

## Land Use Act and Socio-Economic Development Imperatives

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### ABSTRACT

*Land is among the most valuable natural resources bestowed on man. His life is a repertoire of efforts to interact with land to provide his needs since the dawn of civilization. However, the riches of land can be destroyed and / or exhausted if mismanaged. It is therefore incumbent on man to adopt a proper land husbandry procedure to ensure that the resources of land are used to satisfy his needs of today and at the same time conserve some for tomorrows needs. This paper highlights the origin of land tenure system in Nigeria, the desirably or other wise of the land use Act, main provisions of the Act and the provisions of the Act and the challenges of MDGs. The discourse was able to buttress the view that the land use Act was conceived with noble objectives, but its implementation over the years has been fraught with problems thereby constituting a dog in the wheel of national development and an impediment to socio-economic growth of the nation.*

### Introduction

The forms of rural land policy existing in any particular country are affected by many factors which are determined by the political, social and economic conditions existing in that country (Academic Star, 1978) some of the factors include:

- Systems of family (nuclear or extended and customs of inheritance)
- The rules, which govern the disposal of family and individual property at death and the kind of political organization existing in the country.
- The form and efficiency of the local administration and its relationship with the central government of the country.

The interaction of factors mentioned above results in an emergence of several forms of land policy (Academic. 1978). As several communities continually operate these forms of land policy, customary land tenure system evolved as standard ways of dealing on land in the respective communities within this entity called Nigerian there are over 260 ethnic groups which occupy various sections of the land in settlement communities (Academic Star, 1978). For centuries, these human communities within the Nigeria environment have continued to assert right of their member to some land for use. The rights of individual over land were regulated under native systems. The continual increase in population coupled with man's need to satisfy his increasing requirements on an essentially inelastic supply of land, brought pressure upon demands for land. In order to achieve equitable and rational distribution of land, different forms of socio-economic relationships began to evolve through these relationships, individuals and groups obtain guaranteed access to land. The several of these kinds of man-to-land relationships which have evolved with time among these groups, the privileges, opportunities, rights and duties associated with membership, the injunctions as well as the penal sanctions, are the main components of the Nigerian Land Tenure System. The word tenure as associated with land is concerned with rights in land held against other persons (Academic Star, 1978).

### **Historical Perspective**

From time immemorial land ownership and acquisition have been a thorny issue. There are those who believe that they own the land because their forefathers settled on it. As such, they believe they can do anything with the land. Those people give out land to whoever they like. They normally give out land as a favour or in form of payment for services rendered. How and where they came about the land over which they exercise control nobody knows. Despite the continued challenge to their right to exercise control over land which is God-given, land owners have continued to wax strong (The Nation 2008).

Under the land tenure system which was in practice in the days of Yose, land ownership was by inheritance. Land was handed down from one generation to the other. The land owners became the lord of the manor in their respective communities and people deferred to them. The system was subject to abuse and it bred discord. People fought over land because they its worth and value unfortunately its real economic value was lost on the people who believed more in land because of the prestige and honour it conferred on them.

Land's intrinsic value lies in its wealth creating potentials. As a major factor of production, land is much such-after because it is the fulcrum of any business. Without land factories cannot be built, offices cannot be erected and clinics cannot be mounted. To ensure that Nigerians acquired land with ease and enjoyed maximum benefit from its use the Federal Government in 1978 promulgated the land Use Act. Having seen the sufferings people, especially entrepreneurs went through in acquiring land, it made the law to make things easy for them. With the coming of the law, it pulled the rug from under the feet of land speculators (The Nation 2008).

