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EVOLVING A TEMPLATE FOR APPROPRIATE EMINENT  
DOMAIN LAW IN KADUNA-NIGERIA

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## **CONFLICTS OF URBAN HERITAGE LAND TENURE: EVOLVING A TEMPLATE FOR APPROPRIATE EMINENT DOMAIN LAW IN KADUNA-NIGERIA**

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### **Abstract**

The impetus for this paper was the prevailing urban heritage land conflict within Kaduna metropolis due to government arbitrary application of Power of Eminent Domain on allocated infill lands of some intuitions for the said public interest. The paper purpose was set to review the concept of Eminent Domain law in Nigerian urban built environment, understand the varied interest of stakeholders' diverse influences in land use activities and proposed a template for appropriate legislation and application of Eminent Domain law by government and its agencies in Kaduna metropolis and the nation at large. Methodology adapted for the study was hinged on pragmatic philosophy. Deductive approach with qualitative method using case study, archival and interview survey strategies. The selected institutions cut across tertiary, secondary and primary level with key stakeholders were interviewed. Study data was based on content theoretical analysis for proposition on land use eminent domain law. The study findings showed that government and its agencies seem to have abandoned their principal responsibility of impartial trustee and infrastructures provision in urban development. Furthermore, policy decisions are changed whimsically on the status of most urban land tenure depending on those in power at any particular time, thereby dampening land transactions, development schemes, thus leading to litigations. The study also establishes that while neighbourhoods' interest and participatory rights remain neglected; indigenous communities often proceed with the land transaction on the presumptuous right of ownership within urban areas, thereby further compounding the conflicting interests. Ultimately, the paper proposed a template for appropriate eminent domain law legislation process and applicability within Kaduna metropolis as well as the country at large. The designed template will serve in enhancing eminent domain law theoretical development and ensure friendly on-site practical application that is based on proactive government policy.

**Keywords:** *Conflicts, Eminent Domain Law, Land Use Act, Land Tenure, Urban Heritage*

## 1. Introduction

Power of eminent domain is a critical concept that permits the government to take possession of land or property base on overriding public interest. The essential challenges that rose in rural-urban drift seem to have taken most governments in developing countries unprepared as they grabbed to handle urbanization exertions (Bobadoye & Fakere, 2013; Estevez, Lopez, & Janowski, 2015). Therefore, authorities often seem confused as to the suitable strategy required in stemming urbanization consequences. Unfortunately, when government agencies choose to act, it is usually to destroy what the urban dwellers have laboured to put in place such as shelter (Arasomwan, 2016). In some instances, government and its agencies prepare urban upgrade and slum rehabilitation schemes that have no bearing to socio-cultural, economic or environmental realities on the ground (CCDI, 2012; Daniel, Wapwera, Akande, Musa, & Aliyu, 2015). Such urban schemes have led to government making use of its power of eminent domain to the detriment of its citizenry. Here the contradictory tendencies are in terms of tenure challenges rather than the quality of dwelling or level of adherence to set planning standard.

The travesty of justice concerning the land use act has continued to be a source of concern in Nigeria (Otubu, 2016). This travesty is even more so as the government is the holder in trust of all land, and could consciously or inadvertently allocate land for any said public interest. Often these purposes might not be to the benefit of the customary owners of the property, nor do they receive adequate compensation for their land. It is this mentality of government omnipotence on land matters that brought about the often-tragic consequences of slum upgrade, clearance and redevelopment, particularly in urban areas (Daniel, et' al. 2015). The application of eminent domain law in our urban development should anchor on well-articulated citizen interest-based principles. Citizen based interest is particularly important where there are weak institutions that serve as an avenue for individuals to take advantage to the detriment of the citizenry.

Unfortunately, authorities concerned with urban development control often watches as the slums, or illegal structures develop to gigantic proportions. In some cases, a clear violation of the proposed master plan occurs without any deterrent measure. Still, once there are raised concerns, the government operators send eviction notice, mobilise to demolish the said developments and to do so with impunity (Arasomwan, 2016). Paul and Linda (2005) argued that urban renewal is not a new concept and have been in practice since medieval Europe. Hence, towards reinvigorating the rot in middle ages Europe;

‘growth and vitality concept’ was adopted by various authorities to engender urban renewal.

Several countries in Europe and America approached their inner cities reinvigoration based on observed challenges and the people’s need. In America, towards enhanced housing provision, the Housing Act of 1954 encompassed neighbourhood protection and reintegration (Kassen & Schultz,1986). Meanwhile, urban renewal undertaken in the United States of America after the war did not push out inhabitants of the slum but integrated them (Freakonomics, 2011). Ultimately the study established that cities engaged in the urban renewal came out better off during the stated period. In slum rehabilitation, the challenge of inserting suitable infrastructures and actual location within the community often turns out with a lot of problems to the attainment of the policy intent. Such policies get burdened with issues of concern in slum rehabilitation, street provisions, public right of way, industrial and commercial areas as well as public and semi-public spaces. However, there is another form of slums illegal development that is mainly due to tenement issues in developed areas of land as a result of infill attempts. Developed areas tenement has recently become a significant cause for concern in some significant Nigerian cities like Abuja and even Kaduna. Land tenure challenges are grave and central to the discussion on the application of eminent domain. Tenga and Mramba(2008) opined that virtually all human activities are dependent on land; therefore, for land management, this should be a core concern to the governments and its development agencies. It is also significant to set up a manual that ensures a proactive approach for land tenure, conveyance and management that provide articulated rules catering for the varied intricacies.

