

# THE APPLICATION OF PLANNING LAW FOR ENVIRONMENTAL PROTECTION AND IMPROVEMENT IN NIGERIA

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The problem of environmental protection in Nigeria when the provisions of planning laws are not complied with in the construction and management of buildings in Nigeria was examined in this research. The paper also examines different state planning laws as well as judicial authorities while advocating the creation of new towns, effective zoning, as well as the provision for enhancing sanitary conditions of the environment. The researchers adopted the doctrinal and non-doctrinal research methods. Materials were gathered from primary and secondary sources. Thus published text (both local and foreign), Journals, law reports (foreign and indigenous) and laws dealing with the subject matter were relied upon. Materials from the town planning offices in Nigeria were used. Officials of the town planning offices, construction engineers as well as lawyers were personally contacted and interviewed when carrying out this research. The objective of this paper is to examine the provisions of planning laws that relate to the construction and management of buildings and to make planning laws an issue of concern to bring about its application in the construction and management of buildings for environmental protection and improvement in Nigeria. The paper explains that the protection and improvement of the environment is important to the present as well as the future generations. Thus, while constructing houses within the environment for development purposes, the provisions of planning laws must be strictly complied with, in order to maintain a balance between the development and protection of the environment. The paper explains further that the need for development has led to the construction of structures without clearly defined patterns. This has led to the development of slums which are the reflection of lack of master plan for such an area or the ineffectiveness of relevant authority in enforcing the existing planning laws. Thus this paper concludes that a proper and effective enforcement of planning laws remains the key to environmental protection and improvement in Nigeria.

Keywords: enforcement, improvement, planning, protection.

## INTRODUCTION

The environment has been created for the benefit and sustenance of mankind when committed to proper and beneficial use. But the way and manner in which man subjects the environment to certain activities tends to destroy man himself or the dislocation of the ecosystem which helps to make life meaningful and conducive to mankind. In order to protect and improve the environment there must be a proper effective enforcement of planning laws in the construction of houses and their management. This is because the international construction industry has taken an increasingly leading role throughout the years towards the effective implementation of

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sustainable construction practice due to its direct involvement in projects with high environmental impact<sup>2</sup>.

The environment is very important to mankind to the extent that everything done on earth has to deal with the environment. This is why care must be taken to ensure that the resources within the environment are optimally utilized. However, there must be a balance between the development of these resources and the attainment of balanced environment. But we must encourage the application and enforcement of planning laws when houses are being constructed for environmental protection and improvement.

Basically, town planning law concerns the management of physical development and its distribution. Primarily, they are codes for physical land development. However, their environmental protection and improvement implications or capabilities should not be undermined, and cannot be overemphasized.

It is obvious that one of the problems with environmental protection and improvement in Nigeria is that of urban and regional planning. Planning laws could be used to ensure a healthy environment, by making provision for decongesting congested places and that houses are constructed and managed according to the provisions of planning laws. Planning laws could also be utilized to prevent the development of slums and ensure the creation of space for free flow of air and effective ventilation. The above will help promote and ensure a safe environment which will help to protect and improve the environment and also prevent litigation in the area of construction management.

Based on the foregoing, this paper will examine the need for the protection and improvement of the environment and how planning law can be applied in the construction and management of houses for the protection and improvement of the environment.

## **THE NEED FOR THE PROTECTION AND IMPROVEMENT OF THE ENVIRONMENT**

Generally, people all over the world rely on their environment for their survival. They are directly affected by the way others around them make use of the environment, as well as the type and manner of implementation of governmental policies. The destruction of the environment occurs during attempts to achieve development objectives. Thus, it was stated by Tandy that:

*The destruction of the environment most often occurs during attempts to achieve developmental objectives such as the provision of housing facilities, building of roads and bridges, and other physical infrastructures.*<sup>3</sup>

Therefore, there is need to protect the environment against destruction. The realization of the above fact has urged many countries around the world to commit themselves, under the umbrella of the United Nations Conference on Human Settlement (Habitat II) 1996, to:

*Promoting optional use of productive land in urban and rural areas and protecting fragile ecosystems and environmentally vulnerable areas from the negative impacts of*

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<sup>2</sup> Ricardo E B (2013) "social licensing in the construction industry: community and government interests". IBA international construction projects committee, vol 8 issue 1, 23.

<sup>3</sup> Tandy, C (1988) "Handbook of Urban Landscape". London: Architectural Pres, 2.

