstract

Poverty has various manifestations, including homelessness and inadequate housing. Slum settlements are a character of poor urban growth and poverty. In identifying the nature of slum tenancy in Nigeria, this paper mildly attempted to resolve legal controversies surrounding the nature of slum tenancy and land rights, and against the need for urban best practices and development. Having identified who a slum tenant is and the implications of slum land occupation, research emphasized that clamoring for relocation upon eviction or lawful demolition of slum housing has done more harm than good to urban development, spreading the settlements and settlers and further expanding slum habitation in new urban areas. Whether the relevance and realization of policy and law in relation to the right to adequate housing is in the court, the executive or the legislature, the exercise is much easier and more successful where the state is governed by proactive laws and not men and their political misgivings, where there exists an ambiance of egalitarianism in a state, respect for state resources to be used for the benefit of people and respect for basic human rights.

Keywords: tenancy, slum, development, rights, land

1. Introduction

Leases and tenancies occupy significant positions in the domain of estates in land ^[1] Lands which have become slums overtime are subject to the same rules, policies and laws that govern land issues. Persons who lawfully occupy any slum land or premises whether by payment of rent howsoever or by operation of law are tenants under law. The referral to such persons as 'slum tenants' remains rather an issue of nomenclature which merely identifies with the living conditions.

This paper identifies the legal nature of slum tenancy and associated slum occupiers in connection with land rights. In the face of dire trespass by unlawful occupiers of land branded as slum tenants, and the existence of consistent occupation of private and public lands which become slum settlements, with little care over the owner's rights, it accentuates the housing needs and rights of citizens, the desperation people face at the threshold of poverty in Nigeria to have a roof over their heads, and the need for proactive slum development in Nigeria.

Slum housing and habitation in urban centers are growing thicker and it seems that not only are the inhabitants of slum settlements oblivious of their legal occupancy status; the government is often at a dilemma as to the nature of conducts to employ in dealing with the spread of slum habitation, without violating acclaimed human rights standards. Population size indicates the overall dimension of the physical environment and assists in determining the amount of space needed for contemporary and future development ^[2]. In understanding 'slum tenancy', wrongful reference to slum squatters or mere licensees as 'slum tenants' not only puts a sense of significance to their

purported tenure, it also confuses and inflates the existence of rights and privileges, where claims arise over slum lands ^[3].

2. Defining slum and slum dwellers

Slum settlements in urban areas are an inevitable phenomena in our developing society, as long as urban areas offer means for improving quality of living ^[4]. Some factors linked to the growth of slums include, rural-to-urban migration, poor urban governance and ill designed policies as well as globalization, urbanization and poverty ^[5]. This is reflected in poor housing, low urban infrastructural support, and poor social and health services ^[6].

A slum can be defined as a heavily populated urban area ^[7] characterized by substandard housing, inferior living conditions and usually by overcrowding ^[8]. Bad housing is a chief manifestation of slum conditions. Otherwise known and often described as informal settlements, low-income settlements, semi-permanent settlements, shanty towns etc ^[9]. the pocket oxford dictionary and thesaurus, defined slum

³ Smith (n1) p 540

⁴ Taher MT and Arefeen I, 'Transformation of Slum and Squatter Settlements: A Way of Sustainable Living in Context of 21st Century Cities' [2014] (2.2) *American Journal of Civil Engineering and Architecture*, 70-76

⁵ Mahabir R and Others 'The Study of Slums as Social and Physical Constructs: Challenges and Emerging Research Opportunities [2016] (3) (1) *Regional Studies, Regional Science*, p 399

⁶ Giok Ling Ooi and Kai Hong Phua, 'Urbanization and Slum Formation' [2007] (84) *Journal of Urban Health*, p 27

⁷ Sections 3 and 51 (1) of the Land Use Act 1978

⁸ Kings Court Realtors Nigeria Limited Kings Court Realtors Nigeria Limited, 'Eradicating Slums in the Cities will increase Landlords' property values' *Kings Court Realtors* (Thursday, November 13 2014) <<https://www.kingscourtrealtors.com/news/news-1/eradicating-slums-in-the-cities-will-increase-landlords-property-values.html>> accessed 18 April, 2019

⁹ Section 2 of the Indian (Odisha) Property Rights to Slum Dwellers (PRSD) Act 2011

¹ Smith IO, *Practical Approach to Law of Real Property in Nigeria* (Revised edn, Ecovatch Publications Nigeria Limited, 2013) p 244; Land Use Act Cap L5 LFN 2004

² K. Oyesiku 'Modern Urban and regional planning law and Administration in Nigeria (Kraft Books Limited, 1997) p 24

as ‘overcrowded and squalid back street, district, etc., usually in a city.’

