

OPERATING THE ANAMBRA STATE PHYSICAL PLANNING LAW AND THE AWKA CAPITAL DEVELOPMENT AUTHORITY LAW: PALPABLE CONFLICTS AND IMPLICATIONS FOR GOOD GOVERNANCE*

Abstract

This work made a critical analysis of the Anambra State Physical Planning Law and the Awka Capital Development Authority Law with a view to elucidating the apparent conflicts precipitated by the simultaneous operation cum enforcement of both pieces of legislation. This work also considered the provisions of other relevant statutes like the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Land Use Act 1978 while highlighting how the current realities in Anambra State undermine the spirit and letters of these laws. Having found that this situation portends several negative effects on physical planning and good governance in Anambra State, this work made appropriate recommendations towards enhancing sustainable development in the society.

Keywords: Anambra State, Physical Planning, Urban Planning, Anambra State Physical Planning Law, Awka Capital Development Authority Law

1. Introduction:

The role of town planning as an integral aspect of sustainable development cannot be over-emphasised. It breeds the short and long term plans on the allocation and use of scarce land resources necessary for the growth and revitalization of urban, sub-urban, and rural communities, while helping officials at various levels of governance to make decisions concerning the immediate and potential social, economic, and environmental problems associated with the use of land. *A fortiori*, land use, allocation, management and other incidental matters are at the heart of all physical/town planning initiatives. In view of the importance of these for sustainable development which is the primary occupation of government, it is not surprising that government at various levels have over time set up various agencies and administered several policies and legislative enactments aimed at providing the populace which the much desired sustainable development through prudently regulated planning, allocation, use and management of scarce land resources, amongst other variables.

With particular emphasis on physical planning, Anambra State has at various times since the inception of democracy in 1999 operated several policies and legislations that have in no small way enhanced the standard and quality of physical planning initiatives within the State, thus providing a relatively-conducive environment and necessary impetus for developmental activities to thrive. Well-planned housing, commercial and industrial estates and layouts are rapidly on the increase in the State, e.g. Udoka, Iyiagu and Ngozika Housing Estates in Awka, the Trans-Nkisi Housing Estate in Onitsha, the Agu-Awka and Harbour Industrial Layouts in Awka and Onitsha, the yet-developing Oba Airport Commercial Layout in Oba, etc. Be that as it may, critical evaluation remains a *conditio sine qua non* to success in any enterprise, hence, the necessity for a periodic re-assessment of the journey so far while charting the course for further improvements.

The extant State legislation that primarily focuses on physical planning is the Anambra State Physical Planning Law No. 9 of 2013. The *modus operandi* for the application cum operation of this law in Anambra State shall be critically considered *pari passu* the Awka Capital Territory Development Authority Law No. 1 of 2010 (as amended by the Law No. 9 of 2014) in view of the apparent conflict presented by the operation of the two laws and the implications of this situation for good governance in Anambra State. Other relevant legislations like the 1999 Constitution of the Federal Republic of Nigeria (as amended 2011), the Land Use Act of 1978,¹ as well as authoritative judicial decisions will also be considered. Within the context of the peculiarities cum realities of the Anambra terrain, efforts will be made to offer certain recommendations towards enhancing development in this critical sector towards sustainable development.

2. The Anambra State Physical Planning Law

This piece of legislation which was largely modelled after the Nigerian Regional and Urban Planning Act of 1992² came into force on the 15th of May 2013 and applies to all urban and regional planning matters involving

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¹ Formerly the Land Use Decree No. 9 of 1978, now Cap. L5, *Laws of the Federation of Nigeria* 2004.

² Now Cap. N138, *Laws of the Federation of Nigeria* 2004.

