

RULE OF LAW, PHYSICAL PLANNING AND URBAN GOVERNANCE IN NIGERIA: A PANACEA TO SUSTAINABLE URBAN DEVELOPMENT

Ganiyu Olalekan Bakare^a

^a Department of Urban and Regional Planning, Faculty of Environmental Studies,
Rufus Giwa Polytechnic, Owo, Ondo State, Nigeria.

^a Corresponding author: lakangee@yahoo.com

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Abstract: Nigeria as a nation is presently being faced with numerous problems emanating from lack of rule of law, so also the challenges of building an enduring and sustainable democracy that has become a hard nut to crack. For a just and fair society to be achieved, it must be built on credible political institutions worthy of sustaining our towns and cities, which must allow democratic values to deepen in such a way that, rule of law and due process will replace rule of force and arbitrariness, that has become so endemic in Nigerian system and refuses to be relegated to the background. However the fledging civilian to civilian rule and urban good governance will depend largely on the extent to which both the leaders and the led are able to operate under the tenet of human rights and due process as opposed to regime of arbitrariness, lawlessness, corruption and graft, that has continue to earns the country a pronounced position in the comity of backward and corrupt nations of the world. This paper intends to chronicle the, relevance and essentials of rule of law to physical planning and urban good governance in Nigeria, basically to ensure strict compliance of rule of law as it affect physical planning in Nigerian towns and cities, while at the same time, ensure that nobody lives above the law, in other to protect the orderly development of the physical environment according to stipulated planning rules and regulations, and how to deal with urban physical

planning challenges in future, because continuous successive good governance is a panacea to strengthen the compliance, and enforcement of sustainable physical urban development.

Keywords: Rule of Law, Good Urban Governance, Public Participation, Physical Planning and Sustainable Urban Development.

INTRODUCTION

Both the Sustainable Development and the Millenium Development Goals (MDGs) constitute internationally accepted goals for the 21st century to which all nations have subscribed to, including Nigeria, in which sustainable urban development is one of the greatest challenges of the 21st century. For Nigeria to achieve these set goals in other to attain the necessary development, most especially in the area of physical planning, issues related to rule of law and good urban governance must be the fulcrum in which a sustainable physical urban development should be built. It is widely recognized that good governance is essential to sustainable physical urban development. Linking good governance and rule of law, a significant step was taken when countries adopted the convention on Access to information, Public Participation in Decision-making and Access to Justice in Environmental Matters (The Arthus Convention, 1998) The convention recognizes that, sustainable

development can only be achieved through the involvement of all stakeholders (the people) and seeks to promote greater transparency and accountability among government bodies by guarantying three pillars for the public: *the rights of citizen access to information; citizen participation in decision-making and citizen access to justice in environmental matters*. In other words, the convention allows freedom of access to information on the environment, gives citizens a right to participate in environmental decision-making such as, urban planning, and provides for citizens' recourse to judicial remedies when these rights are infringed or denied by state authorities or politically influential individuals.

Well-functioning legal institutions in Nigeria such as courts (Magistrate, High and Appeal) and governments (Local, State and Federal) bound by the rule of law are, in turn a process of ensuring good governance. In the other way round, weak legal and judicial systems in which laws are not enforced, or where some citizens sees themselves as above the law and non-compliance to rules and regulations guiding physical planning and where corruption thrives among the civil servants, will undermine the respect of rule of law, engender disorderly physical urban environment which consists of the towns and cities land-uses, environmental degradation, which may eventually creates a chaotic physical urban land-uses, that would be inimical to sustainable physical urban development.