It is also a house or building unfit for human habitation ^[10]. It is a squalid and overcrowded urban street or district inhabited by the poor people; a house or building unfit for human habitation. Cities like Port Harcourt, Lagos, Jos, etc., are some of the examples where growth of slums encroaches on a noteworthy section of the urban structure ^[11].

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, refuge or hideouts for criminals, sources of unchecked income for slumlords, substandard housing or illegal and inadequate building structures, overcrowding and high density, unhealthy living conditions and hazardous locations, poverty and social exclusion, insecure tenancies, high rates of mental illness and suicide, land ownership insecurity, lack of basic services, the deterioration of the building stock or the exemption from city-wide services such as refuse collection, proper sanitation and sanitary allocations, lack of improved water, waste-water and sanitation systems, insufficient living and recreational area etc ^[12].

Despite these challenges, some people still choose to live in slum settlements, as it provides accommodation for new immigrants, provides economically innovative shelter solutions for the poor, saves people from homelessness in financially desperate times, and boosts income for unskilled and semi skilled labour etc. Other terminologies linked to this subject include:

a) Squatter Settlement/ Squatter

Squatter settlements can be defined as residential areas which have developed without legal claims to the land and/or permission from the concerned authorities to build. As a result of their illegal or semi-legal status, infrastructure and services are usually inadequate ^[13]. A squatter settlement or area, due to its inherent non-legal status, has services and infrastructure below the adequate or minimum levels. Squatter settlements are also known as spontaneous settlements, unauthorized settlements, unplanned settlements etc. The lands could be vacant private, government or public lands, or somewhat insignificant parcels of land like railway setbacks, hills or unattractive swampy land.

A squatter is a person who settles on property of another without any legal claim or title ^[14]. The term often addresses persons who settle on public land without title; a person who takes unauthorized possession of unoccupied premises or land ^[15]. Such person remains a squatter, until the person with interest removes him.

b) License

License is a mere personal, revocable privilege to permit an act or series of acts on another’s land. It terminates when the person in possession asks the licensee out and gives him sufficient time to vacate. If he overstays, he becomes a trespasser ^[16]. A person who has been permitted into premises can only become a trespasser if he remains on the land for an unreasonable time after the permission or license to be on the land has been withdrawn ^[17]. A person is a licensee where he is granted occupation of premises or land without any legal interest or estate but mere personal right to use the premises without exclusive possession, or any estate or legal interest in the premises. 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 ^[18].

c) Tenancy

Tenancy means holding of interest in land or property by a tenant under an agreement ^[19]. A tenancy may be created of an interest in land or building so that the tenant thereby acquires a right to some specified use of or benefit from or privilege incident to such land or building ^[20]. ‘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 ^[21]. A tenancy may be created of any land or building thereof, and such tenancy shall carry with it a right of exclusive possession.

3. Security of tenure and slum occupancy

Security of landed property and of tenure is the cornerstone of the right to adequate housing. Residents of slum settlements without legal security of tenure live in constant state of uncertainty, which keeps them from investing time, effort or money into their homes. Slums specifically refer to dwellings in an urban locality which have become substandard through construction, age, subdivision or neglect, and which generally have low to negligible levels of services. While an informal settlement may be illegally settled, or have extra-legal approval from the landowners or current residents to allow occupation, slums are not necessarily illegal. Thus, depending on context, an informal settlement may slip over years into the category of a slum or with pockets of slum housing.

