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## THOUGHTS ON EXPANDING ACCESS TO AFFORDABLE HOUSING IN LAGOS MEGACITY: A SOCIO-LEGAL PERSPECTIVE ON LAGOS TENANCY LAW

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### Abstract

An effective housing policy framework for expanding access to affordable housing is a key feature of megacities that are socially inclusive, economically resilient and environmentally sustainable. Lagos is a megacity with a population higher than that of most African nations, but with a land mass that is one of the smallest in Nigeria. Thus, there is an alarming housing deficit in Lagos as evident from the increasing urban sprawl to neighbouring Ogun State, soaring rents and overcrowding in low income apartments, including the proliferation of slums and shanties. In this paper we examine the Lagos tenancy law and its impact on access to affordable housing. In socio-legal context and analysis, we argue that the Lagos tenancy law is deficient in scope, content and objective with respect to ensuring that the interests of landlords and tenants are balanced, and that processes that deal with the recovery of possession are fair to both parties, efficient and cost-saving. We propose a reformulation or the crafting of a new tenancy law that covers the field and makes Lagos rental housing market more inconclusive, efficient and equitable; a new tenancy law that is able to expand the rental housing market and increase the supply of housing in Lagos megacity.

**Keywords:** Access to housing, Housing policy, Rental housing, Housing market, Lagos megacity, Lagos tenancy law

### 1. Introduction

The 21<sup>st</sup> century has been referred to as the ‘urban age’ – the century in which more people prefer to live in urban areas instead of rural areas and the countryside, as urbanization is associated with social and economic development<sup>1</sup>. Across the world, the concentration of population in urban areas is rising at an extremely fast rate. Large urban agglomerates now constitute megacities with capacities to affect the development, stability, security, and prosperity of the whole world. While there are many megacities in the developed countries, there are now more increasing numbers in the developing world in Asia, Africa and Latin America.

For example, all but eight of the 30 leading megacities in the world are in the developing world<sup>2</sup>, including Lagos, Nigeria. Megacities are commonly considered as the hubs of

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<sup>1</sup> United Nations Human Settlements Programme (2003). *Rental Housing: An Essential Option for the Urban Poor in Developing Countries*. Nairobi: UN-HABITAT

<sup>2</sup> These are New York City, Los Angeles, London, Tokyo, Osaka, Turkey, Moscow and Seoul See United Nations Department of Economic and Social Affairs, Population Division (2018). *World Urbanization Prospects: The 2018 Revision*, Online Edition.

business opportunities, economic prosperity and social advancement. According to Bugliarello, they are the site of cultural and educational institutions that promote social development; they often set the tone for a nation's social values; and they are powerful instruments of economic concentration, offering new market opportunities to both the developing and developed world<sup>3</sup>.

Megacities thus have attraction for huge populations desirous of a better life, such as a higher standard of living, better education, better jobs, and less hardship. However, the dynamics of megacities also include the existence of a myriad of problems which are escalated and become intractable as the populations grow rapidly and continuously. As noted by the World Bank, explosive population results in alarming increases in poverty that contradict the reasons why a megacity has so much attraction<sup>4</sup>.

Poor infrastructure in transportation services create hardships for the majority of residents in megacities as traffic congestion makes an average commute to take hours. The problem of high rates of unemployment and crime produce social insecurity and general uncertainty. Environmental problems in the form of polluted air and water lead to various diseases, drug-resistant strains of infection, and high death rates<sup>5</sup>. Besides these numerous problems the massive populations put excessive pressure on available land and housing.

Housing is one of the basic needs of all human beings and its availability or lack of it has a direct impact on the life, welfare and well-being of people. It is a notorious fact that megacities, particularly in the developing world, suffer massive deficits in housing<sup>6</sup>. From Cairo in Egypt, Johannesburg in South Africa, Bangalore in India, Bogota in Colombia, Karachi in Pakistan, Lima in Peru, through Dhaka in Bangladesh, Jakarta in Indonesia, and São Paulo in Brazil, housing deficits in these megacities have resulted in significant percentage of their populations living in slums, shanties, and other informal settlements.

In megacities housing is the largest asset on most households' balance sheets, while mortgages make up most of household liabilities. As a result, changes in housing prices have large effects on financial markets and real economic activity in those cities<sup>7</sup>. As the scale of the housing deficit in megacities increases at an alarming pace, there is a need

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<sup>3</sup> See G Bugliarello, (1999). Megacities and the Developing World. 1 *The Bridge*, 29: 4

<sup>4</sup> United Nations Population Fund (1998). Trends in urbanization and the components of urban growth. In Proceedings of the Symposium on Internal Migration and Urbanization in Developing Countries, New York: UNPF

<sup>5</sup> World Resources Institute (1996). World Resources, New York: Oxford University Press.

<sup>6</sup> See United Nations (1998), op.cit; United Nations Department of Economic and Social Affairs (2018), op.cit

<sup>7</sup>A Mian, K Rao, A. Su, (2013). Household balance sheets, consumption, and the economic slump. 128(4) *The Quarterly Journal of Economics*, 1687:1726

for appropriate policy framework and regulatory regime to expand access to affordable housing within the peculiar context of each megacity's geographical setting.

In this paper we examine the housing deficit in Lagos, a megacity with a population higher than that of most African nations but with a land mass that is one of the smallest in Nigeria. Huge population and limited land have scaled the challenge and deficit of housing in Lagos in the last decade. A significant proportion of Lagos residents have their accommodation in rental housing, which in turn constitutes a major source of income for the house owners. Rental housing is thus an essential part of a competitive and capitalist housing market with varying degrees of socio-economic impact on the livelihood and well-being of residents.

