

## THE RELEVANCE OF THE LAND USE ACT 1978 IN 21<sup>ST</sup> CENTURY NIGERIA\*

### Abstract

*The Land Use Act, 1978 was enacted inter-alia to energize economic development in Nigeria by ensuring effective and equitable utilization of land and land resources. It also targeted reducing the high cost of land required for industrial estates and mechanized agriculture. The implementation of the provisions of the Act lives much to be desired particularly in this modern era. The aim of this paper therefore is to examine the relevance of the Act in 21<sup>st</sup> century Nigeria.*

**Keywords:** Land Use Act 1978, 21<sup>st</sup> Century, Nigeria, Relevance

### 1. Introduction

In pre-colonial times, land in the area that later became Nigeria was held completely under the indigenous communal tenure system of people. Land was vested in either the family or in the community with the family heads or Chiefs, Obas and Emirs who held land in trust for the people. The sale or transfer of land to non-indigenes or strangers was more like a taboo. Consequently, government had no control in determining the title to land or even able to manage the activities of land owners and people started to believe that because they owned land, they had the right to choose what to do on and with the lands.<sup>1</sup> Upon colonialism, the duty which used to be carried out traditionally was gradually seized by the British colonial administration. At first, the British administration recognized the existence of communal tenure system and did not interfere with operation of the various autonomous units.<sup>2</sup> To resolve issues that arose, many federal, regional and state laws were enacted. However, despite all these laws that were created both in the north and south of Nigeria, the problem of land tenure and administration persisted and defied concrete solutions. Acquisition of land became more and more difficult in all part of Nigeria and consequently, Panels and Tribunals were formed to solve the persisting problem. The Federal Government under the then Obasanjo regime established the Land Use Panel of 11 members on the 16th April 1977, headed by Justice Chike Idigbe. The consequence of this meeting was the Land Use Act which took effect on 29th March 1978, by which all lands in each state of the federation, is vested in the Governor of that state as provided in Section 1 of the Act. The main objective of the Act is for land to be held in trust and administered for the use and common benefit of all Nigerians in accordance with its provisions. Powers it provided the Governor with includes powers to grant right of occupancy, to issue certificate of occupancy, consent for alienation, revocation and compensation for revocation.

The government has been given power to grant right of occupancy to all citizens in Nigeria, pursuant to sections 1, 2, 5, and 9 of the Land Use Act. However, these powers are often abused and misused and right of occupancy is been given to some people and leaving the ordinary citizens to struggle before they acquire land. Lack of awareness of the unusable land in the states also adds to the difficulty of grant of right of occupancy. Also, corrupt practice in the land registry is another issue that leads to unofficial land charges and unnecessary delays before grant and the issuing of certificate of occupancy creates an obstacle in land registration. Section 34 and 36 of the Act provides for deemed grant of the right of occupancy by the Governor and the Local Government. However, the issue arising is that the government cannot determine the number of deemed rights holders as there is no proper records of deemed holders. Therefore, multiple grants for one particular place become an issue that gives rise to land disputes in Nigeria. Section 21 and 22 of the Land Use Act provides for all transactions relating to alienation of land to require the Governor's consent. However, there is an issue as to whether these sections apply to alienation by order of Court, the Court's auction or the Court ordered sales of Land.<sup>3</sup>

### 2. The Meaning of Land

The term 'Land' has been used to describe the part earth surface that is not covered by water. Some other persons describe land as ground or soil of a specified situation, nature or quality dry land; some others see it as the surface of the earth and all its natural resources. land has also been defined as the solid part of the earth's surface which comprises of water, air, soil, rocks, minerals, natural vegetation and animals and which is suitable for agricultural

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<sup>1</sup>Bala, *The Role of State Governor*, 3.

<sup>2</sup>Bernard Adjekophori, Charles C. Egolum and Fidelis I. Enoch, The Nexus between Land Administration System and Land Market Development in Delta State, Nigeria, *British Journal of Environmental Science* 8, no. 1 (2020) 1 <https://www.researchgate.net/publication/340648125>

