

THE LAND USE ACT OF 1978 AND THE IMPERATIVES FOR REFORMS FOR EFFECTIVE LAND ADMINISTRATION IN NIGERIA

¹Nyeneime Victor Raphael, ²Uduak Uko and ³Victor A. Udosen

^{1&3}Department of Estate Management, ³Department of Urban and Regional Planning,
^{1,2&3}Akwa Ibom State Polytechnic, Ikot Osurua, Nigeria

Email: blackvictor@gmail.com, uduakuko@gmail.com, aniejayisok@gmail.com

ABSTRACT

Land is one of the most indispensable resources available to man. It is a store of wealth and a vital element in the socio-economic development of any country. To ensure its accessibility and prudent use, various legislations have been enacted by governments all over the world. In Nigeria, the principal legislation governing the control and management of land is the Land Use Act of 1978, which abolished the existing freehold title to land and limits the title that can be granted under it to leasehold interests not exceeding 99 years. This makes all allottees of state land and owners of properties covered by Certificates of Occupancy to be tenants of the state. This paper examines some salient issues relating to the administration of land as stipulated in the Land use Act and their implications for growth and development. It posits that unless urgent steps are taken to review the Act and bring about reform in the system of land administration, Nigeria's quest for sustainable national development will remain elusive.

Key words: *Land administration, Land Use Act, Reforms, land policy, Nigeria.*

INTRODUCTION

The importance of land to the socio-economic development of any nation can hardly be overemphasized. Its ownership is considered the most single largest investment by an individual. It is a source of wealth, a factor of production and the centre of all developmental activities.

Throughout ages, man has always depended on land for his survival and development as virtually all basic needs of human existence are land dependent. This is why the ownership of land is jealously guarded. Wars have been fought and territories conquered to assert and preserve the ownership of land (Rasak, 2011).

In most civilised parts of the world, policies have been formulated to regulate access to land as well as its management. According to Nuhu (2009), an acceptable and proactive land policy is a critical success factor in the economic development and growth of developing countries. This is true when one realises the fact that land available for certain uses in certain locations is often limited in supply and therefore scarce. Its equitable use among the population is therefore guaranteed by an effective land policy.

It was against the above background that the Federal Government of Nigeria promulgated the Land Use Act of 1978. The Act was originally enacted as a Decree and came into effect on the 29th of March, 1978. By the adaptation of laws (Redesignation of Decrees, etc) Order 1980, it assumed the appellation of an Act. Although the title of the Act seems to suggest that it was designed to control land use and thus a planning statute. This is misleading. The Act is essentially a land law statute which de-emphasizes private powers over all interests in land in favour of the state (Utuama, 1990).

It is however pertinent to note that prior to the Land use Act, there were different land laws that governed land tenure systems in Nigeria. These included Customary law, Received English land laws and the Land Tenure Law. The Land use Act was therefore a deliberate effort by government to unify the different land tenure systems that were in operation prior to the Act and to streamline and simplify the ownership of land in the country.

In Nigeria today, the Land use Act of 1978 remains the main legal basis for land governance and gives the state a prominent role for the administration of land. However, there are major shortcomings that have been identified regarding its contents and implementation therefore generating a lot of problems.

The objective of this paper therefore is to examine the shortcomings in the Land use Act of 1978 as a tool for land administration and highlights the major areas in the legislation requiring reforms for effective land administration in Nigeria.

Land Administration under the Land Use Act of 1978

It must be understood that any effective land administration system is hinged on the nature of the available land policy that is in place in a given country. The essence of such a land policy is to guarantee and protect individual land rights so as to serve as a source of personal wealth and provide opportunities for economic independence and growth. This view seems to be reflected in the preamble of Act 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 rights 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 asserted, protected and preserved (FGN, 1978)

The summary of the above provision is that every Nigerian has the right to a piece of land in Nigeria for his use and enjoyment and this right as seen from subsequent provisions of the Act is one which must not be denied or refused by any authority.

The Act was principally designed to achieve the following principal objectives: -

- i. To remove the bitter controversies, resulting at times in loss of lives and limbs which land is known to be generating.
- ii. To streamline and simplify the management and ownership of land in the country.
- iii. To assist the citizen, irrespective of his social status to realise his ambition and aspiration of owning a place where he and his family will live a secure and peaceful life.
- iv. 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.
- v. To eliminate land speculation

Some of the more important provisions of the Act are indicated below:

1. The Act vests all land situated in the territory of each state in the country on the Governor of the state. This is asserted by section one of the Act as follows:

Subject to the provisions of this Act, all land comprised in the territory of each state in the federation are hereby vested in the Military 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 provisions of this Act

The Act therefore nationalises land such that the absolute ownership and control of land in Nigeria is no longer within the powers of the communities, families or individuals but on the governor of each state to be held in trust and administered for the use and common benefit of all Nigerians.

