

**DISCUSSION BRIEF**

**ON**

**EXISTING LAND USE POLICY AND REGULATIONS FOR  
LOCAL GOVERNMENT COUNCILS ENABLING DEVELOPMENT  
ON EFFICIENT RISK REDUCTION AND MANAGEMENT PLAN**

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**August 2014**

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## 1. Introduction:

1.1 The Climate Resilience in Local Governments in Lagos State (“the Project”) is divided into three major phases. This Phase entails the collation and review of existing land use policy and regulations for local governments. Specifically, involves the development of discussion briefs to stimulate discussion on the authority or otherwise of Local governments on the following focus areas:

- (i) Wetland Conservation and Restoration;
- (ii) Flood Shelters and Evacuation Routes;
- (iii) Environmental Impact Assessments;
- (iv) Waste Management; and
- (v) Public Spaces.

1.2 This brief is aimed at identifying and highlighting the existence or otherwise of any law, land use policy and/or regulations, enabling the Local Government Councils to develop efficient risk reduction and management plans in their localities, especially in the light of the ever-increasing threat of climate change and other environmental challenge.

1.3 Specifically, the brief seeks to analyze:

- (i) Whether the local governments have any legal authority on the land within their jurisdiction in the areas of: wetland conservation and restoration; flood shelters and evacuation routes; environmental impact assessments; waste management and public spaces.
- (ii) How the Local Government can apply the legal authority for successful planning and implementation in instances where such authorities exist.
- (iii) The application procedures to the State or the Federal Government where it is identified that the Local Government authority are limited.

## 2. Conceptual Clarification:

2.1 Below are the synoptic meanings given to the technical terms under reference in this brief:

- A) **Wetlands**— The United States Fish and Wildlife Service defines wetlands as lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water.<sup>1</sup> Wetland conservation

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<sup>1</sup> <http://www.fws.gov/policy/660fw2.html>

may, therefore, be seen as the preservation, management and maintenance of wetlands. On the other hand, wetland restoration may be understood as bringing back the wetland to its natural or original state in situations where it has been altered by human conduct or natural influences.

- B) **Flood Shelters**— These are buildings or encampments that are constructed for the purpose of giving temporary shelter to the people who are victims of floods.<sup>2</sup> Existing buildings may be converted to flood shelters to accommodate flood victims, especially in situations where they are not readily available.
- C) **Evacuation Route**— This has been defined, in relation to a building, as a path of travel from a common area of the building, through a final exit of the building, to a place of safety outside the building.<sup>3</sup> It is an identified roadway and/or non-road passageway to an area of safety.

**a.Public Spaces**— These are social spaces that are generally open and accessible to people and the public.<sup>4</sup> Roads (including the pavement), public squares, streets, parks and beaches are typically considered public spaces. Government buildings which are open to the public, such as public libraries are public spaces.<sup>5</sup> ).These places are, and must always be, open and accessible to all, with expressive activity limited only in very narrow cases.<sup>6</sup>

### 3. **Existing Relevant Laws:**

3.1 The existing relevant laws to the topical areas are:

- (i) The 1999 Constitution of the Federal Republic of Nigeria (as amended);
- (ii) Bye-Laws and other policies on the environment in place in Amuwo Odofin Local Government;
- (iii) The Land Use Act , LFN 2004;
- (iv) The Urban And Regional Planning Act, LFN 2004;
- (v) The Lagos State Waste Management Authority Law 2007; and
- (vi) The Lagos State Urban And Regional Planning And Development Law 2010.

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<sup>2</sup> See M.J.B Alam and Md. Hossain Ali, “ *The Concept of Flood Shelters to Cope With Flood*” available at <http://salekseraj.com/Page175-Jubair-1.pdf>

<sup>3</sup> Queensland Consolidated Building Fire Safety Regulations 2008, s.5  
<sup>4</sup> [http://en.wikipedia.org/wiki/Public\\_spaces](http://en.wikipedia.org/wiki/Public_spaces).

