

Evicted in Lagos: Assessing Legal Frameworks and Judicial Remedies for the Protection of
the Right to Housing.

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LLM Final Thesis

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June 2022

Acknowledgment

Firstly, I will like to thank God for seeing me through this academic journey at Central European University.

I wish to express my sincere gratitude to my supervisor, Dr. Inga Winkler, for her extensive support, suggestions, and guidance in the development of the work.

Finally, to my parents, Dr. & Mrs. Enobong Frank Eyo, thank you so much for investing heavily in my education. To my siblings, Ndifreke, Mmekitmfon, and Anietie. I owe this to all of you.

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Abstract

Lagos city government has forcefully evicted over two million residents from their homes in the past twenty years.¹ These evictions are instrumental to the government's plan to remodel Lagos into an alluring mega-city. With the urban poor bearing the brunt of this, evictions are a reflection of the vast socio-spatial inequalities affecting Lagos. Also, and more importantly, they are also a flagrant breach of human rights, notably the right to housing. This thesis explores the right to housing regime for evicted persons under the national legal framework of Nigeria, the Constitution. Addressing the lack of justiciability of the right, I rely on an extensive assessment of the constitutional framework to conclude that the right can be realized and enforced through a purposive construction of civil and political rights. In examining the prospects for recognizing the right to housing, this thesis assesses the impact of public interest litigation as a rights enforcement mechanism in Nigeria. However, findings reveal that court interventions are fragmented and inadequate in securing protection for evicted persons. With this disclosure, I contend that developing constitutional climes like Bangladesh, where courts have progressively adjudicated the right to housing, are an example for Nigeria to emulate. More generally, this thesis recommends that courts in Nigeria rethink their rigid stance on ESC rights by embracing orientation on the subject and eliminating bureaucratic bottlenecks within its adjudicatory process. As to remedial outputs, I conclude that current judicial remedies meted out to evicted residents are ineffective in changing the status quo, and I hence move to explore and recommend alternative approaches within the constitution as apt and with a more compelling force. Finally, the Nigerian parliament holds prospects of making the right to housing justiciable; this thesis concludes by urging them to ease pressure on the courts by legislating on housing since the constitution empowers them to do so, thus addressing the normative lawlessness surrounding illegal evictions in the country.

¹ See 'Nigeria: The Human Cost of a Megacity' <<https://www.amnesty.org.uk/lagos-nigeria-human-cost-megacity>> accessed 23 May 2022.

Introduction

Post-colonial cities like Lagos in Nigeria are rapidly urbanizing. However, current urbanization trends bear both a colonial legacy and features of capitalism². Today, the governance paradigm from political leadership leans towards neo-liberal economic interests. Lagos aims to be one of Africa's model cities by 2025³. Consequently, the cycles of development projects aimed at intentionally placing Lagos as an investment hub have resulted in growing tensions between the City government and many of its citizens, especially those living with informality.⁴ The Lagos State Ministry of Economic Planning and Budget suggests that 50 - 70% of the City's workforce earns a living from the informal economy⁵.

About 70% of the 23 million population resides in approximately 200 informal communities (slums and squatter settlements)⁶. Slums and squatter settlements are manifestly by-products of inequalities and a dysfunctional urban governance system that disregards the needs of people living in poverty. Moreover, the quest to build utopian metropolises has paved an authoritarian development model with Slum settlers constantly living under governmental threats. This points directly to the use of forced evictions to achieve public space regeneration wherein poor city residents are removed from centrally located areas favoring the middle class and reorienting the City towards a population of elites and investors.⁷ These evictions have increasingly brought concerns – specifically with the surge of evicted persons within the City.

²Lanre Davies, 'Gentrification in Lagos, 1929–1990' (2018) 45 Urban History 712. P 1.

³ See Lagos State Development Plan 2012-2025 <<https://www.proshareng.com/admin/upload/report/11627-271150413-proshare.pdf>> Accessed 20 November 2021.

⁴ 'In Transiting to Africa's Model Megacity... Where Is Lagos for Everyday People? | Heinrich Böll Stiftung | Abuja Office - Nigeria' (*Heinrich-Böll-Stiftung*) <<https://ng.boell.org/en/2018/03/05/transiting-africa%E2%80%99s-model-megacity-where-lagos-everyday-people>> accessed 1 June 2022.

⁵ LSDP 2012-2025, (n3).

⁶ Ibid.

⁷ Ibid.

Moreover, the evictions hamper livelihoods and violate the internationally recognized human right to housing.⁸

This thesis critically examines the right to housing regime for evicted persons within the City of Lagos, Nigeria, under national legal framework.⁹ Unfortunately, the right to housing is not justiciable under the Nigerian Constitution.¹⁰ Notwithstanding, this thesis will examine the constitutional framework and draw from case law jurisprudence to argue that the right to housing can be realized through a wide range of guaranteed civil and political rights.

Public interest litigation is at the heart of housing rights advocacy. It remains a unique tool for enhancing the prospects of the right to housing recognition in Nigeria. However, it could remain fruitless if courts do not intervene in the most desirable way to protect litigants. To what extent has public interest litigation succeeded at triggering recognition of the right to housing in Nigeria? The recent judicial decision in *Akakpo Agemo v Attorney General of Lagos State* will be critiqued as a missed attempt by the courts to bring more concrete protection for evicted residents.

Based on the preceding, this thesis will assess developing climes where public interest litigation has triggered the recognition of the right to housing. Bangladesh is one of such countries with active court interventions. Reflections are crucial and will be made on Bangladeshi's right-to-housing approach to deduce valuable lessons for Nigeria. The unique point of focus is that despite having a bar on the justiciability of social rights, Bangladesh has moved beyond these inhibitions to re-interpret the constitution differently. How have the Bangladeshi courts done that? Through a wide range of academic discourse, this thesis explores that and argues that Nigerian courts have sufficient impetus to follow suit. Lastly, recent judicial remedies by

⁸ See International Covenant on Economic, Social and Cultural Rights, Article 11.

⁹ The 1999 Constitution of the Federal Republic of Nigeria.

¹⁰ See Section 6(6)(c) 1999 Constitution of the Federal Republic of Nigeria.

Nigerian courts have proven ineffective in securing the rights of evicted residents in Lagos, thus probing the need to rethink better remedies for enforcing housing rights. For instance, remedies in the form of declaratory reliefs do not serve an impactful purpose in the enforcement of housing rights. In response, this thesis will look at other judicial remedies that could potentially be effective in the housing rights discourse under Nigeria's underlying constitutional mechanisms.

Structure

Chapter one of the thesis will begin with an analysis of urban development in Lagos. Then, it will consider the core drivers of this growth and the patterns that have unfolded from colonial times to the present. It will also draw from a wide range of discourse to examine themes like the financialization of housing, its consequences for slum dwellers, and some basis for governmental repression against slum dwellers. Finally, this chapter will provide a considerable critique of the City's governance approach towards development through the lenses of human rights standards.

Chapter two of this work will make a constitutional exposition on how protection can be harnessed for evicted persons in Lagos. In examining the constitution, discussions will be centered on the right-to-life theme and how it can be reimagined to encompass a right to housing for evicted slum dwellers. In corroborating this position, lessons from Nigeria's environmental rights litigation which have constructively re-interpreted the right to life to include a healthy environment will be drawn to demonstrate its feasibility. Likewise, an analysis will be made of how the right to property, due process, and freedom from inhumane and degrading treatments under the constitution are all related and directly enforceable rights for evicted residents.

Regarding the enforcement of the right to housing, the chapter will assess the mechanism of public-interest litigation within the parameters 2009 Fundamental Rights Enforcement Procedure Rules, which have paved the way for housing rights adjudication in Lagos, Nigeria. On this note, the case of *Akakpo Agemo v Attorney General of Lagos* will be examined, with a critique of how the courts adjudicated the matter.

Chapter 3 will focus on a comparative reflection on the courts in Bangladesh and their approach to enforcing the right to housing. Bangladesh is apt for a comparative study for several reasons. Firstly, the underlying triggers of urbanization resulting in evictions of slum dwellers in Bangladeshi cities look similar to that of Lagos. Secondly, Bangladesh and Nigeria share the same constitutional design. Both countries share the same stance of non-justiciability of economic and social rights, but the former has been far more progressive in realizing housing rights. The study aims to draw rich constitutional lessons for Nigeria on the need to reconsider its right-to-housing approach during adjudicatory processes. Lastly, effective judicial remedies should be designed to make human rights enjoyable for litigants who approach the courts for redress. Unfortunately, this has not been the case for evicted residents in Lagos who continually maintain their status quo. This Chapter will comment on the need to rethink judicial remedies for protecting housing rights in Lagos by exploring other effective remedies under Nigeria's constitutional framework. It will also conclude with a general recommendation.

Chapter One

1.1 Lagos and Urban Development Patterns

Like many other African cities, Lagos is rapidly taking a new form through physical transformation and urban restructuring. The vision for Lagos is that by 2025, it will have become Africa's model mega-city, a global, economic, and financial hub that is safe, secure, functional, and productive.¹¹ Africa has been dubbed the second-fastest-growing region in the world. The "last frontier for development" rhetoric is prompting many African governments to strategically position their major cities to take advantage through processes of physical urban transformation¹², an idea Goldman famously labelled as "speculative urbanism."¹³

In contrast, Watson conceives these grand notions for cities as urban fantasies, one which takes no cognizance of the livelihood realities of present urban dwellers.¹⁴ For example, Lagos appears competingly trapped in the struggles of managing a teeming population, addressing its development challenges, and the quest for urban modernity.¹⁵ As a result, there are wide gaps in providing affordable housing and urban services for residents. Ilesanmi convincingly opines that poverty, the proliferation of informal settlements, inadequate physical and social infrastructures are the most enduring spatial and socio-economic manifestations and consequences of urbanization in Lagos.¹⁶ Since poverty triggers the emergence of informal settlements, the urban governance system adopted by the city government visibly results in the

¹¹ See LSDP 2012-2025 (n3).