Most slums exist on government land and a large number also on private lands, where slumlords reign supreme. Similarly depending on circumstance and scale, a slum settlement may be concentrated with tenants, squatters or licensees ^[22]. We reiterate at this point that occupiers of slum settlements may vary, and cannot all be covered by one legal coat. In some circumstances, occupiers of slum

¹⁰ Jewell EJ, *The Pocket Oxford Dictionary and Thesaurus* (2nd American edn, Oxford University Press) p 787

¹¹ Taher and Arefeen (n4) p 70

¹² Centre on Housing Rights and Evictions, *Slum -Upgrading: General Introduction and Compilation of Case Studies* (Centre on Housing Rights and Evictions (COHRE) 2005) p 4

¹³ Hari S, *Defining Squatter Settlements* (GDRC Research Output E-036. Kobe, Japan: Global Development Research Center) Retrieved from <<http://www.gdrc.org/uem/squatters/define-squatter.html>> accessed 10 April 2019

¹⁴ Anyafulude T, *Principles of Recovery of Premises in Nigeria Through The Cases* (Revised Edition, Snap Press Ltd. 2010) p 34

¹⁵ Hari (n13)

¹⁶ Chianu E, *Law of Trespass to Land and Nuisance* (3rd edn, Ambik Press, 2001) 25

¹⁷ Per Nnaemeka Agu JCA in *Horicon Ltd v. Wasurum* [1987] 4 NWLR (Pt 66) p 646; Anyafulude (n14) p 30

¹⁸ Section 47 Lagos State Tenancy Law 2011; Dadem YY, *Property Law Practice in Nigeria* (Jos University Press Limited, 2009) p 83

¹⁹ Section 47 Lagos State Tenancy Law (LSTL) 2011.

²⁰ Synger JK, *The Nigerian Land Use Handbook* (Odade Publishers, 2016) p 138

²¹ Section 47 LSTL 2011; Section 2 Recovery of Premises Act, Laws of the Federation of Nigeria (Abuja) 1990

²² Marx B and Others, ‘The Economics of Slums in the Developing World’ [2013] (27) (4) *Journal of Economic Perspectives*, p 187

land possesses legal interest in the land. Some persons occupy slum lands as lawful tenants, whereas others do so upon a mere license to occupy/possess, and in other instances, some unlawfully dwell as squatters.

3.1. Slum occupier as a licensee

Slum occupiers, who are mere license holders without any valuable consideration to support their occupation, occupy such unplanned habitation at the pleasure of the licensor who may come upon the land at any moment he wishes without committing a trespass^[23]. In distinguishing a tenant from a licensee, the substance of any legal agreement and the acts which the grantee is expected to do on the premises or land would be considered^[24].

The difference between a contractual tenant and a licensee is largely in exercise of *exclusive possession to the slum land or premises*; which the licensee does not have. The licensee has a mere right to possession. Where persons are permitted to reside rent-free on private or public owned land, such possession does not permit the use of such land for purposes other than initial grant. Where licensees let portions or all of the land to third parties, or operate business or build etc., against the initial grant, and attempt to rely on the initial license granted (no matter the number of years), such reliance will be unavailable^[25].

3.2 When Occupier holds land as a Tenant

What purported 'tenancy' exists in the occupation of slum lands? The relationship of landlord and tenant at common law, generally arises where the owner of an estate in land grants, by means of a contract between the parties, the right to the exclusive possession of his land or part of it to another person to hold onto the grantor for a term of years^[26]. However, every state in Nigeria has enactments on landlord and tenant relationship and of recovery of premises; and issues relating to tenancy including questions of possession and recovery of premises are to be approached within the content of these statutes^[27].

Generalizations often made of all slum occupiers as 'slum tenants' influences the debates which arises as to rights and responsibilities. From the statutory definition of a 'tenant' given earlier and of 'landlord' under the Lagos State Tenancy Law 2011, some relevant deductions which flow into each other include^[28]

- A person who occupies premises lawfully is a tenant;
- The occupation may be with (out) the payment of rent;
- Primarily, exclusive possession is what the grantee seeks;
- One who sets up a claim as the owner is not a tenant;
- Occupation may be with (out) the landlord's express consent;

²³ Dadem (n18) p 83

²⁴ Anyafulude (n14) p 31

²⁵ Chianu (n16) p 26

²⁶ Smith (n1) p 246; *Chiroma v. Suwa* [1986] INWLR (Pt 19) p 751 at 756; Sections 33 and 34 (1) Landlord and Tenant Law Cap 75 Laws of Rivers State 1999.