We consider how the housing deficit in Lagos has been addressed in terms of policy framework to develop, alongside appropriate legal regime to regulate, the rental housing sector in the overall interest of residents. In particular, we examine the extant Lagos tenancy law which regulates the relationship between landlords and tenants in Lagos; we examine its impact on access to housing; and we discuss the content, scope and objective of the most appropriate regulatory framework to expand access to affordable housing in Lagos megacity.

## **2. Housing in Lagos Megacity**

Historically, Lagos has been a unique city-state in the Nigerian federation as it was already a cosmopolitan trading port when the British annexed it in 1861<sup>8</sup>. It became the seat of colonial power until 1960 when Nigeria gained independence, and was adopted as the capital of post-colonial Nigeria until 1990 when the capital was moved to Abuja. In the decades following Nigeria's independence Lagos recorded economic boom due to the discovery of crude oil in the southern part of the country, resulting in the flow of 'petro-dollar' and massive spending by the federal government.

Since then the influx of populations into Lagos has not abated as the city has effectively become the commercial and social nerve centers in Nigeria and the West Africa sub-region. By the end of the 20<sup>th</sup> century Lagos was generating about 60% of Nigeria's commercial and industrial activities and 12% of its gross domestic product; it had Africa's second-biggest stock exchange, its largest film industry, and one of its busiest seaports. Compared with other states, it was noted that Lagos was relatively prosperous, with Nigeria's highest per capita income more than twice the national average<sup>9</sup>.

Population growth in Lagos has been so explosive that it defies accurate census while urbanization has been so rapid that it occasions gentrification and urban sprawl. With

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<sup>8</sup> G Kuris, (2014). *Remaking A Neglected Megacity: A Civic Transformation in Lagos State, 1999–2012*, Princeton University

<sup>9</sup> *ibid*

population figures ranging between 13million and 23million<sup>10</sup>, Lagos has become a megacity<sup>11</sup> that is struggling with inadequate infrastructure, multifarious socio-economic challenges and environmental issues, including massive deficit in housing. Acute shortage in housing has led to the proliferation of slums and shanties across the landscape and waterfronts of Lagos.

The informal settlements continue to spring up almost in every part of Lagos due to the inability of the government to provide and ensure adequate and affordable housing for the burgeoning population; the slums and shanties thus provide accommodation for the poor majority which include both long-time residents and new migrants<sup>12</sup>. The Lagos State Urban and Renewal Agency has noted that there are at least 100 informal settlements across Lagos, including dozens of such settlements along the waterfronts, and all of which are densely populated<sup>13</sup>.

It has been found that while the average residential density for Lagos as a whole is about 260 people per hectare, the population density in slums and shanties is between 790 and 1,240 people per hectare<sup>14</sup>. The surging population of Lagos, coupled with its relatively small land mass, has posed a significant housing challenge for Lagos government, particularly since the last decade of the 20<sup>th</sup> century. Authorities in Lagos acknowledge that there is a massive housing deficit in Lagos evident from the high number of slum housing, overcrowding and unmet housing demand from middle and high income households in excess of 3 million housing units<sup>15</sup>.

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<sup>10</sup> There are variations between national and state governments' population size of Lagos. The 2006 national population census put Lagos at 9million but Lagos state government disputed the figure, carried out its own census and arrived at over 17million. In 2014, the Lagos State Bureau of Statistics estimated that Lagos had a population of 23.3 million with an annual growth rate of 3.2%. Earlier in 2000, the United Nations Department of Economic and Social Affairs (UNDESA) had estimated that metropolitan Lagos had 13.4 million people, with an annual population growth rate of 5.6% since 1975, and predicted that Lagos would be one of the world's most populous cities within a generation. The 2020 UNDESA population figure for Lagos is 19.4million. See [https:// Nations\\_Department\\_of\\_Economic\\_and\\_Social\\_Affairshttps/general/documents/](https://Nations_Department_of_Economic_and_Social_Affairshttps/general/documents/). Accessed 28 January, 2021

<sup>11</sup> By the United Nations' definition, a city of over 10 million people is a megacity. See United Nations, Department of Economic and Social Affairs, Population Division (2018), *ibid*

<sup>12</sup> Urban Processes in Lagos, Second, Revised Edition 2018).

<sup>13</sup> 7 Ministry of Physical Planning, Lagos State Urban Renewal Agency: Introduction (2016). Available at [www.physicalplanning.lg.gov.ng/index.php/policies-directives/urban-regeneration/](http://www.physicalplanning.lg.gov.ng/index.php/policies-directives/urban-regeneration/). Accessed 10 January, 2021

<sup>14</sup> World Bank (2006). The Lagos Metropolitan Development and Governance Project. Available at [www.documents.worldbank.org/curated/en/142611468096552955/pdf/36433.pdf](http://www.documents.worldbank.org/curated/en/142611468096552955/pdf/36433.pdf). Accessed 10 January, 2021

<sup>15</sup> Lagos State Government (2013). Lagos State Development Plan, 2012- 2015, 48 – 49. Available at [www.scribd.com/document/271150413/LAGOS-STATE-DEVELOPMENT-PLAN-2012-2025](http://www.scribd.com/document/271150413/LAGOS-STATE-DEVELOPMENT-PLAN-2012-2025) (hereinafter: LASDP 2012-2025). Accessed 10 January, 2021

It is estimated that over 70% of Lagos' population live in informal settlements which are prone to evictions and demolition because they are mostly illegal structures considered to be in violation of planning and building regulations, or targeted by government for high-value property development projects<sup>16</sup>. As Amnesty International noted, despite the risk of forced evictions, the population of informal settlements in Lagos continues to grow as more people seek affordable housing options in these places<sup>17</sup>.