<sup>5</sup> Ibid

<sup>6</sup> Zachary Neal, Ph.D, “*Seeking Common Ground: Three Perspectives On Public Spaces*” available at <https://www.msu.edu/~zpnameal/publications/neal-seekingcommon.pdf>

## **The 1999 Constitution**

- a) Sections 13 & 20: The provisions of sections 13 and 20 are contained in Chapter II of the Constitution which generally provides for the fundamental objectives and obligations of the government. Section 13 enjoins all organs of government and all authorities in Nigeria exercising legislative, executive and judicial powers, including the Local Government to observe and apply provisions of Chapter II. On the other hand, section 20, on the other hand, imposes an obligation on these authorities to protect, improve and safeguard the environment, the water, air, land, forest and wild life in Nigeria.
  - (i) One fundamental challenge that has always confronted the provisions of Chapter II of the Constitution is the issue of justiciability of the provisions. This issue, however, only comes up where a person seeks to enforce against the government. Outside this, the entirety of the provisions in Chapter II guides the government across all levels as to what should be its fundamental objectives.
- b) Item 1(e), (f) and (h) of the Fourth Schedule: These generally empower the local government to construct, maintain and regulate markets, motor parks, public conveniences, slaughter houses, roads, streets, drains, parks, gardens, open spaces, sewage and refuse disposal, among other things.
- c) Item 2(b) of the Fourth Schedule: This provides, inter alia, that the function of the local government shall include participation in the development of natural resources, other than the exploitation of minerals. Wetlands conservation and restoration is a very good example of development of natural resources.

## **Issues For Discussion**

- a) Highlighting and discussing the specific climatic and environmental challenges that are plaguing Amuwo Odofin Local Government.
- b) Identification of wetlands in Amuwo Odofin Local Government and deliberation on the importance of their conservation and restoration to Amuwo Odofin Local Government and to Lagos State entirely.
- c) Identification of flood shelters and evacuation routes in Amuwo Odofin Local Government and deliberation on their need and importance in Amuwo Odofin Local Government, especially in the event of environmental emergencies or challenges occasioned by climate change.
- d) Identification of and deliberation on the need to request for environmental impact assessment in respect of serious development projects in Amuwo Odofin Local Government.

## **The Land Use Act**

- a) Section 2(1)(b): This vests in a local government the control and management of all land in non-urban areas located in that local government.
- b) Section 6: This vests in the local government variety of powers in relation to land use, control and management in respect of land not in urban areas. Pursuant to the provisions of the section, the local government has the power to grant customary right of occupancy for agricultural, residential and other purposes. The local government can enter upon, use and occupy for public purposes any land within its jurisdiction, that is not the subject of a statutory right of occupancy or within an area declared to be an urban area. Apart from the State's overriding interest held in trust by the Governor, the local government has exclusive rights to all the lands occupied by it.
- c) Section 21(b): This section provides that, except where the property is to be sold, alienation of customary right of occupancy or mortgage, transfer of possession, sublease or otherwise howsoever cannot be done without the approval of the local government where the land is located. Note that where the land or property is to be sold, it only requires the consent of the Governor.

## **The Urban and Regional Planning Act**

- a) Sections 1(3) & 4: These sections jointly provide that there shall be a town plan, a rural area plan, a local plan and a subject plan, and that local government shall have the responsibility for preparation and implementation of all these plans, including control of development within its area of jurisdiction, other than over Federal and State lands in its jurisdiction.
- b) Section 5(c) & 11(3): These sections empower the local government to establish a Local Planning Authority for the purpose of initiation, preparation and implementation of the National Physical Development Plans, and the Authority established by the Local Government shall undertake all development control within its area of jurisdiction.
- c) Sections 27(1),(2),(5) & 28: These sections impose an obligation on the Local Planning Authority established by the Local Government to have a department to be known as Development Control Department, vested with the power over control of development on all land within the local government. Any person who seeks to develop any land in the area of jurisdiction of the local government shall submit a development plan for the approval of the Development Control Department.
- d) Section 91: This section defines development as the carrying out of any building, engineering, mining or other operations in, on, over or under any land, or making of any environmentally significant change in the use of any land or demolition of buildings

including the felling of trees and the placing of free-standing erections used for the display of advertisements on the land.