Due to the high level of urban growth as well as government inability to provide critical infrastructures and facilities for the growing population, the development control agencies over time have lost control of urban development strategy (Qurix, 2017). This condition continued for a very long period that brought government land development strategy to a quagmire. Decisions are made arbitrary and also reversed almost immediately after execution. Such confusions were quite visible in the case of Kaduna metropolis infill attempts. As at the early 1990’s most of the currently infill land development had not commenced. The old master plan of Max Lock though violated, was yet to be so bastardised. Soon after, the various military administration during the General Babangida and later General Abacha regimes allocated choice lands within the city centre to themselves and their associates, which led to the current state of land tenure in Kaduna. Arinde (2005) appropriately averred that open spaces on Government

Reserved Areas (GRA) of most Nigerian cities, including Kaduna, were re-subdivided and allocated for the development of varied scope. Unfortunately, most government agencies have no clear thought out program for their action rather than personal aggrandisement. The subdivision of inner cities prime lands was said to base on new urbanist proponents and to some extent supported it based on the Max Lock Kaduna Master plan (Arinde, 2005; Lock, 1967). The paper argued here that infill attempts by the various military governments and later civilian administration, particularly in Kaduna is a planning and development deception. The trickery leads to the current government confusion and consequent conflicts on previously approved and carved out inner cities land, including that of institutions.

### **1.1 Statement of the Problem**

Urban centres have challenges, particularly in the provision of suitably adequate housing for the large and rapidly growing population. Most government strategies towards achieving this noble objective seem to have marginal or have an ineffective impact (Qurix, 2017). The option of eradicating slum by relocation have turnout a grave mistake in the past. Unfortunately, government is unable to come up with better workable options (Bobadoye and Fakere, 2013). In the same vein, the demolition of partly legal developments is costly to both government and the 'illegal' land developers. Conversely, securing valid land title deed is a significant challenge in urban area development, particularly in developing countries (Payne & Durand-Lasserve, 2012). Where such lands though given by government agencies are also statutorily illegal or a violation of masterplans and other government statutes. It is, therefore, pertinent for authorities to find a way around this challenge that can enhance the liveability of cities. This paper set out to adequately review the law of eminent domain in land tenure based development of Kaduna metropolis, and set a template for an integrated form of urban development, which is humane and based on genuine public interest as enshrined in the act.

### **1.2 Objectives of the Study**

This study aimed to critically analyze Eminent Domain Law as it affects urban heritage evolution to land tenure security within Kaduna metropolis. Specifically, the objectives were to;

1. Review the concept of Eminent Domain Law in light of varied interest partners and their diverse influences on land use activities for the appropriate application.
2. Propose a template for developing appropriate legislation and applying the eminent domain law by government and its agencies towards ensuring humane urban

heritage and sustainable urban communities' development within Kaduna metropolis and the country at large.

### **1.3 Significance of the Study**

To bring to fore the challenges of rapid urbanization due to population explosion in urban centres of the developing world (Daniel et' al, 2015). Situate the plight of often dispossessed informal self-help housing providers on the excuse of government trying to upgrade or renew already unplanned well-settled areas (Uji & Okonkwo, 2007) yet. Also place the eminent domain law in the context of social justice, human right for housing provision and the government failures in planning, weak development control enforcement, lack of providing of infrastructures as well as a penchant to demolish what they could not offer. This paper argues that applying the principle of the overriding public should be utilized to improve rather than destroy the bare housing provision that individuals have made for themselves due to government neglect or incapacity. After all, government reluctance to provide serviced plots of land did expose the public to any available provisions they can irk out for themselves. In this part of the world, land availability for government projects is not in such short supply that warrants wanton destruction of already built scarcely available habitat by individuals.

### **1.4 Study Area**

Kaduna metropolis is mainly a colonial administrative town that came into existence in 1912 as part of Lord Fredrick Lugard movement of his Northern protectorate headquarters from Lokoja and later Zungeru (Bununu, Ludin, & Hosni, 2015; Qurix & Suleiman, 2015). The Kaduna State Development Plan for 2014 to 2018 by the Executive Governor then Alhaji Ramalan Yero argued on the need for critical infrastructures in Kaduna (Ministry of Economic Planning, 2013). The areas then identified, which required urgent intervention are concerning roads, housing, potable water and power supply for urgently needed societal development. Part of the critical infrastructures across the metropolis forms the foundation of the tenure challenges across all available lands in the municipality. Also, the unruly use of the principle of eminent domain by preceding and current government and its agencies have compounded the land allocation process and thus development prospects. Within the Kaduna metropolis, the sectors chosen for study included a tertiary institution (Kaduna polytechnic CASS campus), two secondary schools (Government College and Rimi College) and a conglomerate of two Primary Schools along constitution road. The chosen institutions were according to the

severity of the current land tenure challenges within them as a result of flippancy use of the power of eminent domain by government and its agencies across the metropolis.

## **2. Review of Related Literature**

For analysis of the Eminent Domain Law as it affects urban heritage evolution as well as its land tenure security, the paper will further review; the law of eminent domain, land use act and urban heritage land tenure. Similarly, the application of Eminent Domain Law in Kaduna Metropolis, Power of Eminent Domain and Infill Development in Kaduna Metropolis. The developed conceptual framework is from the reviewed perspectives, which involves the critical partners of the conflict on eminent domain law and its applicability.