The Land Use Act was no doubt an ambitious law and it remains so 30 years after it was promulgated. Unfortunately the intent of the law maker has not met the envisaged hope. The coming of the Act in 1978 was supposed to end the hardship encountered in the land acquisition process in line with the laws preamble: / 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 assured and preserved." These are lofty objectives which 30 years down the line are yet to be fulfilled. Rather than the Act hastening the acquisition of land it is delaying it. In the process it is retarding economic growth and accentuating poverty. Yet, access to land and the resources thereof is [sin qua non] of the ideals of the Millennium Development Goals (MDGs)

It is sad commentary that 30 years after the Act has not made any meaningful impact (The Nation 2008) can the nation reap any foreign economic benefit when the Act forbids foreigners from owning land? Do we still have any need for such an Act in this 21<sup>st</sup> century? If after 30 years prospective land owners are still subject to the whims and caprices of land speculators, can the Act be said to have achieved its purpose? Should it be repeated or reviewed to meet the people's need?

### **Major Highlights of the Land Use Act**

The Act represents an ambitious attempt to create an egalitarian society through a public land-holding system that is intended to ensure, protect and preserve the right of all Nigerians to use and enjoy land and fruits thereof in sufficient quantity to enable them provide for the sustenance of themselves and their families. This can be seen from its preamble that reads "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 assured, protected and preserved.

It is evident that the Act was enacted to release land from customary landholding, which regarded land as not a mere economic tool for development and capital accumulation, rather as religious phenomenon with social functions. Land was believed to belong to the living, the dead and the unborn. As viewed, land had metaphysical content, as it were, as an inherent part of social relations process between people, society and gods. Flowing from this conception, customary rules relating to land were designed to discourage its free alienation and capitalization (New Nig. Newsp. 1977). The promulgation of the Act was therefore said to be aimed at redirecting the general philosophies of pre-existing land tenure systems in our society through the application of a uniform statutory regulation of ownership and control of land rights and to stimulate

easier access to land for greater economic development as well as promote national social cohesion (New Nig. Newsp. 1977). Several sections were enacted in the Act to realize this policy. These will briefly be outlined to put the discourse in the perspective of the objectives of the Act (New Nig. Newsp. 1977). Section 1 vests all the land comprised in the territory of each state in the government of such state to be held in trust and administered for the common benefits of all Nigerians in accordance with the provisions of the Act. By section 9, land vested in the Federal Government and Federal agencies are saved and remain vested in the federal government or the federal agencies concerned section 2 vests the control and management of all land in urban areas in the governor and that of the non-urban area in the appropriate local government. Section 5 empowers the governor to grant statutory rights of occupancy to all persons in respect of any land and demand rent. However, the governor is authorized to grant a statutory right of occupancy free of rent or at a reduced rent in any case in which he is satisfied it would be in the public interest to do so. Section 6 empowers the respective local governments to grant customary rights of occupancy over non-urban land within their area of jurisdiction.

By section 34 (2) and 36 (4) the person in whom the land was vested immediately before the commencement of the Act is to continue to hold such land as if he is the holder of statutory or customary right of occupancy granted by the governor and the local government respectively. Sections 21 & 22 prescribe that a holder of right of occupancy shall not lawfully alienate the right of occupancy without the consent of the appropriate local government and the governor first hand and obtained the governor is empowered to revoke a right of occupancy for overriding public interest in accordance with section of subject to payment of compensation as prescribed about section 29 therein. The purposeful implementation of these basic provisions together with the remaining sections was intended to enable the citizenry to realize his ambition and aspirations of owning a place where he and his family would live a secure and peaceful life and do his business (New Nig. Newsp. 1977).