- e) Section 30: The section compels any developer, government or governmental agency seeking to develop any land within the local government areas of jurisdiction to first and foremost make an application to the local government's Development Control Department for a development permit, without which any development cannot commence.
- f) Section 33: The section imposes an obligation on a developer to submit a detailed environmental impact statement to the local government's Development Control Department for permission to build or expand a factory; for construction of an office building in excess of four floors or for permission for a major recreational development.
- g) Section 62: This section empowers the Development Control Department of the local government to grant a development permit subject to a provision on the preservation of existing trees and/or planting of new trees by the impositions of necessary conditions. The Development Control Department is also obligated to make "tree preservation orders" for securing such amenities within its jurisdiction.

### **Issues for discussion**

- a) Identification of challenges confronting waste management, maintenance of refuse disposal, evacuation of drains and gutters, their effects and proffering solutions to the trends to avoid future crises in Amuwo Odofin Local Government.
- b) Identification of challenges confronting maintenance, creation and regulation of public spaces in Amuwo Odofin, and proffering solution to enable better living and conducive environment.
- c) Are there working and practicable local, rural, subject and regional plans for Amuwo Odofin Local Government that set out purposes for the physical, environmental and aesthetic planning of various parts of the Local Government?
- d) Identification of land areas in Amuwo Odofin Local Government where the Local Government directly has jurisdiction to carry out environmental friendly activities and forestall environment unfriendly activities, without any need to make recourse to the Federal and/or State Governments.
- e) Discuss the applicability of the Urban and Regional Planning Act in view of the Supreme Court decision on same.

## **The Lagos State Waste Management Authority Law**

- a) Sections 1 & 2(3)(c): The sections provide for the establishment of Lagos State Waste Management Authority (LAWMA) whose functions shall be carried out by a Governing Board. The governing board consists of one Local Government Chairman from each of the three senatorial districts in Lagos is a member of the Governing Board. All together, three Local Government Chairmen are members of the Governing Board.
- b) Section 5(1)(l): This empowers the Governing Board to enter into contract with local governments, State agencies, regional authorities and private persons to provide waste management services and to plan, design, construct, manage, operate and maintain solid waste disposal and processing on their behalf.

## **The Lagos State Urban And Regional Planning And Development Law**

- a) Section 1: This section establishes three (3) agencies and puts them under the direct supervision of the Ministry of Physical Planning and Urban Development. The three (3) agencies are: (a.) Lagos State Physical Planning Permit Authority; (b.) Lagos State Building Control Agencies; and (c.) Lagos State Urban Renewal Agency.
- b) Section 2(a)(b) &(c): These paragraphs make it the responsibility of the Ministry to formulate policies and review all aspects of physical planning and urban development in the Lagos state, including preparation of regional plans, sub-regional plans, district plans, urban and town plans, local plans etc.
- c) Section 2(d) &(m): The paragraphs also make it the responsibility of the Ministry to provide technical assistance to government ministries and agencies and liaising with the agencies, including Federal, States and Local Governments in the execution of its physical planning, building control and urban development projects.
- d) Section 26(d): The section provides that the Planning Permit Authority shall be responsible for establishing Local Planning Permit Offices in cooperation with the Local Government for the discharge of its functions. The establishment of the offices is with the Governor's approval on the Commissioner's recommendation.

## **Issues For Discussion**

- a) Identification of land areas in Amuwo Odofin Local Government where the Local Government does not have jurisdiction to act on, without recourse to the Federal and/or State Governments. What are the measures taken in the past to prevent environmental unfriendly activities in respect of these land areas?
- b) Identification of relevant governmental agencies, interest groups and international bodies that have a stake in all the topical areas and subsequent deliberation on how they can



be involved in formulation of policies in Amuwo Odofin for efficient risk reduction, climate resilience and management plans.

