

The Land Use Act of 1978: Proscription of Discrimination Against Fellow Nigerians

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Abstract

Having vested the ownership and control of land in the state by section 1, the Land Use Act of 1978 ensures that such land so vested are held in trust for the use and common benefit of all Nigerians. In view of the above provisions, the Land Use Act of the 1978 unlike the existing Land Tenure Law of 1962 facilitated the living together of Nigerians by properly regarding them as 'Nigerians' and not 'natives'. The Act did not start a new brand of apartheid by taking the land of one Nigerian and granting it to another Nigerian without any good reason. However, there are still discriminatory practices indulged in the application of the Act that have resulted in indigene-settler conflicts. This paper examines the Land Use Act of 1978 to see the extent to which it has enhanced the administration of land in Nigeria. In this connection, reforms and innovations introduced by the Act to improve the administration of land are examined. Bearing in mind that every being has its scar, the Act is not without shortcomings. Therefore, this study further beams its search lights in figuring out the inherent problems of the Act and makes recommendations on how to improve the Act.

Key words: Land, Nigeria, Reforms, Administration

Introduction

The Land Use Act of 1978 is a revolutionary legislation in the area of land tenure in Nigeria. Its enactment was necessitated by a number of socio-economic factors militating against conferment of valid title in land, the realization of use and enjoyment of land in Nigerian and the effective utilization of land by private entrepreneurs and the government for development purposes. This paper seeks to reveal that the Land Use Act of 1978 though enacted on the premise of good policies intended by the government for the people of Nigeria has generated a lot of problems. These problems which range from the interpretation to practical implementation of the provisions of the Act are against the background of the inelegance that characterized the draftsmanship of the Act and its military antecedent. These problems as analyzed have led to: stagnation in land transactions; sharp practices, indigene-settler conflicts, land racketeering, general ineffectiveness in land administration; and stagnation in general development in Nigeria.

Historical Background and Nature of Landholding Prior to the Promulgation of the Act in 1978

Prior to the Land Use Act 1978, Nigeria operated three systems of land tenure vis: customary, non-customary and special system of land tenure which was applied in the former Northern Nigeria. Generally, the pre-Act Nigeria land tenure systems emphasized landholding and commercialization of land as opposed to putting the land into effective use. The concept of ownership under the systems did not go with the duty to develop such lands. As such they encouraged the growth of a horde of land speculators who bought lands, held them for as long as they liked until the value had appreciated sufficiently before disposing such lands. In the same way the continued fragmentation of land by unguarded alienation made it difficult for government to acquire sufficient lands to execute its projects. Also, most lands held under customary tenancy lacked any documentary evidence of such ownership. Consequently, such lands lay waste and could not be used as security for loan for other projects. The system in the North was even more backward for national integration because of its discrimination against other Nigerians (NWLR, 1912:77).

It is therefore not surprising that the poor performance of the economy, the inability of the country to feed herself, the inability of both the public and private sectors to provide sufficient shelter for the people, even the inflationary trends in economy have been blamed in a major respect on the system of land tenure. The Land acquired at high prices by government and private individuals when developed in form of housing estate were in turn leased out to people at high prices. The system was seen as an inhibition to national development.

In the third National Development Plan 1975-1980, the Federal Government was emphatic on the need to build a just and egalitarian society. The Plan identified land tenure as one of the constraints to national development. The plan emphasized that several projects in the Second National Development Plan failed to take off because of inalienability of land for the government or the price at which land was bought was often prohibitive. Where land was readily available, the compensation usually claimed by the land owners was generally exorbitant.

Against this background, the Government set up three different panels on different occasions to study the problem associated with land. The first was the Anti-inflation Task Force in 1975 (Headed by Prof. Onitiri, H.A., which recommended a comprehensive national policy by the promulgation of an Act which would have the effect of vesting all land in principle in the government), and the second was the Rent Panel in 1976 (Headed by Dr. Omolayole-recommended a fundamental review of the Land Tenure by vesting all land in the state). They were to carry out certain studies which related to land. In their separate reports, the two panels identified the land tenure system as contributory to the inflationary tendencies in the country. Hence, they recommended that all lands should be vested in the state. The Government White Paper on the Report of the Rent Panel accepted this recommendation in principle but called for a further study of its practical implications. It is noteworthy that the Reports of the two panels above provided a requisite impetus for the setting up of the Land Use Panel(Headed by Justice Chike Idigbo)on 16th May, 1977. The recommendations were studied and accepted by Government and there upon the Federal Military Government proceeded to promulgate the Land Use Act No.6, 29 March, 1978.