*human settlements, inter alia, through development and supporting the implementation of improved land management practices that deal comprehensively with potentially competing land requirements for agriculture, industry, transport, urban development, green space, protected areas and other vital needs.*<sup>4</sup>

The point here is that to ensure the protection and improvement of the environment in this regard, we must begin with the recognition of the challenges facing cities and towns. However, the most serious problems confronting cities and towns and their inhabitants include the problem of constructing houses without complying with planning laws. This has seriously affected the protection and improvement of the environment. Thus, there is great need for the enforcement of planning laws in the construction and management of houses for the protection and improvement of the environment.

### **The Application of Planning Law In The Construction And Management of Houses For the Protection and Improvement of the Environment**

Planning is anything that relates to the character of the use of land. C.S. Ola defines town planning as:

*The art and science of controlling the use of land and the character and arrangement of buildings, so as to achieve economy, and secure convenience and beauty...it ensures safety of the citizens by the provision of pedestrian ways and easy access to and from dwelling - house. Planning prevents the deterioration of areas into slums and minimises public expenditure on slums ... Good planning ensures easy access to places of work, without the hazards of traffic congestion. It locates the right centres for school, playgrounds, markets and shopping centre's.*<sup>5</sup>

Thus, it was stated that planning facilitates economic developments, promotes a healthy and safe environment, and necessarily involves the formulation of policies and laws to control and regulate private rights to, or the indiscriminate use of land and the environment at large.<sup>6</sup> According to Oludayo:

*Planning 'looks beyond today and projects into the future. It examines what is, in terms of activity patterns, space requirements; it gathers other relevant socio-economic indicators and makes use of all those to determine future space requirement of each activity ... it also ensure judicious use of resources to ensure conservation, preservation and the natural process of rejuvenation.*<sup>7</sup>

The application of planning laws in the construction and management of houses can help to protect and improve the environment when new towns are planned cities started on previously undeveloped land with dwellings and provide economic opportunity within its borders. They are usually large enough to contain a full

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<sup>4</sup> The Istanbul Declaration of the United Nations Conference on Human Settlements (Habitat II) (Istanbul, 3<sup>rd</sup>- 4<sup>th</sup> June, 1996), available at: <http://www.daccessdds-ny.un.org/doc/UNDOC/GEN/G96/025/00/PDF/G9602500.pdf?>

<sup>5</sup> Ola, C S (1984) "Town and Country Planning and Environmental Law in Nigeria". 2ed, Ibadan: university Press, 4 – 5.

<sup>5</sup>Smith, I O (2004) "Power to Make Planning Laws in a Federation: The Nigerian Experience", 24 Journals of Private and Property Law, Lagos: University of Lagos press 15.

<sup>6</sup> Oludayo, A (2004) "Environmental Law and Practice in Nigeria" Lagos: University of Lagos Press, 477. See Alden I and Morgan R (1974) "Regional Planning: A Comprehensive View" London: Leonard Hills Books.

complement of community facilities for its residents. New town has been defined by Eldredge<sup>8</sup> as a complete small city with dwellings, jobs, and a full complement of community facilities, including a higher culture, with a fixed area and population. In a report by the United States Advisory Commission on Inter-governmental Relations (ACIR) it was concluded that not everything that is called a “new town” is actually one. The (ACIR) defined new town to mean:

*[A]n Independent, relatively self-contained, planned community of a size large enough to support a range of housing types and provide economic opportunity within its borders for the employment of its residents. It is large enough to support a balanced range of public facilities and social and cultural opportunities...within reasonable limits. The proportion of the total area to be used for the industrial, commercial, residential, public facilities, and open space, are provided for. New towns are started on previously undeveloped land and are built by staged development over a period of time.*<sup>9</sup>

Moreover, it was stated by Mehmert, an expert in Urban Planning that:

*The increasing influx of rural persons typically uneducated and unskilled, has led to severe over-crowding in slums and squatter villages in the major cities and towns of the less developed countries generating unmanageable pressure on health and education facilities, housing and other services.*<sup>10</sup>

The concept of “New Town” was formally adopted by the British through the passage of the New Towns Act 1946, and later on by Russia, Germany, India and Hong Kong.<sup>11</sup> Although, the concept of “New Towns” has not been very well embraced in Nigeria, however, there have been plans by the government to improve the environment by the construction of new towns in such places as Lagos<sup>12</sup> and the nine states that made up the Niger Delta areas of Nigeria.<sup>13</sup>

More over planning laws can be applied for this purpose by making provision for zoning. The Black’s Law Dictionary,<sup>14</sup> defined zoning to be “[a] legislative division of a region, especially a municipality, into separate districts with different regulations within the districts for land uses, building size, and the like”. Thus zoning involves land allocation, the arrangement of public facilities, and the coordination of private activities on allocated land.