Hence, good governance allows openness, participation, accountability and transparency as its key and germane elements for a sustainable development to be achieved. Nigeria as a nation with various and different ethnic nationalities each having age long traditions of governance through formal institutions and for which they are very proud have been in existence before the incursion of colonial government. However, colonization and long years of military rule have disrupted the traditional mode of representative governance as well as stalled the development of western democratic system of governance. Hence, this has made most Nigerians to become disenfranchised and apathetic in matters of governance. This was witnessed in the early 1990s where military incursion reigned supreme in the country, during this period, human settlement (slums or squatter settlements) deemed unpleasant or unsightly to the military government were removed without recourse to rule of law, rather the method applied in the removal of these settlement were simply rule of force. But the demands and the agitation of the people for governance structures to which they could relate and participate informed of the need to create more states and local government councils in the early and late 1990s. Nigeria is

presently structured into 36 States and 774 Local Government Councils each of the councils is further sub-divided into wards with a minimum of 10 and maximum of 15. As time progresses, the advent of democracy or participatory government starting from year 2000 reduced the process of rule of force and some bits of improvements were recorded, but Nigeria as a nation is not yet there, which made this study a necessity. The import of this ordinarily is that, participatory government provides and affords the opportunity of mass participation in governance from the ward level to national level. Hence it allows physical planning activities to come close to the people at the grassroots (Local Planning Authority or Area Planning Authority), and this arm of Physical Planning is to coordinate the planning activities at the various local government areas in Nigeria.

Most of the physical planning crisis that are presently being witnessed in Nigeria urban centres and the hinterlands such as hazards that befall cities, towns and the rural hinterland: collapsed buildings, floods, blown-off roofs, high rise flats in low density areas, slum neighbourhoods and ghettos, empty office blocks, traffic congestion, desolate streets, street hawkers, invasion of roads by commercial activities, road accidents, abandoned public conveniences, and clearance of green areas in the urban centres, are most of the blames heaped on the physical planners. But most of these blames and problems are simply caused by lack of following rule of law and due process in development execution, therefore, there is no way by which these old methods of doing thing can be sustainable in nature.

Aluko (2010), contends that, the meaning of rule of law is that government should be conducted within a framework of recognized rules and principles which restrict discretionary power. This is understandably so in order not to give the government an unrestricted discretionary power which can easily be abused. Since democracy means the absence of arbitrary power. It connotes a dynamic concept which should be employed to safe-guard the development of our cities and advance the will of the people and the political rights of the individual and to establish social economic, educational and cultural conditions under which the individual may achieve his dignity and realize his legitimate aspirations in the cities, whether dependent or independent. Aluko (2010), further stated that rule of law means equality of the citizens before the law. That is it means the state should be given no advantage over ordinary citizen. Disputes as to legality of the acts of the government or executive should be decided by judges who are independent of the executive. Section 6(b) of the 1999 constitution provides that judicial powers shall extend to all matters between persons or between government or authority and any person in Nigeria

and to all actions and proceedings relating thereto, for the determination of any person as to the civil rights and obligations of that person.

However to make continue transition of civilian to civilian government in Nigeria a reality, such process depends solely on the participation of the citizens in political process which is the fulcrum on which physical planning is built, which emphasizes community participation in the decisions that affect their lives, is addressed in section 13 of the Nigeria Urban and Regional Planning Decree No. 88 of 1992)

CONCEPTUAL ISSUES

Rule of Law

Concept of Rule of Law according to World Bank, (2004), stated that when many institutions identify a fair, impartial, and accessible justice system and a representative government as key element to rule of law. In urban physical planning, a purposeful government would want her people to see, well organized towns, and cities with paved-tarred roads, with good drainage system in appropriate places, electricity and water supply, public green areas or greenery, aesthetically pleasing environment coupled with provision of sustainable services such as health care, and security of lives and properties, which is invariably the joy of urban planners. However in this case, the physical Planning role is complementing that of political leaders in governments. *Rule of law* here means independent, efficient, accessible, responsive and responsible judicial and legal systems, working with a government that applies fair and equitable laws equally, consistently, coherently, and prospectively to all citizens without fear or favor.

Physical Planning ensures public participation, because, before any planning decisions are taken, the people are the major stakeholders hence their contributions, needs and wants should be encapsulated in such design, such as neighbourhood plans urban plans and master plans. However this can only be realized if there is good urban governance in place which guaranteed the process of governing cities and towns that are governed, regulated or controlled to the benefit of all without prejudice or discrimination of whatever nature.