The Act sets out in its section 1 to assert the state ownership of land. Hence the power of control and management over land in Nigeria is conferred on the government. Section 1 of the Act provides thus: subject to the provision of this Act, all land comprised in the territory of each state in the Federation are hereby vested in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provision of this Act. The implication of the foregoing provision is that the erstwhile owners are divested of their ownership of land whether occupied or unoccupied.

Pros of the Act

Proscription of Discrimination against Fellow Nigerians

Having vested the ownership and control of land in the state by section 1, the Land Use Act ensures that such land so vested are held in trust for the use and common benefit of all Nigerians. Also by sections 5(1)(a) and 6(1)(a)and(b) of the Act, the Governor or the Local government is empowered to grant either statutory or customary rights of occupancy as the case may be to 'any person.' In view of the above provisions, the Land Use Act of the 1978 unlike the existing Land

Tenure Law of 1962 has facilitated the living together of Nigerians by properly regarding them as 'Nigerians' and not 'natives'. It has ended all discriminations against fellow Nigerians who were regarded as non-natives under the Land Tenure Law of 1962 (Sections 5 and 6 of the Land Tenure Law).The Act does not start a new brand of apartheid by taking the land of one Nigerian and granting it to another Nigerian without any good reason. Thus, in effect, any Nigerian from any part of the country is entitled and can be granted a statutory or customary right of occupancy under the Land Use Act except in a very restricted case in the circumstance of person under the age of 21 according to section 7 of the Act.

Alienability of a Right of Occupancy

One of the criticisms against the pre-Act customary land law was that it did not allow alienation to a total stranger. This was seen as a strong inhibition to the value, merchantability of land held under native law and custom. One of the objectives underlying the introduction of the Land Use Act was to make transfer of land easy and with the ultimate goal of enhancing the value of land. Thus, by the combined effect of sections 21, 22, 23, 24, 26 and 34(7) of the Act, the objective of transferring land from one hand to another is guaranteed. But such alienation must be subject to the consent of the appropriate authority. The foregoing is contrary to the belief of many Nigerians on absolute prohibition of alienation or transfer of a right of occupancy by the Act whether in respect of developed or undeveloped land. As such, with requisite consent having been sought and obtained, the Act allows the holder of a right of occupancy to alienate or transfer all or part of his interest in such right.

The Act, a Source of Government Revenue

One of the objectives of the Land Use Act is that the government by allocating land is able to raise revenue for development purposes. Hence, one of the great achievements of the Act since 1978 is that it has generated more revenue for the government. This is so because the assignors or mortgagors of land must pay certain amount of money to the government before they can obtain consent to their transfer.

Revocation of a Right of Occupancy under the Act

The power of the Governor to revoke a right of occupancy under the Act is exercised in the public interests. This power is guaranteed under section 28 of the land Act. It should be noted however, that the individual's right to acquire and own immovable property anywhere in the country is a fundamental right. Because of the respect for this right, government rarely and whenever it becomes inevitable, reluctantly invokes the power of compulsory acquisition. The Act in section 28(1)-(3) empowers the Governor to revoke a right of occupancy for overriding public interest among other things. In the present time, 'revocation is in fact peremptory'. In order to protect the fundamental property right of the individuals, the Act is very detailed on the procedure for a revocation which must be complied with strictly.

Problems with the Act

The Act though with the compact document of only 52 sections, has probably generated more controversy on the true import and purport of its provisions than even the constitution. The basis of such controversy is owing to two major factors namely: the apparent inelegance that characterized its draftsmanship and its military antecedent. This part of the paper critically examines the inherent problems in the Act which range from the interpretation to practical implementation of the provisions of the Act.