¹² Oluwafemi Olajide, Muyiwa Agunbiade and Hakeem Bishi, 'The Realities of Lagos Urban Development Vision on Livelihoods of the Urban Poor' (2018) 7 Journal of Urban Management 21. P 23.

¹³ Michael Goldman, 'Speculative Urbanism and the Making of the Next World City' International Journal of Urban and Regional Research 35 (2011) <https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1468-2427.2010.01001.x> Last accessed 14 January, 2022. P 555.

¹⁴ Vanessa Watson, 'African Urban Fantasies: Dreams or Nightmares' International Institute for Environment and Development (IIED) Vol 26, <https://journals.sagepub.com/doi/pdf/10.1177/0956247813513705> Last accessed 20 January 2022. P 215.

¹⁵ Olajide, Agunbiade, Bishi, (n12).

¹⁶ Adetokunbo Ilesanmi, 'Urban Sustainability in the context of Lagos Mega-City' Journal of Geography and Regional Planning (2010) <https://academicjournals.org/journal/JGRP/article-abstract/529AF9D40629> Last accessed 20 January 2022. P. 240.

labeling of such settlements as part of the "urban nuisances," which do not need any other remedial solution other than removal.¹⁷ Islam and Mungai offer an engaged perspective on poverty as both a cause and outcome of evictions of the poor¹⁸. They consolidate their point by arguing that in the face of capitalist urbanization, the poor cannot afford facilities that prevail on the market (such as housing), thus resorting to informal settlements where they are constantly under the threat of evictions.¹⁹

1.2 Forced Evictions, Historical Trends in Lagos

The Committee on Economic, Social, and Cultural Rights defines forced evictions as the permanent or temporary removal against the will of individuals, families, and communities from the homes and land they occupy without providing and accessing appropriate forms of legal or other protection.²⁰ Apart from leaving people homeless, these evictions intensify inequality and invariably affect the most marginalized populace.²¹

For Lagos, Nigeria, forced evictions bear a colonial legacy. Olalekan notes and stresses the historical importance of 1861 for two reasons. Firstly, it was the year Lagos was formally annexed and ceded to the British crown. Secondly, it marked the beginning of the colonial urbanization process. The British pulled down indigenous homes and annexed the beachfront, thus pushing the indigenous people of Lagos towards the hinterland.²² Simone contends that the long period in which different versions of colonialism were in operation was critical to most

¹⁷ Ayobami Popoola, Lovemore Chipungu, 'Urban Forced Eviction: Experiences in the Metropolitan City of Lagos Nigeria' (2020) Indonesian Journal of Geography.
< <https://pdfs.semanticscholar.org/3c36/ec49818eae2d982c584bf3e2bfdec364962.pdf> > Last accessed 20 January 2022.

¹⁸ Rezaul Islam, and NdungiMungai, 'Forced Eviction in Bangladesh: A Human Rights Issue.' International Social Work 59, (July 2016). <https://doi.org/10.1177/0020872815580046>. Last accessed 19 January 2022. P 494

¹⁹ Ibid, P 495.

²⁰ See General Comment No 7: The Right to Adequate Housing, E/1998/22.

²¹ See Office of the United Nations High Commissioner for Human Rights.
<https://www.ohchr.org/en/issues/housing/pages/forcedevictions.aspx> Last accessed 20 January 2022.

²² Muritala Olalekan, 'Urban Livelihood in Lagos 1861-1960' Journal of the Historical Society of Nigeria, Vol 20 (2011) <https://www.jstor.org/stable/41857183?seq=1#metadata_info_tab_contents> Last accessed 20 January 2022, P 193.

African cities' shaping and present-day capacities. He makes a distinct observation, "the importance of colonialism is not that it gave rise to cities in what was, for the most part, a rural continent; rather, the crucial move was to shape urbanization so cities would act instrumentally on African bodies and social formations."²³ The form cities assumed during colonization were simply attuned to the colonizer's interest.

Moreover, successive post-colonial governments are not also void of criticisms. Ocheje faults their failure to disengage with colonial urban planning models. He cites: "As with many other areas of social development at independence, many African states inherited from their former colonial authorities land-use/planning policies that placed scant premium on human development."²⁴ As a result, most Africans who were rural dwellers were somewhat considered unfit for civilized existence and therefore were to be kept out of urban centers.²⁵

1.3 Lagos for Show: Contemporary Trends

Post-colonial Lagos today is governed in a neo-liberal economic context. The economic impact of evictions in Lagos intrinsically matches the City's increased reliance on private capital. But, again, the reasons are not far-fetched; Adama notes that large infrastructure projects have emerged as a popular strategy for cities to attract private capital and reposition themselves as "world-class."²⁶ Consequently, forced evictions are enacted under the guise of urban planning to promote the city's elitist vision and anti-poor urbanism.²⁷

²³ AbdouMaliq Simone, 'On the Worlding of African Cities.' *African Studies Review*, Vol. 44, Cambridge University Press, 2001, <https://doi.org/10.2307/525573> Last accessed 20 January 2022, P 15.

²⁴ Paul Ocheje, "In the Public Interest": Forced Evictions, Land Rights and Human Development in Africa' (2007) 51 *Journal of African Law* 173. P 181.

²⁵ Ibid, P 181.

²⁶ Onyanta Adama, 'Slum Upgrading in the Era of World Class City Construction: The Case of Lagos, Nigeria' *International Journal of Urban Sustainable Development* <https://www.tandfonline.com/doi/full/10.1080/19463138.2020.1719499> Last accessed 20 January 2022. P 219.

²⁷ Victor Onyebueke, "Evicting the Poor in the Overriding Public interest: Crisis of Rights and Interests, and Contestations in Nigerian cities". (June 2020) *Cities*, Volume 101, < [10.1016/j.cities.2020.102675](https://doi.org/10.1016/j.cities.2020.102675).> Last accessed 19 January 2022, P 12.

Martinez cites that too frequently, cities have tended to yield to the pressures of global economic competition and financialization, which threaten the right to housing. She argues on the shifting role of the State with respect to housing, away from a social good conceptualization towards financialization which has served to undermine the human rights to housing.²⁸ What are the resulting impacts of these? Poor city residents cannot afford urban housing. First, the acquisition process is labyrinthine and requires a middle-class articulacy to navigate the process, an attribute in very scarce supply among the poor.²⁹ Secondly, they risk homelessness due to forced evictions, especially those who settle in squatter settlements. In developing economies like Lagos, squatter settlements located in prime land are subject to evictions and displacement to make way for speculative investment.³⁰ Miloon Kothari, a former Special Rapporteur on the right to housing, observes this trend in his 2005 report:

Even where developing countries have successfully attracted a large increase in private capital flows, the rapid growth of cities typically outpaces the provision of adequate housing, resulting in an increased number of the poor living in squatter settlements with no security or civic services. The situation is further aggravated when urban authorities or private operators clear such settlements for commercial use or high-income housing. Moreover, increasing trends towards privatization of housing services and markets typically result in land speculation and the commodification of housing...³¹

On another note, Amnesty International reports that the Lagos city government has forcibly evicted over two million residents from the places of their abode over the past twenty years.³² The politics behind forced evictions in Lagos often result in the city government justifying its actions by referring to sanitation, security, and safety claims.³³ In addition, they cite criminal activities, and disorderly behavior as part of the problems evictions help solve.³⁴ Abba

²⁸ Kaara Martinez, 'In The Face of Financialization: Cities and the Human Right to Adequate Housing' (2021)

³⁰ The Italian Yearbook of International Law Online 107. P 108.

²⁹ Ocheje (n24) P 188.

³⁰ 'OHCHR | Financialization of Housing' (*OHCHR*) <<https://www.ohchr.org/en/special-procedures/sr-housing/financialization-housing>> accessed 22 May 2022. Last accessed 21 January 2022.

³¹ See Para 25. Miloon Kothari, 'Report of Special Rapporteur on Adequate Housing' UN DOC: E/CN/4/2005/48

³² 'Nigeria: The Human Cost of a Megacity' (n1).

³³ Amaka Onyemenam, 'Curators of Forcible Evictions: The Problem with Lagos State' (2019) The Republic Journal.

³⁴ Immaculata Abba, "Dispossess: Evictions for Development?" (June 2021) Heinrich Boll Stiftung, Abuja <https://ng.boell.org/en/2021/06/22/dispossess-evictions-development> Last accessed 21 January 2022.

contradicts this position by asserting that evictions in and of themselves do not enhance security levels in the City; instead, they escalate the threat of the insecurity faced by residents.³⁵ Evicted persons are, in these circumstances, left more susceptible to harassment and violence.

What is the basis of this arbitrary governmental discretion relating to forced evictions? In Nigeria, the government retains the power to acquire and revoke any right of occupancy as contained in the Land Use Act of 1978, as long as the land is being revoked for public interest purposes.³⁶ Apart from the federal legislation, the Lagos government also unaccountably abuses its inherent powers under the *State Land Law of 2004*. Section 2 of the said law interprets "public purpose" to include any purpose deemed to be for exclusive government use, permitting the government to make eviction decisions without the public or affected communities.³⁷ Ocheje notes that the "public interest rationale" often adduced by government officials for forced evictions barely survives scrutiny from a human rights perspective. On the contrary, it is often a blanket cover for government-induced immiseration.³⁸

In contrast, Juma avers that there may be circumstances in which public interest justification may be warranted. However, he proposes they must meet a very stringent test.³⁹ Therefore, the test is the extent to which the public have been involved in the decision-making process and have accepted the government's proposal to evict them.⁴⁰ In Lagos, none of the urban evictions witnessed meets the test above. However constructed, the rights of evictees have never been prioritized. The broad discretion of the government authorities to interpret public interest has remained unchallenged so far.⁴¹ Former UN Special Rapporteur on Housing Leilani Farha mentions a similar concern. She argues that the malicious exploitation of domestic legislation

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ocheje (n24) P 205.

