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Examine the Domain Law in Rehabilitation and Slump Clearing in Nigeria: a Case of Displace Priority

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Abstract

Urban renewal involves the application of urban upgrading techniques which have been developed for the treatment of urban obsolescence. Urban renewal theories provide four main approaches with which to address urban renewal challenges which include slum clearance/ redevelopment and rehabilitation/renovation. Redevelopment / slum clearance and rehabilitation/renovation techniques are not mutually exclusive options when it comes to application, more often than not it involve displacement of occupiers. The displaced persons are often helpless and subjected to series of shocks. This situation raises issue of tenure security otherwise known as eminent domain law because unless the slum dwellers are protected by security arrangements, the less privileged households who are mainly the slum residents must always suffer during any slum clearance programme. This paper therefore examine the eminent domain law in rehabilitation and slum clearance in Nigeria; a case of displaced priority.

Keyword: Eminent domain law, Redevelopment, Rehabilitation, Slump clearing benefits, Urban renewal.

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Background to the Study

Traditionally, urban renewal is an environmental management technique used to address the problems of blight, deterioration, housing standards and declining property value and general obsolescence in cities. Urban decay and dilapidation are common features of cities worldwide but particularly prevalent in third world countries such as Nigeria, India, Philippines, China, Brazil, Hong Kong, Bangladesh, New Zealand and Kenya where urban development predated the adoption of physical planning tradition. Urban renewal is a comprehensive scheme which aims to redress a complex of urban problems, including unsanitary, deficient or obsolete housing, inadequate transportation, sanitation and provision of other missing urban services and facilities, correction of haphazard land use, traffic congestion and the sociological correlates of urban decay, such as, crime and other social vices (Olabisi, 2013). Historically, urban renewal has tended to emphasize the two major dimensions of the city, namely, the physical and the human. There is no gainsaying the fact that indicators of city deterioration are physical, social and economic aspects of the bio-physical environment and renewal programmes have tended to address such related problems. Experience over the years shows that a third dimension of urban renewal has been made manifest and need to be discussed and analyzed. This relates to the issues of security(eminent domain law) which supposed to be part and parcel of the process of the articulation of urban renewal action plan. The major aim of this paper is to provide a new understanding about slump clearing(urban renewal)and rehabilitation (upgrading) with the objective of sensitizing the urban renewal executors of the necessity of taking the issues of security (eminent domain law) into consideration while embarking on urban renewal.

Under the power of eminent domain, private property may be taken for public purpose without the owner's consent, through condemnation proceedings. The federal and most state constitutions, usually reinforced by statute, attach to the power of condemnation a requirement that no property may be taken by the government without "just compensation's The courts have generally construed "just compensation" to mean the fair market value of the property at the time of the taking. Fair market value has been defined as the highest price which a hypothetical willing buyer would pay to a hypothetical willing seller in a free and open market. Since fair market value is the highest price the hypothetical seller would pay, it is assumed that this price reflects the highest and best use of the property. Generally, fair market value of property may be demonstrated in three ways: (1) by evidence of sales of property comparable to the property taken, (2) by evidence of income produced by the property, or (3) by evidence of replacement or reproduction costs of structures on the realty adjusted for depreciation and obsolescence (where such reproduction or replacement would be reasonable). The problems of when and how to use these different methods of property valuation in the determination of "just compensation" for property condemned are often quite difficult

Theories of Uurban Renewal

With the advancement and growth of urban renewal as a major branch of town planning and environmental management, greater interest have been shifted to the development of urban renewal theories which tend to reduce the complexities of urban renewal exercise to a manageable pattern which guide the operations and executions of urban renewal. Many specialists with vested interest in the urban dynamics contributed to the development of urban renewal theories. Consequently, three theories were developed to control and guide urban renewal programmes. The theories are Spatial Allocation theory, Economic theory and Behavioural theory. They will be discussed one after the other.

Spatial Allocation Theory

Spatial scientists such as geographers and town planners were the foremost proponents of Spatial Allocation Theory which they used to explain the distribution pattern of land uses. The town planner is primarily concerned with budgeting and allocation of land to various land uses in order to satisfy the space requirements of people and their activities for now and in future. Central to Spatial Allocation model is its proposition that forces of slum development and urban decay are urban circumstances beyond the control of residents. Therefore, the only effective measure against slum problems is total relocation or allocation of the residents to a new site. This type of thinking influenced the American town planners and local authorities during the post-World War II era to the extent that the first federal legislation on Housing Act of 1949 in USA made provisions for the clearance and redevelopment of deteriorated areas or structures for any reuse. Redevelopment was specified to mean total demolition and replacement with new modern structure(s). This Act empowered the town planners and local authorities to clear all buildings and structures within any area that was deteriorated or dilapidated. This has to be so because such area was considered to constitute serious health threats and eyesores.