### **Critical Evaluation of the Land Use Act**

This is one of the numerous decrees put in place around 1978 by the then military administration of General Olusegun Obasanjo it later metamorphosed into an Act of parliament in 1979 and later 1999 (Nig. Tribune 2009) It is like the law, which gave the government near absolute authority over land in the country, according to Nigerians, may have constituted great obstacles and a lot of disadvantages. The government also suffers from the negative contribution of the Act to the nation's growth. For instance, the dream of government towards producing mass housing for the people of the country is yet to be met for many years in spite of government's advocacy for it (Nig. Tribune 2009). During the administration of president Shehu Shagari, practical attempts were made by the government, perhaps based on the free access which the land use Act gave to commence and complete about 100,000 housing units of two-bedroom flats scattered all over the federation. It was a programme tagged: Housing for all in Nigeria (Nig. Tribune, 09). The attempt, even though was applauded in some quarters as a way of reducing accommodation problem and making it affordable to Nigerian income earners, it was soon discovered that the Shagari administration failed to take cognizance of the nature of the country's average family and its need when it comes to accommodation requirement (Nig. Tribune, 09). The government failed to make the accommodations big enough to even accommodate a couple not even to talk of her children in a country where an average family consists of four children or were so that attempt failed because the middle level civil servants who the housing units were meant for found it not acceptable to live in such very small apartment.

### **The Land Use Act and the MDGs**

The achievement of development goals for poverty reduction requires that all factors of production including land so as to tackle critical issues of poverty alleviation to enable the poor to climb from the first rung of extreme poverty and misery to that of wealth and happiness. In spite of the lofty policy objectives of the Acts, which ought to be explored to expand access to land in the crusade for poverty reduction, its operation has been characterized with several obstacles that have militated against achievement of its

objectives. These obstacles include tenure complexities, limited access to land by federal and local governments, and foreigners, insecurity of certificate of occupancy, inhibiting consent provisions, high cost of land transactions, of imperium and dominion and non-enforcement of development permission.

### **The Complexity of Multiple Forms of Tenure**

The Act does not abolish pre-existing forms of tenure but allows them to operate behind its provisions. Thus, section 48 saves the large body of existing laws relating to the registration of title to or any interest in land or the transfer of title to or any interest in land subject to such modifications as will bring these laws into conformity with the act or its general intendment there is need for the various systems to derecognized and simplified to strength the property rights of the poor by giving them a free access to and use of land in order to be able to take advantage of the deregulated economy.

### **Encumbered Access to Land**

The Act has in general increased the power of the state government over lands for economic empowerment development over goals. This cannot be said of local governments, which are the tiers of government closest to the mass of the rural poor. Section 2 (b) of the Act enables a local Government council to control and manage land that is not urban within their jurisdiction yet no title to such land is vested in it. Needless to say that this is a serious drawback in that a local government has to depend on the state governor to revoked right of occupancy for its public purpose before it can make a valid grant for the execution of its development strategy. The Federal Government cannot without difficulty, provides property based strategy to poverty alleviation programmed nationwide its power to grant right of comprised in the federal capital territory or held by it in the territory of any state in accordance with section 51(2) of the Act. The Federal Govt. can only have indirect access to land within the territory of the state with the co-operation of the state government under section 28 (4) of the Act.

### **Lack of Pro Vision for Foreigners**

Section 46 of the Act require the weriat of states to make regulating among other things with particular regard to the transfer by assignment or otherwise howsoever of any rights of occupancy whether statutory or customers including the conditions applications to the transfer of such rights to persons who are not Nigerians. This provision is yet to be implemented. An unacceptable aspect of the non-implement of the provisions is that foreign investors cannot as individuals have access to or use land for development programme except through a Nigerian company. It has been clearly has by the supreme court in *Ogunsla V Eiyekole* that: "The land use Act 1978, applies to, and is limited to the benefits of Nigerian. Thus by virtue of section 1 of the Act a non Nigerian can not apply for a statutory or customary right of occupancy". Yet we seek foreign investments for the industrialization of the country for a state of full employment.

### **Land Ceiling Rule**

Section 34 (5) of the Act authorizes the extinction of a holder of right of occupancy over undeveloped land in an urban area which is in excess of half hectare in favour of the governor for his control and management. On the other hand, section 34 (6) states that where a holder holds more than one at undeveloped land in an urban area in a state, all shall be considered together for purposes of the half lecture entitlement while the remainder is taken over and administered by the governor for redistribution. These provisions which place ceilings on ownership are intended to restrict the amount of land a party may own so as to make the land base available to more people or prevent new consolidations of land after the Act. Ceiling are less effective when used as a fool for government to take private land above the ceiling for retribution advantage has so four been last over the year for most of such lands have since become developed removing them out of the ambit of the provision.