³⁹ Laurence Juma, 'Nothing but a Mass of Debris: Urban Evictions and the Right of Access to Adequate Housing in Kenya' (2012) *African Human Rights Law Journal* 38. P 475.

⁴⁰ Ibid P 475.

⁴¹ Ibid.

containing public interest clauses has resulted in severe consequences for enjoying the right to housing. Moreover, she contends that defining public purpose in a manner that results in forced evictions of impoverished communities remains inconsistent with international human rights standards.⁴²

Finally, in broadly assessing the overall trends of the above patterns, Amnesty International faults the existing legal framework applicable to housing in Lagos. In addition, they stress Nigeria's non-compliance with international human rights obligations.⁴³ Isokpan and Durojaye offer a similar critique. They submit that the absence of an enforceable right to housing which carries with it the protection from forced evictions, is the reason for the untold hardship that victims of evictions face in Nigeria.⁴⁴

This introductory chapter sought to historicize the Lagos development model, its triggering factors, and the situation with forced evictions exacerbated the City's governance approach. Therefore, the analysis is crucial for understanding before examining the legal framework that affords protection for evicted residents.

⁴² Leilani Farha, "End of Mission Statement for Nigeria" (2019) Available at <https://www.ohchr.org/SP/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25033&LangID=S> Last accessed 21 January 2022.

⁴³ See (n1).

⁴⁴ Aisosa Isokpan and Ebenezer Durojaye, 'Eviction Process in Nigeria: The Need for Meaningful Engagement' (2018) 44 Commonwealth Law Bulletin, P 13.

Chapter Two

2.1 Legal Protection Framework for Evicted Residents in Lagos

Displacement elevates the importance of housing rights since evicted residents no longer have access to places they might have previously lived. It is, therefore, crucial to explore the national legal instrument and regime where such protective rights against forced evictions are found and effectively realized. For this chapter, the focus will be on the 1999 Constitution of the Federal Republic of Nigeria. First, arguments will be developed on how the right to life can be read to include the right to housing. Secondly, the discourse will also consider other directly enforceable sets of civil and political rights that can be invoked to protect evicted slum dwellers.

2.1.1 1999 Constitution of the Federal Republic of Nigeria

At the constitutional level, the right to housing finds its expression within the Nigerian State's positive obligations under Chapter II, Section 16 (2)(d). The said provision provides:

"The State shall direct its policy towards ensuring that suitable and adequate shelter... are provided for all citizens."

With this conception, if the State is obliged to provide housing, it also holds a corresponding negative obligation not to deny citizens the right to housing through forced evictions. However, this constitutional provision is curtailed by an ouster clause, which delimits the prospects of judicial review. The Nigerian Supreme Court has opined on this dilemma. In *Archbishop Anthony Olubunmi Okogie v Attorney General of Lagos State*,⁴⁵ the court maintained that they are precluded by Section 6(6)(c)⁴⁶ of the Constitution from enforcing the provisions of Chapter

⁴⁵ 1981 2 (NCLR)

⁴⁶ This section provides that the judicial powers of the Nigerian courts shall not:

II, one of which contains the positive obligation to provide housing. The legislative framing of Section 16 and the Supreme Court's decision echoes the non-justiciability of the right to housing under Chapter II of the Constitution. Chegwe bemoans the situation, commenting that the enjoyment of housing rights in Nigeria falls short of the growing expectations of Nigerians in their desire to have them elevated to the status of an enforceable human right.⁴⁷ Odinkalu, on the other hand, critiques the judicial restraint of the Courts in a rather caustic language – he cites that the Courts have disabled themselves from intervening in the protection of social and economic rights through what he describes as judicial timidity.⁴⁸ He substantiates his claims by referring to the fact that Section 13 of the same Constitution enjoins all organs of government to conform, observe, and apply its provisions at all times.⁴⁹ Anthony Lester and Colm O'Cinnede draw us to the vital role of the Courts:

"The judiciary has an important role to play where there exists a sufficiently gross failure to uphold basic socio-economic rights. where the other two branches have comprehensively failed to fulfill their responsibilities, then 'the least dangerous branch' has a duty to intervene."⁵⁰

The idea of assessing the Nigerian Constitution is not to dwell on the above criticisms and shortcomings but to argue that the right to housing for evicted persons can be claimed and held enforceable through a wide range of guaranteed civil and political rights under the same Constitution. Chapter IV (particularly sections 33 to 46) contains rights such as the right to life, dignity of a person, fair hearing, and personal liberty, among others. These particular rights

except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the fundamental objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.

⁴⁷ Emeke Chegwe, 'The Right to Housing in the Context of Nigerian Law and Human Rights Practice' (2014) 55 *Acta Juridica Hungarica* 21. P 11.

⁴⁸ Chidi Odinkalu, 'The Impact of Economic and Social Rights in Nigeria: An Assessment of the Legal Framework for Implementing Education and Health as Human Rights' in Daniel M Brinks and Varun Gauri (eds), *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World* (Cambridge University Press 2008) P 218.

⁴⁹ Ibid.

⁵⁰ Lord Lester of Herne Hill QC & Colm O'Cinneide, The Effective Protection of Socio-Economic Rights, in Yash P Ghai and Interights (Organization), *Economic, Social & Cultural Rights in Practice: The Role of Judges in Implementing Economic, Social & Cultural Rights* (Commonwealth Secretariat 2004). P 19, 21.

classes protect individual freedoms from government and private individuals' infringement. Nigeria's Constitution permits the legal enforcement of civil and political rights for all persons within the state territory.⁵¹ On human rights implementation, the Supreme Court in *Federal Republic of Nigeria v Ifegwu* has held that the trend in modern society where the rule of law operates is to protect civil and political rights to enhance human dignity and liberty.⁵² The fundamental rights of a person or group of persons are one of those actions that are given priority when brought before the Nigerian courts⁵³. To quote Justice Rhodes-Vivour in *Benson v Commissioner of Police*⁵⁴:

“The court’s priority to these cases symbolizes the significance accorded to rights contained in Chapter IV. Accordingly, courts are encouraged to, where possible, ignore formalities when considering such matters and assume an activist role by ruling immediately after hearing arguments or very soon after that.”

With this posturing from the courts, it would not be implausible to suggest that the right to housing for evicted persons in Lagos can be considered through a constructive re-interpretation of Chapter IV rights, especially within the concept of the interdependency of rights.⁵⁵ Quane’s comments on the interdependency of rights. She posits that the right to housing clearly expresses the principle of the interdependency of rights, “which suggests that there is a mutually reinforcing dynamic between different categories of rights in the sense that the effective implementation of one category of rights can contribute to the effective implementation of other categories of rights and vice versa.”⁵⁶

⁵¹ “Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.” See Section 46(1), 1999 Constitution of the Federal Republic of Nigeria.

⁵² (2003) FWLR (PT 167) 703.

⁵³ Ayodele Babalola, ‘The Right to a Clean Environment in Nigeria: A Fundamental Right?’ (2020) P 7.

⁵⁴ (2016) 12 NWLR 445, 466.

⁵⁵ See Para 5, Vienna Declaration and Programme of Action. A/CONF.157/23

⁵⁶ Helen Quane, ‘A Further Dimension to the Interdependence and Indivisibility of Human Rights? Recent Developments Concerning the Rights of Indigenous Peoples’ (2012) 25 Harvard Human Rights Journal 36. P 1.

Wolde views the prospects of interdependency of rights from an integrated approach that requires using the dynamic process of interpretation and judicial activism to delineate the scope of civil and political rights in a fashion that will be inclusive of socio-economic rights.⁵⁷ This approach within the context of forced evictions works effectively through the right-to-life claims, as I shall explain. Moreover, it is instructive to cite that the other sets of rights enshrined under Chapter IV can be directly enforceable to afford protection for evicted residents in Lagos. I will enumerate these provisions to stress that the violation of housing rights also impacts other sets of rights under the Constitution.

2.1.2 Widening the range of the Right to Life- Section 33

The right to life guarantee enjoys legitimacy from international human rights and domestic law regimes. For example, in Nigeria, Section 33 of the Constitution states:

“Every person has a right to life, and no one shall be deprived intentionally of his [sic] life.”

The Court of Appeal has reiterated the seriousness of fundamental human rights, including the right to life, underscoring the latter as the first and most precious gift on earth.⁵⁸ Moreover, under section 33 of the Nigerian Constitution, the right to life becomes circumscribed without re-interpretation to include housing access and freedom from forced evictions for slum dwellers. According to Farha, lived experiences illustrate that the right to life cannot be separated from the right to a secure place to live. The right to a secure place to live only has meaning in the context of a right to live in dignity and security, free from violence.⁵⁹ The United Nations Human Rights Committee, through General Comment No.36, has also reiterated the broad scope of the right to life. According to the Committee,

⁵⁷ Kokebe Wolde, ‘An Integrated Approach to the Enforcement of Socio-Economic Rights: Enforcing ECOSOC Rights through Civil and Political Rights’ (2010) 1 Bahir Dar University Journal of Law 233. P.244.

⁵⁸ See *COP Taraba State & Anor v Dabo & Anor* (2019) LPELR-47215 (CA).

⁵⁹ Leilani Farha, ‘Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context’. A/71/310. 8 August 2016.

“The right to life is a right which should not be interpreted narrowly. It concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.”⁶⁰

Furthermore, progressive constitutional climes in the global south have remarked on the broad nature of the right to life. For instance, the Supreme Court of India agrees on the impossibility of distinguishing between the right to life and housing. India is cited because it shares the same constitutional status with Nigeria on the non-justiciability of economic and social rights. Notwithstanding, the Indian supreme court commenting on the correlation with both rights, has held:

“The right to life includes the right to live with human dignity and all that goes along with it; namely, the bare necessities of life such as adequate nutrition, clothing and shelter, and facilities for reading, writing, and expressing oneself in diverse forms, freely moving about and mixing and communicating with fellow human beings.”⁶¹

It follows from the court’s dictum that the right to life and housing hinges on interrelatedness. In Nigeria, lessons from environmental rights jurisprudence in Nigeria offer a glimmer of hope and feasibility for actualizing housing rights from the right to life claim. 2005 ushered in a new era of access to environmental justice in Nigeria.⁶² In the case of *Jonah Gbemre v Shell Petroleum Development Company of Nigeria*⁶³, the court read into the right to life, the right to be free from pollution or activities likely to endanger life.