²⁷ Anyafulude (n14) 16; Section 143 Landlord and Tenant Law, Laws of Enugu State, Cap 101, 2004; Section 29 of the Rivers State Recovery of Premises Law (RSRPL) (Cap 109) 1991; Rivers State Physical Planning and Development Law No 6 of 2003.

²⁸ The courts have moved from the use of the common law interpretation to the correct use of the statutory interpretation in defining who a tenant is. Anyafulude (n14) pp 17, 24; *Yekini v. Alhaji R. Etti, & Ors* (1964) NLR 482; Section 2 Property and Conveyancing Law 1959. The occupation in tenancy must be 'lawful'.

- It does not refer tenancy to any compulsory agreement;
- Payment of rent is not a condition for the relationship;
- Intention to create tenancy may be of no consequence;
- It involves no transfer of estate.

It therefore follows, that slum tenants exist and refer to person(s) who lawfully occupy slum lands and have the right of exclusive possession. Any slum occupier whose right in occupation does not involve a grant of exclusive possession by the land owner, landlord or grantee, is not a slum tenant- so-called.

3.3 Unlawful Occupiers in Possession of Slum Lands

It seems a settled principle of law that where a person who initially entered upon land lawfully or pursuant to an authority given by the true owner or person in possession subsequently abuses his position or that authority, he becomes a trespasser *ab initio*, his conduct relating back so as to make his initial entry trespass^[29]. However, this doctrine of relation back has come under attack as a common law position of antiquity, as successive events do not render unlawful an act which was lawful at the time when it was done^[30].

The key characteristic that delineates a squatter settlement is its lack of ownership of the land on which squatters have built their home. These could be vacant government or public land, or marginal land parcels like railway setbacks or undesirable marshy land. On the other hand, unlawful occupation of land or premises may be over private lands. When land is not under productive use by the owner, often times, it is appropriated by squatters for use as homes. In most cases, the existing owners or persons with possessory rights, ignore the squatters occupying these premises or vast lands, even to the extent of ignoring low or large scale habitation improvements on the lands by the squatters. In *Elewa and Others v. Guffanti Nigeria Plc*^[31], the C.A sitting in Port Harcourt held that:

'A tenant is not permitted to deny the title of his landlord It is an act of misconduct or gross misconduct for a tenant to turn around to renounce his overlord's title and set up a rival title to compete with his landlord's title^[32].

The onus is on a 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 requires the tenant to quit and deliver up possession of the premises, 'which you hold of me as a tenant thereof^[33].

Where the occupier holds land illegally, such person(s) remain squatters, until the person with interest removes him/her. Such a person can be ejected without the necessity of statutory notices or the need to comply with recovery of premises laws as there exist no specific relationship between the squatter and the land owner^[34]. Trespass is an unwarranted or unjustifiable entry or intrusion by one person upon land in possession of another. It does not depend on the intention of the trespasser nor can he plead infringement upon his human rights to shelter, ignorance as to the true owner or that he thought the land belonged to

²⁹ *Ajibade v. Pedro* [1992] 5 NWLR (Pt 241) 257; Chianu (n16) p 22

³⁰ *Chic Fashion (West Wales) Ltd v. Jones* (1968) 2 QB 299, 317, *Onagoruwa v. Akinremi* [2001] 13 NWLR (Pt 729) 38, 61 SC

³¹ [2017] 2 NWLR (Pt 1549) 233

³² P 247 para D, p 249 paras F.

³³ Anyafulude (n14) p 37

³⁴ *Odutola v. Samuel* (1956) I FSC 76; Anyafulude (n14) p 35

him^[35]. Coleridge CJ expressed in *Ellis v. Loftus Iron Co*^[36] that:

If the defendant placed a part of his foot on the plaintiff's land unlawfully, it is in law as much a trespass as if the defendant had walked half a mile on it.

All that the plaintiff needs to prove in court is not title to the property in question but proof of exclusive possession^[37]. But not where a higher claim of title is made by the defendant, in which case, the plaintiff must show a better title^[38].

