

The Nigerian Law Journal

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Legal and Regulatory Frameworks for Urbanisation and Urban Planning and Management in Nigeria

Fagbemi, Sunday Akinlolu*

Abstract

Urban environmental problems are of different dimensions and are mostly due to geologic, climatic and cultural factors. The thrust of this paper is to examine the legal and regulatory frameworks for urbanisation, urban planning and management in Nigeria. The paper argues that cultural factors seem to be more pronounced in the Nigerian context because most of the identified urban environmental issues are so much associated with the way of life of the people either as reactions to urbanisation or their spatial heritage. The paper observes that Nigeria never lacks good policies, legislation and institutional frameworks, but good implementation have always been the bane. The paper submits that the failure of existing laws and regulations to make significant impact in protecting and preserving the environment are due to poor implementation, deficient legislations, lack of political will, poor funding and lack of adequate manpower. The paper therefore recommends amendment of the existing legislations on urban planning and management to introduce stiffer penalty for offender and violator of Nigerian Urban and Development Act. It further proposes that all legal ambiguity, lack of qualified personnel, inadequate funding should be addressed while a more coherent and consistent Land Use Policy should be formulated by the government to take into cognisance the needs of the environment without necessarily hampering economic growth

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and development. In similar vein, the judiciary should be proactive in giving relevance to policy considerations in reaching their decisions and not relegating policies completely and ineffective.

Keywords: Legal, Regulatory, Frameworks, Urbanisation, Urban Planning and Management

1. Introduction

Urbanisation refers to the growth of towns and cities, often at the expenses of rural areas, as people move to urban centres in search of jobs and what they hope will be a better life. Urbanisation is an on-going process all over the globe. People moving from rural to urban areas is the primary cause of urbanisation, history have indicated that this movement of people is very hard to influence.¹ In practice, the outcome of social, economic and political development leads to urban concentration and growth of large cities due to rural-urban migration. Migration has been going on over centuries and it is a normal phenomenon. Migration can take different forms and dimensions; it may consist of movement from rural-rural, rural-urban, urban-urban and urban-rural. Migration is thus an important component of urban population growth and the urbanisation process in Africa. However, the capacity of urban towns to plan for and accommodate the increasing number of migrants by providing employment and access to land and basic amenities is limited. This has led to a largely disruption of government policy and city authorities on migration to urban areas. Rural-urban migration in particular is typically seen as creating pressure on urban infrastructure, environment and employment, and there is an underlying assumption that the phenomenon is linked to rising levels of urban poverty.²

The problems associated with urbanisation is acute and exemplified by factors such as inadequate housing and infrastructure, legal dualism in land administration and control, urban flooding, pollution and erosion, city slum, lack of proper

¹ Weingaertner, C. *Analyzing Synergies Between Urbanisation and Sustainable Development*, (Universitet Service AB, Stockholm, 2005) 1; Kwasi Nsiah-Gyabaah, 'Urbanisation Processes – Environmental and Health Effect in Africa' Panel Contribution to the 'PERN Cyberseminar on Urban Spatial Expansion, Sunyani Polytechnic, Sunyani, BS, Ghana.

² Awumbila, M. *Linkage between Urbanisation, Rural-Urban Migration and Poverty Outcome in Africa*, (Background Paper, World Migration Report, 2015) 1

monitoring of physical development activities in urban areas, absence of updated master plans, uncoordinated spatial; urban growth, decay of inner cities; land speculation and rapidly growing urban population.³ The problems also manifested in inefficient waste management system, emission from automobiles, industrial plants and power generating sets; gas flaring, bush and refuse burning, solid and liquid minerals extraction activities and agro chemicals. In addition to the above, several problems such as absence of efficient storm water, discharge system, ocean surge due to rise in sea, indiscriminate destruction of vegetation for fuel and constructions material are imminent in urban cities.⁴

Of course, urbanisation by nature has both negative and positive effects. Hence, the relevant questions which this paper seeks to answer are: What are the factors contributing to urbanisation? What are the consequences of urbanisation on the environment, urban planning and development? What are the extant legal and regulatory frameworks to tackle urbanisation problems? How effective are these extant legal and regulatory frameworks on the urban planning and development in Nigeria?

Trends of Urban and Urbanisation Process in Nigeria

Urbanisation, has pointed out above, is a global phenomenon and is a process of spatial concentration of urban population that is premised on some basic push and pulls factors called urban transformation forces.⁵ For instance, a country is considered

³ Abiodun, O. *Urban and Regional Planning Problems in Nigeria*. (Ife: University of Ife Press 1985) 40; Welber, D. F. *The Growth of Cities in the Nineteenth Century*. (New York: Columbia University Press 1899); Adedeji, A and Ezeiyi, O. I. 'Urban Environmental Problems in Nigeria' [2010] (12) (1) *Journal of Sustainable Development in Africa*; 130; Omofonmwan, S. I. and Osa-Edoh, G. I. 'The Challenges of Environmental Problems in Nigeria [2008] (23) (1) *J. Hum. Ecol*; 25 and Aluko, Ola E. 'Urbanisation and Effective Town Planning in Nigeria' [2011] (5) (2) Serial No. 19 *African Research Review: An International Multi-Disciplinary Journal*, Ethiopia 127.

⁴ Olaniran, O. J. 'Flood Generating Mechanism of Ilorin in Nigeria' [1983] *Geo-Journal*: 231-277; Omiunu, F.G. 'Ogunpa Flood Disaster: An Environmental Problem or a Cultural Fiction' [1981] *Aman*: 10-120; Nigerian Environmental Study/Action Team NEST. *Nigeria's Threatened Environment: A National Profile* (Ibadan: Interface Printers Ltd. 1991)

⁵ Olujimi, J. 'Evolving a Planning Strategy for Managing Urban Sprawl in Nigeria' [2009] (25) (3) *J Hum Ecol*; 202; Kwasi Nsiah-Gyabaah (n 1); Somik V. Lall and Harris Selod and Zmarak Shalizi. 'Rural-Urban

urbanised when over 50 per cent of its population lives in the urban areas. Historically, the earliest form of urban life begun in the Middle and Near East-near what is today Iraq-around 3,500 BC. Hence, the oldest urban communities known in history began approximately 6,000 years ago and later emerged with the Maya culture in Mexico and in the river basins of China cities of Chang'an (Xi'an today) and Hangzhou, which had over one million people.⁶ London did not reach one million people until the 1700s. The world population growth remained very low, with less than three percent of the world's population living in urban places around 1800.⁷ In the year 1800, over 97 percent of the world populations were rural. Hundred years after this, still only 5.5 percent of the world population lived in cities, and by 2000 slightly over half of the world's population lived in cities.

Sparse and often ambiguous archeological and historical record indicates that the urban population fluctuated between four and seven percent of total population from the beginning of the Christian era until about 1850. In that year, out of a world population of between 1.2 and 1.3 billion persons, about 80 million or 6.5 percent lived in urban places, while 80 million was a large number then, they were disperse over hundreds of urban places worldwide. In 1850, only three cities had more than 100,000 inhabitants. Of the 25 largest cities then, 11 were in Europe, 8 in East Asia, 4 in South Asia and only 2 in North America.⁸

The acceleration of world urbanisation since 1850 partly reflects a corresponding acceleration of world population growth; but urbanisation is not merely an increase in the average density of human settlement. For example, in 1960, nearly all less

Migration in Developing Countries: A Survey of Theoretical Predictions and Empirical Findings' (World Bank Policy Research Working Paper 3915, May 2006) 4; Remi Jedwab and Luc Christiaensen and Marina Gindelsky. 'Rural Push, Urban Pull and Urban Push' [2014] New Historical Evidence from Developing Countries.