Problems in Respect of Trust Concept Introduced by the Act

Section 1 of the Act provides, inter alia, that all land shall be held in trust and administered for the use and common benefit of all Nigerians by the Governor of a state (Section 1 of the Land Use Act 1978). The foregoing section sets up Global Trust over land in which case the Governor of a state is the trustee, holding land in trust for all Nigerians who can be regarded as the beneficiaries. It is however unfortunate that the Act has made no effort to lay down even in outline, the principles on which this trust shall be administered and discharged. In normal trust for instance, several onerous duties are placed on the trustee in respect of the trust property. These duties include: duty to act unanimously, duty not to delegate, duty to account to the beneficiary, etc. The question then is who will have the right to probe the performance of this trust seemingly created by the Act? On this important question and many other questions that may be raised in this regard, the Act is silent.

It needs be noted that the beneficiaries of this global trust are Nigerians, not indigenes of the individual states. Can Nigerians as the beneficiaries under this global trust impeach all persons who are involved in the performance of this trust just like the beneficiary under the normal trust has a right to do? and if the ordinary

Nigerians cannot impeach the trustee, who can do that? These are the issues the Act has failed to attend to. In as much as, when trust in its true sense is considered vis-à-vis that created by the Act, it is discovered that the position of the latter idea of trust does not represent the real concept of normal trust. The implication of this is that the beneficiaries under this global trust under the Act i.e., Nigerians are denied many of the benefits they should have enjoyed against the trustee (the Governor) in relation to the trust property, that is, land.

Problem in Respect of Power of Control and Management by the State

By section 1 of the Act, all lands in the territory of each state in the Federation are vested in the Governor of that state to be held in trust and administered for the common benefit of all Nigerians. The Act by above section (Section 1 of the Land Use Act 1978) has altered the existing land laws particularly in the Southern part of the country in a fundamental way: it usurped the power of control and management of land which was hitherto vested in the families,

villages and communities. It has also removed corporate groups, families and chiefs from the ownership of land and replaced them with the state Governors. This usurpation of the power of control and management from the former owners has placed land out of the reach of the natives because the Governor who sometimes lives far away in the state capital is too far from the majority of the people whom the Governor is purported to hold land in trust for. This, it can be contended has made acquisition, use and enjoyment of land more difficult for most Nigerians. Thus, the objectives of the Act at present can be said not to have been realized to a greater extent because land is placed far away from the people. In fact it is arguable that as things are now, especially considering the rigorous process in obtaining the Governor's consent for a valid grant, it is harder to acquire land by an individual than it was before the enactment of the Act.

The Attitude of Former Land Owners to the Act

One important character which any legislation should have is its popularity with the people the legislation is to serve. The Land Use Act obviously does not get that acceptability as it should from individuals, communities especially in the rural areas and even the Bench and the Bar. In this connection, sections 34 and 36 of the Act in general preserve the existing rights of the citizens in land. The practical result of this is that there is no change at all in the attitude of the citizens to land or indeed the number of land disputes. The overlords still go to court to ask for forfeiture of the right of the customary tenant. In the same vein, families still sue for a declaration of title to land. In fact, the struggles for land still linger despite the Act. The communal rifts between the people of Modakeke and Ife further buttresses the fact that the Act lacks popularity as it reveals the attitude of the people to land despite the Act. The Modakeke refused to pay 'ishakole' (i.e. tribute) to the people of Ife on the ground that the Act has abolished customary system. The Ife resisted this and instantly denied the Modakeke of their possession in land. This resulted in war between the two communities which claimed many lives.

Requirement of Consent and its Attendant Problems

One of the objectives of the Land Use Act is to make transfer of land easy. However, any alienation without the consent of the Governor or the Local Government is unlawful. Thus, by the provisions of sections 21, 22, 23, 26 and 34(7), no alienation or transfer of any interest in land whatsoever can be validly made under the Act until the requisite consent is obtained. The requirement of consent in the case of alienation is strict and applies to both actual and deemed grants. The issue of consent has been criticized for being responsible for delay which both a prospective vendor and purchaser usually face in such transactions. As it is the practice now, it takes between six months to three years before a Governor's consent to alienation can be obtained, thus making alienation of land now even more difficult than it was under the pre-Act laws. This is a serious constraint on someone who is desirous to sell or buy a piece of land for industrial, residential or agricultural purposes. The consent requirement has been described as a clog in the wheel of economic development in Nigeria. The adverse effect of this on the economic and business activities of this country is obviously undesirable. It is noteworthy that there is no provision in the Act that consent shall not be unreasonably withheld. And from the

sections relating to consent earlier enumerated, it is quite clear from the wordings of the sections that an occupier who wants to alienate his right of occupancy cannot demand for the Governor's consent as a right.