To make clearance of buildings possible, local governments were vested with two powers, viz; powers of eminent domain and police powers. Powers of eminent domain were exercised for the purpose of acquiring real property for a public purpose with or without compensation. In the other hand, police powers were used to restrain private actions for overriding public interest. For the purpose of execution of urban renewal, the Allocation theory stipulates the following procedural guidelines.

The spatial allocation theory has been criticized on the grounds that it is an inhuman radicalism's approach. Its rejection is based on the fact that in many cases the envisaged benefits are never realized, rather, as experiences have shown, those who eventually benefit from the urban renewal programme are usually the privileged class instead of the poor residents for whom the renewal programme was undertaken and who ought to be the main beneficiaries because it is basically their plight that warranted the renewal programme. Rather than improve the welfare of the residents, they are usually subjected to series of undue hardships. This kind of thinking triggered off agitations from a group of

environmentalists which led to the emergence of the school of humanitarianism in the United States of America. Their views are articulated in what is referred to as behavioral theory.

The Behavioral Theory

The main contention of the behavioral school of thought is that urban renewal should, as a matter of necessity wear a human look and pay disproportionate attention to human elements than physical elements in any urban renewal area. The school is of the opinion that the poor residents of the urban renewal area should be giving unconditional chance to air their views in relation to any plan to upgrade their abode. Therefore, any urban renewal programme which did not have plans for the involvement of the residents and which neglect the participation of those who reside in the urban renewal area is totally unacceptable and rejection able. It is therefore essential to organize the residents into urban renewal committees which will be able to put forward the collective view of the residents. The urban renewal administrators should as a matter of necessity work with the residents' committees as major and primary stakeholders. The school therefore put forward the options of rehabilitation and conservation strategies which they believe will give a clear social focus to urban renewal programmes.

Main approaches to Renewal

At the first International Seminar on Urban Renewal, in August 1958, the three principles of urban renewal were identified as:

- i. *Redevelopment*; consisting of demolition and reconstruction;
- ii. *Rehabilitation;* improvement of the original structures, and conservation, i.e. preservation of historical monuments and not generally with residential areas.

The possible approaches to neighborhood regeneration can therefore be identified as:

- i. Redevelopment, in which a neighborhood is rebuilt anew;
- ii. Rehabilitation, in which the existing structures are preserved and upgraded; and
- iii. Integration, a combination of the first two approaches.

Each approach can involve the re-housing of the population on the original site or its relocation to another part of the city. The three different approaches are presented here in more detail.

Redevelopment

Redevelopment consists of the removal of existing buildings and the re-use of cleared land for the implementation of new projects (Miller, 1959). This approach is applicable to areas in which buildings are in seriously deteriorated condition and have no preservation value, or in which the arrangement of buildings are such that the area cannot provide satisfactory living conditions. In such cases, demolition and reconstruction, of whole blocks or of small sections, is often thought to be the only solution to ensure future comfort and safety of the residents.

Cities renewal programs use redevelopment approach because: It gives developers maximum profit through the sale of new centrally -located units; offers governments opportunities to maximize the use of land, i.e. higher floor area ratio; increases local tax revenues by introducing higher income groups and commercial activities to the city center and leads to higher population density and improved services and infrastructures which is desirable in inner-city areas. And cities reject its use because: It leads to demolition of architectural environments; although it leads to the destruction of badly needed housing units, does not prevent slums from reappearing in other parts of the city; community's cultural heritage and viable neighborhoods can be destroyed; Local people may be re-housed with no guarantee that they can afford to live in the developed housing; It reduces job opportunities, as resettlement areas are usually located outside of the city proper; and, even if residents are re-housed on the same site, the transformation of the neighborhood beyond recognition can cause them psychological trauma. In the majority of western countries, redevelopment has been discarded as a way to rejuvenate old city centers because the greater number of their building stock is in sound structural condition.(Arinde & Doshu, 2016).

Rehabilitation

Rehabilitation, often termed conservation or preservation, is seen as the opposite of redevelopment. It is based on preserving, repairing, and restoring the natural and manmade environments of existing neighborhoods. It is applicable to areas where buildings are generally in structurally sound condition but have deteriorated because of neglected maintenance. It cashes on the existing housing stock as a valuable resource and improves old houses to acceptable standards by providing modern facilities.