There has also been a growing incidence of gentrification in recent years as the increase in value of land occupied by residents of informal settlements is making it attractive to government and private bodies for development. Gentrification inevitably leads to the displacement of low income families and informal settlers who offer their land for sale and then move farther to the outskirts of urban areas.

As more populations of low and informal income earners are pushed to the outskirts of the city, the resultant suburbs invariably create urban sprawl as it is now the case in Ajah, Badagry, Epe and Ikorodu areas in Lagos. As explained later in this paper, Lagos as a megacity lacks the social housing schemes, suitable tenancy law and the type of urbanization policies that are able to protect locals and poor residents in gentrified communities. The result is a vicious circle of poor residents and migrants who move from homelessness to live in slums and informal settlements until they are rendered homeless again through displacement by urbanization.

Expanding access to affordable housing is therefore a complex issue that is of strategic importance for the development, social inclusion, equality and stability in Lagos megacity. Addressing the housing needs of the poor and most vulnerable residents who live in slums and shanties has to be a priority in Lagos development agenda. As noted by the UN-Habitat, for housing to contribute to national socio-economic development and achievement of the Sustainable Development Goals, housing policies have to be placed at the center of urban policies along with strategies to ensure shelter for all – inclusive housing and a safe and healthy living environment<sup>18</sup>.

For Lagos to be an inclusive megacity for all of its residents, government must take urgent action towards achieving adequate and affordable housing for all classes of residents, and this requires a serious commitment to inclusive housing policy. An

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<sup>16</sup> Amnesty International (2017). Nigeria: The Human Cost Of A Megacity Forced Evictions Of The Urban Poor In Lagos, Nigeria. Available at <https://www.amnesty.org/en/documents/afr44/7389/2017/en/>. Accessed 21 January, 2021

<sup>17</sup> *ibid*

<sup>18</sup> J Clos, (2017). Housing Policies: Affordable Homes.' United Nations Human Settlements Programme (UN-Habitat). Available at <https://www.un.org/sustainabledevelopment/blog/2017/10/affordable-housing-key-for-development-and-social-equality-un-says-on-world-habitat-day/>. Accessed 21 January, 2021

effective housing policy framework for expanding access to affordable and decent housing for all is a key feature of megacities that are socially inclusive, economically resilient and environmentally sustainable. In the next section, we examine the framework and objectives of housing policy in Lagos megacity.

### **3. Framework and Objectives of Housing Policy in Lagos**

It has been well noted that the quantity and quality of housing are mostly determined by the effectiveness of the policy framework which sets out the objectives, strategies and programmes aimed at addressing the housing deficit and meeting the housing demand of a city<sup>19</sup>. Nigeria has a National Housing Policy framework with the ambitious objective of ensuring that all Nigerians have access to decent and affordable housing with secure tenure in a healthy environment with adequate infrastructure<sup>20</sup>.

The National Housing Policy encourages the active participation of states' government in housing delivery through policy framework that includes the private sector in the development of decent and affordable housing for citizens. In particular, the Policy tasks states' government to enact appropriate tenancy laws to regulate the relationship between landlords and tenants in ways that prevent forced evictions, reduce default in payment of rent and encourage private investments in rental housing.

The housing policy framework for Lagos megacity is contained in the Lagos State Development Plan 2012-2025 (LSDP)<sup>21</sup>, and reflects the ambitious objective of providing housing for all as expressed in the National Housing Policy. The LSDP sets out the vision to make Lagos Africa's model megacity and global economic and financial hub that is safe, secure, functional and productive<sup>22</sup>. The LSDP identifies housing as a key factor of economic development and therefore projects the objective of making housing available to all residents, with at least 40% of residents being home owners by 2025<sup>23</sup>.

Part of the strategies to achieve its objectives include government's construction of social housing for underprivileged and vulnerable residents, and the development of housing schemes targeted at the middle and upper classes<sup>24</sup>. Amongst others, the policy framework therefore plans to offer residents access to their desired choice of housing by ensuring the development of housing units at the rates of 20,000 units in 2015; 50,000

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<sup>19</sup> VC Ezenagu, *Fundamentals of housing* (Awka: Fountain Publishers, 2000) p.11

<sup>20</sup> National Housing Policy, 1991; this replaced the National Housing Policy, 1981/82 and was more comprehensive and ambitious. There have been subsequent National Housing Polies in 2002, 2006 and 2012 which were mere adoptions of the 1991 Policy.

<sup>21</sup> See Chapter 7.7 of the LSDP

<sup>22</sup> See the Preamble, LSDP, p. 1

<sup>23</sup> See Chapter 7: 7, LSDP, p.10

<sup>24</sup> See Chapter 7:7, LSDP, p.49,

units in 2020; and 80,000 units in 2025 at the ratio of 70: 20: 10 (for low, medium and high income classes, respectively)<sup>25</sup>.

Efforts at achieving these housing policy objectives over the years have not rolled back or even halted the worsening housing deficit in Lagos megacity. But these efforts are by no means complimented by the continuous influx of migrants from other states in Nigeria and neighbouring African countries. Thus, the problem of inadequate housing in Lagos remains endemic as clearly evident from the increasing urban sprawl to neighbouring Ogun State<sup>26</sup>, soaring rents and overcrowding in low income apartments, including the proliferation of slums, shanties and other informal settlements.