- c) Deliberation on and justification or otherwise for the gross usurpation of the powers of Amuwo Odofin Local Government (as contained in the Urban & Regional Planning Act) by the Ministry of Physical Planning & Urban Development, the Lagos State Building Control Agency, the Lagos State Physical Planning Permit Authority and the Lagos State Urban Renewal Agency.
- d) Would there have been better changes or even worse environmental situations if Amuwo Odofin Local Government had taken up its responsibilities as provided in the Act by itself? How can Amuwo Odofin sit with the Lagos State Government to address these issues?

## **GENERAL DISCUSSION ON TOPICAL AREAS**

### **1. Application Of The Laws**

- a) Wetlands Conservation & Restoration— The Constitution, the Land Use Act and the Urban and Regional Planning Act give the Local Government an appreciable measure of authority in respect of all land (including wetlands) within its area of jurisdiction, other than Federal and State lands. Under sections 13 & 20 of the Constitution, the Local Government has land use authority to protect, improve and safeguard the land and the environment within its jurisdiction area. This will include conservation and restoration of wetlands. Also, item 2(b) of the Fourth Schedule enjoins the Local Government to participate in the development of natural resources, and these also include wetlands.

In the same vein, the Local Government has powers to reserve, conserve and protect wetlands in its jurisdiction through conscious and effective regional and rural development planning contained in its local, rural and subject plans.<sup>7</sup> Also, the Local Government has the power to refuse an application for grant of customary right of occupancy on the ground of public use. Reservation (as wetlands) for public or environmental purpose of such piece of land upon which the customary right of occupancy is sought can be grounds for refusal of grant. Where a wetland has been sand-filled and built on, the Local Government can also restore it by reclaiming the land and paying compensation to the occupier of the land.<sup>8</sup>

All these relevant provisions in the referred laws will enable the Local Government to develop its own efficient risk reduction and management plans, especially in climate resilience endeavours. However, one major impediment to all the powers in respect of land decision authority given to the Local Government is the Lagos State Urban & Regional Development Law, which established three (3) new agencies and a supervising Ministry that completely

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<sup>7</sup> See generally sections 1(3), 2(a),(b),(c) and 4, Urban and Regional Planning Act, LFN 2004

<sup>8</sup> Section 6, Land Use Act LFN 2004

subsumes and usurps the powers of the Local Government under the Urban and Regional Planning Act.

- b) Flood Shelters & Evacuation Routes— Pursuant to the relevant provisions of the Land Use Act & the Urban and Regional Planning Act, the Local Government can construct flood shelters on land within its areas of jurisdiction to cater for flood victims in cases of flood disasters. It can also build and/or identify certain places within its jurisdiction as evacuation routes. This will be a preemptive approach to managing, mitigating the impacts of any potential environmental challenges within the Local Government. As said earlier, the Lagos State Urban & Regional Planning & Development Law has completely undermined the powers given to the Local Government under the Urban & Regional Planning Act.
- c) Environmental Impact Assessment— In this respect, the Local Government is expressly empowered under section 33 of the Urban & Regional Planning Act to refuse an application by a developer which does not have a detailed environmental impact assessment attached to it where what is sought to develop, in respect of a residential land, is in excess of 2 hectares of land or in the case of an office building, is in excess of four floors or 5000 square meters of a lettable space. All these are in respect of the land in the areas within the jurisdiction of the Local Government. Where a major recreational development is intended by anybody, including the State and Federal Government or their agencies in the areas of jurisdiction of the Local Government, a detailed environmental impact assessment is also required.

This power to demand for an EIA in respect of the above highlighted types of development in the local government land gives the Local Government a good measure of powers on land use regulation. The power to demand a detailed EIA by the Local Government coincides with the power to refuse development on a particular land based on different public-purpose and environmental-related grounds. Where the development will have adverse effects on the environment or the development (for example, a filling station) is sought to be made in an area which contradicts the local plan, the Local Government may refuse the application.