government intervention, administration and control within the entire boundary of Anambra State of Nigeria.³ At the State level, this law prescribes that there shall be a regional plan, a sub-regional plan, an urban plan, a district plan, a local plan and a subject plan.⁴ At the local level, there shall be a district plan, a community development plan, a rural area plan, a local plan and a subject plan.⁵ A plan is defined as ‘a land use proposal expressed in words and graphics’.⁶ The law mandates the Anambra State Government to exercise its physical planning responsibilities in a manner as will ensure consistency in physical planning, development, organisation and co-ordination at all levels of planning administration in the State.⁷ The operation of this law is the primary occupation of the State Ministry of Lands Survey and Town Planning, the State Physical Planning Board and the Local Planning Authorities in each Local Government Area of the State.⁸ The Ministry is responsible for: (a) determination of the locations of infrastructural facilities and centres of economic activities in the State; (b) the conduct of research in physical planning; (c) provision of technical assistance on development control matters to the Board and Local Planning Authorities; (d) advise on State development projects and programs with socio-economic and land use impact; (e) formulation of legislation, policies, guidelines and strategies on physical planning matters and development in the State; (f) enforcing the provisions of the structure plan of the State; (g) liaise with national and international agencies on physical planning matters; (h) preparation of regional, sub-regional, district, local and subject plans in respect of State lands and in conformity with local plan regulations; (i) preservation of historic and architectural buildings of interest; (j) formulating guidelines for fostering inter-governmental, bilateral and multilateral cooperation on physical planning and urban development in the State; (k) issuance of land use clearance; approval of private and State layout schemes; (l) evaluation and enforcement of town planners’ technical report for all projects including land acquisitions and payment of compensations; (m) consideration of all other matters related to physical planning as may be referred to it by the State government.⁹

The Board has the following functions: (a) initiation and preparation of urban master/structure plans and other relevant plans in conjunction with relevant Ministries; (b) act as State implementing agency in projects related to physical and environmental planning; (c) provide the required infrastructure such as roads, drainages, water and electricity in all approved State and private layout schemes; (d) plan and implement urban renewal programs to upgrade the environmental quality of blighted parts of the State; (e) preserve buildings and objects of historical or architectural interest; (f) development control covering all development applications for petrol/gas/refinery stations, industrial developments, recreational developments covering areas above one hectare, developments on land outside an approved layout beyond two hectares, development plan applications by Federal, State or Local Government Institutions, all developments for residential, institutional, commercial and agricultural purposes, telecommunications masts and all developments above four floors (inclusive of the ground floor); (g) provision of technical assistance to Local Planning Authorities; (h) consultation and coordination with the State Ministry and Local Governments in the preparation of physical plans; (i) supervision of Local Planning Authorities; (j) initiation of acquisition of public use plots and open spaces in government-approved private layouts; (k) development and maintenance of open spaces, play grounds, recreational parks etc on State and private layout schemes; (l) other activities essential to the above functions.¹⁰

The Local Planning Authorities have responsibilities within rural areas for: (a) collaborate with the Ministry and Board in the preparation and implementation of district plans, community development plans, rural area plans,

³ See the Anambra State Physical Planning Law, sections 1 & 2.

⁴ *Ibid*, section 4.

⁵ *Ibid*, section 5.

⁶ *Ibid*, section 3. A regional plan means a statement of general policies and proposals for development plan designed to channel the growth of such a region in a desirable direction. A region is an area of land less than a country but more than a town area, having distinctive characteristic that distinguishes it from other areas. A development plan means a plan indicating the manner in which an area of land should be developed. District plans are plans designed for areas where factors in local planning need to be set out comprehensively. A local plan means any plan formulation within the context of a structure plan detailing ways in which policy and general proposals are to be implemented and includes district plans and action area plans. A rural area means any part of the State which is not designated an urban area. An urban area means any part of the State designated as such under section 3 of the Land Use Act. See *ibid*, section 3.

⁷ *Ibid*, section 6(1) & (2).

⁸ The Anambra State Physical Planning Board and the Local Planning Authorities are established under section 8.

⁹ *Ibid*, section 9.

¹⁰ *Ibid*, section 11.

local plans, and subject plans;¹¹ (b) preparation of annual report on the implementation of the National Physical Development Plan and State regional/sub-regional plan and submission of same to the board; (c) collection and management of local planning fees; (d) development control (without prejudice to the State/Board's interest) within its area of jurisdiction; (e) inspection of sites for siting/location/erection of billboards, including streets/roads for naming; (f) control and grant of planning permission for communication masts, radio links, cyber cafes, etc; (g) acquisition through the Board and development/maintenance of open spaces, playgrounds, recreational parks on public layouts; and (h) providing advice and technical assistance to the Local Governments and private individuals on urban and regional planning matters.¹² Both the Board and Local Planning Authorities are empowered to delegate their above-stated functions to any person(s) as they may deem fit, although such delegation shall not prevent the Board or Local Planning Authority from performing the said functions.¹³ The law also prescribes a comprehensive procedure for preparation of physical development plans. Upon preparation and approval, such plans are referred to as '*Operative Physical Development Plans*' and shall be adhered to by all persons and authorities.¹⁴ It is an offence for any person not being a registered town planner to prepare an Operative Physical Development Plan. It is also an offence for any person or group of persons to carry out the parcellation of parcels of land covered by an Operative Physical Development Plan. These offences are punishable by a fine of Fifty Thousand Naira or two months imprisonment.¹⁵