### **2.1 Law of Eminent Domain**

Most often the disagreement on mode for application of the principle of eminent domain law centres around “whose land”. The land ownership question has a varied viewpoint and raises; moral, legal, social, economic, political and even environmental ramifications (Akpan, 2012; Payne & Durand-Lasserve, 2012). These issues should naturally through dialogue be resolved and or diplomacy amongst stakeholders. Often the tendency of government application of the power of eminent domain to provide land and resources for exploitation by international corporations, business tycoons and often personal interest as public interest investors must be addressed. Communities feeling of deprivation of their ancestral land is the core of the most urban land crisis. Kakulu in 2009 argued that eminent domain law has to do with ownership of the land through compulsory purchase, compulsory acquisition, expropriation or land take (as cited in Otubu, 2012). Eminent domain law application can include; property rights of owners, refusal of the permit, declaration of land as wetland or reserved area in some instances. In the case of Nigeria, the government is vested with control of all lands, even though indigenous owners may often have some rights to be compensated (Mabogunje, 2010). These acquired lands are for development and best provision of community’s infrastructural needs.

Domain law originated from Latin vocative of Dominus being Master, Lord or owner used as a title to address an individual. It is also a feudal title of superior and Mesne as well as for ecclesiastical and academic designation where government could expropriate private land or property for public good (Tyler, 2002). This concept of eminent domain as is being used today has its root in English common law. Eminent domain law has served

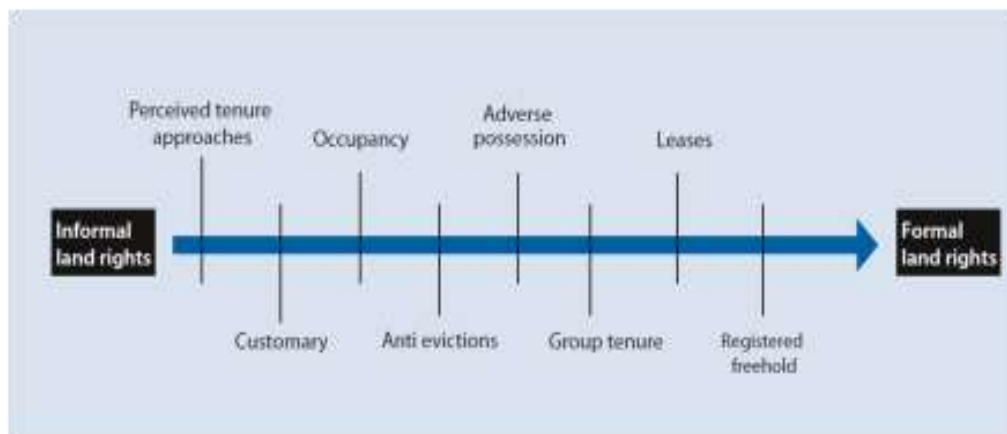
as a means by which government at all level utilised to facilitate development and provision of critical public infrastructures (Kenton, 2020; Otubu, 2012; Saxer, 2005). Furthermore, for there to be a meaningful development base on the power of an eminent domain, the key players should adopt some framework. This framework includes redefining the scope of eminent domain, depending on our circumstances, changing approaches and procedure, applying funding restriction and setting moratoria for its application. Such options are needful, as procured property base on public interest compensation. The supreme court averred that for development purposes, the invocation of the law of eminent domain option as in the case of Kelo and American New London city is encouraged. The court also ruled that individual states could modify its standard base on their public interest. Such pronouncements may seem a novel idea in countries where the institutions are strong. However, in developing countries, particularly Nigeria, this provision is almost certainly being abused; hence opposed acquisition and compensation should be reasonably reconciled (Otubu, 2012; Tyler, 2002). Fair compensation must be done and seen by all as a guarantee for appropriate eminent domain law in Nigeria, which can be realistic only with suitable amendments of the land use act of 1978. The proposal should equally encourage joint analysis in agreement with stakeholders' interest. Thus the Eminent Domain Law application must reflect the general public interest.

## **2.2 Land Use Act**

As well stated by Mobogunje (2010), the land use act of 1978 confer ownership right of land to state governors, but fail gravely to address the traditionally mainstream owners with tenure-ship rights. It argued further that governors in Nigeria had become a clog to any form of land reform since the Land Use Act confers on them the custodianship of their state lands. This posture is despite the 1991 judgement of the Supreme Court in Nigeria that favor continued entitlement of customary landowners (Idowu, 2006). Otubu (2012) further opined that enactment of the Land Use Act skewed in favor of compulsory acquisition against owners' property rights. Such skewed acquisition rights by the government have fundamentally compromised property rights and economic development of most urban areas. Figure 1, identified levels of tenure rights, which required being formalized accordingly. The tenure ranges from informal to the formal tenure rights. At the same time, in between the two extremes is the opportunity for interaction and adoption of appropriate parameters for the formalization of land tenure in Nigeria.



In America, state governors use the power of eminent domain to acquire land and property for developmental projects towards attracting investment for the area (Kenton, 2020; Tyler, 2002). As earlier stated the power of eminent domain is also implicit in the Nigerian land use act that permit governor to exercise power of eminent domain in urban lands. Based on such land purchases, social services as well as housing, which is for poor city dwellers is provided. Ultimately, adjudication should be the most suitable medium for resolving thorny land tenure issues currently rather than the arbitrary use of the power of eminent domain by government and its agencies in Nigeria. State government misuse of the power of eminent domain in Minna Nigeria led to several suits against compulsory government acquisition of natives' land for the said public interest (Nuhu and Aliyu, 2009). The critical points of law for the litigation were; issues of statutory compensation, just formula for valuation, stated public interest and purported grants of right of occupancy to individuals (Nuhu & Aliyu, 2009). The settlement, which was one of the key provision of the statutory land use act is also a constitutional provision as well as a fundamental human right.