- d) Waste Management— The Local Government does not directly have powers to regulate or legislate on waste management, even in areas within its jurisdiction. The Lagos State Waste Management Authority (LAWMA) has been saddled with the responsibility to do this. However, the Local Government will appear to have powers to regulate certain matters that are incidental and ancillary to waste management. For instance, item 1(e) and (f) of the Fourth Schedule to the Constitution empower the Local Government to establish, maintain and regulate markets, slaughter houses, motor parks, roads, streets, drains etc. In ensuring cleanliness in these places, the Local Government may make a bye-law that provides for waste disposal and management. Also, item 1(h) allows the Local Government to maintain refuse disposal. In fulfilling this provision, the Local Government may also pass a bye-law that may bother on waste management. Such bye-laws, however, should not be seen to contract the Lagos State Waste Management Authority Law on the subject of waste management.

On a final note, three (3) Chairmen from all the local government councils in Lagos State are members of the Governing Board that carries out the functions of LAWMA. By virtue of the their

position on , the Local Government can have better and wider involvement in waste management in its areas of jurisdiction.

- e) Public Spaces— The Local Government has powers to regulate public spaces within its areas of jurisdiction, and these powers can be drawn from the Constitution and the Urban & Regional Planning Act. The Constitution in item 1(f) of the Fourth Schedule empowers the Local Government to construct and maintain open spaces, gardens, parks, streets and roads. All these places, by definition, are open spaces. Also, section 1(3) of the Urban & Regional Development Act empowers the Local Government to have its town plan, rural plan, local plan and subject plan. Through these plans, the Local Government may set out certain places in its areas of jurisdiction that will be made public spaces.

The powers of the Local Government to prepare, formulate and implement the local, town, rural and subject plans have been usurped by the State Government through the Lagos State Urban & Regional Planning Development Law.

## 2. **Application Of The Powers of the Local Government For Successful Planning & Implementation**

- 2.1 Considering the entirety of laws analyzed, it is apparent that the local government has a measure of power in relation to land use for successful planning and implementation of its own efficient risk reduction and management plans in the areas of wetland conservation and restoration, flood shelters and evacuation routes, environmental impact assessment, waste management and public spaces regulation.
- 2.2 In order to fully utilize these powers for successful planning and implementation, the Local Government will have to consider the following:
- a) Creation of awareness of the rights and powers given to the Local Government among the legislative, executive and quasi-judicial staff and appointees of the Local Government. This will have the effect of putting these workers, officers and appointees in the know as to the extent of powers and rights of the Local Government in land use and environmental regulation matters.
  - b) Organizing seminars and discussions with relevant stakeholders, including the State Government, the Federal Government, Non-Governmental Organizations, interest groups and international bodies. This will show seriousness and sincerity of purpose on the side of the Local Government and facilitate necessary support and awareness on the side of other stakeholders. This will most especially be used as a platform to engage the State Government in discussion with a view to amicably resolving issues of undue usurpation and subsumption of powers of the Local Government.
  - c) Partnering with the private industry through the public-private partnership initiative and involvement of community development associations in policy formulation. This will enable involvement of the private companies, NGOs and other interest groups, which

will not only strengthen the financial muscles of the Local Government, but also serve as a watchdog in ensuring successful planning and implementation of efficient risk reduction and management policies.

- d) Creation of monitoring bodies and task forces is another effective way to apply the powers given to the Local Government in respect of land use and regulation. These monitoring bodies and task forces will be charged with the duty of ensuring that tasks that have been discussed and/or concluded in papers, documents and blueprints are successfully implemented. They will also be saddled with the responsibility of reporting each stage of progress, highlighting what is causing delay and how such delay can be tackled.