Part III of the law makes detailed provisions on development control and building/project monitoring with both the Board and the Local Planning Authorities having responsibility for such matters.¹⁶ The Control Department/Section, in the discharge of its functions, shall be entitled to receive the assistance of the police and other law enforcement agencies.¹⁷ The approval of the Control Department/Section is required for purposes of any land development such that a developer must submit a development plan to the relevant Control Department/Section and obtain a development permit before commencement of development. The said development plan must be prepared by a registered Town Planner and accompanied by architectural/structural drawings prepared by a registered Architect and/or Engineer as the case may be. No tier of government or their agencies are exempt from these provisions.¹⁸

The Control Department/Section may suspend or reject an application for development permit under section 35. It may also approve or delay the approval of an application for development permit under section 38, provided that such delay shall not exceed 30 days. The decision of the Control Department/Section shall be communicated to the applicant in writing and in case of a rejection of an application, shall contain the reasons for same.¹⁹ A development permit remains valid for two years from the date its approval was communicated to the developer and where the developer fails to commence development within the two years period, is subject to revalidation by the Control Department/Section that issued same.²⁰ The Control Department/Section is empowered to alter, amend, vary or revoke any conditions attached to the grant of a development permit provided that same does not conflict with the conditions attached to the certificate of occupancy or customary right of occupancy over the land, and notice of such intention must be communicated to the developer in writing stating the reasons for same. The Control Department/Section must consider any representation by the developer or holder of the permit before it makes a final decision on the matter, which decision must also be communicated to the developer or holder of the permit in writing.²¹ A dissatisfied developer may appeal to the Appeals Committee established under section 102 within 28 days of service of the notice of the Control Department/Section's decision.²² A similar procedure also applies in the case of an intention by the Control Department/Section to revoke a development permit, except that in this case, a dissatisfied developer may in the first instance appeal to the Commissioner responsible for Physical Planning and if still dissatisfied, appeal

¹¹ *Ibid*, sections 7 & 15(1).

¹² *Ibid*, section 15.

¹³ *Ibid*, section 16.

¹⁴ *Ibid*, sections 23 & 25.

¹⁵ *Ibid*, section 26.

¹⁶ *Ibid*, section 13(5).

¹⁷ *Ibid*, section 31.

¹⁸ *Ibid*, sections 32 - 34.

¹⁹ *Ibid*, section 38.

²⁰ *Ibid*, section 39.

²¹ *Ibid*, sections 40 & 41.

²² *Ibid*, section 42.

against the Commissioner's decision to the Appeal's Committee within 28 days of service of the notice of the Control Department/Section's decision.²³

Following a revocation, compensation shall be paid if development had commenced, or the developer or holder is liable in damages to a third party for breach of contract, or the developer had incurred expenses or suffered loss during the process of obtaining the development permit.²⁴ The amount of the compensation shall be such as to compensate the developer for his actual losses incurred pursuant to the revocation and shall not exceed same. Indeed, no compensation is payable where the development was not in accordance with the terms of the development permit, or where the right of occupancy on the land has been revoked pursuant to the Land Use Act, or where the claim for compensation is not made within 28 days of service of notice of revocation of the development permit.²⁵ The compensation, where payable, shall be paid within 180 days from the date it was claimed and any dispute as to the amount payable may be referred to the Planning Appeal Committee with a right of further appeal to the High Court within 28 days of the decision of the Planning Appeal Committee.²⁶