**Figure 1: A Continuum of Tenure Types**

Source: Payne & Durand-Lasserve (2012)

### 2.3 Urban Heritage Land Tenure

Garcia-Hernandez and Calle-Vaquero (2019) stated that urban heritage could refer to the totality of the metropolitan area in terms of its neighbourhood and historic constituent

units. It is the holistic urban environment's perspective of urban heritage that this study is discussing, rather than its tangible and intangible components'. Therefore, the high level of urbanisation and competition for human activities requires effective land tenure management to secure the holistic urban heritage (Nuhu, 2007). Nuhu (2007) further stated that land tenure in urban areas is mostly, however, tied to specific property rights. The tenure rights based on location, time frame, permitted use and individual versus collective interest. The reasons could also be termed as tradeable rights as it concerns, planning development, accessibility, visuals and many others. On the other hand, non-tradeable rights concern heritage, indigenous and natural (biodiversity) rights. This paper is more concern with the later's rights and their implication for national development and peaceful coexistence. Urban heritage registration is quite significant in the concept of the power of eminent domain application for appropriate conveyance (Tenga & Mramba, 2008). The record of these urban land is quite cumbersome and of great concern in most Nigerian cities. Often, once the process commences, it ends in one controversy or the other, thereby negating the intended purpose of the land use act of 1978 (Momale, 2017). The land use act is to assist community members to own land with secure tenure for development under government trusteeship that guarantees a holistic urban heritage in particular. The consequences of the act are today the course for concern in most urban heritage components or their units. Mainly, the said conflicts are due to arbitrary trusteeship application of eminent domain law in urban areas across the country.

#### **2.4 Application of Eminent Domain Law in Kaduna Metropolis**

The Kaduna State Government have also adapted the eminent domain law as it might be considered suitable to their immediate and long-time public interest. Unfortunately, of recent, most decisions have suffered reversal and counter pronouncements forcing development activities to a halt in most parts of the town. The World Bank 2010 survey on ease of doing business ranked Nigeria 178 out of 183 countries on the difficulty of registering properties. Kaduna State was ranked lowly in doing business, particularly concerning obtaining a planning permit. In Kaduna, it took a minimum of 60 days for planning approval as against 42 days for Lagos, 50 days for Ibadan, Abuja 30 days, 14 days for Kano and Katsina (The World Bank, 2010). This situation really can be attributed to the strangled hold on the land by the state government's use of the power of

eminent domain and the astounding bottlenecks in the land registration and approval process in Kaduna metropolis. This poor perception about doing business in Kaduna State led the Government of Yakowa-Ramallan to commence a process of reorganising the land and survey ministry. The reorganisation was stretched further by the current Kaduna State Government of Mallam El-Rufai base on his experience in Abuja by creating Kaduna Geographic Information System (KADGIS). Therefore, government misused of power of eminent domain led to urban and peri-urban slums, buildings along floodplains, utilisation of recreational areas for personal development, buildings on suburban virgin lands and creation of infill plots (carved out spaces) without dully thought out documentation of acceptable land tenure system. Currently, the state government cancelled other land leases within its urban centre that were earlier given by Kaduna State Development and Property Company (KSDPC) and organ of government for the past about forty years.

### **2.7 Power of Eminent Domain and Infill Development in Kaduna Metropolis**

The concept of infill development came up due to observations made, which noted that key prime land areas are often underutilised within the city centre. Hence new urban thinking was aim at enhanced service utilisation of prime land within the most developed part of our urban areas (Lock, 1967). Unfortunately for Kaduna, the proposed infill developments plots were according to the designed master plan, nor were they based on any particular planning principle. This haphazard carved outs and allocations of lands in already developed urban settlements of the Government Reserved Area (GRA) bred the current urban planning disaster. The abandoned industrial estates' exclusion in the new urban thinking and the decay infrastructures had no particular sense of urgent remediation plan. Unfortunately, institutional lands were equally bastardised in the name of the carved-outs base on the government use of the principle of eminent domain. In Kaduna metropolis institutions like schools and hospital, lands were carved-out for individual development. Years later, the current government claim that the previous government did not act in the public interest; hence its desire to reverse all such allocated lands (Arinde, 2005; Bulus, 2015; Plateau News, 2016). It clearly shows the contradictory tendencies in the use of the power of eminent domain by government and its agencies. Parks and