A careful assessment of the policy objective of providing affordable housing under the Lagos Home Ownership Mortgage Scheme and the Rent-to-Own Housing Scheme has revealed that the apartments were rather too expensive beyond the reach of the targeted category of low income families<sup>27</sup>. Besides the inability of the Lagos government to fully deliver on its housing policy objectives, one significant policy inadequacy is the total focus on home ownership as the main way to provide access to affordable housing; there is no specific and clear strategy to expand access to affordable housing through reforming and strengthening the rental housing sector.

It is noteworthy that rental housing, a critical component of any housing policy, is left out of the Lagos Housing Policy objectives, despite being the object of considerable attention and support in most megacities in other countries. The challenge of developing the housing rental market is getting more important as the world becomes increasingly urbanized and demographic pressures keep increasing the demand for affordable housing<sup>28</sup>. Rental housing is key to any housing policy that can successfully deliver on its objectives. A properly developed rental housing sector can play a significant role in expanding access to affordable housing in a megacity like Lagos. In the context of the object of this paper, it is important we examine the state of rental housing in Lagos.

### 3.1 Rental Housing in Lagos

Most Lagos residents are tenants who live in rented houses. A report by the Lagos government revealed that while home owners constitute 23% of Lagos population,

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<sup>25</sup> Ibid

<sup>26</sup> Most neighbouring communities in Ogun State now constitute urban outposts of Lagos megacity

<sup>27</sup> Urban Processes in Lagos, Second, Revised Edition 2018). Available at <https://www.world-architects.com/it/projects/view/urban-planning-processes-in-lagos-2nd-ed>. Accessed 10 January, 2021

<sup>28</sup> IG Peppercorn, and C Taffin, (2013). Rental Housing: Lessons from International Experience and Policies for Emerging Markets. Directions in Development. Washington, DC: World Bank. doi:10.1596/978-0-8213-9655-1

residents in rented houses make up 69%<sup>29</sup>. For the majority of Lagos residents, rental housing is the only available option because home ownership is beyond their means, and they are not eligible for house financing options such as mortgage loan or government's housing schemes. For the landlords in Lagos, rental housing provides a significant source of income, especially for the small-scale landlords who supply rental accommodation, often as part of their self-built house, to generate a regular source of income and provide financial security during old age<sup>30</sup>. Rental housing thus makes major social and economic contributions as an essential component of Lagos housing market.

Despite the fact that majority of Lagos residents live in rental housing, coupled with its vital role in the development and expansion of the housing market, in addition to its socio-economic contributions, rental housing has remained a neglected area in Lagos housing policy framework. Instead, focused has been on promoting home ownership through government's establishment of housing schemes such as the Rent-to-Own and Home Ownership Mortgage Schemes. Government construction of housing units under these schemes for low, medium and high income classes constitutes the main policy strategy for providing access to affordable housing in Lagos.

Unlike in some megacities<sup>31</sup>, there is absence of other options and incentives to make home ownership more affordable such as granting tax relief to home owners and builders, ensuring the availability of accessible mortgage loans to low and informal income earners, and providing serviced land, including roads and other infrastructure to city outskirts and suburbs. The exclusive focus on home ownership at the expense of the rental housing sector leads to exploitation of poor and vulnerable tenants by landlords who charge high rents for sub-standard housing. Due to weak or obsolete regulatory framework eviction is common as renting offers most tenants little in the way of security, particularly at the lower end of the rental market which may be shrouded in illegality<sup>32</sup>. Though there are benefits to home ownership such as social stability and economic security for the owners, and a source of revenue for government. But home ownership has been found to produce greater urban sprawl with its attendant consequences, particularly when housing prices increase and people are forced to move farther and farther away from the city center<sup>33</sup>. Most instructive for rental housing, however, is the

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<sup>29</sup> See the Lagos State Government Household Survey Report 2016. It is the latest report from the Lagos Bureau of Statistics, Ministry Of Economic Planning & Budget. The Report also showed that 3% was found to live in borrowed houses while 5% live in gifted houses

<sup>30</sup> The UN-HABITAT note that while there are commercial, public-sector, social, and employer rental property landlords in cities of the developing world, the largest group of landlords are the small-scale landlords. See UN-HABITAT (2015). *A Policy Guide to Rental Housing in Developing Countries. Quick Policy Guide Series*, 1

IG Peppercorn, and C Taffin, (2013), *op.cit.* The authors cite New York, Bangkok, Bangalore, Sao Paulo

<sup>32</sup> UN-HABITAT (2015). *A Policy Guide to Rental Housing in Developing Countries, op.cit*

<sup>33</sup> IG Peppercorn, and C Taffin, (2013), *op.cit.* The authors note that urban sprawl exacerbates congestion on the roads, contributes to pollution, and adds significant cost and travel time for the workforce. But a

fact that not everybody can afford to own a home at the same time. As the UN-HABITAT have noted, while renting is not the panacea to solving the housing challenge in the developing world, it does constitute a significant and vital housing tenure option that should be promoted alongside, not in competition to, home ownership<sup>34</sup>.

In order to create an environment that encourages rental housing a megacity government needs to formulate and implement appropriate policy to develop and regulate the rental housing sector. In this context, the only policy framework that relates to rental housing in Lagos is the tenancy law that regulate rights and obligations under tenancy agreements and the relationship between landlords and tenants, including the procedure for the recovery of premises<sup>35</sup>. Under the National Housing Policy, an appropriate tenancy law recommended to state governments must be one that is fair to both parties, and efficient in procedure so as to be able to prevent forced evictions, reduce default in payment of rent and encourage private investments in rental housing.