The strength of rule of law is the best predictor of good urban governance because it is upon rule of law where everybody is equal before the law that planning laws can be implemented. Similarly any deficiency in the rule of law encourages high rates of corruption, political influence in implementing building construction that contravenes laid down planning rules and regulations, with further devastating consequences on the urban infrastructures and services, and poor environmental management,

which can invariably impede sustainable urban development.

Good Urban Governance

Good governance concept is generally characterized by accessibility, accountability, predictability and transparency (Asian Development Bank, 2001). Governance has become an absolutely central concept in the way local government, local politics and urban life is understood. But if the term is used rather casually nowadays, this was not always the case in the urban development lexicon. Urban Administration was the hallmark of the 1960s. Urban Management was the most progressive concept in the 1870s and mid 1980s while Urban Governance has become central to our conceptual apparatus since 1990s (Stren, 2005). The different meanings given to the world *Governance* have generated a lot of controversies in some quarters. Governance was often conflated (erroneous) with corporate government of even the absence of corruption. Another source of controversy is the World Bank definition of *Governance* as the manner in which power is exercised in the management of a country's economic and social resources for development to balance this position, UNDP proposed that governance comprised of political, economic and administrative authority in the management of a country's affairs at all levels. It also comprised the mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences (UNDP, 1997).

The concept of Urban Governance is the sum of many ways individuals and institutions, public and private plan manage the common affairs of the city. It is a continuing process through which conflicting or diverse interests may be accommodated and cooperative action can be taken. It includes formal institutions as well as informal arrangements and the social capital of citizen. Urban governance is inextricably linked to the welfare of the citizenry. Good Urban Governance must enable both men and women to access the benefits of urban citizenship, affirms that no man, woman or child can be denied access to the necessities of urban life, including adequate shelter, security of tenure, safe water, sanitation, a clean environment, health, education, and nutrition, employment and public safety and mobility. Through Good Urban Governance, citizens are provided with the platforms which allow them to use their talents to the full to improve their social and economic conditions (FMW&H/UNCHS, 2001).

However in the year 2000s, the concept of *Governance* has enjoyed wider usage in developing worlds mainly because of the role of UN-HABITAT, and its Global Campaign on Urban Governance. In

line with HABITAT's experience, rule of law and inclusive planning in decision making processes is the key to good governance and sustainable urban development. Urban governance could be said to be the sum of many ways individuals and institutions, public and private plan manage the common affairs of the city.

Physical Planning

One of the most acceptable and popular definition of physical planning was given by Keeble (1969: 1) as the art and science of ordering the use of land and the character and siting of buildings and communication routes so as to secure maximum practicable degree of economy, convenience and beauty. Bruton (1974:7) defined Physical Planning as a physical design of something which already exists or might in the future and this sort of plan is a representation in a geographical or spatial sense, of actual physical structures or elements.

However, Egunjobi (1985:95) observes physical planning to concern with distribution and arrangement in orderly, balanced and consistent forms, or different competing land-use types and structures in space to achieve economy, convenience, beauty, good and security. Crook (1974:85) observed the task of physical planning as the prevention, the control and the promotion of changes which have, which are and which might occur within the physical environment. NITP, (1997 quoted in Soile, 1998:128) sees physical planning as being concerned with the spatial ordering of land use both in the urban and rural settings for the purpose of creating functionally efficient and aesthetically pleasing physical environment for living, working, circulation and recreation

The Nigerian Urban and Regional Planning Law of 1992 explicitly provides for physical activities that may go on at each of the three levels (Federal, State and Local) such that there will be no conflict in functions. There are two basic responsibilities that are common in physical planning, the first has to do with the preparation and implementation of development plans, while the second has to do with the control of development, hence these two responsibilities centres on the issue of law and how to obey rule of law, most especially the laws that has to do with physical planning that is enshrined in the Nigerian Urban and Regional Planning Law of 1992 which explicitly provides for physical planning activities in Nigeria. However these two responsibilities harps on inducing and controlling development so as to achieve a sustainable urban physical planning that is anchor on rule of law.