It must be noted that payment of fees to an illegitimate authority (private or public) and issuance of receipt does not validate or convert a trespass into a valid tenancy. Tenancy against public law or policy for unlawful purpose is void and money or other payments made in connection with such tenancy is not recoverable by action- '*ex turpi, cause non oritur action*'^[39]. The necessity for legal protection arises over lawful slum tenants and not over trespassers or persons in unlawful occupation of land. The claim that it is an offence to demolish, alter or modify a building, or to forcibly eject, threaten, molest by words or actions, or willfully damage premises without the approval of the court, in relation to the relevant laws, is a protection over 'tenants' and with a view to protecting 'tenants' to which the laws apply.

Under section 4(1) of the Lagos State Properties Protection Law 2016:

A person who is occupying a property as an encroacher and fails to leave the property on being required to do so by or on behalf of the owner commits an offence^[40].

Section 2 of the state law, with the intention of preventing forceful land takeover, protection of an owner of property from encroachers and against the use of violence, and being a law to prohibit forceful entry and illegal occupation of landed properties, violent and fraudulent conducts in relation to landed properties in Lagos State, expressed that:

... a person or group of persons shall not use force or self-help to take over any landed property or engage in any act inconsistent with the proprietary right of the owner in the state^[41].

Neither landlord nor his agent shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of relevant laws. However, the law requires that respect for human dignity prevails, and though there is no legal necessity to serve otherwise relevant notices on the unlawful occupiers, legal proceedings are required for recovery of such private, communal or public slum lands^[42].

4. State recovery of slum lands

For the purpose of communal interest/rights in slum lands,

decisions of the Nigerian courts have identified that holding a certificate of occupancy does not supersede vested rights^[43], as the Land Use Act (LUA) 1978 never set to abolish all existing titles and rights to possession of land^[44]. But the claim over rights to land identified as slum lands may become the interest of the governor who may identify such interest as 'public interest', and may seek to recover to the state such portions of slum lands for public interest and public purpose under section 51 LUA 1978.

It is the lawful position that the Governor holds land in trust for the people of the state. In *Aderonpe v. Eleran and 2 Others*^[45], the court held that:

An allocation of land made pursuant to the powers statutorily vested in the Governor of a state under sections 2 and 5 of the Land Use Act (LUA) 1978 has statutory flavor Further, once the Governor vests a possessory right in any person under the sections, that interest so vested is a right of occupancy^[46].

Often, slum land revocation falls within section 51 (1) (c) LUA 1978 - 'for or in connection with sanitary improvements of any kind', or for any other purpose in paragraph (a)-(i) of section 51 (1) LUA 1978, where such slum lands belong to private person(s) or to communities^[47]. Also, more often than not, where private lands or even government lands are repossessed by the state from slum occupiers; some of whom are rendered homeless, the urge to take legal action against the state often arises.

Time and again, slum occupiers of government lands; disclose that the government instructed them to occupy these lands and upon eviction, should provide alternative homes for them; or that the government had waived its right to repossess the lands after decades of private or communal possession. Wherein does good faith over arguments on the slum lands, lie? The meaning of the equitable principles of laches and acquiescence is that if the owner of a land *stood by* when a stranger developed the land in *good faith*, the owner would be estopped from reaping the benefit of such development^[48].

In *Olatunji v. Military Governor (Oyo)*^[49], Salami JCA opined^[50] that other public purposes not stated in section 51, must take colouration or importance from the public purpose started therein^[51]. Compulsory acquisition however, requires striking a balance between the public need for land on one hand, and the provision of land tenure security and protection of private property rights on the other hand^[52]. The weight which is often thrown off the

⁴³ *Dzungive v. Gbish* [1985] 2 NWLR (Pt 8) 528 SC; *Omiyale v. Macauley* [2009] 7 NWLR (Pt 1141) 597 SC.

⁴⁴ *Ogunleye v. Oni* (1990) 2 NSCC 72 at 95, *Dakat v. Dasha* [1997] 12 NWLR (Pt 531) 46

⁴⁵ [2019] 4 NWLR (Pt 1661) p 141 at 159 paras C.