In a representative capacity, Mr. Gbemre – the lead applicant, instituted an action on behalf of the Iwehereken community in Delta state, Nigeria, against Shell Nigeria and the Attorney General of the Federation. They sought, amongst other things, a declaration that the defendants

⁶⁰ See General comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life. (3rd September 2019, CCPR/C/GC/35).

⁶¹ See *Francis Mullins v The Administrator, Union Territory of Delhi and Others* (1980) 2 SCR 557.

⁶² AB Abdulkadir, ‘The Right to a Healthful Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria’ (2014) 3 Journal of Sustainable Development Law and Policy 118. P 129.

⁶³ (2005) AHRLR 151.

violated their rights to life and dignity, enjoyment of the best attainable state of physical and mental health, and a right to a generally satisfactory environment favourable to their development. Accordingly, the court declared that the sustained gas flaring emanating from Shell's oil exploration operations in the applicant's community violated their fundamental right to life (including a healthy environment) and dignity of human persons guaranteed by the Constitution and the African Charter.⁶⁴ I agree with Abdulkadir on the significance of Gbemre's case. He notes that the case mirrors how the right to life has been expanded from a broader perspective to include the right to enjoy a healthy environment despite the non-justiciability of the state's environmental objectives/policies.⁶⁵

To bolster this, in *Center for Oil Pollution Watch v Nigerian National Petroleum Corporation*⁶⁶, the Supreme court recently opined that the Constitution and African Charter recognizes the rights of citizenry to a clean and healthy environment to sustain life through the provisions of section 33 of the Nigerian Constitution and Article 24 of the African Charter on Human and Peoples' Rights.⁶⁷ These two case law decisions bring to the fore the dynamic nature of the Constitution as a doorway that can lead to the realization of housing rights. It follows here that the right to housing can be claimed and held enforceable for evicted persons based on the right to life under section 33. On the other hand, courts are well-positioned to adjudicate housing rights based on this rationale.

The conversation on enforceable rights does not close out on the right to life alone. It is noteworthy that they exist other sets of rights under Chapter IV that are directly enforceable for evicted slum dwellers. They include:

⁶⁴ (n62), P 130.

⁶⁵ Ibid, P 130. N/B - Section 20 of the 1999 Constitution only places a positive obligation on the State to protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.

⁶⁶ (2019) 5 NWLR 518.

⁶⁷ See Babalola, (n53) P 10.

2.1.3 Right to Dignity of the Human Person and Protection from Cruel and Degrading Treatment -Section 34

The constitutional provisions for protecting a citizen's right to dignity of his person are concise and clearly articulated under section 34(1) of the Constitution. The section reads:

“Every individual is entitled to respect for the dignity of his person, and accordingly, no person shall be subject to torture or to inhuman or degrading treatment.”

In *Bassey & Anor v Akpan & Ors*⁶⁸, the Nigerian court of appeal affirmed this position:

“The right to dignity of human person, under Section 34 of the Constitution, is not a nebulous one. The Constitution is clear on what it entails.”

The human costs of forced evictions are at once enormous, ramified, and interconnected.⁶⁹ For example, evicted slum dwellers often have been established for many decades in their settlements. In doing so, they have put down substantial roots and built strong social and economic attachments. Evicting them without consultation or resettlement would have devastating effects on all community members, one that might amount to inhumane and degrading treatment. Furthermore, Ocheje points out a gender dimension to forced evictions. During evictions, women are often at the risk of being beaten, raped, tortured, and even killed. In addition, they are often the primary victims of excessive force applied by state agents during evictions.⁷⁰ Amnesty International notes:

“This is because evictions usually occur in the morning or during the day when most men are away at work. Women are additionally exposed to violence when men leave the area, sometimes for several days, to look for alternative housing for their families. Women...often have to sleep on the streets or in deserted buildings.”⁷¹

⁶⁸ (2018) LPELR-4434.

⁶⁹ Ocheje, (n24) P 197.

⁷⁰ Ocheje, (n24) P 198.

⁷¹ Amnesty International "Nigeria: forced evictions in Lagos make thousands homeless" (24 January 2006) Resource Centre News; Alliance Internationale des Habitants "Call to international solidarity action against forced evictions in Nigeria" (10 January 2006), available at: <https://www.habitants.org/>

The overarching impact of forced evictions cannot be overemphasized. But, more importantly, cruel, inhumane treatment carried out by government authorities on evicted persons has not escaped the scrutiny and criticism of the Nigerian courts. For example, in *Akakpo Agemo v Attorney General of Lagos*,⁷² the Lagos state high court held that forced evictions of slum communities amounted to cruel and inhumane treatment in violation of section 34 of the 1999 constitution. Therefore, the right to dignity claim can be invoked to protect evicted persons based on the undignifying experience forced evictions present.

2.1.4 Right to a fair hearing and due process of law – Section 36

The trends with forced evictions in Lagos reveal that government is usually in the habit of issuing short notices to slum dwellers to evacuate their various places of habitation.⁷³ The entirety of such a process violates the right of evicted persons to a fair hearing. Typically, such notices are insufficiently detailed, imprecise, or overbroad. It fails to give affected community members an opportunity to be heard or information about where they can appeal the decision against them. The inalienable right of evicted residents to a fair hearing, as contained in section 36(1) of the 1999 Constitution, provides unequivocally that

“In the determination of civil rights and obligations, including any question or determination by or against any government or authority; a person shall be entitled to fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality.”

Section 36 protects citizens' right to due process in civil and administrative proceedings. However, evicted persons are to be afforded an opportunity to be heard and to appeal any form of an administrative decision made against them. Similarly, it is observed that due process cannot permit the executive to avoid the requirements of the law as well as the use of coercive

⁷² Suit No LD/4232MFHR/16

⁷³ Elsa Rosseut, 'Exclusionary City' <<https://africasacountry.com/2020/06/exclusionary-city>> accessed 24 May 2022.

force to threaten slum dwellers. Such state action, in my opinion, would amount to unlawful self-help. The Nigerian Supreme Court has opined on this trend of executive lawlessness. In the case of *Military Governor of Lagos State & ors v Chief Emeka Ojukwu*, the court held:

“In the area where the rule of law operates, the rule of self-help by force is abandoned. Nigeria being one of the countries in the world, even in the third world which proclaims loudly to follow the rule of law, there is no room for the rule of self-help by force to operate.”

With all the preceding arguments, the city government has a responsibility to satisfy minimum due process. In the absence of such responsive actions, forced evictions would be unconstitutional and unlawful. Procedural safeguards are important within the scope of due process. Again we learn from India that states have procedural obligations before carrying out any eviction. For example, In *Sudama Singh & others v Government of Delhi & Anor*⁷⁴ – the courts held that the state had an obligation to survey all persons facing evictions and carry out a rehabilitation exercise in consultation with each of them in a meaningful manner. In sum, due process must not be eroded in the context of forced evictions. It is key to protecting the rights of the most vulnerable.

2.1.5 Right to property – Section 43, 44

Sections 43 and 44 of the Nigerian Constitution guarantee the sanctity of all property, both movable and immovable, by prohibiting the taking of such property without the cover of law, compensation, and access to the courts. Moreover, these protections extend not only to land but also to immovable property, such as housing. To substantiate these points, the courts in Nigeria have long recognized the myriad ways in which individuals may legally occupy or possess land under statutory and customary law. The supreme court has enumerated five ways

⁷⁴ (2010) 168 DLT 218.

they can prove title to land whenever a dispute arises. In the *Idundun & ors v Okumagba & ors*, the court recognized the following ways:

- By traditional evidence in the form of traditional history,
- By production of document title,
- By proving act of ownership and possession over a sufficient length of time and are numerous and positive enough as to warrant the inference that the person is the true owner,
- By acts of long possession and enjoyment of land, and
- By proof of possession of connected and adjacent land, in circumstances which make it probable that the owner of such adjacent or connected land is probably the owner of the land in dispute.⁷⁵

The five ways of proving a title are not mutually connected.⁷⁶ For example, in *Bartholomew Onwubuariri v Isaac Igboasoiki*⁷⁷, the supreme court clarified that one could establish ownership by any five means and need not prove all.⁷⁸ What is the significance of these apex court cases for slum dwellers? A combined reading of the court's laid down rules consolidates the position that evicted slum dwellers can claim the right to property. Traditional evidence in the form of traditional history is quite peculiar to the African culture but more specifically for slum communities in Lagos. Most dwellers are uneducated; they often rely on oral history to demonstrate the transfer of title passed on to them over several years and decades.

Acts of long possession also corroborate claims to the right to property. Therefore, it could suitably fit within the scope of adverse possession. In Lagos, Section 16 of the *2003 Limitation law* forecloses state claims in respect of land at the expiration of twenty years. Section 16(1) of the said law reads:

“ Subject to the provisions of subsections (2) and (3) of this section, no action shall be brought by a state authority to recover any land after the expiration of twenty years from the date on which

⁷⁵ See Paras K & L, SC. 309/1974.

⁷⁶ Resolution Law Firm-Olusola Jegede, ‘Proof of Land Ownership and Types of Land Documents in Nigeria’ (*Lexology*, 20 October 2020) <<https://www.lexology.com/library/detail.aspx?g=5c7c1588-65df-4726-9d7b-c2c286a47492>> accessed 24 May 2022.