⁶ Xizhe Peng and others. 'Urbanisation and Its Consequences' (11) (2) *Demography*: 40

⁷ Clark, D. 'Interdependent Urbanisation in an Urban World: An Historical Overview' [1998] (164) (1) *The Geographical Journal* 85-95.

⁸ Xizhe Peng and other (n 6); Grauman, J. V. 'Orders of Magnitude of the World's Urban Population in History' [1976] (8) *Population Bulletin of the United Nations*: 16-33; Golden, H. H. *Urbanisation and Cities: Historical and Comparative Perspectives on Our Urbanising World*. (Washington D. C: Heath, Lexington 1981)

urbanised regions of the world had low rates of rural out-migration – under 1 percent annually – and high rates of urban immigration – 1.5 to 3.2 percent annually.⁹ The urbanisation of the developing world began to accelerate in the late twentieth century, although there was no clear trend in overall urban growth in less developed countries due to inconsistent definition of urban and the lack of quality in their census data.¹⁰ The transition from the twentieth to the present century marked a new and more striking era of global urbanisation. In 2008, the world crossed that long-awaited demographic watershed of half of the people on earth living in urban areas. Further acceleration of urbanisation going forward is likely to raise the share of the world's urban population to 75 percent by 2050, significantly higher than the mere 10 percent in 1900. While the USA, Britain and Germany have already surpassed 75 percent urban and will exceed 90 percent by 2050, newly industrialising countries like South Korea and Mexico, which were half-way urbanised at 50 percent in 1950, had passed 75 percent in 1980 to over 80 percent around 2030. Moving along a steeper upward trajectory, China's will urbanise from 20 percent recorded in 1980 to over 60 percent around 2030. China urbanisation from the 1980s on reflects the global shift of the world's urban population from developed to developing countries, which will account for about 80 per cent of the world's urbanities by 2030 doubling from 40 per cent in 1950.¹¹

In practical term, while urban growth depends on the natural increase of the total population that is already urban; the growth of city population through the natural increase has minimal effects on the process of urbanisation.¹² Thus, resulting into the growth of settlements from villages to towns, cities and mega-cities; as well as leading to the increase in the number of settlements through the establishments of new ones.¹³ A

⁹ Lowry, S. I. 'World Urbanisation in Perspective' [1990] (16) *Population and Development Review*; 148-176

¹⁰ Timberlake, M. 'World-System Theory and the Study of Comparative Urbanisation' [1987] *The Capitalist City*.

¹¹ Xizhe Peng and others (n 6); Soja, E. and Kanai, M. 'The Urbanisation of the World' in R. Burdet and D. Sujic (Eds) *The endless city*. (London: Phaidon 1964).

¹² DeBlij, H. J. *Human Geography: Culture Society and Space*. (New York: John Wiley and Sons 1996)

¹³ *Ibid.*

significant feature of urbanisation finds expression principally in outward expansion of the built-up area and conversion of prime agricultural lands into residential and industrial uses. For example, prior to the 1970 population census in Malaysia, the definition of urban areas used in the population census was 1,000 persons or more. However, for the 1970 and 1980 census the criterion for a minimum population for a gazetted area to be considered as urban area was increased to 10,000 or more.¹⁴ The above are examples of the variety of ways in which urban area are defined in different countries on the basis of the threshold population.

In Nigeria, by the 1952 census, an urban place is an area having a population of more than 5,000. Meanwhile, in the previous 1921 and 1931 census conducted, different figures were used to determine urban area. For instance, the proportion of the total population of Nigerians living in urban areas with more than 20,000 population figures was estimated at 4.8 per cent in 1921. It was 6.7 per cent for 1931. This had increased to 10 per cent by 1952/53 census and to 19.2 per cent by 1963.¹⁵ According to Olujimi,¹⁶ besides the Government Reservation Areas (GRAs) in the regional 3 government headquarters at Ibadan, Enugu, Kaduna and Lagos, the National headquarters; none of the remaining cities in Nigeria could boast of enjoying re-planning project. The 1991 National Population Census gave population of Nigeria as 88.5 million, and it shows that Nigerian urban population had risen by 36.3 per cent with 359 urban centres existing in the country then. By 2004, the estimated population of Nigeria was put at 115 million with a speculation that Nigeria urban centres must have risen to 600.¹⁷ The above speculation was confirmed by the result of 2006 National Population Census

¹⁴ Jamaliah Jaafar, 'Emerging trends of urbanisation in Malaysia' <http://www.statistics.gov.my/portal/download.journal/download.php> accessed 13 March 2017 at 5.56am.

¹⁵ Aluko, O. E. 2011 (n 3) 128; Olujimi, J, (n 5) 202. The 1963 census fixed 20,000 and above people as urban centre.

¹⁶ *Ibid.*

¹⁷ Agbola, T. 'The Nigerian Urban Development Policy: If the Past be Prologue' Being text of paper presented at the 34th Annual Conference of the Nigeria Institute of Town Planners at Abeokuta, October 22 to 24, 2004; Odeyemi, Y. 'Gender Inequality and Urbanisation in Nigeria' in D. Amole, M. O. Fadare (eds.) Proceedings of National Conference Organised by the Faculty of Environmental Design and Management, Obafemi Awolowo University, Ile-Ife 2002: 97-103.

figure which indicated the total population of Nigeria as 140,542,032. The glaring effect of this according to Olujimi¹⁸ is that the urban population in Nigeria over the last three decades has been growing close to about 5.8 percent per annum as shown in the Table below

Table 3.1: Urban population growth trend in Nigeria 1952-2006

Year	Total National Population (Million)	No. of urban centres (20,000 +)
1952	30 million	56
1963	55.67 million	183
1991	88.5 million	359
2004**	115 million	600
2006	140 million	N.A

Sources: Afolayan (1978), Olujimi (2000) and Agbola (2004)
N.A. Not Available

The Nigeria population estimation as at January 2016 was 184,635,279 while the urban population was estimated to be 47.8% of total population with an annual growth rate of 4.66%. The population of major cities in Nigeria have also increased and were estimated as follows: Lagos 13,123 million; Kano 3.587 million; Ibadan 3.16 million; Abuja (capital) 2.44 million, Port Harcourt 2.343 million and Benin City 1.496 million.¹⁹ The implication of the above table and the recent estimation of Nigeria population is that the Nigeria urban growth is among the highest urban growth rates in the world, this trend is attributable to migration from the rural to urban areas. For instance, Lagos, a former capital of Nigeria is growing in size by more than 10 per cent per annum, which will make it the third largest city in the

¹⁸ Olujimi, J (n 5)

¹⁹ Nigeria Demographics Profile 2016.

world by 2020.²⁰ One significant feature of the urbanisation process in Africa is that, unlike Asia and Europe, much of the growth is taking place in the absence of significant industrial expansion.²¹ However, the urbanisation processes are largely driven by market forces and government policies that lead to simultaneous processes of change in livelihoods, land use, health and natural resources management including water, soil and forests and often reactive changes in local governance. Government development policies and budget allocations, which often favour urban residents over rural areas, tend to pull people into the urban areas. A discussion of these factors is the focus of the next section.

2. Factors Contributing to Rural-Urban Migration

Urbanisation have crucial role to play in the economic development of any nation. From earliest beginnings, cities provided opportunities to achieve scale economies through division and specialisation of labour, opportunities that are not easily available in rural areas.²² Urbanisation in the words of Dociu and others,²³ is seen as an effect of the current globalisation phenomenon, with social aspects as well as the economic ones, representing the migration process of the population organising in urban areas considered to be true centers of progress that offer multiple options to residents. Cities are centers of changes, placed in a relationship of interdependence with demographic growth and economic growth. The evidence of a positive link between the urban areas and economic development is overwhelming. Available literatures have demonstrated the positive relationship between

²⁰ *Ibid.* 203. The Federal Capital Territory, Abuja has taken over from Lagos in term of urban growth in Nigeria.