⁴⁶ *Ibid* at p 159 paras C; *Nkwocha v. Gov. Anambra State* (1984) SCNLR 634.

⁴⁷ Section 51 (1) LUA

⁴⁸ Per Webber, J. in *Awo v. Gam* (1913) 2 NLR 100 at 101; Alloh BO, 'An Evaluation of the Principle by which Ownership of Land can be Established' in OVC Okene's (ed) *Readings in Law and Policy: Current Issues and Trends* (Rivers State University Port Harcourt, 2017) p 582

⁴⁹ [1995] 5 NWLR (Pt 397) 586, 606,

⁵⁰ Though an *obiter dictum*

⁵¹ Uduechi GO, *Public Lands Acquisition and Compensation Practice in Nigeria* (John West Publications Ltd, 1987) p 6; Section 51 Land Use Act Cap L5 LFN 2004; *Provost v Edu* (2004) MJSC 94.

⁵² Article 14 African Charter on Human and Peoples Rights (ACHPR) 1986; Wigwe CC, *Land Use and Management Law* (Mountorest University Press, 2016) p 73; Section 43 Constitution of the Federal Republic of Nigeria 1999 (As Amended).

³⁵ Mgbeahuru UM, *Land Disputes and Litigations Practice* (Elyon Quest Frontiers Ltd, 2017) p 336

³⁶ (1874) LR 10 CP at 12

³⁷ *Olanrewaju Comm. Services Ltd v. Sogaola* [2015] 12 NWLR (Pt 1473) 311 CA.

³⁸ *Amakor v Obiefuna* (1974) 3 SC 67.

³⁹ Smith (n1) p 261; Section 42 Cap 75 Laws of Rivers State 1999

⁴⁰ Violation opens one to penalty of imprisonment or fine of Five Million Naira. See section 4(5) Lagos State Properties Protection Law (LS PPL) 2016

⁴¹ LS PPL 2016

⁴² Section 29 Recovery of Premises Act 1990; Sections 21, 33, 35 LSTL 2011.

scale of justice is the latter human rights of the slum occupier; whether tenants, squatters or licensees. Governments have often attempted to solve the problems of urban slum settlements by clearing away slum housing and replacing it with modern housing^[53].

It seems that so long as authority is exercised within the walls of legality, the government (sovereign) can take away a person's (granted) property right^[54]. Also, where a person with statutory right of occupancy is in breach of a condition of a grant^[55], and fails to remedy the breach, possession can be recovered by the state. Section 28(2) and (3) LUA 1978 allows the governor to revoke a right of occupancy of statutory or customary nature for purposes which qualify under the Act.

Compensation is not a condition for revocation, or concomitant to it. As there are several grounds for revocation, so there are certain circumstances for compensation to be made. Compensation; a very grave issue is given to persons with legal interest in land and not to evicted squatters or to illegal slumlords claiming (personal or communal) ownership of land, and compensation shall not be given outside the provisions of section 29 LUA 1978. Does this principle apply to slum settlements on public land which the government intends to recover; whether or not human-rights considerations will be made? Land cannot be taken away from an owner simply by the long possession of a slum occupier who cannot claim a better title. Though two of the five principles by which ownership of land can be established in Nigeria as expressed by the Supreme Court in the case of *Idundun v. Okumagba*^[56], include *establishment of ownership of land by acts of ownership*, and *establishment of ownership of land by acts of long possession and enjoyment of the land*^[57], Chianu argued that where squatter developed land, he should remove the improvements and vacate, and cannot be awarded 'damages' for his development^[58].

Does development of lands occupied unlawfully or without interest or estate fall under 'developments made in good faith'? Will a court of equity over land rights merely assist the government in enforcing its rights over state or public lands, despite the cries of homelessness of unlawful slum occupiers? Is such public land used by citizens as a means to 'keep out the rain' abused by it unlawful occupation? It does not matter to previous occupiers what the landlord or owner of the slum land does with its property upon successful eviction of occupiers. However, there remains a continuous agitation along human rights propositions against slum eradication. Notwithstanding these several thoughts and considerations, the Land Use Act allows the Governor to recover land on stated grounds and the Governor can do so even where such occupier(s) possesses legal interest (vested) in slum lands.