⁷⁸ (2011) SC 212/2003.

the right of action accrued to the state authority, or if it first accrued to some person through whom the state authority claims, to that person.”⁷⁹

Secondly, not only have many slum dwellers occupied their places of abode for a long time, they have proven acts of ownership, such as payment of charges in the form of electricity and waste bills, water rates, etc., to the city government. Therefore, by attempting to employ the use of coercive force, the city government is in breach of its obligations with respect to the right to property under the Constitution. Furthermore, the fundamental guarantees of the law require that, for the government to take over land previously occupied by evicted residents, they must proceed with appropriate law and with recourse to the court of law, with payment of prompt and adequate compensation, and for demonstrated public need and in the general interest of the community⁸⁰.

Given the above-elaborated rights under Chapter IV, Section 46 of the Nigerian Constitution gives prospective litigants who have suffered a breach a right to redress before the Courts. Building on this, Odinkalu believes that the courts retain a different perspective rather than a rigid stand in Nigeria regarding enforcement procedures under the civil and political category of rights.⁸¹ He argues that Nigerian Courts suffer no doctrinal inhibitions in enforcing civil and political rights under the Constitution, unlike economic and social rights.⁸² Therefore, the Nigerian Constitution is crucial legislation where evicted persons can legitimately proclaim their rights to adequate and decent protection against any threat to their lives.⁸³

⁷⁹ See ‘Limitation Law Of Lagos State – Laws’ <<https://laws.lawnigeria.com/2020/05/15/limitation-law-of-lagos-state/>> accessed 26 May 2022.

⁸⁰ See Section 44(1)(a) & (b) 1999 Constitution of the Federal Republic of Nigeria.

⁸¹ Odinkalu (n48) P 219.

⁸² Ibid.

⁸³ Tasiu Magaji, Mohammad Ahmad, and Laila Apandi, ‘Assessing the Legal Frameworks for the Protection of Internally Displaced Persons (IDPs) in the North-Eastern Nigeria’ (2018) Asian Research Journal of Arts & Social Sciences P.3.

2.1.6 Conclusion

The above discourse examined the constitutional regime where legal protection can be derived and exploited to advance evicted persons' rights in Lagos, Nigeria. From a broad assessment of the rights above, a practical framework exists to be engaged strategically for enforcement purposes. As pointed out in the above analyses, institutions such as the courts are empowered and legally obliged by the Constitution to entertain housing rights claims, adjudicate on them, and grant necessary judicial reliefs prayed for. Accordingly, evicted residents in Lagos are granted access to courts under section 46 of the Constitution to seek enforcement of inter-related rights as it concerns forced evictions. In this context, public interest litigation makes it viable for a collective civil action and offers a unique opportunity to establish judicial precedents if successful for prohibiting forced evictions in the future in Lagos.

2.2 Housing Rights enforcement through Public Interest Litigation (PIL)

Public interest litigation can serve as a creative and innovative tool to prompt the government's accountability toward its evicted populations. However, they can be a setback with the initiative when courts do not intervene in the most desirable way to afford concrete protection to litigants. Here, reflections will be on the impact of public interest litigation in enforcing housing rights in Lagos. But firstly, It will be essential to note the historical importance of the Fundamental Rights (Enforcement Procedure Rules) 2009, which paved the way for active public interest litigation cases within Nigerian civil society.

PIL has gained much prominence in Nigeria after the introduction of the fundamental rights (enforcement procedure) Rules of 2009. These rules stipulate procedural steps to challenge a human rights violation in Nigeria. To give a better context, Section 46(3) of the Nigerian Constitution empowers the Chief Justice of the Federation to establish procedural rules for the courts to enforce civil and political rights as enshrined under the Constitution. Before 2009,

there was an enforcement procedure rules of 1979 in operation. Salman and Oniekoro note that the old rules were punctuated with different challenges and defects ranging from the problems of *locus standi* to the unacceptability of public interest litigation.⁸⁴ To explain the dilemma these old rules posed, for instance, only a person whose fundamental rights risked being violated could challenge such violations.⁸⁵ In other words, to invoke the jurisdiction of a court for the protection of any of the civil and political rights under the Constitution, the prospective applicant had to be the actual person whose rights have been breached.⁸⁶

The adoption of the new rules had a significant impact on the prospects of PIL thriving. They came as a breath of fresh air for civil society in Nigeria.⁸⁷ The overriding objectives of the rules are clearly stated in the preamble and embrace progressive human rights ideals. For example, it urges the courts to interpret and apply the Constitution and the African Charter expansively and purposely to advance the rights and freedoms and afford the protection they intended.⁸⁸ It also encourages public interest litigation in the human rights field as courts are urged not to strike out cases for want of *locus standi*.⁸⁹ Suffices to note that these developments led to the emergence of housing rights litigation in Lagos. Moreover, it is crucial to assess: To what extent has public interest litigation yielded success at triggering recognition of the right to housing in Nigeria. To appreciate this, the case of *Akakpo Agemo v Attorney General of Lagos* is apt for consideration.

⁸⁴ Raheem Salman and FJ Oniekoro, 'Death of Locus Standi and The Rebirth Of Public Interest Litigation In The Enforcement Of Human Rights In Nigeria: Fundamental Rights (Enforcement Procedure) Rules 2009 In Focus' (2015) P107 IIUM Law Journal <<https://journals.iium.edu.my/iiumlj/index.php/iiumlj/article/view/127>> accessed 18 April 2022. P 121.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Abiola Sanni, 'Fundamental Rights Enforcement Procedure Rules, 2009 as a Tool for the Enforcement of the African Charter on Human and Peoples' Rights in Nigeria: The Need for Far-Reaching Reform' (2011) African Human Rights Law Journal 21. P 512.

⁸⁸ See Para 3(a) Fundamental Rights (Enforcement Procedure Rules) 2009.

⁸⁹ See Para 3(e), Ibid.

2.2.1 Akakpo Agemo v Attorney General of Lagos

In late 2016, the Lagos state government evicted over 30,000 residents of a waterside slum community called *Otodo Gbame* to create room for a luxurious estate.⁹⁰ Pursuant to the 2009 rules, evicted residents, together with organized leaderships from the Nigerian Slum/Informal Settlement Federation along with a public interest law organization, approached the High Court of Lagos State to seek enforcement of their fundamental human rights as enshrined in the Constitution and the African Charter on Human and People's Rights. In defence of their claims to housing, the applicants alleged violations of their rights to life, respect for human dignity, property, fair hearing, and best attainable state of physical and mental health under Sections 33, 36, 44, and 46 of the Nigerian Constitution; Articles 4,7,14,16, 17 and 18 of the African Charter on Human and peoples' Rights. The most crucial strategy adopted in this case by the applicants was reiterating the interdependency of the above rights on the subject of forced evictions and access to housing.

Ultimately, the Court in *Akakpo* based its ruling on inhuman and degrading treatment. The Court, per Justice Onigbanjo, held as follows:

“Being aware of the duty incumbent on the court as imposed by the fundamental rights (enforcement procedure rules) 2009...I find the evictions/threat of forcible eviction of any citizen from his home at short notice and without any immediate alternative or sufficient opportunity to arrange for such option before being evicted from his current abode as totally inhuman, cruel, and degrading.”⁹¹

I find the court's reasoning commendable; nonetheless, I will offer some critique. First, it appears the court cherry-picked on one rights claim to arrive at its decision and missed the opportunity to engage and elaborate broadly on the interrelatedness of other rights raised by the applicants as it impacts the right to housing. One would argue that this routeway further

⁹⁰ Andrew Esiebo and Ijeoma Ike, “‘They Came While We Were Asleep’: Lagos Residents Tell of Brutal Evictions’ *The Guardian* (31 May 2017) <<https://www.theguardian.com/cities/2017/may/31/destroyed-community-lagos-nigeria-residents-forced-evictions-demolitions>> accessed 7 April 2022.

⁹¹ See (n72)

bolsters the non-recognition of the right to housing. Moreover, this culture of “judicial conservatism,” as Odinkalu pointed out earlier, exemplifies a general discomfort from the courts with broadening access to judicial redress in public law cases.⁹² It suffices to say that this posturing can hamper the practical realization of both categories of rights as it affects evicted persons from slum communities who approach the courts for an adequate remedy.

On an optimistic note, the Court in *Akakpo* also took an innovative approach in directing the applicants and the Lagos city government to explore mediation with the aim of settling. The court prioritized this as opposed to determining the substance of the suit in detail. This approach bears semblance with the principle of meaningful engagement⁹³ under South Africa’s legal jurisprudence, used in eviction cases and welcoming to the Nigerian experience. On the significance of meaningful engagement, Pillay argues that meaningful engagement may be viewed as a tangible expression of a deliberative version of judicial review, potentially a very useful means of implementing social and economic rights.⁹⁴ I agree with her that a dialogic version of judicial review serves best when the judiciary as one actor engages in a continual dialogue with other government branches and civil society about how best to protect human rights.⁹⁵ Ray also reflects on the results of a meaningful engagement. He opines that it births a collaborative model of constitutional development in which the courts, citizens, and political branches each participate in negotiating the meaning of the constitution.⁹⁶ Unfortunately, for *Akakpo*’s case, the engagement failed because the Lagos state government made it a subject of

⁹² Odinkalu, (n48) P 197.

⁹³ Sachs J, observed in *Port-Elizabeth Municipality v Various Occupiers* (2005) 1 SA 217 (CC) that “a potentially dignified and effective mode of achieving sustainable reconciliations of different interests involved in the suit is to encourage and require parties to engage with each other in a proactive and honest endeavour to find mutually acceptable solutions.”

⁹⁴ Anashri Pillay, ‘Toward Effective Social and Economic Rights Adjudication: The Role of Meaningful Engagement’ (2012) 10 International Journal of Constitutional Law 732. P.1.

⁹⁵ Ibid.