2. The control and management of land, including land allocation in urban areas come under the Governor of each state while the local government chairman is entrusted with the management and control of land in rural or non-urban areas. The governor has an unfettered power to designate land within the state as urban land by an order published in the state gazette;

3. The governor is to be assisted by a body known as the Land Use and Allocation Committee in the management of land in urban areas. Such a body is also vested with the responsibility of

settling disputes arising from compensation payable to claimants of expropriated land. Similarly, a Land Allocation Advisory Committee is provided to advise local governments in like manner;

4. All land which has already been developed remained the possession of the person in whom it was vested before the Act became effective;

5. The Governor is empowered to grant statutory certificate of occupancy (C of O) which would be for a definite term to any person for all purposes and rights of access to land under his control;

6. The maximum area of undeveloped land that any person could hold in any one urban area in a state is one half of an hectare; in the rural areas this must not exceed 500 hectares except with the permission of the governor;

7. The Act stipulates that the consent of the Governor must be sought and obtained before any transfer of right over land can be made either by way of mortgage or assignment. The consent of the Local government or that of the Governor in appropriate cases must also be obtained for the transfer of customary right of occupancy.

8. The governor can revoke a right of occupancy for overriding public interests and to pay compensation for the un-exhausted improvement on land.

To ensure that Act, which originally was enacted as Decree will not be easily abrogated or amended by subsequent regimes, it was made an integral part of the 1979 Constitution under section 274(5) and now section 315(5) of the 1999 Constitution. Mabogunje (2011) remarked that although the Act has made it easy for governments to acquire land for public purposes, drastically minimized the burden of land compensation and considerably reduced court litigations over land; it has, since its inception created a new genre of serious problems for land administration and management in the country.

Shortcomings of the Land Use Act of 1978 and the need for reforms

- i. By vesting all lands in the state on the Governor, it means that all rights of ownership previously enjoyed by Nigerians have been converted into mere rights of occupancy. The absolute ownership and control of land in Nigeria is no longer within the powers of the communities, families or individuals but on government. Another implication is that all undeveloped land in every state belongs to the governor and anyone without a certificate of Occupancy in respect to land cannot transact business with it. This apparent nationalization of land by government is inconsistent with democratic practices and the operations of a free market economic system;
- ii. Many State Governments have failed to establish the Land Use and Allocation Committee in their states and where such bodies have been formed, their impact still leaves much to be desired. There has been mounting criticisms that the Land Use and Allocation Committees are no more than appendages of the governors and merely endorse lists approved by the governors in terms of allocation of land as most of these allocations are done mostly to friends, relatives and party faithful. This has made land become an item of patronage thereby undermining the objectives of the Land use Act.
- iii. One aspect of the Act which implementation has brought untold hardship includes the provisions relating to issues of certificates of occupancy (C of O) and grant of consent before alienation. Considerable period can be spent in acquiring the C of O as well as consent of governors. This culture of not giving urgent attention needed to the responsibility of governors in granting consent for land assignments or mortgaging has greatly impeded the development of an efficient land market and housing finance institutions in the country. Some governors see it as a means raising revenue for their States thereby imposing heavy charges for granting such consent. This has made the process of obtaining title to land very expensive. Atilola (2010) remarked that after 30 years of the operation of the land use Act, less than 3% of land in the country, mainly

in urban areas, is covered by title deeds. This may not be unconnected with the tedious and expensive nature of obtaining title to land.

- iv. The inconveniences and delays in securing Statutory Certificates of Occupancy have induced many land transactions among Nigerians to move to the informal market or be falsely dated as having been concluded before the commencement of the Act.
- v. The Act has not in any way succeeded in removing the uncertainties in title to land. Some have argued that instead of removing such uncertainties, it has rather

accentuated it (Olayiwola and Adeleye, 2006). Title to land has become precarious because of the misuse and abuse of section 28 of the Act. The power of Governors and the Local Governments to revoke any right of occupancy over land "for overriding public interest" has been used arbitrarily in the past and helps to underscore the fragility of the rights conferred by the Certificate. This has posed significant threat to our mortgage system as most financial institutions are becoming reluctant in accepting the C of O as collateral for loans. The requirement of consent in every transaction is therefore a clog to the economic development of Nigeria.