### **Grant for Public Revenue Generation**

As has been seen a fundamental objective of the Act is to make land available to every Nigerian to sustain himself and his family. However, the power to make grant has been



exercised more for public revenue generation not to give land to all Nigerians, especially by the have-nots. The approach has made the cost of land generally very prohibitive for the average urban and rural poor to have access to land as a primary asset and to enviably assert themselves in terms of shelter, food security and agriculture section 18 that authorizes grant of right of occupancy rent free for reasons of public interest is a section that can be put to use in assisting the poor to have affordable access to land.

### ***INHIBITION OF CONSENT PROVISIONS***

Section 21 & 22 prescribe the requirement of attaining consent for alienation of customary and statutory rights of occupancy by the local government and the Governor respectively. Procurement of the consent is characterized with long and trusting delay. For this reason, most holders of right of occupancy evade the consent provision. Consequently, the operating of the provisions has led to multiplication of imperfect and unmarketable titles. This has serious social and economic implications of denial of capital for development. Landowners with bad titles may not have access to credit facilities to raise capital with their land as security to build their homes or entrepreneurial investments. The result is that they, are denied the advantage of the Nation Housing Act of 1992 or any other loan scheme or micro credit facility.

### ***Insecurity of Certificate of Occupancy***

Assurance of title to land was also claimed for the Act. However, at every level of the judicial system, the courts have held that the procurement of a certificate of occupancy by a person will not improve his title to the land. In *Ogunlye V Onu* the supreme court on the potency of the "Respect of which a certificate of occupancy was issued acquires no right or interest, which we did not have before. This is the weakness of a certificate of occupancy issued in such a case. Thus where as in this case is certificate of occupancy was issued to one of the claimants who has not proved a better title, then it has been granted against the letters and spirit of the land use Act" The Act has therefore not made any positive contribution to security of title to land that is essential to realizing the overall benefits of land a tool for effective implementation of the new development goals.

### **Insecurity of Agricultural Lands**

It is trite that agriculture is the basis of food security and mass employment. In our country, the agricultural sector remains the greatest employer of labour. The majority of our farmers are peasant, living and farming in the rural area. Nonetheless they are providers of national food security for the teeming population of over one hundred and forty million people.

There is need, therefore, to bring alive such capital by legal reform to provisions the much needed investment funds to such peasant farmers. That is one of the clear ways property based solutions can quickly be applied to achieve MOG goal of poverty reduction and attain the vision 2020 of making our nation one of twenty most industrialized nations of the world.

### **Environmental Sustainability**

Environmental sustainability is one of the Millennium Development Goals which must be addressed to achieve sustainable development. This goal requires that there must be a sharp cut in environmental degradation. Specifically, section 43 of the Act prohibits unauthorized use of land in urban areas to erect any building, wall, fence or other structure, enclose, obstruct, cultivate or do any Cut on or in relation to any land the permission of the governor. This provision reinforces development control powers of the state government to ensure a of our land resource to meet the challenges of environmental protection for the poor in our cities. However, what is needed most to deal with the prevalence of poverty associated with environment the degradation displacing the people from their traditional occupations. One of the clear ways of correcting this environmental imbalance is to give a more robust positive planning power to the federal Government, which can be used as a tool to channel resources, make provision for planning. Improvement and development of different parts of the federation confronted with serious environmental of the federation confronted with serious environmental problems.