Further, the Control Department/Section is empowered to issue an enforcement notice which may be a stop-work notice, contravention notice, quit notice, demolition notice, or a revocation notice in respect of any development commenced without, or in breach of the terms of a development permit/approval, and directing the developer to alter, vary, remove or discontinue the development, or imposing such further conditions as it may deem fit.²⁷ Where the Control Department/Section finds that any structure is defective such as to pose a danger or constitute nuisance to the occupier or public, it shall issue the developer with a 21 days demolition notice and a further 14 days final notice before demolishing the structure, provided that where the developer is in breach of the terms of an enforcement notice already served on him, the demolition shall be carried out without any further notice.²⁸ Unless the structure is illegal, the Board or Local Planning Authority shall, prior to the demolition of any building used for human habitation, provide alternative accommodation or facilitate the construction of same for the persons holding title to building to be demolished, and afford them reasonable time and assistance to enable them move in and settle in the alternative accommodation before effecting the demolition.²⁹

Part V of the law provides for compulsory acquisition of land for purposes of planned urban or rural development and payment of compensation for same. It prescribes that the revocation of any right of occupancy for such purposes together with all matters connected with payment of compensation for same must be in accordance with the Land Use Act, though any compensation payable shall be paid within a reasonable time.³⁰

3. The Awka Capital Development Authority Law

This legislation came into force on the 3rd day of November 2009, though it was subsequently amended in 2014.³¹ It establishes the Awka Capital Territory Development Authority (ACTDA).³² The law charges the ACTDA with the following functions, *viz*: (a) accelerating infrastructural development of the Awka Capital Territory; (b) preparing a master plan for the capital territory and of land use with respect to town planning within the capital territory; (c) implementing the Awka Capital Territory master plan; and provision of infrastructural services in accordance with the master plan.³³ To enable the ACTDA realise its mandate, the law empowers it to: (a) hold and manage moveable and immovable property provided it can only dispose of any property with the approval of the Governor; (b) construct and maintain such roads, railways, sidings, bridges, reservoirs, water courses, recreation facilities, buildings, plants, machinery and such other works as may be necessary for the discharge of its functions; (c) enter into such contracts, partnerships and ventures with either individuals or corporate bodies as are instrumental to the discharge of its functions; (d) undertake such research as may be instrumental to the discharge of its functions; (e) undertake fund raising activities provided that all

²³ *Ibid*, sections 43 & 44.

²⁴ *Ibid*, section 47.

²⁵ *Ibid*, section 48.

²⁶ *Ibid*, sections 49 – 51.

²⁷ *Ibid*, sections 52 – 65.

²⁸ *Ibid*, sections 66 & 67.

²⁹ *Ibid*, section 90.

³⁰ *Ibid*, sections 80 & 81.

³¹ Awka Capital Territory Development Authority Law No. 1 of 2010 (as amended by the Law No. 9 of 2014).

³² *Ibid*, sections 3 & 4.

³³ *Ibid*, section 7.

loans are obtainable with the approval of the Governor; (f) prepare annual budgetary estimates of its activities and submit same to the House of Assembly through the Governor; (g) exercise such powers as are expedient for effective implementation of its functions.³⁴ The law establishes a Board for the ACTDA and *inter alia*, charges it with responsibility for the formulation of policies for the effective performance of the functions of the Authority.³⁵ However, the ACTDA functions under the direct supervision of the Governor though the Governor may delegate his supervisory duties as he may deem fit.³⁶

4. Other Relevant Statutes

Constitution of the Federal Republic of Nigeria 1999 (as amended 2011)

As regards the subject of discourse, the relevant provisions of the Constitution are contained in Chapter IV thereof. Section 43 provides that every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria. No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things, requires the prompt payment of compensation therefore and gives to any person claiming such compensation a right of access to a court of law or tribunal or body having jurisdiction in that part of Nigeria for the determination of his interest in the property and the amount of compensation payable.³⁷ However, this shall be construed as affecting any general law that provides, *inter alia*, for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals; or relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry; or providing for the carrying out of work on land for the purpose of soil-conservation; or subject to prompt payment of compensation for damage to buildings, economic trees or crops, providing for any authority or person to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities.³⁸ The Constitution further provides that any person who alleges that any of his rights under the above provisions has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.³⁹ The High Court shall have original jurisdiction to hear and determine any such application and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcement or securing the enforcement of any such right.⁴⁰