⁹⁶ Brian Ray, ‘Proceduralisation’s Triumph and Engagement’s Promise in Socio-Economic Rights Litigation’ (2011) 27 South African Journal on Human Rights 107. P 114.

appeal since it was a high court decision.⁹⁷ The government's abuse of judicial appeal process has damning consequences on citizens' overall enjoyment of human rights. I argue that it is more of a political strategy to obstruct the course of justice for the city government and not necessarily to express discontent with the judgment. The appeal process in Nigeria's judicial system is contagiously plagued with bureaucracy. Sometimes, a case takes years to get to the higher/appellant court for a second consideration. For example, wealthy and desperate private litigants often escape this reality through corruption, which enables the administrative officers of the court to prioritize their cases⁹⁸. The logic with this bureaucracy is that it will bring weariness and despair to litigants in public interest cases like Akakpo's, causing a discontinuance of the pending suit.

Despite this, Ssenyonjo offers us a favorable position on the importance of strategic litigation. He cites that "to influence the implementation of economic and social rights, they must be increased use of strategic litigation to achieve political recognition (irrespective of the outcome or implementation of the case) to support the empowerment of marginalized individuals and groups."⁹⁹

From an overall assessment, the findings from Akakpo's case reveal that the court intervention is fragmented and inadequate in providing optimal protection for evicted residents. Observations are hinged on the rigid stand of the court to engage elaborately on the rights claimed by the applicants and the nature of the judicial remedy offered. On the latter, though it appears laudable that the court-ordered joint consultation between the government and the evicted residents, these measures, as we see from the above analyses, have not translated into substantial changes for evicted residents. This thesis finds it compelling to look at other

⁹⁷ See "The Scramble for Lagos" and the Urban Poor's Fight for Their Homes | African Arguments' (26 January 2022) <<https://africanarguments.org/2022/01/the-scramble-for-lagos-and-the-urban-poors-fight-for-their-homes/>> accessed 26 May 2022.

⁹⁸ Eva Brems and Charles Adekoya, 'Human Rights Enforcement by People Living in Poverty: Access to Justice in Nigeria' (2010) 54 *Journal of African Law* 258. P 267.

⁹⁹ See (n111) P 288.

developing climes where the courts have given the right to housing full recognition on the basis of public interest litigation.

Chapter Three

3.1 Comparative Reflections on Forced Evictions and the Right to Housing: Bangladesh

There has been an enormous burst of litigation around economic and social rights, more specifically within the context of housing.¹⁰⁰ Langford cites that these rights have been partly rescued from controversies over legitimacy, legality, and justiciability and, in many jurisdictions, have been accorded a more prominent place in advocacy, discourse, and jurisprudence.¹⁰¹ For most South Asian countries, there is no explicit charter of economic and social rights. Still, courts have recognized these rights through implication and holistic constitutional interpretation. The courts in Bangladesh are one of those taking the lead in this wise.¹⁰² However, one would not fail to acknowledge the solid judicial role of the courts in India, which Nanzin asserts has been a guiding light for the Bangladeshi judiciary.¹⁰³

Bangladesh is a compelling choice for comparative reflections on the realization of housing rights for victims of forced evictions, particularly those that occur in an urban context. First, it presents an intriguing close lens for Nigeria due to some elements shared by both constitutional systems. Examples are the non-justiciability status of the social rights, the persuasive influence of international human rights over the court's constitutional jurisprudence,¹⁰⁴ and the liberal

¹⁰⁰ Maria Gomez, Conor Hartnett and Samratine Dinesha, 'Constitutionalizing Economic and Social Rights' (2016) <<https://www.cpalanka.org/wp-content/uploads/2016/09/Working-Paper-7.pdf>> accessed 15 May 2022. P 4.

¹⁰¹ Malcolm Langford, 'The Justiciability of Social Rights: From Practice to Theory' in Malcolm Langford (ed), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge University Press 2009). P 3.

¹⁰² Ibid, P4.

¹⁰³ SM Atia Naznin, 'Adjudicating Social Rights for the Poor: Postgraduate Workshop in Public Law' (2016) <<http://www.gtcentre.unsw.edu.au/events/2016-postgraduate-workshop-public-law>> accessed 28 May 2022. P 1

¹⁰⁴ In *Hussain Muhammad Ershad v Bangladesh & Others* (2005) 371. The Bangladeshi court held that constitutional law regarding human rights can be developed further by way of interpretation more in line with international human rights law. Secondly, if constitutional law is silent on a point which a solution has been provided by International human rights law, International human rights law can be applied there to fill that lacuna. See Muhammad Ekramul Haque, 'The Bangladesh Constitutional Framework and Human Rights' (Social Science

interpretation of *locus standi*, which enables public interest litigation to thrive for the rights protection of society's marginalized groups.¹⁰⁵ On sociological similarities, cities in Bangladesh, such as Dhaka, also bear semblance with Lagos in rapid urbanization processes, often resulting in forced evictions. The underlying triggers are the same. Sharma, for instance, examines how high levels of evictions and displacement of the urban poor have arisen due to the financialization of the land in Dhaka. She stresses that the sheer rate of evictions occurring in the city has remained unchecked by public authorities who are engrossed in pursuing neoliberal development agenda, abetted by a close and often time corrupt relationship between private capital interests and political actors.¹⁰⁶

My goal here is to assess the approach taken by the Bangladeshi courts for housing rights despite having the same constitutional dilemma around non-justiciability as Nigeria. Interestingly in climes like Bangladesh, debates around *whether* economic and social rights are capable of supervision and review through the courts have been settled affirmatively. Instead, discussions are now centered on how the courts can best adjudicate these rights, what new remedies they can devise to ensure effective implementation and how they should balance progressive realization with immediate execution.¹⁰⁷

My analysis begins with the Constitutional position of Economic and Social Rights. The right to housing has a weak constitutional status in Bangladesh. It is placed under fundamental principles of state policy and framed as a basic necessity of life instead of being recognized as

Research Network 2011) SSRN Scholarly Paper 4036033 <<https://papers.ssrn.com/abstract=4036033>> accessed 28 May 2022. P 78.

¹⁰⁵ In Bangladesh, the requirement for enforcing any fundamental rights is that applications has to be made by "any person aggrieved". Moreover, the courts in *Kazi Mukhlesur Rahman v Bangladesh* expanded the scope to any person aggrieved. Court held:

"If a fundamental right is involved, the impugned matter need not affect a purely personal right of the applicant touching him alone. It is enough if he shares that right in common with others". See Haque (n104) P59.

¹⁰⁶ Sarah Sharma, 'Down and out in Dhaka: Understanding Land Financialization and Displacement in Austerity Urbanism' (2021) 42 Urban Geography P 681.

¹⁰⁷ Ibid.

a right.¹⁰⁸ Moreover, the fundamental principles "shall not be judicially enforced," which presents an explicit constitutional bar on its justiciability.¹⁰⁹ Nonetheless, the Courts in Bangladesh have taken progressive views on the right to housing despite its feeble footing under the Constitution.

Nanzin notes public interest litigation has prompted judicial consideration of the basic necessity of housing as a core component of the justiciable right to life.¹¹⁰ In this regard, the case of *Ain O Salish Kendra v Bangladesh*¹¹¹ is instructive. Widely known as the slum dweller's case, it demonstrated a maiden attempt made by the Bangladeshi supreme court to provide sufficient impetus to slum dwellers' rights not to be forcibly evicted.¹¹² The lawsuit challenged state-sanctioned large-scale demolitions of several slums in Dhaka. By considering the non-enforceable nature of the constitutional provision on housing, Naznin argues that the court adopted a modest yet creative approach to enforcement by applying the violations approach.¹¹³ The court opined that the basic necessity of housing constituted minimum core contents of justiciable rights to life and livelihood, the realization of which is fundamental to the State of Bangladesh.¹¹⁴ This declaration resonates with arguments proffered above on human rights' indivisible and interdependent nature.

The court held further that by arbitrarily evicting slum dwellers, the government had also infringed its national and international obligations to protect people from manifestly

¹⁰⁸ See *Article 15(a)*, The Constitution of the People's Republic of Bangladesh.

¹⁰⁹ See *Article 8(2)*, Ibid. SM Atia Naznin and Shawkat Alam, 'Judicial Remedies for Forced Slum Evictions in Bangladesh: An Analysis of the Structural Injunction' (2019) 6 Asian Journal of Law and Society 99.

¹¹⁰ See (n103) P 100.

¹¹¹ (1999) 19 BLD (HCD) 448 P 107.

¹¹² SM Atia Naznin, 'Justiciability of the Basic Necessity of Housing: Litigation of Forced Slum Evictions in Bangladesh' 18. P 230.

¹¹³ Ibid.

¹¹⁴ Ibid.

discriminatory evictions and one that potentially prevents them from having access to housing.¹¹⁵

Another significant aspect of this ruling is the court's assertive comment on directive state policies, which governments have masked as mere governmental aspirations to deny the actualization of economic and social rights. It maintained the interdependent relationship between the directive state policies and fundamental rights as enshrined in the Constitution. To quote the court:

"The state must also direct its policy towards ensuring the provision of the basic necessities of life, including shelter: "Thus, our country is pledge-bound, within its economic capacity and in an attempt for development, to make an effective provision for the right to life, livelihood, etc." While such state policies were not judicially enforceable, the right to life implied the right not to be deprived of a livelihood and shelter. "¹¹⁶

Naznin again walks us through the basis of the court's liberal approach. He argues that numerous intertwined factors have been instrumental to the courts expanding their adjudicative authority. One of these is the liberal perspective in understanding the status and scope of fundamental principles of state policy that include basic necessities. Again, he poses a different question: if these principles are not justiciable within the constitutional scheme, do they exist as only declarations or mere window dressing?¹¹⁷ These principles, although non-enforceable, impose positive obligations on the State. But what then arises when there is a violation of the State's negative obligations? The courts' reasoning in *Ahsanullah and others v Bangladesh* holds much sway in response. The court commenting on the violation approach inferred that

¹¹⁵ For example, it is instructive to note that Bangladesh ratified the International Covenant on Economic, Social and Cultural Rights in 1998.