### **Potency of Certificate of Occupancy**

After the enactment of the land use decree in 1978, many bank in Lagos state started rejecting duly registered deeds of conveyance and demanding and accepting certificates of occupancy as better securities for their credits. Three serious reasoning behind this pasture was that with the decree in place, the only instrument of title to land was now the certificates of occupancy (Daily Times, 1978). For purposes of mortgages, some bank had even demanded that their customers converted the fee simple, or lease hold estates vested in them before the coming into effect of the decree, into certificate of occupancy. This created a lot of problems especially with the delays associated with the issuance of his certificate of occupancy. In the general scheme of the decree, section 1 takes away absolute ownership of land from the citizens and vests it in the governor, therefore, to grant the statutory rights to persons. The local govt. is also empowered to make grants of land not in urban areas under 56 (Daily Times, 1978). But it's like Professor Omotola of University of Lagos steered them into its path of prudence and sanity via symposium and public lectures. He submitted that it was wrong, however desperate, for a bank to refuse to recognize a deed of conveyance dully registered before the Decree for the purpose of granting a loan to its customer and to request such customer to first replace his conveyance with certificate of occupancy. It has also been submitted that whether a person is entitled to a right of occupancy is a matter for the wirts under sections 39 and 41 to determine under section 9 (1) of the Act, a certificate of occupancy is to be issued by the governor in evidence of a right of occupancy and whether such rights exist or not, is by section 39 or 41 to be answered by the court (Daily Times, 1987). With these preliminary observations it is therefore interdid to ascertain, in this essay, the potency of certificate of occupancy under the land use Act via three media,

- The powers of a mortgage under the Act
- The holder of the certificate of occupancy as the exclusive possesses
- What happens to the mortgage and or the holder of the certificate of occupancy upon revocation by the appropriate authority?

It is elementary knowledge that principal powers of a mortgage include: (Daily Times, 1978)

- the power of sale, and
- the power of foreclosure

The main obstacle to the exercise of a mortgages power of sale appears to be the provisions of the land use Act which require the consent of the governor. Sections 21, 22, 23, 26, 34 (7) and (8) and 36 (5) and (6) deal with transfers at right of occupancy and provides that this must be with the consent of the governor. And any transaction in violation of these provisions is null and void.

Finally, the undisputed truth is that the holder of the right or certificate of occupancy is not even in a viable position. the land use Act not only fails to provide for prompt compensation to the pursuance the person has no right to dispute the amount of compensation payable to him Daily Times, 1978).

### **The Land Use Act and the Challenges of MDGs**

The Millennium Development Goals (MDGS) are set by the United Nations (Guardian, 31/03/08). They were signed by world leaders in New York. The MDGs represent the commitment of the international community to an enlarge vision of development that promotes human development. These goals are to eradicate extreme poverty and hunger; achieve universal primary education; promote gender equality and empower women; reduce child mortality; improve maternal health; combat Human Deficiency Syndrome (HIV/AIDS), malaria and other diseases; ensure environmental sustainability and develop a global partnership for development (Guardian) The MDGs are to be achieved by 2015. Our nation faced with myriads of human and economic adversities and determined to reverse the situation, has adopted the MDGs in the National Economic Empowerment and Development strategy (NEED) (Guardian, 08) Some of the principal objectives of the NEEDs are to create wealth, provide jobs, restructure the economy and position the nation for economic growth for poverty reduction with a view

to making Nigeria one of the 20 most advanced economies in the world by 2020. (Guardian, 31/03/08). The 36 states of the Federation and the local governments are encouraged to design and implement their respective strategies for economic empowerment development. Incidentally none of the efforts geared toward this direction has examined the close link between the economic benefits of making land available to the poor as a factor of production and investment capital and poverty alleviation (Daily Times, 1978) it will be contended that given the nature of land as one of the primary assets index and indicators of household assets, there is an intrinsic connection between landlessness and poverty. Hence, access and use of land are central to achieving the MOGs as they provide a convenient conceptual framework in which to examine fundamental contemporary issues of land refrain aimed at poverty alleviation among other things (Daily Times, 1978).

