

LEGAL OVERVIEW OF HOUSING IN PUBLIC AND PRIVATE ENTERPRISES

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**“the foxes have holes, and the birds of the air have nests;
but the son of man have nowhere to lay his head.”¹**

I. INTRODUCTION

Shelter represents one of the most basic human needs and has no doubt a profound impact on the health, welfare and productivity of the individual.² Housing, particularly urban housing remains an intractable problem in the less developed countries of the world, Nigeria inclusive. The acute shortage of housing in developing world was the subject of World Bank Report³ that “the urban poor, typically housed in slums or squatters settlements often have to contend with appalling overcrowding, bad sanitation and contaminated water. The sites are often illegal and dangerous. Forcible eviction, floods and landslide and chemical pollution are constant threats.” This problem is not unconnected with our population explosion and uncoordinated rural urban migratory pattern which exerts excessive pressure on housing demands in the cities.

A study of the housing situation reveals that it is characterized by an inadequacy for which a combination of social, economic, demographic and technological factors is responsible. Throughout Africa statistics show quite clearly that urban dwellings are in general, overcrowded and lacking in most elementary amenities and surrounded by a deplorable urban landscape situation.⁴ It is in apparent recognition of the problem that a

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1. Mathew 18 V 20 The Holy Bible, Revised Standard Version.
2. Oludayo Amokaye: The Role of the Judiciary in the Administration of Rent Control and Recovery of Residential Premises Edict No.6 of 1997. Report of a Workshop: Edited by Professor E.N.U. Uzodike.
3. See World Bank Report (1990), Page 30-31.
4. Ebenezer Acquaye: A Theological Review of Housing Problem in Developing Countries published in Housing in Nigeria Edited by Poju Onibokun.

article for the provision of adequate shelter was recognized as a right internationally.

Article 25 of the Universal Declaration on Human Rights 1948 declares that

“every man has the right to a standard of living adequate for the health and well being of himself and his family, including food, clothing housing⁵ and medical care and necessary social services:⁶

The recognition of the problem in Nigeria is instructive of provision of Section 16(2) of the 1979 constitution⁷ on the Fundamental Objectives and Directive Principles of the State Policy that “the state shall direct its policy towards ensuring that suitable and adequate shelter is provided for the citizenry”⁸

It is in the light of this development that this paper seeks to have an overview of the legal machinery for the realization of the rights to shelter of an individual within the Nigerian state; with special emphasis on provision of housing in the public and private enterprises of the economy. The approach is to look at legislation and government policies affecting the provision and accessibility to adequate housing by the members of staff of public corporations and private companies in particular and the generality of the public in general.

II. CONSTITUTIONALITY OF RIGHT TO SHELTER

In spite of the acute shortage of shelter for the citizenry there is no constitutional provision to guarantee the right to adequate shelter. The closest to the expression of such

5. Emphasis mine.

6. See also Principle 7.6 of Agenda 21 which recognizes that access to life health shelter is essential to a person psychological and economic well being and should be a fundamental part of the national and international action. See also Article 11(1) of the International Covenant on Economic and Social and Cultural Rights (1966) which provides that parties to the covenant “recognize the right of everyone to an adequate standard of living standards and his family including adequate food, clothing, and housing....”.

7. As amended by Decree 107 of 1993.

8. See Section 16(2) d of the 1999 Constitution of Nigeria.

3.

a right can only be found in the provision of section 16(2)(d) of the 1999 constitution⁹ on fundamental Objectives and directives principles of State Policy. By that section it is provided that

“The state shall direct its policy towards ensuring that suitable and adequate shelter... are provided for all citizens”.

However, laudable as the provision was it has been judicially determined that it is non-justiciable and cannot be subject of an enforceable right before Court. The non-justiceability of the provision has therefore made nonsense the acclaimed right to shelter as provided by the United Nations Charter on Universal Declaration of Human rights. The only positive purpose of the constitutional provision is to remind the state of the need to provide adequate shelter for the citizenry.