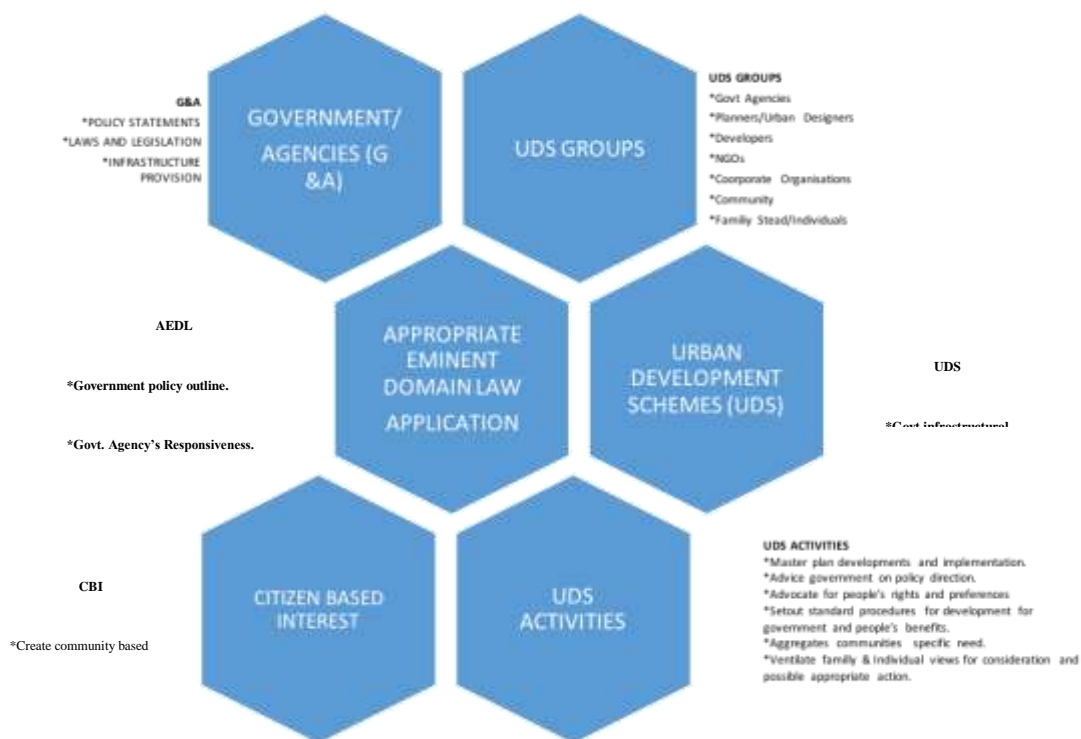
gardens within the Kaduna metropolis were virtually wipe-outs for commercial purposes, due to the use of the power of an eminent domain. Lands designated as parks and gardens were later to be allocated for other forms of development like office blocks, banks and shopping malls development, clearly a violation of any planning principle. This discriminate use of the power of eminent domain brought the integrity of government and its agency as regards urban development to serious questioning. The discriminate power use in addition to contention on proprietary or otherwise of the conferment on state governors the sole right to allocate certificate of occupancy by the land use act continue to be contentious. Unfortunately, the law promulgation was without adequately acknowledging customary landholders' possessory rights (Mabogunje, 2010). As years go by and various government and its agencies allocate to themselves, including their cronies urban land at will, the contradiction heightens, and urban heritage and its development suffers. A critical review of all issues so far highlighted and the essential stakeholders' opinion formed the framework for the study.

## **2.8 Conceptual Framework**

The study premised on eminent domain law and applicable to the concept of slum clearance, rehabilitation, illegal settlement and particularly unsecured tenure in Nigerian Urban Centres. The study assumes that slums here have to do with lands often developed without 'proper' allocation, or statutory development process and approvals from relevant government agencies. Furthermore, UN-Habitat argued that methodological process of resolving tenure security challenges had yielded minimal result (Payne & Durand-Lasserve, 2012). Therefore, tenure categorisation here is around owner-unauthorised construction, squatter owner-unauthorised and tenant in the unauthorised land subdivision. The challenge of rehabilitation and clearance of slums in urban areas is here being visualised in the context of the eminent domain law application by authorities based on overriding public interest vice-a-vice the actual public and their real preferences.

Mainly this paper discussion of the concept of eminent domain law was hinged on compulsory government acquisition of land for the said public interest. The argument is not against the application of the principle of eminent domain on urban land matters.

Here the discussion is on the justification or otherwise of the said public interest on the one hand and suitability of applied compensation on acquired land (Otubu, 2012). This paper further argues that to actualise an appropriate and reasonably acceptable “public interest” and “fair compensation” of all acquired lands; the urban development strategy should incorporate key partners that form the fulcrum of any development process. In that regard, therefore, this paper categorised these interest groups to include; government/agencies programs, citizen-based preferences (interest) and urban scheme developers for appropriate eminent domain law application as illustrated in Figure 2. This framework is related to Nuhu (2007) 3P’s for land management that involves; People (local community members), Public (government and its agencies), and Private Developers (free market).



**Figure 2: Urban Heritage Land Tenure Concept for Appropriate Eminent Domain Law Application**

### **3. Methodology**

The research design is anchored on pragmatic philosophy being concern with measuring organisational practical impact, where objectivism and subjectivism are reconciled for purposeful benefit of stated stakeholders (Saunders, Lewis & Thornhill, 2019). This view is within the context of practical consequences, which here adapt the study conceptual framework as instrument for thought and action. Pragmatism ensures that complex practical reality is based on practical experiences within a context. The philosophy is driven often on stakeholders' belief system and the specific concern with practical solution in view. Here a theoretical survey and review of existing pieces of literature, including physical observations on sites of the selected institutions was undertaken (Aliyu, 2015; Uji, 2009; Yin, 2009). The study approach is basically deductive with qualitative methodological choices using case study, archival research and interview survey strategies (Saunders, Lewis & Thornhill, 2019). Using cross-sectional time horizon to carry out interviews with critical stakeholders' personnel in land tenure management of Kaduna that yield appropriate eminent domain law applicability (Sabri and Olagoke, 2020). The metropolis is made up of several institutions from primary to secondary and tertiary institutions. For this study the study institutional population was purposively selected due to the nature and intensity of the conflict on the tenured infill land. Thus, the three categories of the institutions within the metropolis each had a severe case chosen for study. Each case chosen had pending court cases and several government orders for vacation land and or built property despite being legally assignment. Hence, the purposively selected institution includes; CASSS, Kaduna Polytechnic, Rimi College, Government College and Constitution Road Primary Schools. as earlier stated in study area (1.4). The sampling frame categorised these institutions into the three-level of academic training. It also considered the varied sources of the land ownership (indigenous owners, missionary schools and government school's lands) over time and its relevance to current contention. The interview on the selected case study sites was done with group members of each institution's management, their current inhabitants, infill land developers and investors as well as government planning agency. This study used stratified proportionately random sampling to select institutions for the review (Cohen, Manion & Morrison, 2011; Uji, 2009). The study review was hinged on key variables and