Land Use Act 1978⁴¹

The Act vests all land comprised in the territory of each State in the Governor of that State, to hold in trust and administer same for the use and common benefit of all Nigerians.⁴² All lands in urban areas shall be under the control and management of the Governor while all other lands shall be under the control and management of the Local Government, within the area of jurisdiction of which the land is situated.⁴³ The Act establishes in each State a body to be known as ‘the Land Use and Allocation Committee’ with responsibility for: (a) advising the Governor on any matter connected with the management of land in an urban area; (b) advising the Governor on any matter connected with the resettlement of persons affected by the revocation of rights of occupancy on the ground of overriding public interest; and (c) determining disputes as to the amount of compensation payable for improvements on land.⁴⁴ It also establishes a ‘Land Allocation Advisory Committee’ in each Local Government with responsibility for advising the Local Government on any matter connected with the management of land in non-urban areas.⁴⁵ The Governor is vested with powers to designate parts of the territory of the State as

³⁴ *Ibid*, section 8.

³⁵ *Ibid*, section 9.

³⁶ *Ibid*, section 20.

³⁷ CFRN 1999 (as amended 2011), section 44(1).

³⁸ *Ibid*, section 44(2).

³⁹ *Ibid*, section 46(1).

⁴⁰ *Ibid*, section 46(2).

⁴¹ Formerly the Land Use Decree No. 9 of 1978, now Cap. L5, *Laws of the Federation of Nigeria* 2004.

⁴² Land Use Act, section 1.

⁴³ *Ibid*, section 2(1).

⁴⁴ *Ibid*, section 2(2).

⁴⁵ *Ibid*, section 2(5).

constituting land in an urban area.⁴⁶ Further, the Governor is empowered to revoke a right of occupancy for overriding public interest.⁴⁷ The Governor shall also revoke a right of occupancy in the event of the issue of a notice by or on behalf of the President if such notice declares such land to be required by the Federal Government for public purposes.⁴⁸ Granted that the Governor may revoke a statutory right of occupancy under section 28, revocation shall be signified under the hand of a public officer duly authorised in that behalf by the Governor and notice thereof shall be given to the holder. Apart from cases of revocation due to breach, the holder and the occupier shall be entitled to compensation for the value of their unexhausted improvements on the land.⁴⁹ In the case of a community, the same shall be paid either: (a) to the community; or (b) to the chief or leader of the community to be disposed of by him for the benefit of the community in accordance with the applicable customary law; or (c) into some fund specified by the Governor for the purpose of being utilised or applied for the benefit of the community.⁵⁰ The Act also prescribes the method for the determination of the amount of compensation payable and further provides that any dispute arising in that regard is to be referred to the appropriate Land Use and Allocation Committee.⁵¹

The High Court is vested with exclusive original jurisdiction in respect of proceedings relating to any land the subject of a statutory right of occupancy and proceedings to determine any question as to the persons entitled to compensation payable for improvements on land under the Act.⁵² Customary courts are vested with jurisdiction in respect of proceedings relating to a customary right of occupancy granted by a Local Government.⁵³ It is an offence for any person in an urban area to erect any building, wall, fence or other structure, or to enclose, obstruct, cultivate or do any act on any land which is not the subject of a right of occupancy or licence lawfully granted him by the Governor.⁵⁴

5. Palpable Conflicts and Practical Realities: The Anambra Experience

Functions/Powers of the Regulatory Agencies

As already seen, the Anambra State physical Planning Law creates several agencies and imposes on both these agencies and the Ministry several functions/powers. The Awka Capital Territory Development Authority Law also creates an agency and confers certain powers on it. However, a perusal of these functions/powers shows that they are not clear-cut such that they appear to overlap. For example, both the ANSPPB (in conjunction with the relevant Local Planning Authorities) and the ACTDA have powers to prepare and implement master plans for the capital territory. Both have the duty to provide infrastructural services in accordance with their master plans. Both have powers of development control and to collect the fees for development permit, etc. As a result of the above situation, it is not unusual within the Awka capital territory to find different enforcement notices/instructions emanating from these entities in respect of the same property. In fact, it has become advisable for property developers within the Awka capital territory to clear with both bodies to avoid embarrassment. The situation is almost akin to the biblical 'Tower of Babel' and at this point when the Nigerian economy has officially been declared to be in a recession, one questions the wisdom behind the simultaneous

⁴⁶ *Ibid*, section 3.