The theory here is that with limited availability of funds for new construction and the serious housing shortage destroying already-existing housing is both unaffordable and imprudent. It recognizes the value of old neighborhoods and, by preserving what is unique, ancient, and specifically local, it can also contribute to the development of the tourism industry and stimulate the economy. From the standpoint of time and cost, rehabilitation is a sensible solution to the problem of neighborhood regeneration.

The advantages of rehabilitation include: savings in time and cost; residents can remain in place and invest their own time, money, and energy and improve their housing and their social conditions; and because it respects the social links that have formed within and among the communities over the years. The disadvantages, on the other hand, are because it is technically difficult and involves a lot of work and research; is usually complex and time-consuming process making it more difficult to implement than redevelopment; developers see it as an infringement on free enterprise and a barrier to large-scale redevelopment and try to resist it; it can be difficult introducing new infrastructure to old and dense neighborhoods. (Arinde & Doshu, 2016). The weak economies of many developing countries that have not afforded cities good quality design and construction of sound building stock with reasonable life spans, redevelopment through slum clearance and reconstruction is still regarded as the only viable way to improve housing conditions and to modernize inner-city areas.

Integration

The third approach to neighborhood regeneration referred to as integration, views rehabilitation and redevelopment as complementary forces and combines the best aspects of both approaches. It consists of rehabilitation of what can realistically be saved, combined with reconstruction of new buildings in place of those beyond the reach of feasible rehabilitation.

Integration is considered today to be the most acceptable way to regenerate old neighborhoods because it can preserve the traditional urban environment while achieving respectable densities; contemporary architecture is created with local characteristics thereby enriching the appearance of the old city while maintaining its identity and Social order of the community is respected because the majority of the original residents are re-housed. For many developers and local authorities, however, integration remains a time-consuming process, less profitable than redevelopment with mass housing. With reference to few notable urban renewal programmes in Nigeria, suffice it to say that the use of bulldozer featured prominently resulting to displacement of several households each time. (See Table I)

Table 1: Urban Renewal Programmes and Number of Households Displaced

S/N	Urban Renewal Area	No. of Households Displaced	Source
1	Maroko, Lagos Urban Renewal	12,000	Sule, 1990
2	Olaleye-Iponri, Lagos Urban Renewal	20,000	Alaba, 2010
3	Badia East, Lagos Urban Renewal	18,612	Olayiwula, 2008
4	Okpoko, Onitsha upgrading	128,147	Onweluzo, 2002
5	Owerri, Upgrading	167	World Bank, 1990
6	Aba Upgrading	78	World Bank 1980
7	Umuahia Upgrading	258	World Bank, 1980
8	Bauchi upgrading	2,156	World Bank, 1980

Analysis from these renewal programmes indicate that all the displaced households are those that can be regarded as poor or core poor households no matter the yardstick used in their income assessment. Their poverty goes beyond poor income to poor education, lack of helpers and ill health. Living with such risk is part of their everyday life and changes in politics which normally bring in new administration with new agenda increases fear in their everyday life. They are the most vulnerable in the society because they are most exposed to any decisions about environmental upgrading. Their low income makes them to live in slum areas where they can afford to rent at least a room without regard for quality or availability of amenities and infrastructures. Their lives are not secured and for them to have any feature, they must be provided with security by the state. Poor people live without fundamental freedom of action and choice that the privileged take for granted.

The security arrangement for them will be that which will make them become less vulnerable to upgrading of their abode. Reduction of vulnerability must aim at helping the slum residents manage risks of displacement better by reducing, mitigating and lessening the impact of shocks. These packages will produce dual terminal effects, namely,

- 1. Deter government from massive eviction to focus on inevitable minimal cases because of cost implications,
- 2. Reduce the citizens violent protests and demonstrations since their losses are minimal and manageable, and
- 3. Eliminate citizen's vulnerability and hence promote their ability to manage shocks of eviction.

Another security issue which is exacerbated by urban renewal relates to insecurity of tenure in the cities. By far the most significant attempt to provide for security of title and alter the holding and use of land for the benefit of the society in Nigeria is the Land Use Decree of 1978. decree aimed at introducing a land tenure reform that would replace the authority of customary leaders over land tenure with state control and thereby impose a uniform, nationwide land tenure system. It also aimed at making land available to government for its needs, increasing equity and curbing inflation and land banking (Ikejiofor, 2014). The decree provides that all urban land in the territory of a state is vested in the Governor of that state, who shall hold it in trust for the people of that state. Land use and Allocation Committees were set up in each state to administer land matters. The establishment of these committees for land administration created room for inefficiency, delay and corruption because the pattern of their activities favored only those who are wealthy with substantial connections, thus making land to be concentrated in the hands of privileged politicians and their allies.