²¹ *Ibid.*; see also Kwasi Nsiah-Gyabaah (n 2) 3

²² Terwase S. 'The Relationship Between Urbanisation and Economic Development in Developing Countries' [2010] (1) (2) & (3) *International Journal of Economic Development Research and Investment*; 30; Meyer J. R. 'The Role of Industrial and Post-Industrial Cities in Economic Development' [2000] Draft paper prepared for the World Bank Urban Development Division's Research Project, Joint Centre for Housing Studies, Harvard University.

²³ Dociu Mădălina and Dunarintu Anca. 'The Socio-Economic Impact of Urbanisation' [2012] (2) Special Issue 1 *International Journal of Academic Research in Accounting, Finance and Management Sciences*:47-52

urban centres and various other factors that make lives more comfortable than the rural areas²⁴.

In spite of their complexity, the factors of migration decision are generally grouped either into 'push' or 'pull' factors. The 'pull' and 'push' factors of migration can be economic or non-economic.²⁵ Although, these factors are interwoven, the major factors contributing to rural urban movement or migration include the following among others.

2.1. *Employment and Market Opportunity*

One of the advantages of living in a city is that cities generate jobs and income. In developing countries, industrial growth in urban areas offers employment and trading opportunities for rural people which are faced with declining living standards. High industrial wages in urban areas are one of the biggest attractions for rural people. People will continue to migrate to cities as long as they expect urban wages to exceed their current

²⁴ Machel, M. May. 'The Process of Rural-Urban Migration in Developing Countries' An Honours Essay Submitted to Carleton University in fulfillment of the requirements for the course ECON 4908, as credit toward the degree of Bachelor of Arts with Honours in Economics. Department of Economics Carleton University Ottawa, Ontario 2004; 1-68; Gimba, Z and Mustapha, G. K. 'Causes and Effects of Rural-Urban Migration in Borno State: A Case Study of Maiduguri Metropolis' (1) (1) *Asian Journal of Business and Management Sciences*; 168-172; Banerjee, B. November. 'Rural-Urban Migration and Family Ties: An Analysis of Family Considerations in Migration Behaviour in India' (Oxford Bulletin of Economics and Statistics, 1981) 321-355; Barlett, W. 'On the Dynamic Instability of Induced-Migration Unemployment in a Dual Economy' [1983] (13) *Journal of Development Economics*; 85-96; Todaro, M. P. 'A Model of Labor Migration and Urban Unemployment in Less Developed Countries' [1969] (59) *American Economic Review*; 138-48; Collier, P. and D. Lal. 'Why Poor People Get Rich in Kenya: 1960-1979' [1984] (12) (10) *World Development*; 1007-1018; Cornwell, K. and Inder, B. *Migration and Unemployment in South Africa: When Motivation Surpasses the Theory* (Australia: Monash University 2004); Day, R. H and Dasgupta, S and Datta, S. K and Nugent, J. B. 'Instability in Rural Urban Migration' [2004] (97) *Economic Journal*, 940-950 and Fields, G. S. 'Rural-Urban Migration, Urban Unemployment and Underemployment, and Job-Search Activity in LDCs' [1975] (2) (2) *Journal of Development Economics*; 165-187.

²⁵ For example demographic, social, natural and political. See Miheretu. B. A. 'Causes and Consequences of Rural-Urban Migration: The Case of Woldiya Town, North Ethiopia' Being a text of thesis submitted in accordance with the requirements for the degree of Master of Arts in the subject Geography at the University of South Africa 2011: 24.

rural wages. Employment opportunities, higher incomes, joining other rural refugees, freedom from oppressive lifestyle, access to better health care and education, are the “bright lights” for rural people. One of the main reasons for people to move to the urban areas is that the situation in the rural areas is very difficult. With the income level they have it is not possible to survive. In this case even the low salaries in the urban areas are more attractive than non-existing salaries in rural areas.²⁶

Apart from job opportunity, cities also offer market potential for the population. For instance, there is a much greater variety of shopping opportunities than in rural areas. This may result in lower prices and longer shopping hours. Most cities have shopping malls and big box centres with many different stores that stay open long hours, and that often include entertainment, food, recreation, and cultural activities to attract consumers.

2.2. *Improved Standard of living*

The differences in standard of living are major issues when considering factors that encourage urbanisation. Higher living standards and higher salaries in the city attract people to move to the cities. As long as the income gap between rural and urban areas is big, people will continue to move to the cities. Again, cities offer a more favourable setting for the resolution of social and environmental problems than rural areas. With good governance, they can deliver education, health care and other services more efficiently than less densely settled areas simply because of their advantages of scale and proximity. In the city, health care and social relations are much easier to organise which makes the inhabitants feeling more secure. Political and social factors are also better in the urban areas and they are reasons for migration. In the city, people may more easily have their voices heard by joining different political groups and by this, poor people can acquire better living standards and services that small rural centres cannot. In the word of Muller,²⁷ participation and political empowerment are key factors in urban society when it comes to enhancing equality of opportunities and social inclusion. At the same time, citizen-friendly infrastructure

²⁶ Gibert, A and Gugler, J. *Cities, Poverty and Development: Urbanisation in the Third World*. (New York: Oxford University Press 1982) 50

²⁷ Gerd, M. 'Managing Urbanisation: Towards Sustainable Cities' [2014] (3) *BMZ Information Brochure*: 2

development that improves mobility in urban transportation. For instance, these might include facilities interaction between different social groups and foster social cohesion. Furthermore, there is a public transportation system, water and sewage services, a greater variety of education and recreational facilities and larger and more specialised health facilities. Other factors that influence rural-urban movement are inadequate social amenities and facilities in the rural areas such as pipe borne water, electricity, good roads, hospitals, schools and vocational centres.²⁸

2.3. *Social Mobilisation and Women's Empowerment*

Cities present opportunities for social mobilisation and women's empowerment. According to Dociu and others,²⁹ urbanisation produces an increase in the rate of participation of women in the labour market; they became even decision makers who have had to balance professional responsibilities with the family responsibilities. Urban centres now provide equal opportunities and social inclusion. Muller³⁰ argued that urban environments foster personal development in a way that for many is linked to the hope of better living conditions and social mobility. Cities are places where social change takes place, where the young people and women are more easily able to develop their potentials unlike rural area where political and social participation and individual scope for decision-making are often limited on account of traditional decision making mechanisms.

2.4. *Environmental Pressure*

The biggest environmental pressure for rural people is the lack of profitable land. The land inherited from the parents is divided among the children and their children. At last, the land per farmer becomes so small that it is unprofitable to farm.³¹ According to Kebede,³² land scarcity due to increasing population pressure, unfavorable land tenure system, agricultural stagnation caused by faulty government policies, poverty,

²⁸ Gimba, Z and Others (n 24) 171.

²⁹ Dociu Mădălina and other (n 23)49

³⁰ Gerd M (n 27) *op cit*.

³¹ Machel, M (n 24)11; Todaro, M. *Migration and development* (8th ed. Nairobi: Economic Development, Addison-Wesley 2003) 229.

³² Kebede, M. *Migration and urbanisation in Ethiopia*. (Published by Institute for curriculum Development and Research (ICDR), Ministry of Education (MOE) 1994)10.

environmental crisis and the consequent famine and a set of many other related factors have in single or combination acted as forces pushing people from the rural areas in poor countries.