⁴⁷ *Ibid*, section 28(1). Overriding public interest in the case of a statutory right of occupancy means: (a) the alienation by the occupier by assignment, mortgage, transfer of possession, sublease, or otherwise of any right of occupancy or part thereof contrary to the provisions of the Act or of any regulations made thereunder; (b) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation; (c) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith. See *ibid*, section 28(2). Overriding public interest in the case of a customary right of occupancy means: (a) the requirement of the land by the Government of the State or by a Local Government in the State in either case for public purpose within the State, or the requirement of the land by the government of the Federation for public purposes of the Federation; (b) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith; (c) the requirement of the land for the extraction of building materials; (d) the alienation by the occupier by sale, assignment, mortgage, transfer of possession, sublease, bequest or otherwise of the right of occupancy without the requisite consent or approval. See *ibid*, section 28(3).

⁴⁸ *Ibid*, section 28(4).

⁴⁹ *Ibid*, section 29(1).

⁵⁰ *Ibid*, section 29(3).

⁵¹ *Ibid*, sections 29(4) & 30.

⁵² *Ibid*, section 39(1).

⁵³ *Ibid*, section 41.

⁵⁴ *Ibid*, section 43.

operation of these agencies with scarce State resources. What is that special mandate of the ACTDA that cannot be achieved under the regulatory framework of the ANSPPB? Why operate the two laws?

Inconsistency in the Implementation of Development Plans

It is no longer news that the success of most development plans in Anambra State was hindered by inconsistency in implementation. A typical example is the Oba International Airport project. As far back as 1991, the Government of Anambra State had concretized plans to develop an international airport at Oba. In that same year, the government entered into a contract with the Oba landowners and Fezel Nigeria Ltd to facilitate the project, pursuant to which the parties formed and incorporated the Anambra Airport Management Company Limited on 3rd June 1992. By 1993, Government had issued the said company with a Certificate of Occupancy over the land and the company commenced construction of the airport thereon until same was suspended owing to security concerns by the then Federal Government.⁵⁵ It is no longer news that currently, the Anambra State Government has concretised arrangements to abandon this project and site the new airport at Umueri, same to simply serve as a cargo airport.⁵⁶ But that is not all, the Oba international airport project was a comprehensive scheme, with plans for a modern housing estate which will serve as a satellite village for Onitsha and its environs. Currently, the government had granted part of this land to the Emodi Shoe Dealers Association. All these measures were taken without any reference to the extant contract with the Anambra Airport Management Company Limited or the relevant provisions of the Constitution and Land Use Act on revocation of rights of occupancy and payment of compensation.⁵⁷ Another case in hand is the Awka Executive Business District. Previous administrations had conceived a plan to site the executive, legislative and judiciary headquarters there and to eventually situate most government offices at that place. Currently, the State Judiciary Headquarters, the State House of Assembly Complex, the State Civil Service Secretariat, the Federal Secretariat, and offices for other government agencies and departments are located there. Surprisingly, the government seems to have abandoned this plan mid-way. The current news is that the area is to be laid out into residential and commercial plots for private developers. A new government house is now under construction at Agu-Awka, the unfinished edifice at the Awka Executive Business District meant for the same purpose having been abandoned.⁵⁸ The list is endless.

Compulsory Acquisition of Land and Compensation

Another worrisome issue is the attitude of government to compulsory acquisition of lands and payment of compensation therefore. The law remains that government can compulsorily acquire lands and revoke pre-existing rights of occupancy thereon only for overriding public interest. The courts have consistently held that it is wrong for the government to compulsorily acquire land otherwise than for public purposes, e.g., to transfer same to private individuals. This position was reiterated in *Olatunji v. Military Governor Oyo State*⁵⁹ as thus, ‘... if a property is ostensibly acquired for public purposes and it is subsequently discovered that it has directly or indirectly been diverted to serve private need, the acquisition can be vitiated. The acquiring authority cannot rob Peter to pay Paul by diverting one citizen of his interest in a property by vesting same in another.’⁶⁰ In the light of this, the question remains as to the validity of the plans to parcellate and allocate plots within the Oba International Market Scheme and the Awka Executive Business District to private developers, including traders’ associations.⁶¹ The issue of compensation also follows. It is no news that government is yet to fully pay compensation for most of the lands acquired for public purpose in Anambra State, including the Oba

⁵⁵See the records of proceedings in *Suit No. HID/224/2017: AAMC Ltd & 2 Ors v. Chief Nwabueze Umeh* currently pending before the Anambra State High Court, Idemili Judicial Division, holden at Ogidi, Anambra State.