### 3. **Applying To Higher Authorities In Cases of Limited Powers**

- 3.1 With respect to lands in the areas of its jurisdiction, the powers of the local government as shown in this brief extend to wetlands conservation and restoration, building of flood shelters and evacuation routes, environmental impact assessment, creating public spaces, maintenance of refuse disposal, excluding waste management. Since the local government does not have exclusive authority on waste management, it may apply to the State authority to ensure effect waste management in its areas of jurisdiction.
- 3.2 This may be done under section 5(1)(l) of the Lagos State Waste Management Authority Law by entering into a contract with LAWMA to provide waste management services for the Local Government on certain days and in certain areas that might have been designated as dumping grounds. The Local Government can also apply to LAWMA for a license to manage its waste through a body or company established by it for this purpose. The procedure is to apply to LAWMA in a prescribed manner<sup>9</sup> and pay the necessary fees.
- 3.3 Considering the fact that the Local Government comprises lands that are within its jurisdiction, lands that are within the jurisdiction of the State Government and lands that are within the jurisdiction of the Federal Government, where the Local Government intends to exercise powers to conserve and restore wetlands, build flood shelters and evacuation routes, conduct environmental impact assessment and create public spaces in respect of a State or Federal land, the Local Government will have to apply to the relevant authority of the State or Federal Government. In the case of the Federal Government, the appropriate authorities are the Federal Ministry of Land and/or the National Urban and Regional Planning Commission, depending on what the Local Government seeks to do. In the case of the State, the appropriate authorities are the Lagos State Ministry of Lands and/or Ministry of Physical Planning & Urban Development, also depending on what the Local Government seeks to do. The procedure is to apply to the authorities in a prescribed manner and pay the necessary fees.

### 4. **Conflicting Provisions In The Planning Laws**

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<sup>9</sup> See section 9 of the Lagos State Waste Management Authority Law

- 4.1 The Urban & Regional Planning Act LFN 2004 gives the Local Government very wide powers in respect of planning, managing and regulating land use for regional planning in its areas of jurisdiction. The powers include preparation, formulation and implementation of its own town, local, subject and rural plans<sup>10</sup>; establishment of a Local Planning Authority to, inter alia, undertake all development control in the Local Government areas of jurisdiction<sup>11</sup>; establishment of the Development Control Department in the jurisdiction<sup>12</sup>; granting of approval and permit for all development in the Local Government area of jurisdiction<sup>13</sup>; requesting for environmental impact assessment in respect of certain developments in the Local Government area of jurisdiction<sup>14</sup>; etc. The Lagos State Urban & Regional Planning Development Law 2010<sup>15</sup>, however, came with sweeping provisions that established certain agencies which have now usurped and subsumed all the powers given to the Local Government under the Urban & Regional Planning Act.<sup>16</sup>
- 4.2 The fundamental legal question that springs up here is: whether, in the light of the provision of section 4(5) of the Constitution, the Lagos State Ministry of Physical Planning and Urban Development and the three (3) agencies established under section 1 of the Lagos State Urban & Regional Planning Development Law can usurp and/or subsume the powers given to the Local Government under the Urban & Regional Planning Act.
- 4.3 The answer to this question is elementary. Section 4(5) of the Constitution provides where a Law enacted by a State House of Assembly contradicts an Act enacted by the National Assembly, the provisions of the Act will prevail and that of the Law will be void to the extent of its inconsistency. This is based on the popular Principle of Covering the Field. In the case at hand, the usurping provisions in the Lagos State Urban and Regional Planning Development Law cannot successfully stand the test of judicial adjudication.

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<sup>10</sup> Sections 1(3) and 4

<sup>11</sup> Sections 5(c) and 11

<sup>12</sup> Section 27

<sup>13</sup> Section 28

<sup>14</sup> Section 33

<sup>15</sup> Repealed and preceded the 2005 version of the Lagos State Urban & Regional Planning Development Law.

<sup>16</sup> See generally sections 1, 2, 3,5, 26,27,28, 30, 45,47, 49 and 51 of the Lagos State Urban & Regional Planning Development Law.