In rural areas, land degradation and deforestation are directly correlated with their productivity and life condition. When they are not in a position to sustain their life through agriculture, where it is highly affected by environment condition, then they would prefer to migrate to urban areas and engage in non-farm activities.³³ Similarly, erosion and land deterioration makes farming even more difficult. Even when poor farmers have enough land space they cannot always afford and compete for non-sufficient water resources or fertilisers.

2.5 Poverty

Poverty is hard to define. Poverty means that human needs are not met. Poverty is everyday life in every country, even in developed areas. In every country, there are individuals who have so small income that they cannot avoid even the very basic goods. These physical needs are adequate diet, housing, work, water supply, sanitation and health care. For humans, a few mental demands are also important, like basic civil and political rights and feeling of safety.³⁴ Poverty profiles for developing countries characterise the poor as being agricultural households with little arable land. In an agricultural based economy, where poor residents lack access to resources and there is a high level of inequality and an inequitable distribution of assets, non-farm labour becomes an important source of income for the poor. For instance, poverty can be measured by income level. Still using this kind of income level is normal in every country. People whose income is under this minimum level are considered poor. At least 20 per cent of the world's population lives in absolute poverty. More than 90 percent of these live in the developing countries. These numbers are only rough averages because it is

³³ Mekelle, Tigray and Dereje D. *Causes, Trends and Patterns of Migration to Bishoftu Town*. (Unpublished M.A. Thesis, Addis Ababa: Addis Ababa University, 2002)

³⁴ UN-Habitat, 1996. Note that this is not always the best way to define poor people because some level of personal income cannot substitute problems with health, crime, physical violence or life expectancy

in reality difficult to estimate the amount of people who suffer from absolute poverty³⁵.

In many developing countries, rural poverty resulting from low agricultural income, low productivity and under employment as well as strain of farm work is pushing many migrants out of rural areas towards areas with greater employment opportunities.³⁶ Rapid urban population growth in the context of poor economic performance in most African countries has created a “new face” of poverty, which is characterised by a significant proportion of urban populations living in overcrowded informal settlements, or slums. Recent estimates by UN-Habitat³⁷ showed that sub-Saharan Africa is the only region where no tangible progress has been made in improving the lives of slum dwellers in line with the targets set under the framework of the Millennium Development Goals.³⁸

2.6 Government Policies Creating Urban Bias

Another cause of rural-urban migration is urban bias. Government policies supporting disproportionate increases in wage rates and employment opportunities in the urban areas

³⁵ For instance, the UN reports that monitors progress towards the MDGs almost always include a graph highlighting the very rapid fall in the proportion of the world's population suffering from extreme poverty. Unfortunately, the basis for this graph is the US\$1.25 a day poverty line that is not only applied across all locations in each country but also applied internationally. This is a poverty line that is set so unrealistically low for many urban contexts that it makes urban poverty disappear in most nations and regions. See United Nations (2013b) *The Millennium Development Goals report 2013*. United Nations, New York. See also Tacoli, C, McGranahan, G and Satterthwaite, D. (n 31)19; UN-Habitat, 1996.

³⁶ Charles, B. W. 'The Decision to Migrate under Uncertainty: A Case Study of Rural Urban Migration in Tropical Africa' (Ph.D. Dissertation, University of Maryland 1975) 4; Herric, B. H. *Urban Migration and Economic Development in Chile* (USA: Massachusetts Institute of Technology, Cambridge 1965) 14; Oberai, A.S. *Migration, Urbanization and Development*. (International Population Conference, Volume 1. New Delhi: International Union for Scientific Study of Population 1987) 40 and Okereke, O. 'Migrant Labor and its Economic Implication to African Agriculture' [1976] (8) *East Africa Journal of Rural Development*: 92- 94

³⁷ UN-Habitat (2014a) *The State of African Cities 2014: Re-imagining Sustainable Urban Transitions*. UN-Habitat, Nairobi.

³⁸ Awumbila, M (n 2) 9; Owusu, G. and Oteng-Ababio, M. 'Moving Unruly Contemporary Urbanism Toward Sustainable Urban Development in Ghana by 2030' [2014] (59) (3) *American Behavioral Scientist*: 311-327.

contribute to imbalances in the rural urban landscape.³⁹ For instance, municipal government takes decisions that have a direct impact in the lives of city dwellers and these include where to build schools and health stations.⁴⁰ Again, it is in cities that state meets its citizen face to face, calling on civil society and private enterprises to actively have a say in political matters, to participate in decision-making process and monitor facilities provided by municipal authorities. Civil society, private enterprise and politics therefore contribute to joint responsibility and create an environment in which the cities take on more responsibility for democratic consensus.

3. Urbanisation and Its Consequences

Urbanisation is primarily the result of migration, and it is reasonable to treat it as such. However, urbanisation is not just the result of rural–urban migration, particularly if rural–urban migration is taken to mean long-term rural dwellers moving permanently to urban centres. Tacoli and others gave two reasons for measurement of urbanisation thus:

First, urbanisation is the net result of complex migratory movements between rural and urban areas, including circular migration back and forth. Indeed, net rural–urban migration can be as much the result of people delaying or not going back to rural areas as it is deciding to move to urban areas in the first place.

Second, urbanisation involves both the net movement of people towards and into urban areas and also the progressive extensions of urban boundaries and the creation of new urban centres. Urbanisation can in principle also result from higher natural population growth in urban areas or from particularly high international out-migration from rural areas, although neither is considered very significant. The added urban population that results from urbanisation is sometimes estimated as the sum of net rural–urban migration and the increase in urban population resulting from the expansion of urban boundaries. However, it is not only difficult to obtain the data for such calculations but presenting them suggests wrongly that the urbanisation is being driven by the extension of urban boundaries, when the reverse is closer to the truth.

³⁹ Machel, M (n 24) 13.

⁴⁰ Gerd, M (27)

In practice, the people accumulating in near-urban or nearly urban settlements have mostly come to be there as part of the net migration of people towards larger settlements or from the centre of urban settlements towards their peripheries. With urban densities declining around the world the expansion of urban boundaries should not be taken to reflect urbanisation in the demographic sense.⁴¹ Where the natural population growth in urban areas is greater than in rural areas; this can also contribute to urbanisation.

Nigeria, as a nation has been experiencing an accelerated drift of her population from rural to urban areas. This rapid rate of urbanisation has engendered several environmental challenges and problems similar to situation in other parts of the world.⁴² For instance, the problems identified in Agenda 21⁴³ are prevalent in Nigeria. Some of the problems highlighted by Omofonmwan and another⁴⁴ include city slums,⁴⁵ problem of deposit of sewage and refuse due to rapid rate of generation of non-biodegradable materials such as plastics, inadequate storm

⁴¹ See generally Angel, S. and others. 'The dimensions of global urban expansion: Estimates and projections for all countries, 2000–2050' [2011] (75) (2) *Progress in Planning*: 53–107.

⁴² Lawanson, T. O. 'Challenges of Sustainability and Urban Development in Nigeria: Reviewing the Millennium Development Goals' [April, 2006] <www.unilag.edu.ng/opendoc.php> accessed 31 May 2014 at 7.45pm.

⁴³ Agenda 21 is the Blue Print of Action for sustainable development by Governments from the United Nations Conference on Environment and Development in Rio 1992 into the 21st Century and beyond. It is an action Agenda for the United Nations, other multilateral organisation and National governments around the world that can be executed at local, national and global levels. Participating countries were required to fashion out a local version of the document to suit their respective peculiar situations and environmental conditions. The Nigeria Agenda 21 is fashioned after the United Nations Agenda 21. The Agenda seeks to integrate in holistic manner environmental policy into development planning at all levels of government and the private sectors; intensify the transition to sustainable development; address sectoral priorities, plans, policies and strategies for the major sectors of the economy and simultaneously foster regional and global partnerships. The Nigeria Agenda 21 is co-ordinated by the Federal Ministry of Environment.