- vi. The methods of assessing compensation in the Act have been identified as being grossly inadequate. It limits the compensation payable for land to the ground rent paid during the year of revocation. This does not in any way conform to the doctrine of adequate compensation as envisaged by the Nigerian Constitution. Besides, it does not recognise the interest of third parties who may have paid the market value for the land prior to acquisition.
- vii. Perhaps one other shortcoming of the Act is the half hectare rule which places the maximum size of a portion of land that can be granted to an individual. The provision seems unenforceable because of the lack of statistics of land ownership or holdings prior to the Act. It is therefore impossible to know what other property in land an applicant for a C of O has unless where he has declared it, which is not a common thing amongst most Nigerians.
- viii. The discretionary powers conferred on Governors by the Act to declare part of the state land as urban without laid down guidelines is subject to abuse. The provision has led to the practice of indiscriminate designation of all land in the state as urban land. An attempt by the Lagos state Governor to declare all land in his state as urban land gave rise to considerable absurdities in the operation of the land market.

RECOMMENDATIONS

If the Land use Act of 1978 is to achieve desirable results in the administration of land in Nigeria and become an instrument for rapid socio-economic development, the following recommendations would have to be implemented.

- i. The Act should be urgently removed from the Constitution so as make it amenable to amendments.
- ii. The Land Use and Allocation Committees in each state of the federation should be constituted as independent commission and should also be accorded independence and tenure of its officers clearly provided. This will avoid their manipulation by political office holders.
- iii. In order to make the C of O serve as an evidence of title and make it more acceptable as collateral for mortgage, the provision of section 28 of the Land use Act should be amended to make it obligatory for the governor to act on advice of the Land Use and Allocation Commission.
- iv. Since undeveloped land is assumed to belong to the governor as well as land without formal titles consequently making them devoid of market value, a cadastral survey

should be undertaken and all those with possessory rights be documented. This will enable owners of such possessory rights transact business with their land thereby bringing about empowerment and poverty alleviation.

- v. The provision of consent should be expunged from the Act. All transactions in land should be done freely without the need for the holder to seek the consent of the governor or any person for the matter. This will facilitate business transaction and stimulate economic development.
- vi. The method of assessing compensation should be based on the open market value of land rather than the depreciated replacement cost method provided by the Act. Interests of third parties should be recognised. In addition, provision should be made for other claims such as injurious affection, disturbance and severance.
- vii. Disputes arising from compensation should be returned to the High Courts or Judicial tribunals rather than the Land Use and Allocation Committees.
- viii. Since the bulk of land in Nigeria is not covered by title deeds, majority of the owners of such lands cannot raise capital with their land for any economic pursuit. Their land parcels are locked up as "dead capital". It is therefore incumbent on Government to vigorously commence a reform process that would provide registrable titles to land owners throughout the country. This will bring about empowerment and help reduce poverty.
- ix. The discretionary powers conferred by the Act in Section 3 on governors to designate part of the state land as urban land should be reviewed. The Act should set a standard that will guide the Governor in the exercise of the designation of urban land.

CONCLUSION

Land is a central issue in the development process of any nation and if Nigeria is to pursue its quest for national transformation, concerted efforts must be made to secure land rights and make it attractive for long term investment. The more accessible land and real estate assets become, and the greater the possibility of their use as collateral for mortgage purposes, the more likely they are to contribute to economic growth and sustainable national development. It is therefore expedient to take a second look at the Land use Act of 1978 with a view to reviewing it to meet the aspirations of every Nigerian.

REFERENCES

- Atilola, O. (2010). Land administration reform in Nigeria: Issues & Prospects. A paper presented at the FIG Congress 2010, Sydney, Australia. 11th-16th April.
- Land Use Decree No. 6, 1978. Lagos: Federal Government press.
- Federal Government of Nigeria (1999). *Constitution of the Federal Republic of Nigeria* Lagos: Federal Government press.
- Mabogunje, A. L. (2011). Land reform in Nigeria: Progress, problems & prospects. Retrieved from <http://www.siteresources.worldbank.org/EXTARD/...> 12/11/2014
- Nuhu, M. B. (2009). New development of land administration and surveying matters in Nigeria. A paper presented at FIG Commission 7 on Cadastre and Land management. Kuala Lumpur, Malaysia, 12th-16th October.

Olayiwola, L. M. and Adeleye, O. (2006). Land reform: Experience from Nigeria. A paper presented at the 5th FIG Regional Conference on Promoting Land Administration and good governance. Accra, Ghana. 8th- 11th March.

Rasak, S. E. (2011). The Land Use Act of 1978: Appraisal, problems and prospects. Unpublished LL.B Degree project submitted to the Faculty of Law, University of Ilorin, Ilorin.

Utuama, A. A. (1990). *Nigerian law of real property*, Lagos: Shaneson publishers.