With increasing influx of migrants into urban centre which resulted to high rate of urban physical development, land became commoditized and landholding became increasingly individualized particularly in the cities. Under this dispensation, the poor ones, the less connected and the underprivileged who cannot afford to acquire and own land were forced to become perpetual tenants in those neighborhoods where accommodation rents are cheap, such as in the core slum areas or in the spontaneous squatter settlements at the city periphery. Thus, these vulnerable households live in the urban sections where population density is as high as 700 persons per hectare and room occupancy ratio is as high as 6/4 persons. Such areas exist as central slum areas or spontaneous squatter settlements which are commonly the targets for urban renewal programmes during which huge army of underprivileged landless urban poor are forced to become homeless.

One disheartening story of forced eviction is that no compensation is made since those affected lack tenure legitimacy. Tenure insecurity creates an excruciating condition which affects the psychological wellbeing of an individual which may lead to depression cases.

Sometimes the trauma of tenure insecurity can interfere with the need for rest, sleep and relaxation and in extreme cases can lead to untimely sudden death. Some psychological problems such as hopelessness, aggressiveness, insomnia, apathy, delinquency, alcoholism and carefree attitude are partly attributable to insecure tenancy. Most deviant behaviour associated with slum areas can be traced to the general belief by the dwellers that their residency is tenuous and unstable to the extent that they can be forced to relocate at any time. Government should use the provisions of the 1978 landuse decree as an authority to guarantee the tenure security of residents particularly during urban renewal programmes by regularizing the property title of residents which will qualify them for financial compensations or allocation of alternative accommodation. Afterall, the comprehensive urban renewal approach demands that those adversely affected by urban renewal programmes must be provided with resettlement alternatives; otherwise no demolition of structures should be undertaken. Urban renewal is undertaken principally to enhance the living standard of the people and not to undermine their sensibilities by subjecting them to series of avoidable hardships.

For someone to lose his property just because it is in a state of disrepair is disheartening particularly when it is realized that the major reason for leaving the property to degenerate into disrepair was weak personal income base. To lose a property just because of attempts to upgrade environmental quality is undemocratic and painful. For a government to forcefully acquire the property of an individual just in the name of urban renewal or face lift is tyrannical. There is every need for the Federal and State legislatures to come up with enactments aimed at providing tenure security for the less privileged property owners in the cities to protect them from forceful eviction without compensation. For the tenants, they should be provided with alternative accommodation preferably through a resettlement programme. Therefore no nation can fold its arms and allow its land use management to fall in disarray as "no nation handles the issue of land management within its borders with levity". It is this nexus between land and economic prosperity of an individual and a nation that probably informed the Constitutional provision respecting the inviolability of private property rights in various jurisdictions around the world.

Way Forward

The large majority of Nigerians who are by circumstances of poverty are compelled to mass themselves in insalubrious urban environment characteristic of informal squatter settlements and who daily live under the constant fear of forceful eviction need to be protected and secured because they are part of mankind and deserve fair treatment. This can be achieved by strict implementation of the sections of the environmental laws which accord meaningful rights to individuals towards protection of fundamental liberties. As far back as 1948, the United Nations came up with the famous Universal Declaration of Human Rights (UDHR) which meant that the entire humanity formally registered its hatred to oppression and inhuman conduct and as such declared its support for the recognition of and respect for the fundamental and inalienable rights of all members of the

human family as the foundation of freedom, justice and peace in the world. The UDHR not only refers to civil and political rights but also includes economic, social and environmental rights. Human rights are said to be indivisible and interrelated (Dele, 2002) and as such must be comprehensively applied to protect both the rich, the connected and the poor, the less privileged and the uneducated living in any part of the city. Forceful eviction or quick quit notice for any reason is tantamount to infringement into the fundamental rights of inhabitants and occupiers. The above gives credence and support for the adoption of the practice of Advocacy Planning in Nigeria which has hitherto been neglected and unpracticed. Each residential unit particularly the squatter settlements that stand the risk of forceful eviction in the name of urban renewal programme should by policy be made to hire the services of an advocate planner who will be vested with the residential security assignment for the protection of the environmental rights of dwellers in case of any infringement or threat. The advocate planner should be one who believes in or shares the interest of his clients. Such an advocate therefore requires more than sentiment, anger, dissatisfaction and dis-affection to proposed plan. The advocate must be a provider of vital information and well-grounded in extensive fieldwork and research so as to be in the position to generate facts and figures that would be needed to defend his client's alternative plan. The advocate must be a hard bargainer and a good negotiator, one who will be able to educate his client group as well as the opponents as to the desirability or otherwise of the aspects of the contending plan. Advocacy is a game of negotiation which is guided by the spirit of give and take so that what will emerge at the end of the negotiation will be the product of conciliation, tradeoffs and negotiations.