Zoning is regulated and its regulation governs how land may be used and the size, type and number of structures that may be built on the land. Thus, specific locations are given for different types of residence, industries, businesses, leisure places etc.<sup>15</sup>In

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<sup>8</sup> Eldredge, H W (1976) “The New Town Concept”. In: Eldredge H W (Ed) *Towing Megalopolis*, Vol. 2, New York: Boubleday and Co Inc., 2.

<sup>9</sup> Cited in Onokerharaye, A G and Omuta, G E (1994) “City Structure and Planning for Africa”. Benin City: The Benin Social Science Series for Africa, 160.

<sup>10</sup> Mehmert O (1978) “Economic Planning and Social Justice In developing Countries”. London: Oxford University Press, 72.

<sup>11</sup> Onokerharaye, A G and Omuta G E (1994) “City Structure and Planning for Africa”. Benin City: The Benin Social Science Series for Africa , 158.

<sup>12</sup> <http://allafrica.com/stories/201003020286.html>

<sup>13</sup> <http://allafrica.com/stories/2010031022.html>

<sup>14</sup>8<sup>th</sup> Edition, at p. 1649

<sup>15</sup> Listokin D and Burchell, R W (2007) “City Planning”. Microsoft Student [DVD].

the case of *Ohio v. Amber Reality Company*,<sup>16</sup> the legality of zoning was challenged and the US Supreme Court gave a rationale for the practice when a company found it could not utilize its land for the purpose for which it was bought as it ran contrary to the zoning regulations in that area where the land was situated. The company sued on the ground that this violated the 14<sup>th</sup> Amendment protection against taking property without due process. The majority of the court rejected this argument and the court ruled that, zoning was both reasonable and indispensable in view of the complexities of urban life and land uses.

Moreover, in the case of *Penn Control Transportation Co v. New York City*,<sup>17</sup> the US Supreme Court recognized zoning laws as having the potential to promote “*health, safety morals and general welfare*” by “*prohibiting particular contemplated use of lands*”.

The Town and Country Planning Law of Bendel State, 1976<sup>18</sup> made adequate provision for the implementation of the zoning concept. Section 3 of the above law provides that:

*A planning scheme may be made under this law with respect to any land, whether there are or are not buildings thereon...and of preserving buildings or other objects of architectural, historic or artistic interest and places of natural interest or beauty and generally of protecting existing amenities whether in urban or rural portions of the area.*

The Town Planning Law of Lagos State<sup>19</sup> stipulated in Clause 3 of its First Schedule that development plans must include “*zones for various uses... master plans shall include definition of the main planning zones and the main types of developments and uses that are permissible...*” The above provisions have within the potential to create a better environment.

Zoning preserves the neighbourhood by eliminating non-conforming or conflicting uses. This standard is readily upheld by the courts. Thus, in the case of *Ademola v. Rutili and Ors*,<sup>20</sup> the defendant attempted to build a school on land zoned to be an open space. The development was successfully restrained by the plaintiff on the ground that it contravened the approved Victoria Island Scheme. In the English case of *Re Carshalton Urban District Council's Application*<sup>21</sup> the land in question was subject to restriction, which forbade the erection of building of any kind except such as is normally erected in public parks and open spaces. The objectors were entitled to the benefit of the restrictions. However, the Council sought to modify the restrictions to enable them erect twenty-six bungalows for elderly people among facilities. Upon application to the court, the court refused the application and held that use as a public open space in accordance with the stipulations of 1932 was both possible and reasonable and that the proposed development would injure the objectors.

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<sup>16</sup> 272 US 365 (1926)

<sup>17</sup> 438 US, 104, 125 (1978).

<sup>18</sup> Cap. 165, Laws of Bendel State, 1976 (applicable to Delta and Edo State in Nigeria. Delta and Edo states were formally together and known as Bendel state before they were separated to two states in 1991.

<sup>19</sup> Cap. 181, Laws of Lagos State, 2005.

<sup>20</sup> Unreported Suit No. LD/784/84 of 21/09/85.