Unfettered Power of the Governor to Designate Certain Areas as Urban Land

By section 3 of the Act, the Governor reserves an unfettered power by order published in the State's Gazette to designate parts of the areas of the state as urban land. By this discretionary power, it then suggests that the governor reserves the choice to the designate any how the land in his state. This has led a former Governor of a particular state to designate the entire land in his state as urban land (Former Gov. Lateef Jakande by Designation of Urban Area Order 1982 designated all Lagos Land as urban land), thus leaving the Local Government in the state without any land to control according to the power conferred on them under section 2(1) (b) of the Act.

This unquestionable power of the Governor to designate certain areas as urban land and in fact the silence of the Act (Section 3 of the Land Use Act 1978) on the designation of 'other land' to my own mind is a serious erosion of the power of control and management conferred on the Local Government by the Act. This is because whatever the Governor decides to do in respect of his designation power seems to be the most appropriate. Regrettably, failure of the Act in setting a standard as to which particular parts of the state should be declared as urban land and which part not to be so declared which has led to indiscriminate designation has succeeded in defeating the object of the Act by not permitting the Local Governments to operate in this matter. This, it may be claimed, is largely responsible for the failure of the Act, for example in meeting agricultural needs in the country especially in rural areas because of insufficient land in these areas. This is quite an unfortunate and confusing situation of the Act in that, the Act, having vested the control and management powers over land in two independent authorities namely the State and Local Governments (Section 2 (1) of the Land Use Act 1978), the Act again creates a pathetic scenario in which the power of the one authority can be swallowed up, undermined and seriously eroded at will by the other. This obviously is the evidence of inelegance that attended the Act.

The Half Hectare Rule by the Act is Confiscatory

In pursuance of the policy of Re-distribution and Equitable policy, the Act decides to introduce the Half Hectare Rule as enshrined in the transitional provisions (Section 34 (5) and (6) of the Land Use Act 1978) of the Act. The idea behind this rule is to revert the land in excess earlier held by the former owners to the government, leaving such former owners with a plot not more than half hectare. And the excess lands so reverted are administered for the common benefit of all Nigerians as provided for in section 34(5) and (6) (a) & (b) of the Act. The above section has been interpreted as having confiscated land in excess of half hectare without payment of any compensation. This has not been fair at all to the former owners who lose their many portions of land to the government without any compensation in return.

Finality of the Decision of the Land Use and Allocation Committee

Section 2 (2) and (5) mandates each State and the Local Government to establish the committees known as the Land Use and Allocation Committee and Land Allocation Advisory Committee respectively (Section 2 of the Land Use Act 1978). The Committees shall perform such functions as: advising on matter related to compensation, resettlement of person affected by the revocation on ground of overriding public interest and overall management. By section 2 (3) and (4), the Governor shall determine the composition of the State's Committee's membership and the person who presides over the proceedings of the Committee. The State Committee is by section 2(2)(c) conferred with adjudicating role of determining disputes as to the quantum of compensation payable under the Act for improvement on land compulsorily acquired by the Government (Section 28 of the Land Use Act). This later role destroys the advisory nature of the committee as intended by the Act.

By section 30 of the Act, any dispute as to the amount of compensation that may arise under section 29 (Section 29 of the Land Use Act 1978) shall be referred to the Land Use and Allocation Committee. And on a matter of

constitutional and public importance as the above, it is obvious from the express provision of section 47(2) of the Act that whatever the Committee decides is final. The above provisions are affronts on the fundamental right of fair hearing enshrined in section 36 of the 1999 Constitution which guarantees the right to fair hearing to a citizen by a court or tribunal established by law and 'constituted in such a manner as to secure its independence and impartiality'. The Land Use Act and Allocation Committee certainly does not qualify either as a court or tribunal envisaged by the constitution. The Committee is set up by the Governor who also has the power to revoke statutory right of occupancy for overriding public interest and any dispute on compensation arising from it refers to his Committee.