III. NATIONAL HOUSING POLICY

The following are the specific objectives of the Federal Government as spelt out in the National Housing Policy published by the Federal Government in 1981:

- (i) To increase and improve overall quantity and quality of housing
- (ii) To ensure that the provision of housing units are based on realistic standards which the prospective home owners can afford.
- (iii) To give priority to housing programmes designed to benefit the low income groups.
- (iv) To mobilize housing finance from all sources.

9. See Section 16(2) d of the newly promulgated 1999 Constitution of Nigeria.

4.

- (v) To encourage every household to own its own home, by providing more credit.
- (vi) To encourage and support private initiatives and activities in the production of housing
- (vii) To encourage local production of building materials.
- (viii) To provide infrastructural services particularly suitable for self help housing programmes.
- (ix) To improve the quality of rural housing and rural environment through integrated rural development.¹⁰

To realize these objectives the Federal Government embarked on an extensive construction of dwelling houses throughout the state of the federation including Abuja. A total number of 10,000 Units of houses were projected for each state of the federation, especially for the low and middle income earners in the society.

However, the programme did not record huge success before the civilian government was terminated by Military incursion of 31st December 1983. The housing programme of that time was plagued by many problems ranging from political, social-economic and cultural problems. In most cases the houses built were of inferior quality and too small for occupation by a family of four. There was also the problem of lack of infrastructures like roads, water and electricity in these new estates. The political wrangling between Federal Government and the State over land allocation for the project was also a contributory factor to the failure of the venture in some states.¹¹ The

10. See Federal Ministry of Housing And Environment: Nigerian Housing Policy, Government Press 1981.

11. In Old Oye State, The UPN controlled government under Chief Bola Ige sued the Federal Housing Authority and Minister of Housing for trespass for illegal entry into land for its housing project in Oyo and Ogbomosho. See Nigerian Daily Times of Feb. 13, 1981 and March 5, 1981.

programme also encountered the problem of prohibitive cost of building materials.

While the government was projecting to build house for all, it overlooked the major role of the building materials industry and failed to provide incentives to make them produce at relatively cheaper prices and at maximum capacity to meet the upsurge in the demands for their products.

IV. NATIONAL HOUSING FUND DECREE

In spite of the constitutional inadequacy for provision of housing to the citizenry, the government has long realized the need to provide shelter for the citizen. It is in the light of this that the National Housing Fund Decree¹², in furtherance of the National Housing Policy was promulgated. The main objectives of the fund amongst others are;

- (a) To facilitate the mobilization of fund for the provision of houses for Nigerians at affordable prices.
- (b) To ensure the constant supply of loans to Nigerians for the purpose of building, purchasing and improvement of residential houses.
- (c) To provide incentives for the capital market to invest in property development.¹³

The resources of the Fund are to be provided by the civil servants; and the private sector of the economy, privately employed people, the commercial and merchant banks, insurance companies and the Federal Government.¹⁴ The Decree provides that each named group shall contribute a certain percentage to the resources of the fund with the insurance group having the highest contribution of 20 percent of its non-life fund and 40

12. No. 3 of 1992.

13. Section 2 of Decree 3 1992.

14. Section 3.

percent of its life fund. Curiously however the federal Government contribution is not based on percentage but on the provision that “it shall make adequate financial contribution both in local and foreign currency to the fund as it may deem necessary.”¹⁵ The management of the fund for the benefit of Nigerians is vested in the Federal Mortgage Bank through wholesale mortgage lending to primary mortgage institutions. For strict adherence to the Decree, offences and penalties are provided in the Decree.¹⁶

The promulgation of the Decree is not only commendable but a step in the right direction. However, as with other programmes in Nigeria, it is the administration and implementation of the objectives of the Decree that may be the problem. Nigerians are never bereft of ideas, but the manifestation such idea into reality is usually the problem. It is alleged that a large sum of the contribution to the fund is lying idle with the Federal Mortgage Bank and even where funds are given to primary mortgage finance houses, such is not well monitored giving room for diversion of fund by these institutions. Another inadequacy noticed in the Decree is the ambiguous nature of Federal Government contribution to the fund and non-inclusion of state contribution. A clear provision as to the percentage contribution of the Federal Government annually, either from the budget, or from allocation to Federal Ministry of Housing would have put the fund on a firm stead. Also since the fund is a national fund and virtually all facets of the economy are contributors, it is opined that the states should also be made to contribute to the fund.