⁴⁴ Omofonmwan, S. I, and Osa-Edo, G. I. 2008 (n 3)

⁴⁵ A slum household is usually defined as a group of individuals living under the same roof lacking one or more of the following conditions (i) sufficient-living area, (ii) structural quality, (iii) access to improved water source, and (iv) access to improved sanitation facilities. See UN-Habitat 2003.

drains, squalid housing conditions, poor quality or unavailability of basic infrastructural and social service such as water and sewage facilities and even lack of access routes. In general, rural-urban migration has a number of economic, social, cultural, mental and demographic impacts to both receiving and sending areas. In Nigeria, for instance, several studies⁴⁶ have identified many of the environmental problems as having serious adverse socio-economic and ecological implications. A majority of these problems, it is argued, are traceable to a number of factors. These include the colonial antecedent of most Nigerian cities,⁴⁷ the high rate of urbanisation,⁴⁸ the bad psychological orientation of urban residents on the environment as well as poor environmental management practices which clearly indicated that the spatial structure of Nigerian cities evolved before, during and after the colonial rule in the country made the introduction of modern infrastructural facilities very difficult and expensive especially when dealing with areas having the bulk of ancestral homes of indigenous people.⁴⁹ It is also suggested by demographic experts that the high rate of urbanisation put at 5.3

⁴⁶ Rashid, H. 'Urban Flood Problem in Benin City- Nigeria: Natural or Man-Made?' [1982] (6) *Malaysian Journal of Tropical Geography*: 17-30; Nigeria Environmental Study/Action Team (NEST). 1991. *Nigeria's Threatened Environment: A National Profile* (Ibadan: Interface Printers Ltd; World Bank. 1992); National Economic Empowerment and Development Strategy (NEEDS) 2004. Abuja: National Population Commission (NPC) 1998. 1991 Population Census of the Federal Republic of Nigeria: Analytical Report at the National Level. Abuja: National Population Commission; Bulama, M. 'The Nigerian Built Environment Challenges' in A. S. Alabi and Sam Epelle (eds) *Proceedings of the First National Built Environment Summit on Built Environment Disasters for National Action Plan*. Nigerian Institute of International Affairs 8th-10th February 2005) 185-196 and UN-HABITAT. "Air Quality Monitoring in Africa Urban Environment. (Kenya: UN Urban Environment Section (2005b)).

⁴⁷ Ogbazi, J. 'Historical Development of Urban Planning in Nigeria' in H. C. Mba and others (Eds) *Principles and Practice of Urban and Regional Planning in Nigeria*. (Awka: Mekslink publishers (Nig) 1992.) 12-19; Ikyia, S. G. *Urban Passenger Transport in Nigeria* (Ibadan: Heinemann Books Plc 1993).

⁴⁸ National Economic Empowerment and Development Strategy (NEEDS) (Abuja: National Planning Commission 2004).

⁴⁹ Agbola, T. and Agbola, E. O. 'The Development of Urban and Regional Planning Legislation and their Impacts on the Morphology of Nigerian Cities' [1997] (39) (1) *Nigerian Journal of Economics and Social Studies*: 123-143; Agukoronye, O. C. 'Urban Poverty and Environmental Degradation in Nigerian Cities' in H. C. Mba and others. (eds.) *Management of Environmental Problems and Hazards in Nigeria*. (Hants: Ashgate Publishing Ltd. 2004): 161-170.

percent in Nigeria which is among the highest in the world has the tendency of spurring up environmental degradation⁵⁰.

Closely related to this is the fact that most urban areas in Nigeria have grown beyond their environmental carrying capacities and existing infrastructure.⁵¹ For instance, the 2006 National population census data⁵² revealed that most of the urban areas in Nigeria with small land mass have their capacity to take further population increase already exhausted or extremely limited. With a population figure of more than 184 million and land mass of about 924,000 km², current estimates indicated that 10 percent of the land area accommodated 28 percent of the country's total population.⁵³ The implication of this is that there is disequilibrium between the population and the environment, and this has adversely affected the carrying capacity of the urban areas in the country; hence, the increasing poor quality of the living conditions and the low livability index of urban areas in Nigeria.

4. Legal and Regulatory Frameworks for Urban Development and Planning in Nigeria

The role of environmental legislation is to induce responsible attitudes and behaviours toward the environment. Legislation serves as an effective instrument for environmental protection, environmental planning, management and control. Nigeria is a predominantly urban country. About 50 percent of the Nigerian population now lives in urban areas. The prevalent environmental problems as set out in the preceding sections are associated with human activities. As a result of population growth and rapid urbanisation, there is an increased demand for natural resources, goods and land, thereby leading to irretrievable changes in physical landscape. The most important of the numerous problems resulting from the urbanisation

⁵⁰ Goldstein, G. 'Urbanization, Health and Wellbeing: A Global Perspective' [1990] (39) (2) *The Statistician - Special Issue: Health of Inner Cities and Urban Areas* <<http://www.jstor.org>> accessed 18 March 2017: 121-133.

⁵¹ National Population Commission (NPC) 1998. 1991 Population Census of the Federal Republic of Nigeria: Analytical Report at the National Level. Abuja: National Population Commission

⁵² Federal Republic of Nigeria (FRN). 1998. Urbanization: 1991 National Population Census: Analytical Report at National Level, Abuja: NPC. 32-48.

⁵³ Nigeria Demographic Profile 2016.

include urban flooding and absence of storm water discharge system; ocean surge due to rise on sea level, extensive use of hard landscape; reclamation of swamps and natural storm water swale for building construction. Physical development on natural flood plains and non-adherence to physical development regulations resulting to flooding in low lying cities like Lagos, Port Harcourt and flooding of the Ogunpa river and Kudeti stream, both in Ibadan in 1955, 1960, 1961, 1963, 1969, 1980 and the most recent one in August 26, 2011 which affected Apete and Odo-Ona Elewe among other areas within Ibadan metropolis.⁵⁴

There is no doubt that every human activity which manipulates the environment for his gains imposes some burden on the man-environment. The realisation of this phenomenon and in reaction to urbanisation challenges has led to the promulgation of various planning laws, which are seen as codes for physical land development in Nigeria. Primarily, the statutory frameworks on land tenure and planning control are contained in the Land Use Act,⁵⁵ Town and Urban Planning Law of various States in Nigeria, Nigerian Urban and Regional Planning Act⁵⁶ and other subsidiary regulations. The objectives of these laws, according to Ukoni⁵⁷ is to protect the environment against wide spread abuses. In summary, the concept of 'town planning and environment' is to improve our towns with broad streets, 'cleanse' the environment of filth; remove the reclaim swamp lands or clear bushes from urban surrounding.⁵⁸ In addition to the foregoing statutory enactments and in order to realise the

⁵⁴ Olokesusi, A. 'Characteristics of Environmental Problems in Nigeria and Management Prospects' [1987] (7) (1) *The Environmentalist*; 55-60: 55; Akintola, F. A. 'The Hydrological Consequences of Urbanisation: A Case Study of Ibadan Cities' in P. O. Sada and J. S. Oguntoyinbo Eds. *Urbanisation Processes and Problems in Nigeria*. (Ibadan: University Press 1978): 151-158; Fagbemi, S. A. 'Reflections on the Causes, Effects and Legal Mechanisms for the Control of Environmental Pollution in Nigeria' [2010] (1) *University of Ibadan Journal of Public and International Law*, 147-179:166

⁵⁵ Cap L5, Laws of the Federation of Nigeria 2004

⁵⁶ A Federal Act

⁵⁷ Ukoni, U. D. *An Introduction to Nigerian Environmental Law*. (Lagos: Malthouse Press Limited 2010) 71

⁵⁸ *Ibid*: see also Utuama, A. A. 'Planning Law and Environmental Protection' in J. A. Omotola (Ed) *Environmental Laws in Nigeria including compensation*. (Lagos: Faculty of Law, University of Lagos 1990) 14- 34.