#### **4. Lagos Tenancy Law**

The development and efficiency of the rental housing market in any city depends largely on the prevailing tenancy law which stipulates the rights and obligations of landlords and tenants, including the process of eviction or recovery of possession from tenants. The respective rights and obligations thereby created under a tenancy agreement, and the process of termination of tenancy bears heavily on the availability and access to rental housing. For example, under the Lagos tenancy law landlords have the right to demand payment of rent, and tenants have a corresponding obligation to pay rent<sup>36</sup>. The amount of rent charged for what apartment or premises, and tenants' ability to pay rent are determining factors of the supply and demand of affordable housing.

Under the Lagos tenancy law tenants have the obligation to keep the premises in good and tenantable condition, subject to reasonable wear and tear, while there is also landlords' obligation to keep rented premises insured against loss or damage, including carrying out repairs and maintenance of the external and common parts of the premises<sup>37</sup>. The purpose of these mutual obligations of landlords and tenants is to ensure that structural standards are maintained in rental housing, and to prevent situations where landlords let out and demand rent on premises and apartments that have become sub-standard, dilapidated, or a threat to life, health and safety of occupants. Similarly, the loss of a rental housing has far-reaching effects on tenants who are occupants, landlords who receive rental income, and the housing sector that suffers

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vibrant rental housing market can reduce these problems – and can even help to stimulate the city center itself.

<sup>34</sup> UN-HABITAT (2015). A Policy Guide to Rental Housing in Developing Countries, op.cit

<sup>35</sup> The Tenancy Law became operational on 24<sup>th</sup> August, 2011

<sup>36</sup> See sections 5(1) and 7(1)

<sup>37</sup> See sections 7(3), 8(iii) and 8(vi)

further deficit as a result. The obligation on landlords to insure their rented premises under the Lagos tenancy law is therefore to avert the various effects of possible loss on the availability of rental housing. The process of terminating tenancy and evicting tenants as stipulated under a tenancy law also has significant effect on the availability of rental housing. Within the provisions of the Lagos tenancy law, landlords can terminate tenancy and evict tenants on grounds such as arrears of rent, breach of tenancy agreement, where the premises is required by the landlord for personal use, or where the premises require substantial repair<sup>38</sup>. The court itself, notwithstanding any agreement between the landlord and tenant, can also order the eviction of a tenant where the premises is being used for immoral or illegal purposes, or the premises is unsafe and constitute a danger to human life or property<sup>39</sup>.

Within the provisions of the Lagos tenancy law it is only the court that can order the eviction of a tenant and grant possession to the landlord. But before the court can assume jurisdiction to make eviction order the tenant must have been served with a notice to determine the tenancy. As provided under the Lagos tenancy law, at the expiration of the period stated in the notice and the tenant neglects or refuses to quit and deliver up possession, the landlord may then file a claim by way of summons for the recovery of possession<sup>40</sup>. The Lagos tenancy law prescribes the length of notice to be given to a tenant where the tenancy agreement does not stipulate such notice. According to the law, a week's notice is required for a tenant at will; one month's notice for a monthly tenant; three months' notice for a quarterly tenant; three months' notice for a half-yearly tenant; and six months' notice for a yearly tenant<sup>41</sup>.

The law however makes the service of a notice to quit unnecessary in three situations, to wit: a. in the case of a monthly tenancy, where the tenant is in arrears of rent for six months; b. in the case of a quarterly or half-yearly tenancy, where the tenant is in arrears of one year's rent; and c. in the case of a tenancy for a fixed term, where the tenancy has been determined by effluxion of time<sup>42</sup>. In any of these situations the tenancy is deemed to lapse, and where the landlord intends to proceed to court to recover possession, he is only required to serve a seven days' written notice of his intention to apply to court to recover possession<sup>43</sup>.

Forcible eviction without the approval of the court is an offence punishable with six month imprisonment or with option of fine<sup>44</sup>. It is also an offence for a landlord to obtain an order for possession by intentionally providing false information, likewise the tenant

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<sup>38</sup> Section 25(1)

<sup>39</sup> Section 25(2)

<sup>40</sup> Section 24

<sup>41</sup> Section 13(1)

<sup>42</sup> See section 13(2), (3) and (5)

<sup>43</sup> See section 16

<sup>44</sup> Section 44(1)

who deprived the landlord of his premises by intentionally providing false information<sup>45</sup>. The length of notices required to be given to tenants before eviction, and the whole process of recovery of possession from tenants go to either incentivize or discourage private investment in rental housing.

Consequently, to ensure a faster and less cumbersome process of eviction, modern tenancy laws provide for alternative disputes resolution of tenancy conflicts in addition to the court system. For instance, the Lagos tenancy law provides that in proceedings under its provisions the court shall promote reconciliation, mediation and amicable settlement between the parties<sup>46</sup>. As such the court may refer tenancy proceedings to mediation at a Citizen Mediation Centre or to the Lagos Multi-Door Court House. Referrals to mediation under this provision does not require the consent of the parties to the proceedings, and the court will endorse and enforce a mediation agreement duly executed by the parties<sup>47</sup>.

The Lagos tenancy law has thus set out the legal relationship between landlords and tenants, how the relationship is created, the respective rights and obligations of parties, and how to terminate the relationship either by the parties themselves, through legal adjudication or alternative dispute resolution processes. Instructively, the law does not apply to the whole Lagos megacity. The law expressly excludes Apapa, Ikoyi, Ikeja GRA and Victoria Island areas of Lagos from its ambit<sup>48</sup>. It is not clear, as no reason is stated in any addendum to the Lagos tenancy law, why it exempts these areas that are mostly populated by industrial, commercial, corporate and highbrow residential premises and apartments.