From the above, Physical Planning is a conscious but comprehensive approach to orderly and healthy use

and management of the natural environment of human settlements. It does this by systematically anticipating and achieving adjustment in the physical environment of part or a whole settlement, given the constraint of social, economic, political and human resources. Hence, Wahab (1987:6) opined that the main purpose of physical planning is to create an improved, protected and sustainable human environment, by which is meant both its appearance and the need to ensure that the living and working condition in settlements are healthy. Ensuring good urban governance and supremacy of rule of law, inclusive physical planning approach has to be judiciously and consistently applied as observed by Wahab (2008). He further stated that, inclusive and participatory urban planning and management is capable of reinvigorating and revitalizing our existing and future cities. it can be inferred from this that inclusive and participatory physical planning could be achieved in an environment where rule of law and good governance plays an important roles to ensure sustainable urban environment. Good governance in turn promotes accountability, transparency, efficiency, and rule of law in public institutions and public lives at all levels.

Public Participation

Carry, (1973:11), stated that the word *Participation* means open, popular, and broad involvement of the people of the community in decisions that affects their lives. Wahab (2004:147) said that to participate means a share in decisions about goals and objectives, about what should be done, how and by whom. Participation, to public administrator, may mean an access to the decision-making process, while to the grassroots; it means involvement in decision-making and taking action in issues affecting their daily lives or the right to select their representatives. The process of selecting our representatives at political levels goes a long way to dictate the set of people we wants in governance, hence this set of representatives could either make or mar the process of rule of law that will ultimately affects our lives as a nation.

According to (Okpala,1982) in public or community participation, (Graves 1972, Burke 1968, Mogulof 1970, O'Riordan, 1977, Agbola, 1988) in citizen participation or (Wahab 2004) in Grass-roots participation, defined the concept severally from different perspectives. The common feature is that public or citizen or grass-roots participation is a concept that evolved from self-help and the provision of more responsive local services in a movement towards the re-examination of the whole social and economic structure (Olujimi and Egunjobi 1990:165). However if participatory governance is allowed to thrive in Nigeria, the citizen would have their say

and how they want to be governed, since the constitution that guide the operation of the country is made by the people, hence rule of law as it affects urban lives and other societal activities would not be compromised.

Sustainable Urban Development

The concept of sustainable development as defined by World Commission on Environment and Development (WCED, 1987) *the Brundtland Commission* in its report, entitled *Our Common Future* (1987) as development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs. World Bank (1992), stated from proactive approach that, the whole world is exploring the concept of sustainable development as an approach that will permit continued improvements in the present quality of life at a lower intensity of resources use, leaving behind for future generations an undiminished or even enhanced stock of natural resources and other assets. City Journal (1996), opined that sustainable development seeks to deliver basic environmental, social, cultural and economic services to all residents of the community without threatening the viability of the natural, built and social systems upon which the delivery of these services depends.

However, a sustainable (urban centre) city is therefore defined as a city in which the population enjoys a high quality of life and which takes care not to transfer socioeconomic and environmental health problems to other place or future generation (Girardet, 1992). To achieved this stated goal, some agreed that new principles and processes of sustainable urban planning need to be created based on an inter-sectoral approach that incorporate spatial and environmental aspects as well as health, social and economic elements. Also, City Journal (1996), stated that the aim of sustainable urban centre should be able to build a new urban culture in which rich people and poor people can enjoy a sustainable and congenial lifestyle that leads to a viable urban structure. Kadiri, (2006) stated that awareness-raising and capacity-building are crucial to achieving sustainable development. Citizens in all walks of life need to become more aware of the consequences of their lifestyle and the means for change, at both personal and community levels. The basic challenges (urban pollution, poor management of urban waste-sewage and refuse, poor conditions of urban infrastructures-water supply, electricity supply, poor road and drainage system) cities or urban centres are facing are how to a strike balance between various urban needs, the challenges from these needs and how to sustain a modern city that would be environmental friendly, technologically in tune with current innovations, without such technology

constitutes nuisance to the environment. This is necessary because the cities are the centres of economic growth, political hotbed, and a place where technological innovations and human achievements are displayed. Hence the needs to make urban centres viable, dependable sustainable and functionally responsive and responsible to urban residents' needs should be encouraged so as not to jeopardize the future of the incoming generations.