⁵⁶V Ujumadu, ‘30 Years after promise, Anambra Finally Gets an Airport’, Vanguard Newspaper, 5th May 2021, available online at <<https://www.vanguardngr.com/2021/05/30-years-after-promise-anambra-finally-gets-an-airport/amp/>>

⁵⁷See the records of proceedings in *Suit No. HID/93/2020: Chief Noel Ezenwa & 4 Ors v. Executive Governor of Anambra State* currently pending before the Anambra State High Court, Idemili Judicial Division, holden at Ogidi, Anambra State.

⁵⁸Daily Post, ‘Anambra Government Approves Construction of New Government House, Governor’s Lodge’, available at <<https://dailypost.ng/2013/11/26/anambra-government-approves-construction-new-government-house-governors-lodge/>>

⁵⁹ [1995]5 NWLR (pt. 397) 586 @ 602.

⁶⁰See *A. O. Osho v. Foreign Finance Corporation* [1991]4 NWLR (pt. 184) 157; *Chief A. O. Lawson v. Chief A. A. Ajibulu* [1991]6 NWLR (pt. 195) 44; *Chief Ereku v. The Military Governor, Mid-Western State of Nigeria* (1974)1 All NLR (pt. 2) 163; *Ajao & Anor v. Sole Administrator for Ibadan City Council* (1971)1 NMLR 74.

⁶¹See the records of proceedings in *Suit No. HID/93/2020: Chief Noel Ezenwa & 4 Ors v. Executive Governor of Anambra State* currently pending before the Anambra State High Court, Idemili Judicial Division, holden at Ogidi, Anambra State.

International Airport project land.⁶² In *National Universities Commission v. Oluwo*,⁶³ the Court of Appeal held that where land has been compulsorily acquired, the person whose land has been so compulsorily acquired is entitled to a reasonable compensation. The right to own property by an individual is well entrenched in the Constitution of the Federal Republic of Nigeria and it carries with it, the right to dispose of the said property. The government with all its might cannot acquire the land of an individual without paying adequate compensation to the dispossessed citizen.⁶⁴ Thus, failure to pay compensation within a reasonable time is a breach of fundamental rights.

6. Sustainable Physical Planning and Good Governance: The Way Forward

Uniform Planning and Administration

There is need to amalgamate the dual statutory and regulatory framework currently in place in Anambra State. This will eliminate the present situation where there are conflicting and overlapping planning and implementation responsibilities between the ACTDA and ANSPPB on one hand, and between the ANSPPB, the Local Planning Authorities and the Ministry of Lands, Survey and Town Planning on the other hand.

Implementation Consistency

Government is a continuum and physical planning is an exercise with intended long term effects and benefits. No meaningful progress will be achieved in terms of physical development when successive administrations simply abandon pre-existing plans and introduce new ones without any consideration the quantum of resources already consumed by the abandoned plan. *A fortiori*, there is great need for successive administrations to imbibe a culture of consistency in pursuing physical development plans.

Legal Compliance in Compulsory Acquisition and Compensation

In his book titled, 'Introduction to the Study of the Law of the Constitution', Dicey⁶⁵ propounded that the rule of law '...means in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government ... It means, again, equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts ...' It follows therefore, that in a democratic society like ours founded on the constitutional doctrine of the rule of law, the law of the constitution becomes the litmus test for determining the legality or otherwise of all governmental actions. Under our constitution, any compulsory acquisition must be by government and for an overriding public purpose. Further, adequate compensation must be paid within a reasonable time. Anything short of this amounts to an infringement of the fundamental rights of the citizens as guaranteed by the constitution and is antithetical to the rule of law. *A fortiori*, the current situation where lands are compulsorily acquired by government and subsequently handed over to private developers or compensation for such acquisition not paid after several years and despite repeated demands for same runs contrary to the constitutional rights of the customary landowners and the rule of law. This must be shunned.