interview data derived from critical attributes of concern in the selected sites to includes, government and its agencies, Urban development schemes and citizens based perceptual preferences. In establishing a suitable analysis for this case study interview data collected the fitness of purpose and eligibility for audience concept was adopted (Robson, 2002). Furthermore, Yin argued that case study could be analysed using amongst others narrative and comparative structure which was applied in this study by the snapshot of the several chosen variables of the institutions (as cited in Cohen, Manion, & Morrison, 2011). The explanation of these case studies based on theoretical analysis and part of a more extensive intervention and proposition on land use act concerning eminent domain law that is taking place across the country and specifically in Kaduna metropolis (Aliyu, 2015; Yin, 2009).

#### **4.0 Applicability of Appropriate Eminent Domain Law on Selected Case Study Sites in Kaduna Urban Area (Interviewees summed Responses and Discussion)**

The sum reality of the four institutional interview case studies in Kaduna in the application of eminent domain laws is here analysed within the context of the conceptual framework and the overall concern of an appropriate eminent domain law in urban areas of Kaduna. This paper discussion utilized the conceptual framework and the strategic partners which form the fulcrum of urban evolution for proper eminent domain law application in Kaduna metropolis and Nigerian urban centres in general. Below is the findings of the case study interview and observation made on these selected sites based on the study framework of; government policy, urban development schemes and citizens based preferences. The views gathered showed the under listed attributes as below stated.

#### 4.1 Case Studies Interview Responses

**Table 1: Respondents Opinions from the selected Institutional Cases Studies in Kaduna Metropolis**

Respondents	Responses		
	Government and its Agencies	Urban Development Schemes	Citizen Based Preferences
Institutional Managements	Lack of well guided policy document. Inconsistencies in application of development framework. Institutional management are left with burden of contradictory directives after each change in government. Inability to tackle current urban concern of citizens.	Fluidity of government policy stand on the institutional lands. Low development appetite that lead to mostly frozen developments.	Abuse in enforcement of power of Eminent domain law on institutional land without infrastructural provisions. The urban renewal strategy seems to call to question government sincerity in the application of the principle of eminent domain for public interest.
Institutions Land End users	Often found in a state of despondencies and lack of faith in government protective role. Averred public interest rarely considers its effect on end users. Required proactive government	Need for cooperative policy principle adherence by government and its agencies. Lack of quality urban planning and development.	Lack of desire for good governance as government value system. Citizen desire for good shelter often sacrifice on alter of said public interest. Right of urban dwellers to enjoy crucial infrastructural provision is abused at will. Land tenure management system is not community



	framework for consultation and action.		friendly
Infill developers/ Investors & indigenous communities	Lack of government infrastructures within sites. Government going round and confiscating prime land base on law of eminent domain.	Changing and arbitrary application of eminent domain law leads to stalling development of the institutional lands. No investor will undertake unguided risk without clear policy direction.	Citizens actual desire should act as driving force for and form of development so as to guarantee shelter provision. Compensation by government on land valuation are mostly unrealistically low. As it is often based on stated land cost rather than cost in use within the metropolis. Socio-cultural ties of indigenous communities are not respected
Government Planning Agencies	Often change of used is observed during the course of development by land allottees. Need for an improved urban environment generally within the metropolis.	Unapproved development schemes within the infill land areas. Need for all stakeholders such as planners, developers, other built environment professionals to actively participate.	Brazen demolition of built structures on tenure land without due process. Urban renewal program within metropolis is not holistic and integrated properly into masterplan.

#### 4.2 Government and its Agency

Provision of well-articulated guiding policy statement for implementation in most cases seems lacking. Where they exist, it is outdated and inappropriate to tackle specific needs of a rapidly changing urban centre. The current land use act will require urgent

legislative action, through people-centred “public interest” in the application of the power of an eminent domain. Towards tackling the fast-changing urban realities, Tanzanian land law conveyance manual did set up a proactive approach to ensure effectiveness, and people-oriented management system (Tenga & Mramba, 2008). In virtually all lands under contention in this study, there is no any form of serious infrastructure investment by the government. Urban infrastructure provision being a key public welfare responsibility of government need immediate and responsive action from all government agencies (Famuyiwa & Omirin, 2011). Hence the paper argues as conflicting the Kaduna state fluid application of the power of eminent domain on prime land, as well as not being responsive to its citizenry urgent need for an improved urban environment as provided in the land use act.