<sup>3</sup> *Ibid.*, 8

production; also, it can be seen as the uppermost layer of the earth's crust on which agricultural and non-agricultural activities are carried out.<sup>4</sup> According to Blacks' Law Dictionary, the term 'land' has been described to include not only the soil, but everything attached to it, whether attached by the course of nature, as tress, herbage and water, or by the hand of man, as buildings and fences. Consequently, it can be said that land is a main source of all material wealth; it is from land that we get food, clothing, shelter, metal, fuel, precious stones, etc. The availability of land is the key to human existence and its distribution and utility are of immense importance. It should be noted that the definition to the term 'land' in Law has been faced with a lot of troubles to lawyers and academic writers; therefore the definition is not feasible. In the legal parlance, 'land' includes the surface of the earth and all the subjacent and superjacent things of a physical nature like buildings, trees and minerals. It has also been used to mean 'corporeal and incorporeal hereditaments.'<sup>5</sup> A judicial definition of the term 'land' has been given by the Supreme Court of Nigeria in the case of *Salami v. Gbodoolu & Ors*<sup>6</sup>, where the learned Judge per Adio JSC stated that 'the word 'land' in its ordinary meaning, means any ground, soil or earth or the solid part of the earth's surface as distinguished from the sea.'<sup>7</sup> The interpretative section of the Land Use Act 1978, however, did not give any definition to the term 'land' but gave a definition to 'developed land'. Section 51(1) defines 'developed land' as 'land where there exists any physical improvement in the nature of road development services, water, electricity, drainage, building, structure or such improvement that may enhance the value of the land for industrial, agricultural or residential purposes'<sup>8</sup> Section 18(1) of International Act<sup>9</sup>, defines Land as 'any building and any other thing attached to the earth or permanently fastened to anything so attached but does not include minerals;' The Law of Property Act 1925 gives a wider definition of the term 'land', it states thus;

Land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or part of buildings (whether the division is horizontal, vertical or made in other way) and other corporeal hereditaments; also a manor, an advowson, a rent and other incorporeal hereditaments, and an easement, right, privilege or benefit in, over, or derived from land; but not an undivided share in land...<sup>10</sup>

Olawoye in his book, 'Title to Land in Nigeria'<sup>11</sup>, described land as;

Thus as conceived by law, land includes the surface of the earth, the subsoil and the air space above it, as well as all things that are permanently attached to the soil. It also includes streams and ponds. On the other hand, things placed on land whether made of the product or of the soil or not, do not constitute land.<sup>12</sup>

### 3. The Land Use Act 1978

The need to regulate land ownership, its use and development and land resources, have made nations all over the world initiate land ownership systems to balance the interest of the government, land owning class and the landless class, hence, the enactment of the Land Use Act in Nigeria. The Land Use Act was enacted on the 29th March, 1978, as a military decree. Four objectives have been observed by Omotola in his book, *Essays on the Nigeria Land Use Act, 1978*, as the reasons for the enactment as follows;

- a) To remove the bitter controversies, resulting at times in loss of lives and limbs, which land is known to be generating
- b) To streamline and simplify the management and ownership of land in the country
- c) To assist citizenry, irrespective of his social status, to realize his ambition and aspiration of owning the place where he and his family will live a secured and peaceful life
- d) To enable the government to bring under control the uses to which land can be put in all parts of the country and thus facilitate planning and zoning programmes for particular uses.

The first step taken by the Land Use Act was converting the old forms of estate into a right of occupancy with respect to the citizens, having vested the absolute ownership in lands in the Governors as stated in its preamble and its first section.<sup>13</sup> When the Act was promulgated, it received a lot of mixed feelings and reactions from

<sup>4</sup> 'Land and Its Uses' <https://classhall.com/lesson/land-and-its-uses/>. Accessed 22/8/2022

<sup>5</sup> Adewale Taiwo, *The Nigerian Land Law*, Rev. ed. (Nigeria: Princeton & Associates, 2016), 11-12.

<sup>6</sup> *Alhaji Tijani Salami v. Chief Surakatu Gbodoolu & Ors* (1997) 4 NWLR (Pt. 499) 277

<sup>7</sup> Land Law – Lawlane, <https://www.thelawlane.com/land-law/> Accessed 22/8/2022

<sup>8</sup> Land Use Act 1978

<sup>9</sup> 1964 Cap 123, Laws of the Federation of Nigeria 2004

<sup>10</sup> Adewale Taiwo, *The Nigerian Land Law*, Rev. ed. (Nigeria: Princeton & Associates, 2016), 12.

<sup>11</sup> C. O. Olawoye, *Title to Land in Nigeria*, (Nigeria: Evans Brother Limited, 1974), 9.

<sup>12</sup> Niki Tobi, *Cases and Materials on Nigerian Land Law*, Reprint (Nigeria: Mabrochi Books, 1997), 9.