15. Section 4, 5 and 6.

16. Sections 20, 21 and 22.

V. FEDERAL MORTGAGE BANK ACT¹⁷

To further realize the policy of National Housing Programme, the Federal Government promulgated the Federal Mortgage Bank Act, the functions of which include the granting of long-term credit facilities to Nigerians. The bank also has the function of providing, at competitive commercial rates of interest, credit facilities to commercial property developers, estate developers and developers of offices and other specialized buildings. To carry out research on mortgage finance activities and the building construction industry in the country, and to invest in companies engaged in the manufacture or production of building materials in the country with a view to stabilizing the cost of such materials.¹⁸

This law is made not only to directly solve the housing problems of Nigerians but also indirectly by advancing credit to primary mortgage institution for the same purpose and also for realizing the policy behind the setting up of the Housing Fund Decree. However, the modalities for granting the loan and advances both to individuals and mortgage institutions are not clearly spelt out in the Act, as same is left for the board of the Bank. One cannot therefore guarantee consistency and continuity of policy with respect to loan advancement by the bank. This, it is submitted may give room for manipulation of the law, favoritism and double standard.

In realization of the enormity of the problems of housing the law seeks to boost the effort of manufacturers of building materials by investing in the industry and even

17. Cap. 138 LFN 1990.

18. See Section 2 of Cap. 138 LFN 1990.

conducting research in the area to bring about stability in the market and the production of building materials at a reasonable price. And to encourage private sector to invest in the provision of housing the bank has the mandate to extend their credit facilities to private investors in the estate and property development.

It can be said that the provision of the law sets a solid foundation for the realization of the National housing Policy of the government upon which the public and private enterprise in the country could build to provide the Housing needs of their employees. The combined effect of the National Housing Fund Decree, the Federal Mortgage Bank Act and the law regulating the establishment of Primary Mortgage institutions¹⁹ is to provide the financial base or the provisions of housing for the citizenry. However, the fund can only be meaningfully used if there is availability of land upon which to build the house. It is therefore, important to have a look at government effort at making land available to all and sundry.

IV. LAND USE ACT.²⁰

The problems encountered in obtaining land for national projects beneficial to the country and the community, and the need to streamline and unify land legislation in the country, were among the reasons that informed the promulgation of the Land Use Act in 1978. By section 1. of the Act

“all land comprised in the territory of each state in the Federation are hereby vested in the Military Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Decree.”

19. Mortgage Institution Act Cap. 231 LFN 1990.

20. Cap. 202 LFN 1990

An avalanche of literature has been written on this Decree²¹ as to its nature, purport and relevance in land administration in this country. Unfortunately the inelegant drafting of the provision of the Decree has not helped matters. According to a learned Jurist

“The land Use Act as a major legislation affecting the fortunes of every Nigerian leaves a lot to be desired in its drafting.”²²

A legislation made to provide land for the citizen has turned out to deny the citizens property rights. The interpretation of the Supreme Court on the consent provision²³ and its likelihood effect on commercial transaction as delivered in *Savannah Bank Limited v. Ajiloh*²⁴ is instructive. According to Obaseki JSC who wrote the lead judgement in the case;

“In my view and I agree with Chief Williams’ expression of anxiety over the implementation or consequences of the implementation of the consent clauses in the Decree; it is bound to have a suffocating effect on the commercial life of the land and the house owning class of the society who use their properties to raise loans and advance from the banks”²⁵

Realising its suffocating effects on mortgages and provision of housing, Prof. Kasumu opined that,

“There is no reason why mortgage to Banks and other financial institutions should not be exempted from the consent provisions of the Act, as was the case under the Acquisition of Lands by Aliens Law”²⁶

21. See National Workshop on Land Use Act 1978, Ed. J.A. Omotola: The Land Use Act: Administration and Policy Implication Ed. Olayide Adigun. The Supreme Court and the Land Use Act – J.A. Omotola 10 & 11 JPPL 1989; F.O. Adeoye: The Land Use Act 1978 and the 1979 Constitution 10 & 11 JPPL 1989; Taiwo Osipitan: The Land Use Act JPPL 1991: I. A. Umezulike: Does the Land Use Act 1979 Expropriate 5 JPPL 1986; J.F. Fekumo: Does the Land Use Act Expropriate: A rejoinder 8 & 9 JPPL 1988.