### **4.3 Urban Development Schemes**

The development prospect was kill due to government mode of applying its power of eminent domain and the fluidity of the “public interest” definition by a different government. Genuine developers’ developed low appetite based on government action or inaction; hence the Pretoria of frozen development schemes. It is particularly true on all the four chosen studied institution lands of Government college, Rimi College, Constitution road schools and CASSS in Kaduna polytechnic. Without clear policy direction, no investor will be willing to take an unguided risk, and these eminent domain law contradictions had frozen most urban developers intended investments. However, cooperative policy principle adherence by government and its agencies could be vital to ensuring quality urban planning and development schemes (Simon, Adegoke & Adewale, 2013). Non-governmental organisations, developers, planners, urban designers, built environment professional and advocacy groups critical roles is crucial for proactive development in our urban areas.

### **4.4 Citizen Based Preferences**

The desire of citizens in any society should inform significant government driving policies direction always; this is important if there is to be any prospective future for urban shelter provision. Compensation valuations on most land matters by government and their agencies are not realistic, often based on stated land cost rather than its cost in use by the original owner. Socio-cultural ties and value of indigenous landowners are usually not respected, and the desire for good governance does not seem a core

government value. Citizens desire for proper shelter and good sanitation often sacrifice on the altar of government said “Public Interest”. The right of urban dwellers to have access to crucial infrastructures are often abused and not respected while enforcing the application of eminent domain law. Land tenure management system is mostly not community-based, institutionally entrenched and stakeholder centred (Payne & Durand-Lasserve, 2012). The interest of the neighbourhood and communities’ preference in most cases are of least concern in the government drives to meets its said public interest. Such brazen tendencies were further shown in state government infrastructures development (Qurix, 2017) as well as in new roads and markets destruction across the state capital. In some instances, existing roads and bridges, hotels as well as neighbourhood markets suffer demolition in the name of reconstructed or urban renewal. Meanwhile, a more significant part of the town lacks the fundamental infrastructures of access roads, water and electricity. The whole urban renewal strategy calls to question the government’s sincerity in upholding the public interest and their application of the power of an eminent domain.

### **5.0 Proposed Template for Eminent Domain Law Application in Kaduna Metropolis**

The template is on the key stakeholders in the policy formulation, legislation and adjudication as well as development schemes based on developers, NGO, professional, advocacy groups including the beneficiary communities as shown in Table 1. This proposed template has the understanding that once the key stakeholders' interest is part of the process of urban development and EDL application, we shall have enduring and sustainable urban centres in Kaduna metropolis and Nigeria at large.

**Table 2: Proposed Eminent Domain Law (EDL) Template for Urban Land Heritage Legislation and Developments in Kaduna, Nigeria**

Concepts/Approaches	Government Development Program (Policy Direction)	Citizens Based Preference (Community Inputs)	Urban Development Schemes (Implementation Strategy)	Remarks (Action Sequence)
<b>Redefining Eminent Domain</b> *Authorised users. *Governing roles for entities that can exercise it.	There is urgent need for government to critically review the land use act of 1978 to make it align with current development realities. Those responsible to use power of eminent domain should be well guided and responsive for deliberate abuses. Government must demonstrate by example the best acceptable approach to apply the principle of eminent domain by all its agencies.	Citizens' true interest should form the fulcrum for redefining application of eminent domain law on all lands. Only dully agreed "public interest" developments should be given the right to use and enjoy the EDL provisions. Citizens' continual interest should form the basis for government agencies roles in exercising EDL always.	Government should serve as an important infrastructure provider on land development issues. Developers' schemes should integrate government provisions and ensure tax remittances and other charges on a continual a basis. Government agencies are to supervise and ensure plan and design proposal are implemented as intended by developers	Government to outline policy statement and monitor agencies. Citizens and communities to articulate position of indigenous land owners'. Urban developers to converse for their position amongst other stakeholders. Jointly define the varied "public interest" for application in EDL.
<b>Utilised Funding Restrictions and Financial Incentives.</b>	Specified funding requirement for any application of EDL	Funds gotten from application of EDL should be utilised to	All scheme developers are to factor in the	Authorities to formulate guiding minimum financial

<p>*Ensure authorities follow stated policy.</p>	<p>on indigenous land would ensure responsible application by government at all time. Compensation by government should be based on use value rather than cost of land only. Once the policy statement is made by government it should be adhered to always. Any violation must have dire consequences.</p>	<p>acquire similar land by citizens to continue their lifestyle undisturbed. Citizens should be encouraged to prepared cost in use value of their lands and defend it rather than just setting a fix amount by government agencies and imposed on the land owners. Ensure that only when compensatory payments are made and due application of funds by citizens achieved should development commenced.</p>	<p>cost-in-use of land acquired using EDL. Developers can partner with citizens to assist them in utilizing effectively compensation funds as their social-service to the communities. Regular monitoring of environmental impact studies of acquired land and the development scheme impact should be required on a periodic basis. This is to keep a permanent mutual relationship of communities, developers and government.</p>	<p>remuneration and maximum % expendable funds by authorities for land policy as it applies to EDL. Citizens and communities to prepare and present funds application (utilization) for land replacement options for discussion and approval. Allow for continual fund regulation of all stakeholders towards mutual benefit and actualisation of sustainable urban development for all.</p>
<p><b>Changes to Procedure/ Process</b> *Timeline. *Compensation.</p>	<p>Ensuring a due process was set and adhered to in all EDL transaction should be paramount. The timeline for commencement of the process and its</p>	<p>Community base positions should always be established through consultation rather than individualistic aversions on all EDL matter. The citizens' time preference for</p>	<p>Development scheme should adhere to approved procedures on all land issues. The timeline adopted by</p>	<p>Once the "public interest" have been established, all processes shall be procedural rather than optional by any of the stakeholders. This</p>