<sup>13</sup> Niki Tobi, *Cases and Materials on Nigerian Land Law*, 170.

various individuals, organizations and institutions in the country.<sup>14</sup> Writers have asserted that persons in favour of the Act and the take-over by the State Governor are the landless members of the society. While, the persons calling for a repeal of the Act are Obas, Chiefs and other members of the bourgeois class as it gradually wore out their capitalist base.<sup>15</sup> However, the act has been in operation for over three decades and the enthusiasms it received from the landless members especially workers and other individuals have died down. Many have come to the realization that the act has caused a lot of problems and created a great complexity in land transactions in the country. Therefore, the calls from all over Nigeria for an amendment or total abrogation of the Land Use Act have been received because of its injustice to the people and the near immobility it has caused on the mortgage industry.<sup>16</sup>

#### 4. Literature Review

Taiwo in his book, 'The Nigerian Land Law,'<sup>17</sup> gave a brief history of how the Land Use Act came to be. He explained how urbanization, population pressure in the urban areas and discovery of oil contributed to the difficulty of acquiring land in Nigeria, for both private individuals and the government. He also mentioned the Military Government's approach to creating a uniformed decree/law to regulate land ownership in Nigeria. However, in all his explanation he failed to mention the incident of 1908, when the Liverpool Commerce Chamber needed land in the rural area but it was difficult because of the system of land ownership that many part of Nigeria operated. Oretuyi in 'Public Take Over Land – Federal and State Government Rights over Land – The Conflict' in Omotola J.A<sup>18</sup>, stated as follows;

'It is clear from the above quoted provision (referring to Section 1 of the Land Use Act) that the Governor of each State is the legal owner of all land comprised in his State. He is not the absolute owner as such since he holds such land on trust for the use and benefit of Nigerians...Although the legal ownership of all the land in the State is in the Governor, nevertheless he does not have the sole responsibility for the control and management of lands within the State... From the foregoing analysis, it becomes very apparent that the only lands that Federal government owns in any State are those which it owned on or before 29th March 1978. All other lands are vested in the Governor. The management and control of such lands are vested in the Governor and the Local Government Councils. Although the Governor and Local Government Councils are to be assisted in the discharge of their functions by Land Use and Allocation Committee and the Land Allocation Advisory Committee respectively, nevertheless it is the Governor that determines the composition of these two committees with reference to the Federal Government. The Governor and Local Government Council exercise their powers of control and management of lands to the exclusion of the Federal Government'.

Umezulike described the enactment of Land Use Act as 'a decisive and worthy step forward aimed at achieving egalitarianism and equity in the land-rights distribution in the country.' He also stated that 'the act was the product of state intervention based on desperate demand and noble aspirations of the ordinary citizens of Nigeria with the objective to make land easily available to them.' He went further to state reasons why the act was enacted, giving instances of newspaper articles on land issues before the Land Use Act surfaced. These papers urged all Nigerians to support the interest of the nation and gave various reasons, social and economic reasons why Nigerians must support the Act. He also explained what nationalization of land meant by the act; that control and ownership of land had been vested in the state and the citizens have been divested of or denied ownership of lands in the state. Hon. Justice Umezulike gave his believed objectives of the Land Use Act, which were quite different from the objectives stated by Omotola J. A.<sup>19</sup> He stated some factors which contributed to the problem of implementing the Act, to be; 'lack of base maps, shortage of technicians on land registration, shortage of surveyors and fund to effect a cadastral survey of all land in the state and effect its definition, and conflicts and lack of cooperation and coordination between the key government ministries responsible for the implementation of the Act.'

In all, he did well in analyzing the Land Use Act, its relevance and some associated problems of the Act in Nigeria.<sup>20</sup> Morenikeji, Ayorinde and Owoyele noted that prior to the promulgation of the Land Use Decree of 1978 in Nigeria, there was no uniform land administration system. They went further to state that in Northern Nigeria land was communally owned and vacant plots were allocated by the Chief or the Emir in whom the lands

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<sup>14</sup>Adewale Taiwo, *The Nigerian Land Law*, 221.

<sup>15</sup> Niki Tobi, *Cases and Materials on Nigerian Land Law*, 174.

<sup>16</sup>Adewale Taiwo, *The Nigerian Land Law*, 222.

<sup>17</sup>Adewale Taiwo, *The Nigerian Land Law*, Rev. ed. (Nigeria: Princeton & Associates, 2016), 218 - 220.

<sup>18</sup>*Essays on the Nigerian Land Use Act 1978*, (Nigeria: Lagos University Press, 1980), 74-75.

<sup>19</sup>Omotola J. A., *Essays on the Nigerian Land Use Act 1978*, (Nigeria: Lagos University Press, 1980).