Since no other legislation specifically regulates tenancy in the exempted areas the implication is that the common law principles and doctrines relating to tenancy would apply. Therefore, in the exempted areas the provisions of the Lagos tenancy law on rent are not applicable. Rent is so central to a functional rental housing market that most tenancy laws attempt to regulate it. The Lagos tenancy law expressly spells out the rights and obligations of landlords and tenants with respect to the payment of rent on business and residential premises that are let out by their owners under a tenancy agreement<sup>49</sup>.

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<sup>45</sup> See section 44(4)

<sup>46</sup> Section 32(1)

<sup>47</sup> See section 32(2) - (4) generally. But note that under section 2(3) the parties' agreement to resort to the Lagos Multi-Door Court House or to the Citizens' Mediation Centre for amicable dispute resolution shall not however be construed as an ouster of Court's jurisdiction

<sup>48</sup> Section 1(3). In addition the law does not apply to (a) residential premises owned or operated by an educational institution for its staff and students; (b) residential premises provided for emergency shelter; (c) residential premises- (i) in a care or hospice facility; (ii) in a public or private hospital or a mental health facility; and (d) that is made available in the course of providing rehabilitative or therapeutic treatment. See section 1(2)

<sup>49</sup> Under section 1(1), the Law applies to all premises within Lagos megacity, including business and residential premises unless those exempted under section 1(2) and (3)

Unless payment of rent is waived by agreement, a tenant is under obligation to pay the rents at the times and in the manner stated by the landlord<sup>50</sup>. But the Lagos tenancy law criminalizes the payment of advance rent that exceeds six months in the case of a monthly tenant, and one year where it is a yearly tenant; it is an offence for a landlord to demand or receive and for a tenant to pay such advance rent, and the offence attracts three months imprisonment, with an option of fine<sup>51</sup>. The Lagos tenancy law further discourages unreasonable increase of rent by providing that an existing tenant may apply to the court for an order declaring that the increase in rent payable under a tenancy agreement is unreasonable<sup>52</sup>.

When a tenant makes such application the court is obliged to determine whether an increase in the rent is unreasonable based on the general level of rents in the locality or a similar locality, including any special circumstances relating to the premises or apartment in question, or any other relevant fact. If satisfied that the increase in the rent is unreasonable, the court may order that the increase in the rent be changed to a specific amount<sup>53</sup>.

Though the Lagos tenancy law falls short of stipulating specific amounts of rent payable according to types, shapes, sizes and locations of apartment and premises<sup>54</sup>, it however appears to have been motivated by the objective of regulating rent as far as it is reasonably possible; ensuring that rents are not unreasonably exorbitant beyond the rental value of apartments and premises. Almost a decade since it became operational, the impact of the above salient provisions of the Lagos tenancy law can be examined in order to determine how they promote the rental housing and contribute to access to affordable housing in Lagos megacity.

## **5. Impact of the Lagos Housing Tenancy Law on Rental**

As we noted earlier in this paper, the rental housing market is a natural outlet for households that do not have sufficient income to afford a home, do not have income that is formal enough to qualify for a mortgage, have not saved enough to meet down-payment requirements for ownership, or simply do not want to own a home at a particular time<sup>55</sup>. But establishing the most suitable regulatory framework to protect landlords and tenants on equal terms in the rental housing market is a herculean task.

For instance, providing greater tenant protection may hamper investment in rental housing by landlords who worry about the effect of regulations, and may be discouraged

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<sup>50</sup> See section 7(1)

<sup>51</sup> See section 4(1)-(5)

<sup>52</sup> Section 37(1)

<sup>53</sup> See sections 37(2) and (3). Under section 37(4), while the application is pending it is unlawful for the landlord to eject the tenant from the premises.

<sup>54</sup> Unlike the old Lagos State Rent Control (Standard and Maximum rents) Order, 1976, which stipulated standard rents for different categories of housing in low and high density areas in Lagos

<sup>55</sup> IG Peppercorn, and C Taffin, (2013), *op.cit*

from maintaining or increasing their investments in the rental housing market, for fear that in the event of default in payment of rent eviction of the tenant could take a long time in the bureaucracy of the court system. Where the regulation is more favourable to landlords, it gives rise to the likelihood that tenants could be exploited through imposition of high rent and failure to keep the apartments or premises up to standard and in good repairs.

Peppercorn and Taffin have opined that regulation can promote investment in rental housing where it is streamlined to ensure that the rights of landlords and tenants are balanced, and that processes that deal with eviction are fair to both parties, efficient, timely and transparent<sup>56</sup>. It is on these grounds that we examine the impact of the Lagos tenancy law with respect to its provisions on rent, recovery of possession, and exemption of certain areas from its sphere of applicability.

### 5.1 Regulation of Rent

Rent is regulated if the government fixes the rent or sets limits on rent increases, or if the law limits the tenancy agreement that landlords and tenants are allowed to sign due to a rent related clause contained in the agreement. In a comparative study of the economics and law of rent control in different jurisdictions, Basu and Emerson note that a standard feature of the debate concerning rent control is that the battle lines are typically drawn between landlords and tenants, with the popular argument claiming that rent controls work to the advantage of tenants and to the detriment of landlords<sup>57</sup>.

Indeed, regulation of rent was originally motivated by the need to protect tenants who are deemed to be in a weaker position in a tenancy relationship thereby preventing eviction based on tenants' inability to pay unreasonably exorbitant rent<sup>58</sup>. It is only for this purpose that the Lagos tenancy law attempts to regulate rent by prohibiting the payment of rent in excess of six months by a monthly tenant and in excess of one year by a yearly tenant<sup>59</sup>. It further provides that a tenant may object to the payment of increase in rent by applying to the court for an order declaring that the increase in rent payable under a tenancy agreement is unreasonable<sup>60</sup>.