5. Slum occupancy in nigeria and indian legal

⁵³ Taher and Arefeen (n6) p 72.

⁵⁴ Section 28 (1) (2) of the LUA 1978 introduced the word 'overriding' to qualify 'public interest'.

⁵⁵ Section 28 (5) LUA

⁵⁶ (1976) 10 SC 227

⁵⁷ *Emphasis Ours*. Others include: establishment of ownership of land by traditional evidence, establishment of ownership of land by production of documents of title, and establishment of ownership of land by proof of possession of connected or adjacent land. see Alloh (n48) p 574-575

⁵⁸ *Dantosh v. Mohammed* [2003] 6 NWLR (Pt 817) 457; Chianu (n16) p 91

developments

National approach to informal settlements in particular, has generally shifted from negative policies such as forced eviction or benign neglect. Enabling approaches are considerably gaining attention from the accustomed confrontationist attitude to tackling the challenge of slum growth^[59]. In as much as slums may be environmentally and developmentally unfriendly, forceful eviction, relocation or involuntary resettlement^[60] of slum dwellers cannot solve the problem. Though the Supreme Court recently reemphasized in *Olomoda v. Mustapha*^[61], that 'section 28 (1) of the Land Use Act 1978, empowers the Governor to revoke a right of occupancy for overriding public interest^[62]. The court further stated that:

.... The power of the Governor to revoke the right of occupancy of a person in breach of a condition or covenant in a certificate of occupancy is not a mandatory one but rather permissible. In exercising the power of revocation, there must be due compliance with the provisions of the Act particularly with regard to giving of adequate notice of revocation to the holder^[63].

Protecting slum land owner and slum occupiers has become a sustainable human rights development. Practices of urban development must comply with the principles of sustainable development. Sustainable development is development that meets the needs of present generations without compromising the ability of future generations to meet their needs.

Rehabilitation or 'upgrading' aims at tackling identified problem over slum settlements. However, since no two settlements are the same, there is no single correct way of proceeding with slum upgrading. Any process of slum upgrading requires careful analysis of the local situation and adaptation to its unique circumstances. What slum upgrading actually involves therefore varies. It is subject to local decision-making and can include anything from technical improvements to socio-political arrangements^[64].

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. By section 3 of the Indian (Odisha) Property Rights to Slum Dwellers Act 2011 provides that:

3 (1) Notwithstanding anything contained in any law for the time being in force, every landless person living in a slum area in any city or urban area, ... shall be entitled to a dwelling space at an affordable cost^[65].

(2) Every slum dweller eligible as per sub-section (1) shall be given a 'legal document of entitlement'^[66].

(4) Every person living in a slum area who is in-eligible

⁵⁹ Taher and Arefeen (n4)

⁶⁰ Slum Resettlement means the process of relocation and settlement of slum dwellers from the existing untenable slums to an alternative site with dwelling space, basic civic and infrastructural services.

⁶¹ [2019] NWLR (Pt 1667) 36 SC.

⁶² *Ibid* at p 51

⁶³ *Ibid* at p 56

⁶⁴ Centre on Housing Rights and Evictions (n12) p4; Section 28 and 33 Indian (Odisha) Property Rights to Slum Dwellers Act 2011

⁶⁵ Section 3 Odisha PRSD Act 2011

⁶⁶ *Ibid*. For the purpose of this sub-section the legal title to the dwelling space shall be in the name of the female head of the household or in the joint name of the male head of the household and his wife.

under sub-section (1) shall be provided with an all weather built space to live in, with provision of all basic civic services and other infrastructure facilities....

Though slum rehabilitation in India is plagued with issues of dispossession, illegal subletting, corruption and exclusion, the Act nevertheless prevents transfer or ownership of more than one such certificate by one person, and it defines slums only to include slums on state government land, which would make the provisioning of land rights practical^[67]. The Act ties slum policy to slum dwellers' issues rather than ideals of a 'slum free city' or practices such as large-scale resettlement^[68].

Where government repossesses slum lands, the law imposes the duty on the acquiring authority to strictly adhere to the formalities prescribed by the law, as the provision of section 28 of the LUA 1978 is construed strictly against the acquiring authority but sympathetically in favour of the person whose property rights are being taken away^[69].