Relationship among Rule of Law, Good Urban Governance and Physical Planning as a Panacea to Sustainable Urban Development

It is observed that different factors play important roles in: physical planning, good urban governance plays an exceptional role in the advancement of sustainable development.

Good Urban Governance promotes accountability where government and its representatives can be held responsible if it errs in physical planning matters such as demolition of "illegal" structures without payment of compensation where necessary according to NURP Decree No.88 of 1992.

Good Urban Governance promotes transparency, where government and its agencies in Local, State and National conducts its activities as it affects physical planning in transparent manners without any ulterior motives or political gains but should rather conduct it operations on physical planning to benefit goods of the general urban residents.

Good Urban Governance should ensure that its operations are conducted in other to ascertained maximum efficiency in provision of physical infrastructures such as electricity and water supply, road and drainage construction, to the common goods of the public.

Good Urban Governance should ensure strict and religious compliance to the rule of law in public institutions at all levels. All manners of issues related to physical planning should be handled in respect to rule of law; this should be applicable to both the government in carrying out its statutory obligations and citizens in compliance to rule of law in carrying out physical infrastructural development. Hence everybody should be equal before the law when matters related to physical planning is being handled at the court of law.

Good Urban Governance should ensure public participation, civil society participation/advocacy group participation in physical planning activities, since, they are they end beneficiaries of these infrastructural provisions they should be allowed to have their say, contributions and inputs on issues and matters that affects their lives and the cities they resides in.

Practicable Suggestions to achieve Sustainable Urban Development

The urban government should do whatever it can, to restore respect to the rule of law as it affects physical planning by making use of planning tools such as; day to day planning of reducing the bottleneck of title ownership, transportation system, planting of trees, shrubs, grasses to serves as natural landscaping in urban centres and recycling of urban wastes.

The laws governing the society, the economy, the environment, the urban and regional planning activities be put into practice without fear or favour to any individual, no matter how highly placed or how poor such individual is in the society

All existing laws in the country governing the environment: the building codes, Nigerian Urban and Regional Planning Decree No.88 of 1992, Environmental Impacts Assessment EIA, Strategic Environmental Assessment or Strategic Sustainability Assessment reports must be enforced and complied with by every member of the society to ensure a sustainable urban development.

The key-people (Stakeholders) in the system of governance (the politician and the civil servant) must support and remained committed to the rule of law so as to ensure public involvement in providing sustainable urban development in the country since all the laws that can make these sustainable developments realizable are available in the various laws in the country.

The various participating tools such as: modeling of sustainable new housing designs, participatory/inclusive planning should be evolved, use of GIS (Geographical Information System) to tackle urban challenges should be used to ensure the reign of rule of law so as to creating a sustainable urban development.

The issue of corruption should be fought at all levels of governance and be strictly frowned at, this could be achieved by involving inter-sectoral collaboration, such as the Judiciary, The Physical Planners, The Governments and The Community in other to achieve an urban centre that is free of bias which can sustain itself

From this study, a strong foundation that can strengthen the physical planning development of Nigerian Urban centres it should be anchor on vibrant, effective rule of law and good urban governance in other to achieve sustainable urban development. Despite the existing environmental laws, planning rules and regulations, the urban centres in Nigeria still continues to suffer from poor environmental quality, irregular conversion of land-use from the original land-use to different land-uses

without recourse to these existing laws. However, one thing is to laws guiding the operation of a society in place and another thing is to have a government that has the strong will and respect of rule of law to make the various existing laws operational. Hence, it is not the existing law that is deficient but lack of implementation, enforcement and compliance by all citizens regardless of one's position or political affiliation or connection in the society.

From this assertion, more strong and commitment should be paid to a strengthened focus on compliance, implementation and enforcement efforts should be made by the government at the three tiers of governance in Nigeria, this eventually will lead into sustainable urban development that would not only make the present urban life bearable and livable but would not compromise the benefit and usage of the future generations.

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