¹¹⁶ The Bangladeshi court relied persuasively on the Indian case of *Olga Tellis & Ors v Bombay Municipal Corporation* to maintain that the Constitution enjoins the State to ensure the rights to life and livelihood, including shelter. See Abul Hasnat Monjurul Kabir, 'Development and Human Rights: Litigating the Right to Adequate Housing' (2002) *Asia-Pacific Journal on Human Rights* 97, 112-117.

¹¹⁷ Naznin, (n112), P 232.

the non-justiciability bar in Article 8(2) of the Bangladeshi Constitution is only applicable to positive enforcement. Moreover, in the case of an apparent infringement of any fundamental principle due to a retrogressive act, the court can validly intervene to enforce the alleged violation by considering it as an infringement of a negative state obligation.¹¹⁸ This point holds weight because “civil-political rights as fundamental rights and socio-economic rights as fundamental principles of state policy are together subject to the overall constitutional aim of ensuring equality and social justice”.¹¹⁹

Equality and non-discrimination claims for slum dwellers also arose in the case of *Kalam v Bangladesh*. By applying the violations approach, the courts constructed the principle of non-discrimination and equality as the guiding principle for achieving human welfare and social justice. In the court's consideration, housing constituted one of the minimum necessities of life, one which the State cannot arbitrarily take away from the poor. Justice Khairul Haque made a compelling argument in this regard. He notes:

The Constitution of the People's Republic of Bangladesh envisages a welfare state and makes all citizens equal in the eye of law. As such, all citizens have got equal rights in every sphere of life including food, shelter, healthcare, education, and so forth which is fundamental in nature... After all, the slum dwellers, poorest of the poor they may be without any future dreams for tomorrow, whose every day ends with a saga of struggle with a bleak hope for survival tomorrow, but they are also citizens of this country, theoretically at least, with equal rights. Their fundamental rights may not be fully honoured, because of the limitations on the part of the State but they shall not be treated as slaves or chattels, rather as equal human beings and they have the right to be treated fairly with dignity, otherwise, all commitments made in the sacred Constitution of the People's Republic shall prove to be a mere mockery.¹²⁰

Justice Haque's arguments are not unfamiliar. Traditionally, this rhetoric has often been used to champion the rights of different marginalized groups across the world.¹²¹ Equality and non-discrimination claims hold sway and are at the heart of economic and social rights realization.

The Committee on Economic, Social, and Cultural Rights has noted that both principles are

¹¹⁸ (1992) 44 DLR (HCD) 179.

¹¹⁹ Naznin, (n112) P 232.

¹²⁰ (2001) 21 BLD (HCD) 446, See Para 6.

¹²¹ See Equal Rights Trust, *Economic and Social Rights in the Courtroom: A Litigator's Guide to Using Equality and Non-Discrimination Strategies to Advance Economic and Social Rights* (2014). P 13.

essential and have a ratchet effect on realizing economic and social rights.¹²² Again, the Kalam decision demonstrated the Bangladeshi court's willingness to find legal measures available under the Constitution to consolidate their position on the right to housing.

3.1.1 Lessons for Nigeria

Drawing reflections from the constitutional jurisprudence of Bangladesh set a valuable model for the Nigerian courts to rethink their rigid approach to the justiciability of socio-economic rights. One crucial lesson it could learn is that adopting a flexible and liberal view toward the enforceability of housing rights is feasible. From Bangladesh, we appreciate that courts can effectively rely on state directive principles and other sets of cross-cutting fundamental rights to enforce the right to housing. Okere argues in favour of infusing some sense of judicial activism into the court's decision-making process.¹²³ Judicial activism is constitutive in theory, liberal in conception, and teleological in essence. It assumes that every legislation has a purpose; that a constitution is a social charter of a dynamic society based on specific ideological presuppositions.¹²⁴ Okere further contends that courts must seek to ascertain these underlying principles and give effect to them. Giving effect to the Constitution's goal is the essence of its interpretative efforts.¹²⁵

However, it is necessary to probe the prospects of the courts assuming this activist role in Nigeria by assessing institutional challenges and solutions for enforcing housing rights. But before delving into that, it is crucial to share a bit about what shapes judicial activism in Bangladesh. My goal here is to juxtapose these conditions with that of Nigeria.

¹²² See General Comment No. 20 (Non-discrimination in Economic, Social and Cultural Rights. E/C.12/GC/20 2 July 2009

¹²³ Obinna Okere, 'Judicial Activism or Passivity in Interpreting the Nigerian Constitution' (1987) 36 The International and Comparative Law Quarterly 788.

¹²⁴ Ibid.

¹²⁵ Ibid.

Hoque traces the evolution of judicial activism in Bangladesh from the outlook of socio-political needs and realities.¹²⁶ He cites that the court's reach in Democratic Bangladesh has been felt more robustly in respect of social causes. He argues further that the judge's sensitivity and conscientiousness towards the needs and crises in a given socio-political setting have greatly contributed to their dispensation of justice on socio-economic rights.¹²⁷ This consciousness did not just fall on them. This alertness has been facilitated with the collaborative help of an active bar and academics, which have stirred up the discourse around social rights in academia and the courts via public interest litigation. Rafiquazzaman cites the relentless efforts of legal and social activists to develop this dialogue.¹²⁸

In contrast, courts in Nigeria have not had that sustained pulse towards these socio-political needs and realities, as Hoque points out in the Bangladeshi context. To be fair, one might cite the court's intervention in environmental rights cases as a few exceptions, but then, interventions are very much nascent and uncoordinated due to several reasons. First, the courts have customarily been disposed to adjudicating civil and political rights. We see that in prioritization of the human rights of citizens that have been *breached* than in their *observance*. To corroborate these claims, the courts, in the wake of the military dictatorship (1966 -1998), intervened fearlessly in cases bordering on free expression, freedom of movement and association, etc.¹²⁹ This same predisposition toward the hierarchization of human rights has been a defining feature today, even after the transition to civilian rule in 1999. Inclination to this trend is not far-fetched. One reason to note is that earlier judicial precedents on the non-

¹²⁶ Ridwanul Hoque, *Judicial Activism in Bangladesh: A Golden Mean Approach* (Cambridge Scholars Publishing 2011). P 94.

¹²⁷ Kawser Ahmed, Book Review: 'Judicial Activism in Bangladesh: A Golden Mean Approach' (2013) 11 International Journal of Constitutional Law 547. P 549.

¹²⁸ Muhd Rafiquazzaman, 'Public Interest Litigation In Bangladesh: A Case Study' 18. University of Dhaka. P 131.

¹²⁹ See for instance, the cases of *Amakiri v Iwowari* (PHC/222/73) & *Director of State Security Services v Olisa Agbakoba* (1993) 3 NWLR PT 595.

justiciability of the status of economic and social rights have hampered attempts by the courts to entertain matters based on the doctrine of *stare- decisis*.¹³⁰

One of the ways to address these problems in the Nigerian context is to orient judges on the subject of socio-economic rights through education. The goal is to strengthen the institutional capacity of judges to respond to social rights. First, awareness discourse can be facilitated through public interest litigation which is not well saturated at the moment. Secondly, the current Nigerian legal education curriculum remains outdated¹³¹; therefore, it needs to be revamped to produce judges interested in social justice. Training must move away from the era of mere traditional law subjects and be directed towards questioning social injustice and inequality¹³². Thirdly, the National Judicial Institute, saddled with the responsibility for judges' continuing legal education, must steer its training and programs toward the discourse of socio-economic rights to improve the courts' efficiency and uniformity of judicial services.

On the theme of judicial precedents, the courts can sanitize its system by getting rid of corruption and bureaucracy to enable prospective socio-economic cases made a subject of appeal in the lower courts to accelerate quickly to the apex court for a final determination. Moreover, if such development occurs, there will be prospects of having new precedents from the supreme court, which will aid in housing rights litigation and advocacy. These suggestions could catalyze the courts to assume an attentive and activist role in adjudicating housing rights in the country.

¹³⁰ See (n45) Chp 2.

¹³¹ Victor Ogunje, 'Nigeria's Legal Education Curriculum Outdated, Obsolete, Say Osinbajo, Babalola' (*THISDAYLIVE*, 31 March 2022) <<https://www.thisdaylive.com/index.php/2022/03/31/nigerias-legal-education-curriculum-outdated-obsolete-say-osinbajo-babalola/>> accessed 29 May 2022.

¹³² Olusola Adegbite, 'An Appraisal of the Standard of Nigerian Legal Education' <https://www.academia.edu/31050088/An_Appraisal_of_the_Standard_of_Nigerian_Legal_Education> accessed 29 May 2022.

3.1.2 Rethinking judicial remedies for the protection of Housing Rights in Nigeria

One observation this thesis makes is that the nature of judicial remedies meted out for litigants seeking enforcement of housing rights in Nigeria are impractical and inadequate to secure protection. Former British jurist Lord Diplock echoes the importance of effective remedies for human rights violations. He notes:

“The sacred pledges and sublime commitment to the ideal of fundamental rights contained in the Constitution will have a hallow ring unless the fundamental rights which they bestow upon every citizen are buttressed by an efficient legal remedy.”¹³³

Nigerian Jurist Oputa restates this position, he maintains that:

“All citizens of our country have a right to have their substantive legal and Constitutional rights recognized and transformed into actual judicial remedies without which their theoretical constitutional fundamental rights would be seriously diminished or else denuded of any real value’.¹³⁴

These commentaries implicitly bolster the point that weak judicial remedies can adversely impact the meaningful enjoyment of justice for housing rights litigants. A distinguishing element of such remedy is its susceptibility to apathy on the part of the government. This section assesses the nature of judicial remedies given to victims of forced evictions in Lagos, as we see in cases like *Akakpo*’s. Is there a need for the courts to reconsider these ineffective remedies? I will draw from the work of Naznin and Alam, who raise similar concerns for Bangladesh, to critique what is obtained in Nigeria and assess better prospects for other effective remedies.