Nigeria's Vision 20:2020,⁵⁹ the Nigeria in 1992 approved the National Urban Development Policy amongst others to tackle various environmental challenges occasioned by urbanisation.⁶⁰

4. 1. *Land Use Act*

Land denotes the quantity and character of the interest or estate, which a person may own in land.⁶¹ Land may include an estate or interest in lands either legal or equitable as well as asset and incorporeal hereditaments. Historically, the issue of environmental planning law in Nigeria is as old as time itself. Hence, it has passed through the three phases of environmental planning law for sustainable development in Nigeria. For instance, during the pre-colonial era, land was held under communal ownership. It was then managed on the basis of the customs and traditions of the various ethnic groups that formed the country. Traditional rulers and family heads were vested with the right to manage land in accordance with the political, socio-economic, cultural and traditional norms that existed at that time. Community members had only use rights. The use rights were heritable and inheritance was common among male children, with few ethnic groups allowing females to inherit.⁶²

Formal urban planning began with British colonial urban development activities particularly in Lagos in the late

⁵⁹ The vision for urban development is one of "functional cities for rapid economic growth" and the vision advocates that priority should be given to promoting the good governance of the planning system in the country. To achieve this, the document recommends that strategies should focus on promoting smart and functional cities to achieve environmental sustainability, which are to contribute to achieving the goals of promoting fast economic growth and social welfare of the Vision 20:2020. See Lamond, J and Awuah, K. B and Lewis, E and Bloch, R and Falade, J, B. 'Urban Land, Planning and Governance Systems in Nigeria' [July 2015] Research Report Foundation for Development and Environmental Initiatives, Urbanisation Research Nigeria, (URN): 1-54

⁶⁰ The first National Urban Development Policy was passed in 1992 and was revised in 2012.

⁶¹ Ogiji, L. O. 'Land Use Policy under the Land Used Act and Its Impact on Environment and Development in Nigeria' [2015] (6) (2) *Ebonyi State University Law Journal*: 174-190: 174.

⁶² Adeniyi, P. 'Improving Land Sector Governance in Nigeria: Implementation of the Land Governance Assessment Framework' (A synthesis report. Lagos: Department of Geography, University of Lagos 2013)

nineteenth century.⁶³ These urban development activities included public works such as the construction of new dock facilities and a railway into the interior of the city in the 1890s and the passage of Ordinances for Town Improvement (1863) and Public Health (1904). The 1928 Planning Ordinances created the Lagos Executive Development Board with the responsibilities of swamp reclamation, slum clearance, market planning and the development of suburban estates for African employees.⁶⁴ Similar urban planning activities subsequently took place in Enugu, Zaria and Kano.

These colonial planning activities promoted spatial segregation. Three distinct types of urban settlement developments were created and governed with the assistance of the Township Ordinance No. 9 of 1917, namely European residential areas, non-European reservations and native communities.⁶⁵ Unlike the native areas, the colonial urban areas were governed based on British urban development standards and were provided with the requisite infrastructure.⁶⁶ Following the promulgation of the Commonwealth Development and Welfare Act (1940), which sought to promote reconstruction of Great Britain and her colonies, urban planning was given further impetus in Nigeria. The Town and Country Planning Ordinance No. 4 of 1946 was passed. The ordinance for the first time considered planning as a comprehensive activity of government with the provision for re-planning, improvement and development of different parts of Nigeria. The Ordinance was modeled along the lines of British Town and Country Planning Act of 1932⁶⁷ and promoted a modernist approach with the use of master plans, planning authorities and planning schemes. However, implementation of the Ordinance was usually restricted to European residential

⁶³ Home, R.K. 'Town Planning, Segregation and Indirect Rule in Colonial Nigeria' [1983] (5) *Third World Planning Review* 165-175.

⁶⁴ *Ibid*

⁶⁵ *Ibid*; Mabogunje, A.L. 'Urban Planning and the Post-Colonial State in Africa: A Research Overview' [1990] (33) (2) *African Studies Review*, 121-203; Ogu, V. I. 'Evolutionary Dynamics of Urban Land Use Planning and Environmental Sustainability in Nigeria' [1999] (14) (4) *Planning Perspectives*: 347-368.

⁶⁶ Mabogunje, A. L. 1990 (n 73)

⁶⁷ Robert, W. T. 'Urban Development Policies in Nigeria: Planning, Housing and Land Policy' [2000] *Centre for Economic Research on Africa*. 2

areas, and the Ordinance did not encourage integrated and participatory planning approaches.⁶⁸

After independence in 1960, colonial land policies subsisted with traditional land tenure arrangements until the passage of the Land Use Decree (LUD) in 1978.⁶⁹ The Act is now the basic framework for land administration in Nigeria.⁷⁰ According to James,⁷¹ the Land Use Act sets out a framework for a national land policy in Nigeria. The policy adopted trusteeship policy by placing the ownership, management and control of land in each state of the federation in the Governor.⁷² Land is therefore allocated with his authority for commercial, agricultural and other purposes. The objective of the Act was to unify land policies in Nigeria, to curb land speculation in urban areas, and to promote agricultural investment through secured land rights. Land holdings in Nigeria are now broadly classified into public/state, private and communal.⁷³ Public/state lands are lands owned by government comprising federal, state and local governments and their agencies. Private lands are defined as those whose ownership is vested in private individuals, families, and lands under customary tenancies. Communal lands are lands which have their ownership vested in communities. These lands are usually administered by community leaders mainly chiefs with the assistance of their councils of elders.

The Land Use Policy in Nigeria is a derivative of policy made or obtainable from Land Use Act. The policy is a course of action adopted and pursued by a government, party, ruler, statesmen,

⁶⁸ Ogu, V. I. 1999 (n 73); Lamond, J; Awuah, K. B; Lewis, E. Bloch, R and Falade, J. B (n 65) 7

⁶⁹ Now Land Use Act, Cap. L5, Laws of the Federation of Nigeria, 2004; see Birner, R. and Okumo, A. Challenges of Land Governance in Nigeria: Insights from Case Study in Ondo State [2010] *International Food Policy Research Institute*, 65.

⁷⁰ Butler, S. B. 'Improving Land Policy for Private Sector Development in Nigeria: Lessons and Challenges Ahead' Report presented at the World Bank Conference on Land Governance in Support of the MDGs, March 9-10, 2009. Washington, DC; Aluko, O. 'Sustainable Housing Development and Functionality of Planning Laws in Nigeria: The Case of Cosmopolitan Lagos' [2011] (4) (5) *Journal of Sustainable Development*: 139-150.

⁷¹ James, R. W. *Nigerian Land Use Act: Policy and Principles*. (Ile-Ife: University of Ife Press Ltd. 1987) 27.

⁷² Section 1 of the Land Use Act; Abugu, U. *Principles of the Land Use Act. 1978* (Kaduna: Joyce Graphic Printers and Publishers 2008) 13.