But the regulation of rent has been found to be impracticable, and even counter-productive as it reduces the quantity and quality of housing supply<sup>61</sup>. While proponents of rent regulation suggest that it prevents landlords from charging exorbitant rents and evicting tenants at will, the opponents have successfully shown that by distorting

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<sup>56</sup> *ibid*

<sup>57</sup> K Basu, and P Emerson, (2013). *The Economics and Law of Rent Control*. Policy Research Working Papers. Available at <https://doi.org/10.1596/1813-9450-1968>. Accessed 10 January, 2021

<sup>58</sup> For a comprehensive history of rent control in Europe and the United states of America see Arnott (1995)

<sup>59</sup> See section 4

<sup>60</sup> Section 37(1)

<sup>61</sup> K Basu, and P Emerson, (2013), *op.cit*

incentives, it leads to deterioration of existing housing stock, increases pullout of apartments from the rental housing market and thus reduces overall supply of housing<sup>62</sup>. In a megacity like Lagos where there is high deficit of housing due to over-population and relative small land mass, rent regulation can only exist only in the statute book with no practical effect. This has been the situation since the Lagos tenancy law came into force as both landlords and tenants contract tenancy agreement in flagrant violation of the provisions prohibiting payment of advance rent and unreasonable increase in rent. Since there is acute shortage of housing, tenants are willing to pay advance rent or acquiesce to unreasonable increase in rent outside the provisions of the tenancy law.

The practice of Lagos landlords and tenants fits into the economics analysis of rent control; that the regulation of rent below the market equilibrium necessarily leads to a situation of excess demand or shortage of supply of housing. In a deregulated market rents would rise to automatically fill the gap between demand and supply, but regulation prevents rent from rising up to the equilibrium level and thus, alternative rationing mechanisms such as black and unregulated housing markets thereby evolve<sup>63</sup>. In Lagos the existence of the black and unregulated housing market is accentuated by the high cost of land and construction of housing. Therefore, any possible regulation of rent would only serve as a major disincentive for private investments in rental housing due to the comparative low rate of returns on investments it would cause.

## 5.2 Recovery of Possession

In rental housing, landlords are exposed to a higher risk than tenants in possession of the apartments or premises. There is the ever present risk that the tenant may default in payment of rent or holds over after the expiration or termination of the tenancy. In any event of non-payment of rent the landlord loses rental income, which will have a devastating effect where the rent is the only source of income. On the other hand the tenant needs protection from arbitrary eviction by the landlord. The legal process of eviction and recovery of possession therefore requires striking the right balance between the competing interests of both parties.

From the provisions of the Lagos tenancy law, landlords can terminate tenancy and recover possession on grounds of arrears of rent or breach of any covenant in the tenancy agreement<sup>64</sup>. Only the court can order eviction of a tenant and grant possession to the landlord if the tenancy is terminated according to the provisions of the tenancy law and the landlord files a claim by way of summons for the recovery of possession<sup>65</sup>. In practice, the whole process of recovery of possession, from the time the statutory notices are served on the tenant through when summons is issued and served, including the time

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<sup>62</sup> Dev, S. (2006). *Rent Control Laws in India A Critical Analysis*. Centre for Civil Society, 1

<sup>63</sup> Dev, S. (2006). *Rent Control Laws in India A Critical Analysis*, *op.cit*

<sup>64</sup> See section 25

<sup>65</sup> Section 24

of actual adjudication by the court, takes an average of one to three years, or even more in some cases<sup>66</sup>.

Undoubtedly, it is in recognition of the length of time it takes to recover possession that the Lagos tenancy law provides for the referral of tenancy proceedings to mediation at the Citizens' Mediation Center and the Lagos Multi-Door Courthouse where a faster process is envisaged<sup>67</sup>. However, in practice the process at these court connected alternative venues for resolution of tenancy disputes may actually elongate, rather than shorten the period of recovery of possession<sup>68</sup>. As we noted earlier, difficulty in the process of recovery of possession from tenants goes directly to impact private investments and landlords' continued stakes in the rental housing market, and the overall supply of affordable housing.

In terms of its provisions on recovery of possession therefore, the Lagos tenancy law cannot be said to have struck the right balance between the interests of landlords and tenants. The law is inequitably skewed in favour of tenants as the process of eviction effectively deprives landlords of rental income and unduly ties down their investment in the housing market during the course of the protracted process of recovery of possession. Like the case in some jurisdictions<sup>69</sup>, the Lagos tenancy law ought to have provided for a special court, along with special rules, for the purpose of expedite hearing and resolution of landlord and tenant cases.

### 5.3 Exemption of Specified Areas

In the peculiar geographical context of Lagos megacity that occupies a relatively small land mass, it is curious why the Lagos tenancy law exempts Apapa, Ikoyi, Ikeja GRA and Victoria Island areas from its operational ambit. These are foremost areas in Lagos with a motely combination of industrial, commercial, corporate and residential premises and apartments; they are not exclusively dedicated to any specific land use under any legislation. The practical effect of the exemption is that for the purpose of the applicability of the Lagos tenancy law, business and residential apartments and premises in the exempted areas remain under the pre-2011 legal regime when the tenancy law became operational.

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<sup>66</sup> This is from the professional experience of the author as a legal practitioner in Lagos

<sup>67</sup> See section 32

<sup>68</sup> Under section 32(4) any mediated agreement has to be sent to the regular court for endorsement and enforcement within three days after execution by the parties. Note that the stipulation of "within three days" is a practical impossibility due to the bureaucracy of the court system

<sup>69</sup> See Peppercorn, I. G and Taffin, C. (2013), *op.cit.* The authors identify Boston, Massachusetts, in the United States, with a specialized housing court that deals with landlord-tenant disputes which reduces the amount of time and simply the process of resolution of tenancy disputes.