The Governor's Concurrent Possession with the Occupier's Right, a Bar to Actionable Trespass

By the provision of section 14 of the Act, the Governor holds possession concurrently with the occupier. Also, section 11 of the Act gives the Governor or any public officer duly authorized by him the power to enter and inspect the land comprised in any statutory right of occupancy or any improvements effected thereupon at any reasonable hour in the day time. Although it is in the interest of the society that the Governor or any public officer duly authorized by him has a right of entry, such right obliges the Governor to exercise the power to enter reasonably and for the specific purpose of inspecting the land and any improvements. It then holds that such power of entry cannot be exercised capriciously by the Governor or any other authority for that matter. An unjustifiable invasion of the possession of the occupier will amount to actionable trespass. However, as evidenced from the express provision of section 14 above, no such action in trespass is maintainable against the Governor or his duly authorized officer for such entry because the occupier's possession is not exclusive of the Governor's. It is an established principle in law that an action in trespass is not maintainable against a person by another with whom he shares concurrent possession e.g., tenant in- common or joint tenants.

The Governor's Exclusive Power of Revocation under the Act

The Governor is mandated by section 28(4) of the Act to revoke a right of occupancy in the event of the issue of a notice by or on behalf of the President, declaring such land to be required by Government for public purposes. The question that may well arise here is, if the Governor refuses to revoke rights of occupancy as indicated by the Federal Government, has the Federal Government got any way out? This inter alia is the problem left unsettled by the Act. This provision makes the cooperation of the State Government indispensable to the Federal Government's acquisition of land for its use. Thus, subjecting the exigencies of the Federal Government to the politics and bureaucracy of relevant State Governments.

There is no power anywhere in the Act enabling the Federal Government to revoke rights of occupancy under any circumstance. Thus, the best the Federal Government can do subsequent to such acquisition in a case of refusal by the Governor to revoke a right of occupancy following the Federal Government's notice, is to enter into negotiation with the holders or occupiers affected by the acquisition so that such holders or occupiers can voluntarily surrender their rights and be compensated by the Federal Government for such rights. There is no doubt that in such a case the Federal Government will most likely pay more than the compensations the Act or state's Committee would have recommended. And if the Federal Government is not willing to pay more, the private holders or occupiers might want to join the State Government in refusing to co-operate with the Federal Government.

We have seen for instance, how an agent of Oyo State Government demolished houses being built by the Federal Government under the Low cost Housing Scheme. The action was reported to have been taken because the land on which the houses were built was not allocated to the Federal Government by Oyo State Government, and that the Federal Government does not have right to acquire land directly nor by private treaty from any other individual in the state. Consequently, the projects continue to suffer until may be when the Federal Government secures a court order compelling the Governor to revoke the subsisting rights of occupancy. This again portrays a pathetic situation of the Act in relation to the Federal Government's right to acquire land for public purposes which is only exercisable at the mercy of the Governor.

The Land Use Act is both Discriminatory and Restrictive

Section 1 of the Act states that the Governor holds the land for the benefit of 'all Nigerians'. Interpreting the general words 'any person' as used in sections 5(1)(a), 6(1)(a) and 36(s) must be construed in accordance with the express provision of and in away consistent with the spirit of section 1 above, given the rule of statutory interpretation— *Expressio unius est. exclusio uterius*, then 'all Nigerians' will mean Nigerians simpliciter and no more. As such, foreigners are discriminated against by the Act. That is, they are not in the category of persons for whose common benefit the Governor holds the land.

This non-inclusion of the 'foreigners' in section 1 or any other relevant provisions of the Act, and failure to lay down the procedure for acquiring land in Nigeria by the foreigner leaves anyone to wonder whether or not the foreigners are entitled or have access to a right of occupancy in land in Nigeria. Similarly in section 7 of Act, the Governor is prohibited from granting a statutory right of occupancy to persons under the age of 21 without such express provision in respect of customary right of occupancy. A number of issues arose from this provision: What is the rationale behind the age restriction? Could there be any special reason for putting the age limit to 21 years? The Act seems not to provide any answer to these questions.

In Nigeria, the age of puberty under the customary way of life is the age of maturity while in England the maturity age is 21 years. Oluyede observed that under the English, a person of less than 21 years of age could hold land (Oluyede 1989). Yakubu also observed that many Nigerians at age of 21 years are wealthy enough to own large farms and acquire lands for residential and industrial purposes. It is therefore submitted that there is no reason why the Act should put the age restriction at 21 when a person under age 21 in English law is entitled to hold land (Yakubu 1986). The provision is therefore discriminatory, the age restriction has no basis and it is unreasonable. This also does not confirm with the philosophy of the entire legislation (i.e., to ensure that every Nigerian has the right to a piece of land for his use and enjoyment) and it is also unrealistic.