Need to Explore Innovative Approaches

Cities are structurally different and cannot accommodate standardized formula or rigid methodologies if sustainable management and governance are to be achieved. To manage this diverse physical, geographic, socio-economic and cultural, political factors necessitate pragmatic approaches. Towards this objective there is need to involve the society in city management. A reappraisal of the technical and legal/enforcement framework for implementing urban development programme is required. Capacity building should be an important component of this approach. The decision making process in physical planning in Anambra State should be balanced with participatory approach as key element in decision making process towards sustainable urban management. This will give the urban dwellers a sense of belonging. Among specific innovative approaches to sustainable urban management include the need for institutional restructuring to cope with the rapid urbanization process; existing local authorities need to be restructured to manage these new capacities.

⁶²See the records of proceedings in *Suit No. HID/93/2020: Chief Noel Ezenwa & 4 Ors v. Executive Governor of Anambra State* currently pending before the Anambra State High Court, Idemili Judicial Division, holden at Ogidi, Anambra State.

⁶³ [2001]3 NWLR (pt. 699) 90.

⁶⁴Also see *Elf Pet. (Nig.) Ltd v. Umah* [2007]1 NWLR (pt. 1014) 44; *Kukoyi v. Aina* [1999]10 NWLR (pt. 624) 633; *Ogunleye v. Oni* [1990]2 NWLR (pt. 135) 745.

⁶⁵ See AV Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, London: Palgrave Macmillan, 1961).

Public Integration and Participation

There is serious need to educate the public on government's physical planning initiatives and to make them part of the entire process. In this regard, relevant and identifiable interest especially at local levels, such as the community development associations, landlord associations, market unions, drivers unions, and other trade groups should be the primary target. This will facilitate a feedback system whereby the final output of the planning process will combine the technical competence of the planner with the perception of the public.

'De-commercialisation' of Planning Permit

The current trend is that development permits are seen as an avenue to raise government's internally generated revenue capacity. This is indeed a wrong approach. The primary objective of all physical planning initiatives should be the reconciliation of land use with the need for sustainable socio-economic development without defacing the physical environment. This is expected to invariably lead to the enhancement of land use values and such enhanced land use values is also expected to lead to a systematic increase in tenement rates and other taxes and rates by Government. The present situation where the operation of the physical planning laws is primarily directed at increasing government's revenue through increased assessment charges, etc could lead to stunted urban physical growth and escalation in the upspring of illegal structures as a way of circumventing such charges.

7. Conclusion

Physical planning is a process aimed at achieving orderly physical development with the overall aim of evolving a functional and liveable environment where individual and common goals can be achieved. In urban centres, the essence of land use planning is to ensure that urban activities are organized and developed in physical space with due consideration for the protection of the public interest which include health, safety, convenience, efficiency, energy conservation, environmental quality, social equity, social choice and amenity.⁶⁶ These are also features of sustainable development. The 1992 United Nations Conference on Environment and Development included sustainable land use planning as one of the eight programme areas of Agenda 21. The objective of the programme area is to provide for the land requirements of human settlement development through environmentally sound physical planning and land use so as to ensure access to land to all households.⁶⁷ The manifest ineffectiveness of the control processes in Nigerian cities derives to a large extent from the planning, the regulatory and administrative frameworks within which physical development takes place. However, a principal underlying problem for effectively administering land use is the land itself. Planned city expansion in Anambra State and other places across Nigeria is encountering problems. At the centre of this problematic are the questions of who has access to land, how such land is acquired, and what laws for regulating land use. Anambra State and indeed, Nigeria must find solutions to the myriad of physical planning issues that continues to exacerbate her land problems and which has made sustainable development impossible. It is believed that the adoption of the recommendations of this work will help the situation, not just in Anambra State but also Nigeria as a whole towards achieving sustainable physical planning and land use control measures.

⁶⁶WW Nnah *et al.*, 'Development Control and the Public Interest in Obio/Akpor Local government Area of Rivers State, Nigeria', (2007) XX(1) *Journal of the Nigerian Institute of Town Planners*, 71 – 86.

⁶⁷OB Owei *et al.*, 'The Challenges of Sustainable Land Use Planning in Nigerian Cities: The Case of Port Harcourt', being the text of a paper presented as part of the proceedings of the 46th ISOCARP Congress held in Nairobi, Kenya on the 19th – 23rd September, 2010, p. 1.