Both argue that adopting weak remedies in litigation on state-induced evictions significantly contributes to the tardy implementation of court orders.¹³⁵ For Bangladesh, although litigation

¹³³ See *Jaundoo v Attorney General of Guyana* (1971) A.C. (P.C) 972.

¹³⁴ Chukwudifu Oputa, *Human Rights in the Political and Legal Culture of Nigeria*, Lagos Nigerian Law Publications, 1989. P 73.

¹³⁵ See (n109) P 99.

on forced slum evictions has contributed positively to mobilizing legal action and providing access to justice for the victims, judicial remedies have been minimal in terms of bringing about any meaningful change from government agencies.¹³⁶ Bangladeshi judicial remedies have ranged from an award of an interim injunction to declaratory orders affirming that evictions violate the right to life under the constitution and establishing the rights of slum dwellers to alternative accommodation.¹³⁷ But to what extent have these decisions been executed to change the status quo with evicted slum dwellers? Naznin asserts that state-initiated forced slum evictions continue despite the repeated directives of the courts on evictions and resettlement.¹³⁸ Weak remedies like declarations and recommendations are deficient in monitoring compliance. The judicial outcomes in housing rights litigation in Nigeria bear semblance with what Nanzin and Alam observe. For instance, in Akakpo's case, the courts avoided ordering a remedy. The court deferred (*sine dine*) delivering a considered judgment on the basis of the reliefs sought by the applicant slum dwellers against the city government¹³⁹. Instead, it urged parties to resolve the dispute out of court. It is imperative to stress that the arrangement in Akakpo only results in a band-aid approach and has equally failed the growing realities of slum dwellers in Lagos. This dilemma now begs the question: Can the Nigerian courts reinvent their remedial judicial orders and develop more impactful ones?

3.1.3 Assessing other effective remedies under Nigeria's Judicial Framework

Dada argues that human rights guarantees under Nigeria's constitution are not mere rhetoric but are backed by adjudicatory mechanisms and remedies for their enforcement.¹⁴⁰ That assertion stems from understanding the constitutional framework providing remedies for

¹³⁶ Ibid, P 111.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ See Para 4 & 5 (n72)

¹⁴⁰ Jacob Dada, 'Judicial Remedies for Human Rights Violations in Nigeria: A Critical Appraisal' (2013) 10 Journal of Law, Policy and Globalization 1. P 10.

human rights abuses. First, it is worth taking a look at the constitution. Section 46 empowers the court to grant redress for persons whose rights have been violated under the constitution.

Section 46(2) of the Nigerian Constitution provides:

The High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of this section and *may make such orders, issue such writs and give such directions* as it may consider appropriate for the purpose of enforcement or securing the enforcing within that State of any right to which the person who makes the application may be entitled under this Chapter.

The literal framing of this section reveals that the courts are endowed with discretionary powers to choose the type of judicial remedies as allowed under the constitution to enforce the rights of citizens breached. The right to judicial review is inherent and can be employed by the court through multiple approaches. As noted earlier, mere declaratory rulings favoring slum dwellers have achieved symbolic justice but have failed to improve their status quo. Moreover, examining the above constitutional provision on remedies reveals other ways of issuing better and more effective court orders. For example, judicial review through an order of mandamus may be a better remedy with a compelling sting. Courts in Nigeria are enabled by Section 46(2) of the constitution to exercise such. I will draw some Nigerian case law where the courts have adopted judicial review through an order of mandamus to buttress my points that it is feasible also to use the same for housing rights enforcement.

The practice of adopting judicial review such as mandamus is not alien to Nigeria's adjudicatory system. An order of mandamus refers to a court order to a government or public authority which compels the performance of a public duty (what they are obliged to do under

the law) as a first resort where no other remedy is available.¹⁴¹ For example, in *Fawehinmi v Inspector General of Police*¹⁴², the Nigerian Supreme court held:

“The prerogative writ of mandamus is issued or ordered by the courts to secure or enforce the performance of a public duty. It is pre-eminently a discretionary power, and the courts' will decline to award if other legal remedies are available and effective.”

In human rights litigation bordering on the right to a fair hearing in wrongful public employment dismissal processes, the Nigerian supreme court utilized the writ of mandamus approach to compel action from the government. In the case of *Shitta Bey v Federal Public Service Commission*¹⁴³, the supreme court upheld the statutory flavored job status of a public officer who was dismissed from service without due process as laid down in the civil service rules of the federal public service. The rules in question were made according to the powers conferred on the government by virtue of a constitutional provision. First, the court stressed that such rules had equal constitutional force. Secondly, they invested in the public servant over whom they prevail, a legal status that makes the relationship between public officers and the government beyond the ordinary master-servant relationship.¹⁴⁴ In the final determination of the suit, the courts held that the right to fair hearing was breached under the constitution and made an order of mandamus compelling the government to reinstate the public officer to his previous position.

The approach adopted in Shitta Bey's case points to us an already existing judicial design for remedies that the courts can exploit within the right to housing adjudication. For example, in evictions, rather than ordering just declaratory reliefs, an order of mandamus can compel the

¹⁴¹ Akinola Aguda, 'Practice and Procedure of the Supreme Court of Appeal and High Court of Nigeria', London: Sweet and Maxwell, 1980 at P 668.

¹⁴² See Pt. 767, (2002) 7 NWLR.

¹⁴³ (1981) 1 SC 40. P 21 -30.

¹⁴⁴ See Moshood Quadri, 'Unfair Dismissals in the Workplace: An Appraisal of the Available Remedies - The Nigerian Example' (Social Science Research Network 2014) SSRN Scholarly Paper 3237636 <<https://papers.ssrn.com/abstract=3237636>> accessed 31 May 2022. P 19.

government to provide alternative accommodation for evicted residents or mandate the government to enter into some dialogue and consultation than just recommending it. The basis stems from the fact that evictions violate many human rights, and courts are bound to provide a remedy based on *ibi jus ibi remedium* – where there is a right, there is a remedy.

Fredman cites that “mandamus is an express means of compelling public bodies to take action and is, therefore, a powerful vehicle for enforcing positive duties.” For instance, she references that “the supreme court of India has not only used mandamus to issue detailed directions to states or the central government of India to implement its orders, but it has also developed the remedy to give it ongoing supervisory powers, using the device of interim orders and continuing mandamus, which keep the case open and require ongoing reporting to the court on the extent of compliance.”¹⁴⁵

The ongoing conversation aims to stress the point that an order of mandamus approach might be an apt judicial innovation to bridge the rights-remedy gap in the housing rights discourse in Nigeria. Courts in Nigeria have the impetus to do so based on their previous remedial jurisprudence. It is argued here that reliance on non-coercive remedies can thrive when the court exercises the belief that the executive will heed to implement its orders.¹⁴⁶ Undoubtedly, this seems to be a feature for developed democracies where the rule of law is not undermined. However, in the absence of such certainty, coercive remedies like that of mandamus represent a more forceful remedial response to the question of enforcement of rights.

3.1.4 Conclusion

I have highlighted the critical situation with evicted slum dwellers in Lagos and the dilemma with their protection posed by the non-recognition of the right to housing in the 1999

¹⁴⁵ See Sandra Fredman FBA, *Human Rights Transformed: Positive Rights and Positive Duties* (OUP Oxford 2008).

¹⁴⁶ Kent Roach, ‘The Challenges of Crafting Remedies for Violations of Socio-Economic Rights’. P 53.

Constitution of Nigeria. In evaluating this, this thesis becomes significant because it unveils the threats urbanization poses to the enjoyment of human rights. Furthermore, since forced evictions serve as an exclusionary capitalist tool, there is an increased need to address its inequity through the lenses of the law, particularly within the scope of human rights.

In line with this reasoning, this thesis has examined the constitution extensively to assess the protection framework for evicted residents. Most significantly, it reveals that the right to housing can be realized and enforced through civil and political rights. Therefore, courts in Nigeria are obligated to give purposive interpretations of the right despite the non-justiciability bar. The Bangladeshi approach examined in this thesis is recommended as a model in which courts in Nigeria can imbibe in its budding adjudication on housing rights. Lessons have been drawn for Nigeria with recommendations on how the courts can assume an activist and attentive role. Finally, this thesis has argued for the need for judicial remedies to be reconsidered for housing rights litigants based on the court's discretionary powers in Section 46(2) of the 1999 Constitution. It is believed that courts hold better prospects of offering a more forceful and effective remedial response.

On the differing roles of democratic institutions, this thesis recommends that parliament could ease the pressure on the courts by playing a role in recognizing the right to housing in Nigeria. For instance, the Supreme Court of Nigeria has affirmed this position by reiterating that the directive principles under Chapter two of the constitution can be justiciable by legislation.¹⁴⁷ To provide a more explicit context, despite the legal obstruction in enforcing socio-economic rights in Nigeria, item 60 of the exclusive legislative list under the 1999 Constitution empowers the parliament to promote and enforce the observance of fundamental objectives and directive

¹⁴⁷ See Attorney-General, Ondo State v Attorney-General of the Federation and others. (2002] 9 NWLR (Pt 772) 222.

principles of state policy as contained in the constitution.¹⁴⁸ Therefore, parliament can enact laws to make chapter two provisions justiciable. By doing so, the positive obligation imposed on the Nigerian state to provide housing can be translated into a legally recognized right. Most importantly, prospective legislation can address the normative lawlessness surrounding illegal evictions in places like Lagos.

¹⁴⁸ See Femi Falana, 'Justiciability of Chapter Two of 1999 Constitution (as Amended): Need for the Nigerian Judicial System to Be More Proactive' (*Vanguard News*, 3 March 2022) <<https://www.vanguardngr.com/2022/03/justiciability-of-chapter-two-of-1999-constitution-as-amended-need-for-the-nigerian-judicial-system-to-be-more-proactive/>> accessed 16 June 2022.

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