The Polycentric urban renewal approach should be adopted in Nigeria. According to Akinola et al (2012), this urban renewal strategy is anchored on the existing understanding that African human societies are sustained on the basis of cooperation and as such, models that are designed to address problems of African human societies cannot be effective except such models, policies and programmes take cognizance of the underlining factors that underpin human cooperation such as collectivity, mutual trust and reciprocity which are part and parcel of existence in Africa. For the protection of human citizens, there is need for government to implement inclusive policies to diminish inequalities. In an inclusive city, residents take part in decision making that ranges from the political to issues of daily life. Such participation injects a sense of belonging, relevance, pride and guarantees them a stake in the benefits of urban development.

Polycentric urban renewal model conceptualizes urban renewal project as involving the efforts of three major groups of people in the urban centre namely the governments, financial institutions and the community institutions for the search for solutions to the problems of urban decadence. The model is an innovation designed as an alternative to the centralized, repressive and top-down urban renewal programmes that have perpetuated deprivation, inequality, poverty and human misery. These three groups must as a matter of policy and regulation sit together as welfare officers to discuss

intimately and trade off ideas for the purpose of taking urban renewal decisions together. This is a kind of enforcing and encouraging citizen participation. The World Bank (1994) defines participation as a process through which stakeholders' influence share control over development initiatives, decision and resources for moving the community forward. Citizen participation in urban renewal is a means of improving local welfare, training people in local administration and extending government control through local self-help activities. Participation is a democratic principle in that it calls for representation and total involvement of citizens in taking decisions that affect them and their lives. However for the full benefits of participation to be realized the participation of the citizen must be active, persistent, effective, creative and innovative and the language of communication must be simple and local and the planning issues to be discussed should be non-technical.

The legislative arm of the government should come up with enactments aimed at guaranteeing the residential security of urbanites particularly for the slum dwellers who are usually subjected to series of socio-economic, political and environmental problems emanating from forceful eviction in order to execute urban renewal programmes. Such enactments should include but not limited to instruments such as;

- (a) Slum citizen dislocation insurance,
- (b) Eviction pension,
- (c) Relocation microfinance grants, and
- (d) Social welfare funds

Such enactments will have the effect of selectively reducing to barest minimum the number of people to be displaced or evicted during urban renewal just because of the financial implication of massive eviction, which may eat deep into the government's treasury and hence constrain it from other public pursuits. Having such enactments in place will reduce or eliminate riots, demonstrations, violence and stubborn resistance usually associated with eviction threats during urban renewal. Since the slum dwellers are sure they are protected by enactment to cushion eviction shocks, they will become less disturbed by any urban renewal threats.

With the present precarious situation in land administration in Nigeria, the Government needs to take a stand and take steps to review the current legal regime. In particular the government could administratively introduce a scheme whereby it makes the possession of a certificate of occupancy over land the only recognized legal instrument evidencing title to land in Nigeria.

Conclusion

Urban renewal as one of the environmental management strategies is aimed at upgrading the living environment of the people from the state of general obsolescence and decline to acceptable modern standard conducive for effective functioning of the area as a socioeconomic and eco-political unit. It is essentially an opportunistic exercise because governments and town planners often seize the opportunity of the existence of urban

obsolescence and general decay to articulate urban renewal action package. In order words, existence of urban blight provides opportunity for urban renewal.

Urban renewal theories provide some strategies which are adopted either separately or jointly for the execution of urban renewal programme. It is instructive to point out that any approach adopted must be applied in compliance with the theoretical dictates, otherwise unanticipated and unintended consequences will emerge to bring about unhealthy complaints, demonstrations and violent opposition which in most cases might frustrate a well-intended urban renewal programme. Urban renewal is never without problems because residents must be disturbed, property owners must be shaken and stakeholders must spend their resources. In view of the foregoing, it is absolutely necessary that urban renewal programmes take security issues seriously. This will help ameliorate the sufferings associated with urban renewal particularly on the side of the vulnerable households who are usually the victims of urban renewal. Security of life, continuity, job, property and tenure are serious security issues that must be part and parcel of urban renewal action package.

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