<sup>20</sup>Hon. Justice I.A. Umezulike, OFR, FCI Arb, *ABC of Contemporary Land Law in Nigeria*, Rev. & Enlarged Ed. (Nigeria: SNAAP Press Nig. Ltd, 2013) 47-81.

were vested, no individual had absolute title to land. In Southern Nigeria, a kind of dualism existed in the ownership and control of land in a community were owned by individual families and others reserved was held in trust for the community and administered by the traditional ruler.<sup>21</sup> Smith analyses management and control of land under the Land Use Act. He dwells on sections 1 and 2 more without making any reference to the recent issues in this area. In his work, the powers of the governor to grant right of occupancy, revoke right of occupancy, power to charge rent, power to appoint land use and allocation committee, inter alia, were not discussed.<sup>22</sup> Madaki criticized the governor's power of management and control of land under the Land Use Act. He discussed a governor's powers to designate land into urban and non-urban areas, power to constitute a Land Allocation Committee, the power to charge rent and the power to grant right of occupancy and to issue a certificate of occupancy. He however did not dwell much on governor's power to consent to alienation, powers of revocation and payment of compensation.<sup>23</sup> Christopher Mitchell Chukwu-Eneh J.S.C in *Mbanefo v. Agbu & Anor*<sup>24</sup> stated that '...it is clear that it is only whenever Certificate of Occupancy has been granted or is deemed granted and a holder of such certificate is desirous to transfer, assign, mortgage, lease and sublease of the land that is subject of such certificate that the Governor's consent is required under the said section (section 22).' In considering the effect of the Sections 29 of the Land Use Act, the court in *Nigerian Engineering Works Ltd v. Denap*<sup>25</sup>, per BELGORE, JSC held:

Any holder of a right of occupancy, whether evidenced or yet to be evidenced by a certificate of occupancy, holds that right as long as it is not revoked. Revocation in this instance is that one done in accordance with the law; for nobody will lose his right of occupancy by revocation without his being notified first in writing and subsequent revocation must also be notified to him in writing. Any other method may be a mere notice of intent it will never be notice of revocation. It will be a nullity. The Governor may revoke a right of occupancy for overriding public interest (section 28(1) Land Use Act). As for notice required to the holder of right of occupancy that his right of occupancy will be revoked or is revoked, is clearly explained in Section 44 of the Act.

Iwarere examined the management and control of land by state and local governments. In his work, he argued that the Land Use Act has restrained the property rights system in the country from a mixed private property rights system into that of a collectivist framework and circumvented the existing order, thus bringing all urban land under the control of the state governments and all rural land under the management and control of local governments. According to him, the new authority is exercised by special land use boards which are Land Use and Allocation Committee at the state level and Land Advisory Committee at the local government level. He went further to state how the Land Use Act abolished all forms of fee simple and communal ownership as a result of vesting management and control of all lands in the federation in the state. However, in his research, he overlooked the problems hindering the management and control of land with respect to grants of right of occupancy for the common benefit of all citizens, alienation, revocation and compensation.<sup>26</sup>

### 5. The Relevance of the Land Use Act 1978 in Nigeria

The relevance of the Land Use Act has been analyzed by many authors, eminent legal jurists and legal minds. The basic philosophy for the enactment of the Land Use Act in Nigeria is evident in the preamble to the Act, which states as follows;

WHEREAS it is in the public interest that the rights of all Nigerians to the land of Nigeria be asserted and preserved by law: AND WHEREAS it is also in the public interest that the right of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families should be assured, protected and preserved.

Omotola J.A. in his book, *Essays on the Nigerian Land Use Act, 1978*, stated that the objectives of the Land Use Act are as follows;

- a) To remove the bitter controversies, resulting at times in loss of lives and limbs, which land is known to be generating

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<sup>21</sup>Morenikeji W., Ayorinde D., & Owoyele G., *Land Administration Problems in Nigeria: Case Studies of Oyo and Niger States* (Urban and Regional Planning Department, Federal University of Technology, Minna; 2013)

<sup>22</sup>Smith I. O., *Practical Approach to Law of Real Property in Nigeria*, Rev. Ed. (Lagos, Nigeria; Ecowatch Publications Ltd, 2013) 476-477.

<sup>23</sup>Madaki A.M. & Agom A.R., A Critique of the Governor's Power of Control and Management of Land Under the Land Use Act, *Journal of Private and Comparative Law* 6, no. 7 (2016): 49 – 167.