The Land Use Act and the Constitution

At the time the Land Use Act was promulgated there was a dire need for land policy which was thought was very crucial for the development objective of Nigeria. The government wanted to be firm on the new law which was thought was only panacea for the realization of development objectives at that time. To show Nigeria that land policy and administration which was to quicken development process was of the utmost priority of the government, The Federal Military Government decided to annex the Act to the 1979 Constitution (Section 274 (5) (d) of the 1979 Constitution) with a view that the its provision should not be easily annulled. The incorporation of the Act into the constitution has led to confusion as to the actual status of the Act.

Besides, there are a lot of inconsistencies between the provisions of the Act and the Constitution. The highlights of these areas of inconsistencies are as follows: Firstly, section 1 of the Act vests all land in the Government, thus living the individual with certain rights in form of rights of occupancy devoid of ownership. This drastically curtails the property right of the individual as regards his ultimate ownership in land under section 43 of the 1999 Constitution, which guarantees the individual right to acquire and own immovable property (i.e., land) anywhere in Nigeria. Secondly, section 47(1) of the Act makes the Act to have effect on any law or rule of law including the Constitution of the Federal Republic of Nigeria. This subsection also ousts the jurisdiction of the court in inquiring into any question concerning the vesting of all land in the Governor, the right to grant statutory and customary rights of occupancy by the Governor and the Local Government respectively and in section 2, any question as to the amount or adequacy of any compensation paid or payable under the Act. Section 47(1) above is inconsistent, with and an affront to the supremacy of the constitution as contain in section 1(1) and (3) of the 1999 Constitution. Also the ouster clauses contained in section 47(1), (2) above are in consistent with section 272 of the 1999 constitution which guarantees the jurisdiction of the High Court of a state to hear and determine any civil or criminal proceeding involving the existence or extent of legal right, power, duty, liability, privilege, obligation or any claim in any issue, penalty, forfeiture, punishment or other liability in respect of an offence committed by any person. Thus, the jurisdictions of the court which are really important to enforce the

intention of the Act are seriously undermined or curtailed by the provision of the section 47 of the Act. This is really undesirable.

Thirdly, the finality of the Land Use and Allocation Committee's decision on disputes referred to it (Section 30 of the Land Use Act 1978) as regard the amount of compensation payable under section 29 in respect of land compulsorily acquired in the public interest without appeal to court is ultra vires to section 44(1) of the 1999 Constitution which gives any person claiming compensation or amount of compensation payable (in the event of compulsory acquisition of his property) a right of access to court to determine his interest. Section 47 (Section 47 of the Land Use Act 1978) above only confirms the military antecedent of the Act. The section could only apply under a dispensation where the provision of the constitution are clearly suspended and have effect at the pleasure of the Military Government. In the present dispensation, the constitution is supreme, and if any other law is inconsistent with its provisions the constitution shall prevail, and that other law shall to the extent of the inconsistency be void (Section 1 (1)& (3) of the 1999 Constitution). This should be the relationship between the Act and the constitution.

Conclusion

This paper has examined in detail the subject The Land Use Act 1978 and the proscription of discrimination against fellow Nigerians. It is crystal clear that the problems in the pre-Act land laws and tenure necessitated the promulgation of the Land Use Act in 1978. The pre-Act land tenure policies were not satisfactory because of their attendant problems, such as insecurity of title, land litigations, fragmentation of holdings, difficulty in acquisition and alienation of land, etc. All these contributed to housing problems, slum development and general lack of infrastructural developments in Nigeria. With the Act in place, these various pre-Act land laws and land tenure policies were largely done away with, but the principles of those pre-Act laws which are inconformity with the spirit and general intendment of the Act are preserved (Section 48 of the Land Use Act 1978).

This paper has shown that the Act by its policy objectives has improved land tenure and administration in Nigeria. The Act inter alia has unified land policy, initiated the principle of effective utilization to our land tenure system, ensured equitable redistribution of land among the

citizens without discrimination on ground of state origin and facilitated both governments and private industrialists' quick access to land needed for developments. The Act has also generated more revenues for the government. In this respect, this paper has found the Act laudable.