22. Obaseki JSC in *Savannah Bank Ltd. V. Ajiloh* (1989) 1 NWLR,

23. Section 21 LUA 1978.

24. (1989) 1 NWLR pt. 97; 305.

25. (Supra) p. 329.

26. Prof. A.B. Kasumu: The Question of Consent To Alienation – Effect on Development – Land Use Act Report of A National Workshop. Ed. J.A. Omotola.

From the barrage of criticism that trailed the promulgation of the Act and the implementation of it in the last 20 years or so, one can say with reasonable justification that the Act has failed to make available land for the housing needs of the citizenry. There is therefore a conflict of policy and implementation in the administration of the Act which has so far impeded the realization of its objective.

Though the Act aims at a minimum of one man one plot policy through its provision that no person shall hold more than half hectare of undeveloped land in urban areas.²⁶ The Act has failed to solve the problem of land availability as various ways are being used by the public to circumvent its provision²⁷ thereby leaving the Governor with nothing to allocate to needy members of the society. Even where the government are able to secure land for public purposes, such land are usually sold by governments at exorbitant prices beyond the reach of average common man and any individual contribution made with the Mortgage Bank and National Housing Fund. It is in realization of this problem that one commentator asked the question “Does the land policy in a country produce a housing situation which must constitute a burden to the tenant class in a society?”²⁸

Where an individual succeeds in building on government allotted land, irrespective of the cost of the building and the cost of acquiring the land; if the right of occupancy is

26. Section 34 Land Use Act.

27. It is a usual practice among conveyancers to backdate the transaction to pre-Land Use Act date to escape the need for consent.

28. Rent Control and Recovery of Residential Premises Edict. A General Evaluation of the Policy and Principles Report of a Workshop Edited by Prof. E.N.U. Uzodike.

revoked, one cannot get more than “an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked”²⁹ And for any improvement thereon on amount of the replacement cost of the building, installation or improvement...”³⁰ These and many others are impediments to adequate provision of housing for the teeming population of this country. It is therefore ripe for the Land Use Act to be reviewed and amended to give it the necessary policy thrust for the realization of its objectives.

VIII. MORTGAGE INSTITUTIONS ACT³¹

The Mortgage Institution Act is the Principal legislation regulating the establishment and operation of Mortgage Finance business in Nigeria. The rationale for the promulgation of this law is the need to promote a more plausible evolution of institutional structures capable of accelerating the development of financial intermediation within the housing delivery system using appropriate financial and legal instrument³². The major objective of the law is to make provision for the establishment and licencing of Mortgage Institutions, to grant loans and advances to individuals for the purchase or construction of a dwelling house, improvement or extension of an existing dwelling house and to accept savings and deposits from members of the public and to pay interest thereon.³³ The fund of the institution are to be derived from its savings deposits and loans and grants from the National Housing Fund Decree.

29. Section 29(4) of Land Use Act.

30. Ibid.

31. Cap. 231 LFN 1990.

32.

33. Section 5 Mortgage Institution Act.

Every mortgage institution shall not only conduct proper evaluation of the mortgage loan submitted to it but shall also monitor the construction or extension of any dwelling house in respect of which a loan is granted.³⁴ This provision is to ensure that the loan is judiciously used for the purpose for which it was granted. Mortgage institutions are also to take adequate security on an existing property or the property in respect of which the loan or advance is being granted. The provision is to ensure payment and or recovery of the loans granted to the public so that where there is default the institution can attach the property in satisfaction of the loan. The problem with the application of this provisions is however found in the provision of the Land Use Act, Sections 21 & 22 on consent provision to any alienation of land, including mortgage transactions.