	<p>completion should not be sacrosanct on all cases but negotiated. Compensation process should be citizen friendly and base on jointly agreed phases by key stakeholders.</p>	<p>acquisition should be presented in the course of negotiated position. Compensation proposal presented by community are to be fashion and defended by competent professionals as they negotiate with government.</p>	<p>stakeholders is to form the basis of project scheme execution without default. Compensation are to be paid dully and promptly to ensure fair deal always with original land owners regardless of government interest.</p>	<p>is necessary to avoid or minimised failed negotiations that could stall or discourage developmental schemes. Actionable process activities must be outline with specific timeline for definite achievement on all acquisition and compensations.</p>
<p><b>Establish Moratoria</b> *To enable issues for further studies.</p>	<p>Set moratoria on all EDL issues, this can allow for purposeful discussion and action by all stakeholders in the course of amending the land use act. Once government exercise this option, there will be a quick legislative and legal framework that can be reliable and rational for national good.</p>	<p>During the moratoria period citizens can interact and formulate positions that can be presented as memorandum for legislative processes. All interest can be capture during this period and quickly too.</p>	<p>Urban scheme developers can actually assessment implication of all EDL issues as it affects their desire investment and plan appropriately for effective schemes that are worthwhile.</p>	<p>It is expected that during the period of moratoria, all stakeholders' conference shall be undertaken for interaction and purposeful mutual dialogue that can engender sustainable urban development for "National Interest". During this period no acquisition on the basis of EDL shall take place by all stakeholders until an acceptable template is attained.</p>

**Note:** This proposed template shall serve as a guide towards the discussion, preparation of proposal as the land use act is being reviewed based on all stakeholders input. Ultimately, the final positions will then be incorporated into the reviewed land use act for amendment by the Nigerian National Assembly. Hopefully once this procedure is incorporated in the course of the land use act review, subsequent application of Eminent Domain Law for land heritage legislation will not be contentious and counterproductive to urban development in Kaduna and Nigeria at large.

## **5.0 Summary of Findings, Conclusion and Recommendations**

### *5.1 Summary of Findings*

Based on the conceptual framework and the interview as well as observation made with respect to the conflict of urban heritage land tenure with respect to Eminent Domain law appropriation in Kaduna metropolis, the following findings were made and here stated.

In virtually all instances, government used its power of eminent domain to carved out portions of school land for infill development only to change their policy position later after substantial developers' investments. Similarly, government reluctance to review the land use act decree of 1978 is causing a lot of constraining towards enhanced urban heritage management and its development. The key infrastructures provision by government across the metropolitan area being their social responsibility is lacking in all the case study areas. Eminent Domain Law was mostly not applied responsibly by the state government and its agencies, and frequent contradictory actions by different administration had bred the various land crises.

Furthermore, most development schemes remained abandoned due to changes in government and the often transformation in policy direction. Also, developers investments are habitually not secure due to inadequate legal protection and lack of legislative zest for contemporary challenges. New development schemes advocacy is mostly after significant challenges rather than from its inception. Professionals in the urban development sectors do not seem to take up their professional responsibility both to government and developers as well as protection of local communities' interest. Most of the urban areas do not have master plans, where there exist, it is often outdated and does not cover the new emerging settlements that require definite urban designers input.

Often citizens' socio-cultural ties and values are not respected in the application of the power of eminent domain by government and its agencies. Therefore, citizens desire

for development, often leads them to any form of accommodation that continuously degenerate into slums; as government abandoned them to their faith once the land is secured. The unfortunate economic activities are as a result of inadequate infrastructures and lack of waste management strategy in place; often generate poor sanitation and health concerns in some of these areas that government presence is virtually absent.

### *5.2 Conclusion*

The paper essentially demonstrated that the eminent domain law as is currently being applied in most Nigeria cities seems to be ‘executive’ centred rather than ‘public interest’ based. The study further established the strategic place of land administration challenges in urban planning and development. Similarly, it affirms the vital position of critical stakeholders in ensuring an enduring and all-encompassing land tenure heritage and management system in Kaduna metropolis. Such a situation can be applicable in Nigeria, generally using the proposed template for evolving an apt eminent domain law.

### *5.3 Recommendations*

Towards the attainment of this output, as stated in conclusion, the paper recommends as follows;

- (a) Government to provide a clear policy direction for immediate legislative action on the land use act, which caters for contemporary urban heritage realities and its diverse public interest aspirations of its citizens.
- (b) A moratorium on enforcement of eminent domain law by government and its agencies within urban lands tenement will allow for a holistic review of the land use act within two to three years. Government pending demolition orders should ensure obedience to courts injunctions aim at an amicable resolution of all conflicting land issues.
- (c) Provision of critical infrastructures by the government in all segments of the town is urgently required in terms of roads, water supply, electricity and effective waste management for each neighbourhood and community to ensure inclusivity.
- (d) Government and relevant agencies should provide an updated master plan that considers contemporary urban development strategies and the local community’s needs.



- (e) All development schemes must be a guarantee at inception against government arbitrariness', and there should be consequences on specific persons for violating the stated warranty. It will ensure that all investments on land are safe and protected from wanton abuse.
- (f) Application of Eminent Domain Law must be responsive by all essential government agencies, as they are to be made accountable for all said "Public Interest" revocation actions whenever they occur.
- (g) All relevant communities should be consulted and ensure proper dialogue is undertaken with set objectives/resolutions as well as a reasonable timeline be drawn before any land is taken from such neighborhoods to serve the said public interest.

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