Since the extant tenancy law repealed the pre-existing legislation which was then in force<sup>70</sup>, and in the absence of a new and specific applicable legislation, the logical conclusion is that the exempted areas are now covered by the common law. This is incongruous with the need for the enactment of the current tenancy law as the regulatory framework for landlord and tenant relationship in 21<sup>st</sup> century Lagos megacity.

It is arguable that the exclusion of certain important areas of Lagos from the provisions of the current tenancy law suggests that the objective of promoting rental housing was not a major focus of its enactment. As a megacity, the high deficit of housing is evident in every area of Lagos, including informal settlements that lurk within the façade of ostentatious neighbourhoods. In particular, there is noticeable presence of shanties around local markets and street corners in Ikoyi and Ikeja GRA, while there are slums along the waterfronts of Apapa and Victoria Island.

The reality therefore is that whatever minimum contribution the Lagos tenancy law may offer to rental housing in the megacity, it cannot apply to the excluded areas, and the impact of such contribution would be neutralized by the effect of the exclusion. Developing rental housing in Lagos requires government's actions towards ensuring that the interests of all landlords and tenants within the megacity are equally protected. Such actions can only be effective if taken within the objective of a uniform policy or regulatory framework that empowers all tenants who live in rental housing, as well as all landlords who provide the rental housing within Lagos as a megacity.

## **6. Expanding Access to Affordable Housing in Lagos Megacity**

The UN-Habitat have observed that there are two extreme outcomes of current housing systems in today's world; affordable housing that is inadequate, and adequate housing that is unaffordable<sup>71</sup>. But in Lagos megacity access to housing is neither adequate nor affordable for majority of residents who are forced to live in crowded and sub-standard apartments, including slums and informal settlements. Expanding access to affordable housing in Lagos megacity requires policy choices and regulatory framework that enable more provision of rental housing. Lagos's government focus on home ownership under its public housing schemes cannot address the alarming deficit in housing in Lagos megacity.

However, in socio-legal context and analysis, the Lagos tenancy law is deficient in scope, content and objective with respect to ensuring that the interests of landlords and tenants are balanced, and that processes that deal with the recovery of possession are fair to both parties, efficient and cost-saving. There is a need to reformulate the Lagos tenancy law, or craft a new law that covers the field and makes the Lagos rental housing market more

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<sup>70</sup> The Rent Tribunals (Abolition and Transfer of Functions) Law 2007. See section 48. The repealed law was a re-enactment of the erstwhile Lagos State Rent Control (Standard and Maximum rents) Order, 1976, which prescribed standard and maximum rents for various categories of buildings in low and high density areas of Lagos

<sup>71</sup> UN-HABITAT (2015). A Policy Guide to Rental Housing in Developing Countries, *op.cit*

inconclusive, efficient and equitable; a new law that is able to expand the rental housing sector and increase the supply of housing in Lagos megacity.

Besides the identified deficiencies of the current tenancy law, a new law has to address the unfair, inequitable and discriminatory practices which have become rampant in the Lagos rental housing market. Most landlords in Lagos discriminate against potential tenants based on age, gender, ethnicity, and marriage status. It is common for property agents to inform potential tenants that some landlords do not want a person of certain age, from certain ethnic group, of particular sex, and of certain marriage status as tenant. As a megacity, a suitable tenancy law should integrate the principle that all Lagos residents have equal opportunity to seek housing, without being subject to any discrimination due to factors outside their control.

Similarly, a tenancy law by its operation should not allow or encourage unfair practices in rental housing and the housing market. For its objective, unfair practice may be defined as a practice unreasonably prejudicing the rights or interests of a tenant or a landlord<sup>72</sup>. Particularly, in the process of eviction and recovery of possession there is a need for a tenancy law to create mechanisms to protect both tenants and landlords against unfair practices. Closely related to the need to prevent unfair practices is for a tenancy law to ensure that the process of eviction and recovery of possession is not only fair and efficient, but also requires that courts making eviction order consider whether it would be just and equitable to make the order.

The extant Lagos tenancy law is mainly focused on compliance with the required notices and processes to be served on a tenant in order for the court to make an eviction order. The court is not required to consider the circumstances and apply the just and equitable principle even in deserving cases. The power imbalance that exists between landlords and tenants, coupled with acute housing deficit in Lagos megacity, call for the consideration of the just and equitable principle in rental housing, and its application in the process of recovery of possession.

In all, the scope, content and objective of a new tenancy law discussed and advocated in this paper would address the interests and protect the rights of landlords and tenants, encourage private investment in the rental housing market, increase the housing supply, and expand access to affordable housing in Lagos megacity.

## **7. Conclusion**

The UN-HABITAT warned that governments should not close their eyes to reality; they should not perpetuate the myth of the achievability of universal home ownership, instead they should accept that millions of households live in rental housing and that at some

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<sup>72</sup> For example, see the Preamble to the South Africa Rental Housing Act 50 of 1999

point in their lives most people need rental accommodation<sup>73</sup>. The Lagos government has focused on home ownership as a major strategy towards the provision of housing. But majority of residents continue to live in rental housing and informal settlements. In this paper, we postulated that expanding access to affordable housing requires a suitable tenancy regulatory framework that can enable adequate provision of rental housing in Lagos megacity.

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<sup>73</sup> UN-HABITAT (2015). A Policy Guide to Rental Housing in Developing Countries, *op.cit*