<sup>21</sup> (1965) 16 P& C.R., 68.

Furthermore planning law is applied to protect the environment through the setting of minimum safety environmental standards for buildings, to ensure a sanitary housing condition. Thus, planning mechanisms has been employed even in more developed jurisdictions like the United Kingdom to create and maintain a healthy environment in the construction and management of houses. For example, in the case of *MacDonald v. Glasgow Corporation*,<sup>22</sup> A land which has been waste ground was used for dumping rubbish. No planning permission was obtained. The land was later sold and the new owner continued to use it for the same purpose. A suit was brought against the owner. It was held by the court that he had no right to continue to dump rubbish on the land without planning permission; as such a practice has the capacity to endanger the health of occupants of adjacent houses. Similarly, in the case of *Ealing Corporation v. Ryan*,<sup>23</sup> it was found that the three floors of the house in question were occupied by different families and it was inferred that the bathroom and lavatory accommodation was also shared by the occupants. These were against planning stipulation for health reasons. The planning authority filed a suit against the occupants and the suit was held in the authority's favour. Thus, it can be stated that planning law has been applied to maintain environmental sanity and has also helped to prevent the outbreak of disease which is common with the slum areas. This is a good case to be taken into consideration in the construction and management of houses.

The slum areas are the endemic affliction of our urban environment. They are characterized by over-crowdedness, poor housing and the absence of such facilities as toilet, hygienic kitchen system, bathroom and store absence of good and functional drainage and waste disposal systems, unregulated buildings and air space, etc.<sup>24</sup> In the case of *Agunregne v. Adeyemi*,<sup>25</sup> the defendant built her house so close to the plaintiffs house that the flow of air and light into the plaintiff's house was obstructed. This causes the plaintiff's house to be uninhabitable during dry season because of heat and darkness. The plaintiff filed a case against the defendant urging the court to order the pulling down of the defendant's house to abate the nuisance. The court adjured the parties to seek extra-judicial redress and it was stated by Ajose-Adeogun J. that:

*The plaintiff has the right to seek further redress in respect of future interference with the use or enjoyment of her house (this is if the defendant does nothing to abate the nuisance).*

Furthermore, Section 17(1) of the Building Adoptive Bye-Laws provides that no drain shall be laid so that it passes through or under any building,<sup>26</sup> and that no person shall let or occupy any new building until the drainage thereof including disposal of surface water shall have been completed to the satisfaction of the health officer<sup>27</sup>. The Bye-Laws also prohibit any person from letting or occupying any building until suitable latrine accommodation approved by the health officer, has been provided.<sup>28</sup>

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<sup>22</sup> (1960) 11 P&C.R., 318.

<sup>23</sup> (1966) 17 P&C.R.,15

<sup>24</sup> Taylor, R W (1986) "Urban Development Policies in Nigeria: Planning, Housing and Land Policy". In: a revision of a paper presented at World Congress on Land Policy, held in London, on July 7<sup>th</sup> – 11<sup>th</sup>, under the auspices of London Institute of Land Policy.

<sup>25</sup> (1977) 10 CCHCJ, 2 447.

<sup>26</sup> Operational in Edo State and Delta State.

<sup>27</sup> S. 17(3)

<sup>28</sup> S. 18(1)

## **CONCLUSION**

This paper has attempted to show how planning laws can be applied in the construction and management of houses to improve the environment. It has also revealed that the protection and improvement of the environment is important both to the present as well as the future generation. The paper has also shown that the need for development has left most cities in Nigeria without enforcing planning rules and that the situation has led to the creation of slums and other unpleasant environment.

Moreover, it was revealed that in Nigeria, most major cities and towns have grown beyond their delineated boundaries. This situation has led to the need for towns to be created, as the creation of new towns can help to disperse crowded cities and leads to the creation of a healthier environment. In fact the construction of new towns enables the improvement of the environment. Consequently, the provisions of planning laws must be strictly complied with in the construction of the houses that makes up new towns in order to keep the environment in healthy condition safe for habitation.

This paper also disclosed that slums and other unpleasant environment is a reflection of the lack of a master plan for such an area or the ineffectiveness of the relevant authority in enforcing the existing planning laws. The paper further reveals that planning laws could also be used to prevent the development of slums and ensure the creating of space for free flow of air affecting ventilation. Thus a proper and effective enforcement of the provisions of planning laws remains the key to environmental protection and improvement in Nigeria.