Notwithstanding the foregoing positive impacts of the Act, the study has further beamed its searchlights in figuring out the inherent problems in the Act. These problems have been considered in this paper against the circumstances surrounding the promulgation of the Decree. The Act (formerly known as Decree) was hurriedly drafted and promulgated by the defunct federal military government without the necessary consultations. Hence the drafting of the Decree was characterized by inelegance. These inelegant and military antecedent natures of the Act were two major factors responsible for all the interpretation and implementation problems that have greeted the Act so far. It is instructive therefore to say that any criticism against the Act or any problem attributable to it must recognize these two factors as the genesis of all the shortcomings of the Act.

In this paper, it has been discovered that there are gaps between the expectations and the achievements of the Act. In this connection, some of the problems earlier identified with the pre-Act land laws and tenure policies which the Act claims to improve have been made worse than they were before. For instance, vesting of all lands in the state in the Governor has made acquisition of land more difficult especially for the individuals.

More so, compensations payable under the Act are grossly inadequate compared to what was paid under the Land Tenure Law. Furthermore, the consent provisions under the Act with the rigorous processes and delay usually experience in obtaining it has stagnated land transaction in the country, and thus has become a dog in the wheel of development. Again, the Governor's reluctant to exercise his exclusive power of revocation in favour

of the Federal Government could stagnate Federal Government development projects. Moreover, the jurisdictions of the courts necessary to enforce the Act and give effect to its provisions have been seriously eroded.

It is against the background of these inherent problems of the Act that this paper deems it fit to consider what should be the prospects for the future of the Act which also serve as the recommendations of this paper.

Recommendations

It is obvious from the discussions so far that there is a lot in the Land Use Act which requires a second look. A review of the Act is most urgent. The Federal Government should therefore expedite actions to effectuate the review of the Act. The following amendments are hereby remanded:

1. In order to make the amendment of the Act easy, it should be removed completely from the constitution. After all, the Act is like any other statutory law and there is no reason whatsoever for giving it such a status in the supreme law of the land.
2. The Act has made no effort to lay down even in outline the principles on which the trust created under the Act in section 1 shall be administered and discharged. It is considered much better for the Federal Government to insert into the Act the standard of practice which each trustee (i.e., the Governor) should be expected to observe in administering land for the common benefit of all Nigerians. For instance, the Governor should at least be accountable to all Nigerians (i.e., the beneficiaries) in relation to land under his trust as is usually the practice in normal trust. Such provision will make the trustees (Governors) in each state wary of the onerous duties which they owe citizens of their states and Nigerians as a whole.
3. The Act in section 3 confers on the Governor a discretionary power to declare part of the state land as urban land without laying down what should guide the exercise of such power. i.e., where particularly in the state should be declared as urban land and where not to be so declared. This has led to the practice of indiscriminate designation of all land in the state as urban land. The Act is equally silent as to the designation of 'other land'. It is therefore suggested that the Act should set a standard that guides the Governor in the exercise of designation of urban land. In the same manner, in view of the bureaucracy involved in granting the rights of occupancy by the governments, it is suggested that the Act should be more assertive on the designation of other lands. In this connection, the Local Governments which are closer to the people should be given power to designate such other lands as non-urban land to allow them to exercise their power of control and management over land.
4. The Act has vested so many powers in the Governor, so much so that an overzealous Governor can misuse them for his political or personal gain. The Act should contain administrative remedies available to persons that have a certificate of occupancy that shows that they are entitled to such land to curb the many powers of the Governor.
5. In order to ensure the involvement of the traditional rulers (whose positions are held in high esteem in the rural areas) in land tenure in the country, they should be made chairmen of Land Allocation and Advisory Committee in different Local Government areas for the granting of customary rights of occupancy.
6. All provisions of the Act relating to non-justice ability should be expunged forthwith or should generally be justice able. This will ensure the operation of Chapter IV of the constitution vis-a vis the Act without inhibition.
7. To avoid the unnecessary delay usually experienced in obtaining consent, and the hardship same has created, the Act should mandate the Governor to grant his consent without unnecessary delay. It should also be incorporated into the Act such provision as 'such consent if sought should not be unreasonably withheld'.
8. There is no provision in the Act enabling the Federal Government to revoke the rights of occupancy for its urgent use under any circumstance. It is therefore suggested that the Act should contain a provision that will enable the Federal Government to acquire land in any part of the federation for public purposes without going through the state Governor.