### **Land Use Act Impedes Socio-Economic Development**

Though the land use Act, 1978 is necessary for regulating the acquisition and use of land because of the great importance of land in socio-economic development, it has created more problems than it has seeks to solve in its current form (The Punch, 2010) Therefore there is urgent need to amend some of its provisions. To do this successfully, however, the act must be stripped of its special statues, which requires rigid constitutional procedure from amendment as no meaningful amendment can be done under the present scenario. Some of the problems created by the implementation of the Act are largely due the fact that some of the provisions of the Act were based on the wrong assumptions that the interest of the people in relation to land in this country are the same and that the governor as a trustee will always act in the best interest of the people all the time (The Punch, 2010). Some aspects of the law have hampered the socio-economic development of the country and make land inaccessible to the people, thereby defeating the main objective of making land for development available to all. Also, it clear from the provision of the act that the Act altered the existing land laws, particularly in Southern Nigeria in three critical ways (The Punch, 2010) by firstly

removing families and chiefs as trustees of land and replacing them with the state governors.

Secondly, individual interest in land has been reduced to a mere right of occupancy, while land in rural areas were placed under the control of the local government; with individuals no longer enjoying right of ownership over land. On section one of the Land Use Act (LUA), which vests in the governor the ownership of land in each state to be held in trust for the people, whereby the governor/trustee acted as absolute owner and the beneficiary was left at the mercy of the trustee, it is anomalous. It is wrong to vest the entire land in all state in the governor as the interest of the people will be more protected if they are allowed to hold free simple interest in land subject to the right of the government to acquire any land for public purpose upon payment of appropriate compensation to the owner. The idea of the governor holding land in trust for the people is totally misconceived as it has not adequately benefited the people especially the land-owning families and communities. The agitation in the Niger Delta is fuelled largely by the fact that people are dispossessed of the land without payment of appropriate compensation. Rather than land being readily available to the people, the implementation of the land use Act has created a new land-owning class apart from the traditional land owners (The Punch, 2010). Section 21 and 22 of the Act, which rendered as unlawful granting of right of occupancy without the consent of the governor has been used to frustrate many transactions in land.

Also, many state governors had converted the consent provision laws through the imposition of several levies on consent applications while a lot of administrative bottlenecks had been created in the procedure for obtaining consent all of which has resulted in undue delays in completing land transactions. In some states the valuation of the land is of one government officials who usually ignore the consideration in the Deed of Assignment and impose their own valuation. Even Deeds of Gift are not exempted from payment of consent fees (The Punch, 2010). If the intention of the consent provision is to ensure that all transactions in land comply with the provisions of the Act,

its operations in practice, have defeated the objective of making land readily available by adding enormously to the cost of land transactions. Money business people could not use their landed property to obtain facilities because all mortgage transactions require consent which invariably adds to the cost of doing business in Nigeria (The Punch, 2010).

### **Conclusion**

What President Umaru Yar' Adua said during his campaign as one of his seven-point agenda or programmes for the nation was land reform would take. But one thing is that it certain that the land use Act is long overdue, not only for amendment, but its total removal from the constitution of the country. This is because; it is one document that has remained a serious problem in land ownership structure in the country, it is the land use Act. Meanwhile, the Act remains the only official and guiding law for land administration for the entire country. Outside the main provision of the law, the absence of technical infrastructure like suitable cadastral base maps, uniform physical plans for development schemes and standard land titling procedures do not help the operation of the Act. One of the issues that are generally canvassed by many advocates of the review of the Act is the issue of the consent of the governor or the minister. If the governor holds the radical title to land and the citizens are only entitled to limited interest to occupy, it means that their interest will continue to be inferior to that of government. After all, only very few people have access to the governor or know the governors in Nigeria. Therefore one has to go through some system and at the end of the processes involved add up to the total cost of transaction it so difficult for people to actually sell property when they have the property. It is against this back ground that not a few Nigerians welcomed as a bold move and with open hands the Amendment Bill on Land Use Act sent to the National Assembly by President Umaru Musa Yar'Adua.

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