Any applicant for loan must therefore satisfy the provision of Land Use Act by obtaining the Governor's consent before he can benefit from Mortgage institution. This is even assuming that the land on which the mortgage is to be taken is covered by a registered title such as conveyance or Certificate of Occupancy.

It is in the realization of the problems that will arise from the absolute application of this provision that informed the argument of Prof. Omotola³⁵ that the interpretation of the section could not and should not be extended to include deemed grants under the Land Use Act. The dictum of Obaseki JSC earlier cited is quite instructive.³⁶ However, under the present law, as interpreted by the supreme Court in *Ajiloh v. Savannah Bank* (supra) every applicant must seek and obtain the governor's consent before the mortgage

34. Section 6 Mortgage Institution Act.

35. J. A. Omotola: *The Supreme Court and the Land Use Act 10 & 11 JPPL 1989.*

36. See Footnote 24.

loan could be perfected. In that wise the applicant must go through the complex, cumbersome and expensive procedure of obtaining governor's consent before obtaining the loan to build his house. This process does not only prolong the time for securing the loan and building the house but, additionally, increase the cost of providing housing for the members of the public. One can therefore conclude that the Land Use Act is the albatross working against government policy of providing housing for the common man.

IX. HOUSING IN PUBLIC ENTERPRISE: THE UNIVERSITY³⁷

Having critically examined national legislations aimed at providing for the housing needs of the citizenry, it is necessary to turn to the public and private enterprises and see how they go about the law to provide the housing needs of their staff. It must be appreciated that these enterprises cannot operate beyond the law, and we have observed in preceeding paragraphs that there is a major constraint in the Land Use Act at achieving the goals of providing housing for all. It is with this constraint in mind that an examination is being conducted into the housing policy and law in Nigerian Universities as examples of public enterprises.

The principal legislation creating any University in Nigeria is usually the University Act or Law.³⁸ A perusal of all these laws do not disclose any special provision on staff housing either for the staff or students.³⁹ It is therefore reasonable to conclude that the housing needs of the University staff are regulated principally by the national

37.

38. See for example University of Ibadan Act Cap. 454, LFN 1990. University of Ilorin Act Cap 455 LFN 1990. University of Jos Act Cap. 456 LFN 1990, Lagos State University Law Cap. 105 1994 Law of Lagos State.

39. Except under sections 36 & 37 of Lagos State University Law Cap. 105 where the law provides that the University may provide staff accommodation and must provide staff Housing Loan Scheme.

legislations⁴⁰ earlier discussed. Therefore the identified constraints in the application of those laws *mutatis-mutandis* apply to housing provision inside the University system. This is more so as every staff of the University, as a civil servant, contribute to the National Housing Fund.

However as already observed, the contribution to the fund by staff is grossly inadequate to buy land talk less of building a house on the land. This inadequacy has been made manifest by the galloping inflationary trends in the country which has eroded the economic worth of the Naira and the stipend paid to workers as salary. Since the salary is low the percentage contribution of the worker to the fund from this salary will also be low. Such staff will also have to encounter the ubiquitous Land Use Act and its problems before he could take the benefit of the fund provided by law for his housing needs.

However, in spite of no special legislative provision mandating the Universities to provide housing for its staff, the University authorities have themselves realized the impact of good housing system on the health and productivity of their staff. It is in the light of this that the University administration strives hard to provide staff quarters and subsidized tenancy to their staff. The Lagos State University, one of the new generation University, even provide statutorily for the establishment of Home Ownership Scheme and operation of Staff Housing Loan Scheme for its staff.

40. National Housing Fund Decree, Federal Mortgage Bank Act. Mortgage Institutions Act etc.

Apart from the provision of staff quarters and subsidized tenancy for their staff, some universities, like University of Lagos have gone ahead to initiate staff housing programmes beneficial to staff, while still in the employment of the University and on his retirement from the system. This programme is designed, irrespective of the National Housing Fund, to make staff a house-owner on or before his retirement from the services of the university.