9. Provisions on compensation are grossly insufficient. The National Assembly should make definite efforts to improve upon the present system. Section 35 of the Land Tenure Law of 1962 which further provided compensation for disturbances should guide the bodies in their efforts.

10. Reference of disputes arising from the quantum of compensation should cease to be made to the Land Use and Allocation Committee. Section 30 of the Act should therefore be amended to that effect. Also, the decision of the committee should not be made final as provided for in section 47(2). This provision should equally be amended so that complaints are allowed to have recourse to ordinary court of law in such disputes.

11. The Act in section 34(5) and (6) took away many plots of land held by the former land owners without any compensation in return. We humbly submit that property legislation should not confiscate property right of the people. The right to property is a fundamental right and should not be violated indiscriminately and spontaneously. Even where such confiscation is necessary, the legislation should provide compensation to that effect. Subsequently amendment should take cognizance of this.

12. Planning education should be carried to, and intensified in, all local government areas by virtue of their headquarters being designated as urban centres by various state governments. Governments at all levels should make land information system an integral part of the planning, research and statistics unit of the Ministry or Department in charge of land matters. Above all, staff training in Geographical Information System is essential in order to keep abreast of the latest land management and administration techniques.

13. Furthermore, since the government has not been able to supply land at the right quantity to meet public and private demands, it is expedient that the section that limits the size of land to 0.5 hectare per person in the urban area should be revised to enable private and corporate property developers acquire and develop more land. The revision should contain checks which will control land transfer or land speculation. Also, the Development Controls Unit of the Town Planning Departments should be strengthened and well equipped in terms of mobility, being the "eye" of the Department, in order to effectively police the urban centres.

Bibliography

1. Abubarka M.M., 'The Land Use Act Policies: An overview' in Journal of Private and Comparative Law, vol. 1 No. 1 2006, A Publication of Private Law ABU, Zaria pp. 69-98
2. Bensti-Enchill, Ghanna Land Law (London Sweet & Maxwell 1964) p. 81
3. Elias T. O., Nigerian Land Law (London Sweet & Maxwell, 1971)
4. Emeka Egburuonu, How to Handle Land Cases in Practice (Basic Rights Publication Ltd.2001)
5. Essang S.M, 'Reflection on some of the provisions of the Land Use Act 1978' being his Keynote address at the workshop on the Land Use Act: Report of the National Workshop held at the University of Lagos on 25th-28th May 81
6. Federal Republic of Nigeria (1992), Land Use Decree No.6, Official Gazette Extra Ordinary 65(14) Government Notice 272.
7. Ijaiya A, 'The Land Use Act: A Critical Review' in An Annual Publication of Law Students' Society University of Ilorin, Faculty of Law 2006. pp.196-203
8. James R. W, Nigerian Land Use Act: Policy and Principles (Unife Press Ltd 1987)
9. Nigeria Constitution Drafting Committee vol. 1 p.vii, The Draft to the 1979 Constitution Submitted to the Country's Head of State Lt. Gen.(later General) Obasanjo (September 14, 1976)
10. Nigeria Anti-Inflation Task Force, Report on the Comprehensive National Land Policy by promulgation of an Act with effect of vesting all lands in the Government (1975)
11. Nigeria Rent Panel, Report on Fundamental Review of the Land Tenure Law by vesting all lands in the State (1976)
12. Niki Tobi, Handbook on the Land Use Act (ABU Press Ltd, 1989, Zaria)

13. Nweke O.U, The Land Use Act Decree 1978: A Critical Analysis (Fab. Anieh (Nig) Ltd, 1989, Jos)
14. Omotola J.A, Cases on the Land Use Act (Lagos University Press, 1985)
15. Omotola J.A, Essay on the Land Use Act 1978 (Lagos University Press, 1984)
16. Oluyede P.O.A, Modern Nig Land Law (Evans Bros (Nig) Ltd 1989, Ibadan)
17. Smith I.O, The Law of Real Property of Nigeria (Law Centre, Lagos State University, 1995)
18. Uwakwe Abugu, Principles of the Land Use Act, 1978 (Joyce Graphic Printers & Publishers 2008, Kaduna)
19. Yakubu M.G, Notes on the Land Use Act (ABU, Zaria 1986).