⁷³ Adeniyi, P (n 69)

etc. The most distinguishing feature of the Land Use Act is the ouster of absolute individual ownership of land in favour of 'trusteeship'. By section 1 of the Act as noted earlier, the Governor occupies the fiduciary position of a 'trustee' with the powers to grant right of occupancy and to revoke or acquire compulsorily by the provision of section 28 of the Act for overriding public interest.⁷⁴ Of course, the Land Use Act is silent on the protection of environment but since land is under the trusteeship of the State, it behooves on the latter to formulate policies that are not at variance with the Act in order to protect the environment and ensure urban physical development and planning. This has led to a succession of Acts enacted to complement the Land Use Act, to wit: the Nigerian Urban and Regional Planning Act and the Federal Environmental Protection Agency Act⁷⁵ there are also policies such as the National Policy on the Environment 1989, Federal Ministry of Works and Housing (Environmental Planning and Protection Division) and the United Nations Environmental Programme (UNEP) which organised the international Workshop on the Goals and Guidelines of the National Environmental Policy for Nigeria.⁷⁶

4.2 Nigerian Urban and Regional Planning Act

Planning decision and environmental protection are intricately linked, and it is sometimes unclear where the dividing line is to be drawn between 'planning and environmental' controls.⁷⁷ Even though the two regimes of control have slightly different purposes, very often the two regimes converge, so that environmental issues must form part of planning policy and procedure of the state. The term 'planning' according to Omaka

⁷⁴ However, such compulsory acquisition of land is subject to payment of compensation as stipulated in section 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁷⁵ Cap F10, Laws of the Federation of Nigeria 2004. The Act was succeeded by the National Environmental Standards and Regulation and Enforcement (Establishment) Act in 2007 as the main legislation on the Environmental governance and enforcement in Nigeria.

⁷⁶ This marked the first major step adopted by the government 'to readjust the nations' relationship with its environment based on the principles of sustainable development and proper management of the environment and its resources. See Okorodudu-Fubara, M. T. *Law of Environmental Protection: Materials and Texts*. (Ibadan: Caltop Publication (Nigeria) 1989) 57

⁷⁷ Ukoni, U. D (n 63). 72

and other,⁷⁸ consists of the rules and regulations used to control the arrangement of buildings, designating town and country layout, enforcing city decency and used to compel compliance with planning schemes. Planning law is thus a mechanism for the imposition of land use restrictions and proposals regulating the exploitation of land. The primary objective of planning law is to promote the general welfare and property of people. A well environmental planning law necessarily involves the use of land. Physical planning law therefore arose from the realisation that certain users should be separated from one another because of their incompatibility.⁷⁹ Hence, the need for effective development control is to prevent abuse and misuse of land and to ensure compatible use of land as stipulated in the master plan.

As could be seen in the above analysis, several specific urban planning, development and governance initiatives including passage of regulations at both federal and state government levels have been undertaken since independence by successive post-colonial governments.⁸⁰ However, the Town and Country Planning Ordinance 1946 continued to be the main planning legislation in Nigeria until the passage of the Nigerian Urban and Regional Planning Decree (No. 88) of 1992⁸¹ to complement the provisions of the Land Use Act. The Act came into existence with a view to recognising the relationship between overcrowding, unhealthy housing conditions and poor environmental condition on one hand and the incidence of communicable diseases and epidemic, on the other.⁸² Hence, in the word of Aluko,⁸³ 'the Act was expected to revamp planning activities and make them more responsive to the socio-economic development needs of the country'.

⁷⁸ Omaka, C. A and Ozougwu, C. 'Planning Law and Environmental Sanity in Nigeria' in C. A. Omaka (Ed) *Nigerian Environmental Law Review*. (I) (2) (Ebonyi: Kingdom Age Publications, 2010) 62.

⁷⁹ Aluko Ola. E (2011) (n 3) 131

⁸⁰ Filani, M. A 'City in Transition: Vision, Reform and Growth in Lagos Nigeria' [2010] *Cities Alliance*. 34; Ogbazi. J. U. 'Alternative Planning Approaches and the Sustainable Cities Programme in Nigeria' [2013] (40) UN-Habitat International, 109-118.

⁸¹ Nigerian Urban and Regional Planning Decree was enacted in 1992 to replace the Nigeria Town and Country Planning Law of 1946. It now forms part of the Laws of the Federation of Nigeria 2004 as Cap N138. See Aluko, Ola. E (2011) (n 3)

⁸² Ogiji, L.O (n 67)178

⁸³ Aluko Ola. E (2011) (n 3)

To avoid ambiguity and provide focus for the administration of the Nigerian Urban and Regional Planning Act, section 91 of the Act defines some salient concept in urban development. These concepts, among others include: 'Physical Development Plan', which is defined to mean any schemes, plans or master plans approved under any authority approved by the Act. 'A Plan' means land use proposal expressed in words and graphics. A 'plan area' means the area of land designated by the planning authority with power to designate as the area for which a physical development plan is to be or has been made. A local plan includes plan formulating in detail within the context of the structure of plan, the ways in which the policy and general proposal are to be implemented.

The types of plan envisaged under the Act are stated in respect of the Federal level, state level and local level in section 1 (1), (2) and (3). It states the responsibilities of the Federal Government, State Government and Local Government in sections 2, 3 and 4 respectively, which amongst other include the formulation of national and state policies for urban and regional planning; the preparation and implementation of the national physical development plan and regional plan, sub-regional and urban and subject plans including preparation and implementation of a town and rural area plans.

The Act in section 5 also establishes three Commissions for the purposes of the initiation, perception and implementation of National Physical Development Plan for the federal, state and local government respectively as follows:

A National Urban and Regional Planning Commission⁸⁴ to deal with federal matters;

A State Urban and Regional Planning Board⁸⁵ in each State of the Federation and the Federal Capital Territory to deal with all state matters, and

A Local Planning Authority⁸⁶ in each local government areas or area council in the Federal Capital Territory.

Thus it is certain that the Commission has enormous power for the purpose of meeting its mandates. However, the practical

⁸⁴ (Hereinafter referred to as "the Commission").

⁸⁵ (Hereinafter referred to as "the Board").

⁸⁶ (Hereinafter referred to as "the Authority").

exercise of these functions had generated tension between federal and state governments.⁸⁷ This is further compounded by the provisions of the Second Schedule to the 1999 Constitution, which confer on the States House of Assembly concurrent legislative power with the Nigerian National Assembly, but silent on the matters related to urban and physical planning law. For instance, in the case of *Attorney General of Lagos State v The Attorney General of the Federation and the 36 States*,⁸⁸ the competence of the National Assembly to legislate on the planning law with regard to the states physical development were called into question. In that case, the following issues were formulated for the court determination amongst others:

- a) whether centralising urban and regional planning does not offend the federal system practice in Nigeria?
- b) whether federal legislature is empowered to legislate on urban and regional planning that will have effect in the state?
- c) whether Town and Regional Planning and issues connected therewith is a residual or local matter for the state or a federal matter?

In resolving the above issues, the Nigerian Supreme Court first drew distinction between environmental protection and town planning and held that environmental protection and town planning are two distinct fields and that the power to legislate on the environment cannot be extended to cover power to legislate on town planning.⁸⁹ However, the court noted that town and country planning may be influenced by environmental law. In addition to the foregoing, the Supreme Court further held that the National Assembly has no power to make law on planning for any area outside the Federal Territories in Nigeria and declared sections 1 (2), 3, 2 (1), 3, 4, 5, 8, 9, 10, 11, 12, 28, 30-46, 47-63,

⁸⁷ World Bank. 2002. *State and Local Governance in Nigeria*. Washington DC: World Bank

⁸⁸ [2003] FWLR (Pt. 168) 909 at 1120

⁸⁹ It should be noted that the power to legislate on environmental matter is within the exclusive legislative list. The Nigerian National Assembly is conferred with the exclusive competence to legislate on the items listed in the Exclusive Legislative List.