One of the approaches adopted by the University of Lagos is to approach the state government for allocation of land to it for staff housing scheme. On securing such land the authority now re-allocate same to deserving members of staff and advance loan to the allottees for them to be able to buy the state land and obtain certificate of occupancy.⁴¹

Another approach being used by the University of Lagos is that the University purchases land from communities wholesale, partition it and re-allocate to staff on its pay-roll.⁴² In addition to allocating the land to staff, development loan⁴³ in form of materials is also given to staff in deserving cases. This will ensure that the land is developed by the staff and the housing loan is not used for purposes not connected with housing. It also has the advantage of supply of relatively cheap products which the University purchases wholesale from the manufacturer without any intermediary or middle man.

Apart from these direct approaches, the University also encourage the formation of Cooperative Credit and Thrift societies among its staff. These societies apart from

41. The University of Lagos Staff Housing at Magodo Phase I was obtained through this model.

42. The staff housing at Kayetoro Ajah was secured through this model.

43. Housing development loan ranges between N300,000.00 and N500,000.00 per person.

being able to provide back up financial support to staff in the quest for personal house, atimes involve themselves in the purchase of land for members corporately which is later divided and sold to individual members of the society. Over 100 plots of land have been acquired for University of Lagos staff through this approach.⁴⁵ This “Unilag approach” is recommended for all other Universities and public enterprises nationwide.

HOUSING IN PRIVATE ENTERPRISES

A private enterprise is defined as a business concern wholly or principally owned by private individuals. It is that enterprise that has little or no government patronage in its share holding e.g. P.Z. Industries, Lever Brothers, UAC etc. The welfare of staff of these institutions is also of paramount importance to the survival of the business. It is thus imperative for the staff to be adequately accommodated as this has direct consequence on its productivity. However what is on the ground with respect to staff housing, either in staff official accommodation, staff housing programme or staff housing allowance is a far cry from what is expected to be able to produce at optimum capacity.

It is a rarity in Nigeria to find an employer in the private sector of the economy providing accommodation for its staff, except for those in the upper echelon of the management of the enterprise. This attitude is not as a result of non-appreciation of the effects of good housing on staff productivity, but as a result of selfish economic interest of the employer and paucity of legislation in this area.

45. University of Lagos Housing II Cooperative Society Ltd.

The current legislation on housing which employer of labour in the private enterprise must comply with is no other than the National Housing Fund Decree. The provision of the decree in this respect is for the employer to deduct and remit to the fund certain percentage of the staff salary.⁴⁵ There is no provision mandating the employer to remit part of the profit of the enterprise to the fund except of course financial enterprises, like Banks and insurance companies.⁴⁶ As already pointed out, with the present paltry salary paid to staff, their percentage income contribution to the fund is inconsequential to the cost of obtaining land talk less of building a house thereon.

For the few companies that have realized and appreciated the need for good staff housing to productivity, their approach is to build staff housing estates,⁴⁷ give lump-sum housing loan to their staff,⁴⁸ pay good salary from which the staff may be able to plan building his own house⁴⁹ and at times sell accommodation to their private employees.

CONCLUSION

This paper, which is targeted at the legal overview of housing in private and public enterprise commenced with an exploration into the inadequacy of housing and the need to provide quality housing for the citizenry. Thereafter, national legislation on housing and their adequacy or otherwise was analysed to the conclusion that the legislative machinery for the provisions of housing in Nigeria is demand for these products. New industries should be established while the existing ones should be given financial incentives for turn around maintenance.

45. Section...9....National Housing Fund Decree.

46. Section ...5... National Housing Fund Decree.

47. E.g. West Africa Portland Cement Staff Housing Estate at Ewekoro and Sagamu Ogun State.

48. The Multinational Oil Companies e.g. Shell, chevron etc.

49. The Multinational Oil Companies.

In addition, alternative and cheaper building technology using locally sourced materials should be developed to complement the present technology. The idea expressed by Tade Ismail that

“...let the government encourage all civil servants to purchase the quarters occupied by the. They would pay for them with their pensions and gratuities,”⁵⁰ may also be adopted to ease the problem of housing.

The adoption and application of these recommendations by government will surely go a long way in ameliorating the difficulties and problems encountered in the Housing Sector of the economy.

50. Ibid 165.