Section 16 (2) (d) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), provides that the state shall direct its policy towards ensuring that suitable and adequate shelter are provided for all citizens. A right is that which is proper under law, morality, or ethics. It is a legally enforceable act, a recognized and protected interest, the violation of which is a wrong^[70]. 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^[71].

From a human rights perspective, slum upgrading can help realize the right to adequate housing and other human rights. Existing housing stock and access to services can be improved, which means that excessive reliance is not placed upon investments in new low-income housing. Slum upgrading can also provide protection from forced evictions through better tenure security. However, slum upgrading programmes can have adverse implications for human rights if they are poorly designed or implemented^[72].

In Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), state parties recognize the right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions^[73]. The right to a clean environment, adequate housing and dignity of person, are recognized in the 1948 Universal Declaration on Human Rights and in a number of international as well as several municipal laws and regional conventions, and can truly be fully realized in public law against the backdrop of sustainable development as a right one has, because one is a human being^[74].

⁶⁷ Vipra J, 'Analysing The Odisha Land Rights to Slum Dwellers Act, 2017' *The Leap Blog* (March 13, 2018) <<https://blog.theleapjournal.org/2018/02/analysing-odisha-land-rights-to-slum.html>> accessed 27 April, 2019.

⁶⁸ *Ibid*

⁶⁹ *The Administrators of the Estate of Abacha v. Eke-Spiff* [2009] 7 NWLR (Pt 1139) 97; *LSPDC v. Foreign Finance Corporation* [1987] 1 NWLR (Pt 50) 413.

⁷⁰ M.O.I Nwabuoku, 'Is there a Constitutional Right to a Protected Environment' in OVC Okene's (ed) *Readings in Law and Policy: Current Issues and Trends* (Rivers State University Port Harcourt, 2017) 13; *Sande v Abdulahi* [1989] 4 NWLR (Pt 2) 387 at 418-419 Per Kayode Eso

⁷¹ Centre on Housing Rights and Evictions (n12) 5

⁷² *Ibid*, p 4

⁷³ *Ibid*, p 5

⁷⁴ Nwabuoku (n70) p 25

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 Nigeria needs to be upturned. 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.

6. Conclusion

Not only are proper planning and intervention major issues in agenda to manage rapid urbanization, but city governments are not effectively linking the economic development trajectory to implications for urban growth and housing needs^[75]. Social housing is virtually non-existent in Nigerian cities, and private landlords typically demand high rent^[76]. Protecting slum occupiers has become a sustainable human rights development. In as much as the existence of land rights is limited against licensee and trespassers in slum settlements, dispossession by state or private owners must absorb property rights as well as human rights consideration.

Clamoring for relocation upon eviction or lawful demolition of slum housing has done more harm than good to urban development, spreading the settlements and settlers and expanding further slum habitation in new urban areas. Human rights are evolving and law must evolve with it. Promoting equitable, socially viable and stable human settlements is inextricably linked to eradicating poverty.

The practice of employing violent means to evict residents of slums, which often results in the loss of lives and causes injuries to people and damages to properties, in as much as the land owner has eviction rights over the slum land, is a clear contravention of human rights and sustainable development principles and local laws^[77]. Forceful eviction, relocation or involuntary resettlement^[78] 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. Clamoring for relocation upon eviction or lawful demolition of slum housing has done more harm than good to urban development, spreading the settlements and settlers and expanding further slum habitation in new urban areas.

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⁷⁵ Giok Ling Ooi and Kai Hong Phua (n6) p 27

⁷⁶ Akinwot E, 'The Forced Evictions of Badia East, Lagos: This is not right' *The Guardian* (Friday, 16 Oct 2015) <<https://www.theguardian.com/cities/2015/oct/16/forced-evictions-badia-east-lagos-this-is-not-right>> accessed 18 April, 2019

⁷⁷ See LS PPL 2016

⁷⁸ Slum Resettlement means the process of relocation and settlement of slum dwellers from the existing untenable slums to an alternative site with dwelling space, basic civic and infrastructural services. Section 2 Odisha PRSD Act 2011

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