75, 76 (3), 86-88 of the Urban and Regional Planning Act, which seek to control Urban and Regional Planning as well as physical development of land use in Lagos State on the Federal Government as inconsistent with section 4 of the 1999 Constitution (as amended) for exceeding the legislative competence of the National Assembly.⁹⁰

The conclusion to be drawn from the above position is that planning law is purely a legislative matter and each component states within the Federal Republic of Nigeria has residual power to regulate physical development on land within their sphere of authority, subject however, to the National Assembly's competence to legislate on land use and physical development of the Federal Capital Territory, Abuja only. The statutory framework for planning control is contained in the Nigerian Urban and Regional Planning Act, Town and Urban Planning Laws of States, and with particular reference to Lagos State, the Urban and Regional Planning Board Law and Building Regulations applicable in each State.

Similarly, in Oyo State, the State Government has established its planning laws: The State in 2012 promulgated Physical and Urban Development Law 2012 which repealed the Town and Country Planning Law 2000, and by subsidiary legislation established the Oyo State Urban and Regional Planning Board Law 2001. Thus, in Oyo State, the Ministry of Physical and Urban Development is saddled with the responsibility of formulating and implementing state policies on Urban and Regional Planning, Physical development of State buildings including special location of infrastructural facilities.

4.3 *National Urban Development Policy*

A policy, according to Nabutola,⁹¹ is typically described as a principle or rule to guide decisions and achievement outcome(s). Policies can assist in both subjective and objective decision making. Policies to assist in subjective decision making would usually assist senior management personnel with

⁹⁰ See also the case of *Attorney General of Ogun State & Ors v Attorney General of the Federation* [1982] 1-2 SC 13. Note that section 4 of the 1999 Constitution allocates legislative responsibilities of the National Assembly and State Assembly with the Federation of Nigeria.

⁹¹ Nabutola, W. L. 'National Urban Development Policy (NUDP) Making Process the Kenyan Way: Big Challenges and some Opportunities' [2012] (1) *Planning Policies and Procedures* 5828.

decisions that must consider the relative merits of a number of factors before making decisions and as a result are often hard to objectively test. In contrast policies to assist in objective decision making are usually operational in nature and can be objectively tested. A policy can be considered as a 'Statement of Intent' or a 'Commitment'. For that reason, at least, the decision-makers can be held accountable for their 'Policy'.⁹²

However, policy differs from the rule of law. While rules of law can compel or prohibit behaviours, policy merely guides actions toward those that are most likely to achieve a desired outcome, often for the greatest common good, and or the least harm if one were to have to undergo it. Nigeria is the most urbanised and largest country in population in black Sub-Saharan Africa and according to Robert,⁹³ the urban growth rate is 3 to 5 times greater than the rural growth rate. In practical term, the National Urban Policy by design is the framework for ensuring the sustainable growth and development of cities and towns of all sizes in a country. Such a policy framework incorporates social, economic, political, spatial, environmental and all other relevant factors. The policy framework serves as a guide in making specific decisions at the national and local levels which affect the pattern of urban growth in the nation.⁹⁴

Nigeria's experience of National Urban Policy is similar in some respects to what obtains in other countries. For instance, approximately half of the Nigerian populations live in urban areas and economic growth has been relatively strong since the discovery of oil. Yet poverty remains high and the proportion of the urban population with access to water and sanitation is very low by international standards.⁹⁵ As discussed earlier, Nigeria has a long-established urban and regional planning system, based on colonial experience. However, a new planning law was

⁹² *Ibid.*

⁹³ Robert, W. T (n 75)2

⁹⁴ Government of Ghana, Ministry of Local Government and Rural Development. 2000. National Urban Policy Framework. 10; Nabutola, W. L (n 104). 5

⁹⁵ UN-Habitat. 2014. The Evolution of National Urban Policies: A Global Overview. United Nations Human Settlement Programme. Prepared by Ivan Turok <www.unhabitat.org> accessed 20 March 2015

introduced in 1992⁹⁶ to modernise the old system and making it more relevant to the country's needs arising from rapid urban growth and the pressure on land and infrastructure on the account of population growth. This was accompanied by a National Urban Development Policy (NUDP) in the same year, and the establishment of an Urban Development Bank to finance urban infrastructure and public facilities.⁹⁷ However, when the Federal Government of Nigeria in 2011 discovered that despite all its legislative actions, executive responses and interventions; Nigeria's urban problems had remained seemingly intractable due to the fact that the majority of the actors responsible for the implementation of the 1992 Policy were either not fully aware of their roles and responsibilities, or did not have the requisite knowledge and capacity, or were simply not involved in the actual implementation,⁹⁸ the Federal Government setup a 50-member committee to review the National Urban Development Policy of 1992.⁹⁹ The new National Urban Development Policy was approved in June, 2012 by the Federal Government of Nigeria.

It is very unfortunate to observe that in spite of the laudable and good intention of government to review and approve the National Urban Development Policy 2012, neither has the Independent Committee on Coordination and Monitoring been established nor as any of the above activities started till date. It is also sad to observe that the National Council on Housing and Urban Development, held in 2013 and 2014, since the approval of the National Urban Policy by the Federal Government in 2012, did not reveal any significant progress at state and local government levels, in the implementation of the Policy. Furthermore, many state and local government Ministries, Departments and Agencies (MDAs) with mandate for urban

⁹⁶ In 1992, The Nigerian Urban and Regional Planning Law was promulgated to replace the 1946 Town and Country Planning Act which was a colonial law.

⁹⁷ *Ibid*

⁹⁸ Mustapha, Z. 'A Case Study from Nigeria: Development and Implementation of Nigerian National Urban Development Policy' [2015] International Conference on National Urban Policy: Towards Smarter Greener Cities

⁹⁹ The National Housing Policy of 1991 was equally reviewed along the NUDP by the Committee.

development and management were either not aware of the Policy or copies given to them.¹⁰⁰

According to Lamond and others,¹⁰¹ one of the difficulties facing implementation of the NUDP in Nigeria is the federal system, which limits the powers and influence of the national government and its policies. To gain traction, there need to be arrangements to influence policy-making and development practice at the state level. This has not happened to any great extent to date. In addition, there is an acknowledged shortage of technical capacity, resources and information/evidence to undertake effective urban planning. The approach to land-use planning also remains somewhat outmoded in that it is reactive and control-oriented. There is little tradition of positive planning to make things happen, and the institutional and legal frameworks for promoting urban development are inadequate.

5. Conclusion

It is certain that Nigeria never lacks good policies, legislation and institutional frameworks, but good implementation have always been the bane. The failure of existing laws and regulations to make significant impact in protecting and preserving the environment are due to poor implementation, lack of political will, poor funding and lack of adequate manpower. Therefore every legal ambiguity, lack of qualified personnel, inadequate funding should be addressed. The private sector should be encouraged to make significant contributions in capacity building in environmental management agencies. This will enhance the capacity of agencies to enforce environmental laws and physical development policies and regulations and thus reducing the rate of illegal developments and structures contravening planning laws, street trading and indiscriminate dumping of refuse in unauthorised places. Also the existing penalty for non-compliance with town and urban planning legislations fixed at ₦10,000.00 for individual and ₦50,000.00 for corporate body is too small to discourage people from violating the provisions of the Nigerian Urban and Regional Planning Act. Hence, these provisions should be amended to introduce stiffer penalty for offender and violator of Nigerian Urban and Planning Development Act. Furthermore, since no

¹⁰⁰ Mustapha, Z (n 111)

¹⁰¹ Lamond, J (n 65)

section of the country's urban environment is immune to environmental effects due to urbanisation challenges, there is urgent need to seek workable solutions by the application of planning, economic, legal, and educational tools in combating environmental and urban problems in Nigeria. The proposed law should be proactive in the promotion and maintenance of a sustainable built environment and natural environment, promote an ongoing human resource development, promote standard of health, safety and environmental protection and the industry and lastly promote government transformation.

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