<sup>24</sup>LPELR-22147 (SC); (2014) 6 NWLR (PT. 1403) 238.

<sup>25</sup>(2001) 18 NWLR (pt. 746) 726 @ 758 A - C

<sup>26</sup>Iwarere L.J.A., Partial Adjustment of Model of Land Owner Behavior under the Nigerian Land Use Act, *Journal of Housing Research* 5, no. 2 (1994) 247-262.

- b) To streamline and simplify the management and ownership of land in the country
- c) To assist citizenry, irrespective of his social status, to realize his ambition and aspiration of owning the place where he and his family will live a secured and peaceful life
- d) To enable the government to bring under control the uses to which land can be put in all parts of the country and thus facilitate planning and zoning programmes for particular uses.<sup>27</sup>

The Land Use Act nationalizes land in Nigeria. By nationalization of land, it means that control and ownership of it had been secured in the state or put in the hands of the state. Therefore, the citizens have been divested of or denied the ownership of any land in the state. Omotola states that the vesting in the Governor under Section 1 of the Land Use Act is made subject to the continued existence of any interest that was in actuality at commencement of the Act. If this proposition is correct then the Act did not alter any existing interest in Land in Nigeria.<sup>28</sup> The Land Use Act forms a tripartite system of land holding in Nigeria and they are; state, federal and private/individual land holding systems. It is important to note that Section 49(1) of the Act relieves the management and control of land held by Federal Government or any of its agencies from control of the State Governor. The section provides thus;

Nothing in this Act shall affect any title to land whether developed and undeveloped held by the Federal Government or any agency of the Federal Government at the commencement of this Act and accordingly, any such land shall continue to vest in the Federal Government or the agency concerned.

It should also be noted that the Governor of any state is not seen as beneficially entitled to the land that is vested to him, he is only a trustee of the land for the benefit of all Nigerians in that particular state. Therefore, he holds only a minimal ownership of land but has control and holds nominal title in the land for the purpose of accomplishing the objectives of a particular trust. This is because of a principle of law which states that a trustee is not the real owner of a trust property. The major aim of the enactment of the Land Use Act was to energize economic development by ensuring effective and equitable utilization of land and land resources. It also targeted reducing the high cost of land required for industrial estates and mechanized agriculture. For reasons like this, the law appeared to nationalize land when it placed lands in the hands of the government (State Governor and Local Government Council) as a custodian, to hold in trust and administer for the use and common benefit of all Nigerians.<sup>29</sup> In *Savannah Bank of Nigeria Limited and Another v. Ajilo and Another*,<sup>30</sup> the Court of Appeal maintained that the main purpose of the Land Use Act is to achieve a fusion between the Land Tenure System in Northern Nigeria and the South where absolute ownership of land by families, communities and individuals became obliterated, while all land within each State became vested in the Governor of that State. Nevertheless, after more than three decades of the enactment and operation of this law/decree, many believe that it is obvious that the problems it sought to solve have resurfaced and certain provisions of the law have themselves worked hardship on the citizens and initial aim to stimulate the economic development of the Federation tended to rather impede the economic development. Therefore, many authors and scholars have recommended that the Land Use Act be amended to be able to achieve its initial objectives; that certain provisions which have been noted to be unfair, be amended to reinstate prosperity to the people while acquiring an equitable access to lands in Nigeria.

## 6. Conclusion

The enactment of the Land Use Act no doubt was well intentioned. This was because, the major aim was to energize economic development in Nigeria by ensuring effective and equitable utilization of land and land resources. It also targeted reducing the high cost of land required for industrial estates and mechanized agriculture. The result of the implementation of the Act over the years leaves much to be desired. There is need for the legislature to take a second look at the Land Use Act and its implementation in Nigeria particularly during this civilian dispensation as it is prone to abuse.

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<sup>27</sup>Niki Tobi, *Cases and Materials on Nigerian Land Law*, 170.

<sup>28</sup>I.A. Umezulike, OFR, FCI Arb, *ABC of Contemporary Land Law in Nigeria*, (Rev. Ed) (Nigeria: Snapp Press Nig. Ltd., 2013), 55.

<sup>29</sup>Matthew Enya Nwocha, *Impact of the Nigerian Land Use Act on Economic Development in the Country*, *Journal of Acta Universitatis Danubius Administratio* 8, no. 2 (2016): 1.

<sup>30</sup>(1987) 2 N.W.L.R. (Pt. 57) 421; *Madam Salami and Others v. Oke* (1987) 4 N.W.L.R. (Pt. 63) 1.