THE REGIME FOR MANAGEMENT AND ADMINISTRATION OF LAND UNDER THE LAND USE ACT: A CRITIQUE

CHINEDU A. ONAH*

Abstract

Land is important to the development of the society and poor land management and administration regimes impede economic development and social welfare. It is on the above premise and consideration that every nation of the world ought, in the interest of its citizens, take its land use and management very seriously and never allow it to fall in disarray. It is the importance of land to the society and the need to fashion efficient and effective management and administration regimes that predominantly influenced the State intrusion into property legislation so as to ensure adequate and efficient land management technique for the benefit of the majority of the members of the society. The promulgation of the Land Use Act was borne out of the necessity to generally, achieve an efficient land use and management regime as highlighted above, and more specifically, to harmonize the land tenure system in the country and address the problem of land speculation as well as the difficulty in obtaining land for business and developmental purposes. The Land Use Act contains an elaborate provision for the management and administration of land in Nigeria. It is however doubtful if the said provisions are properly armed to achieve an effective land management and administration regime in Nigeria in view of the practical implication of the general administration of the Act as have been witnessed over the years. It is in view of the foregoing background that this study undertook a critical examination of the regime for management and administration of land under the Land Use Act. The work found that the regime for management and administration of land under the Land Use Act is inadequate and made recommendations for the amendment of the Act to improve same.

1.0 Introduction

A critical look at the prevailing state of development in Nigeria today reveals that it is confronted with a plethora of land related problems.[1] These problems include inadequate housing, haphazard development, traffic congestion, inadequate infrastructural and social amenities, inefficient use of land, lack of access to land, land tenure insecurity, poor land policy implementation etc. In trying to address these problems, it seems that the legal regime for management and administration of land under the Land Use Act are critical factors for consideration.

The ever-increasing rise in the world population tends to place great pressure on the limited available land. In view of the foregoing, and more especially the fact that land use and management greatly affects national development, most organised societies and States have, over time, through their laws, evolved different systems of land management and control towards achieving an equitable distribution of the various rights and interests that may accrue on land. This is especially with regards to creating a strong framework for the protection of these rights.

* **Chinedu A. Onah, LL.M**, Lecturer, Department of Commercial and Property Law, Faculty of Law, Nnamdi Azikiwe University, P.M.B. 5025, Awka, Anambra State, Nigeria. Email: ac.onah@unizik.edu.ng; chineduonah@nigerianbar.ng. Phone Number: +2348064794333

[1] M A Banire, *Land Management in Nigeria: Towards a new Legal Framework* (Lagos: Ecowatch Publications Limited, 2006) p.4

Land is important to the development of the society and poor land management and administration regimes impede economic development and social welfare'.[2] It is the importance of land to the society and the need to fashion efficient and effective management and administration regimes that predominantly influenced the State intrusion into property legislation so as to ensure adequate and efficient land management technique for the benefit of the majority of the members of the society. Moreover, sustainable development requires government to provide public facilities and infrastructure that ensure safety and security; health and welfare; social and economic enhancement; protection and restoration of the natural development. A proper step in the process of providing these facilities and infrastructure is the acquisition of appropriate land; as these facilities and infrastructure would be built on land.[3] This point is further underscored by M. A. Banire when he asserted that 'virtually every form of investment or development by government and private entities is dependent upon land in one way or another.

It must be acknowledged that lack of security of land tenure leads to poverty and poverty contributes, in no small measure, to mismanagement of land resources and environmental degradation.[4] Security of land tenure, on the other hand, ensures adequate access to land which motivates individuals, communities and corporations to plan and undertake, on a sustainable basis, the use of land for various developmental purposes without fear of interference. It is in acknowledgement of this basic fundamental fact that the constitutional provisions regarding the inviolability of private property rights, as in almost all the jurisdiction of the world, were made.[5]
In the light of the foregoing, it is crystal clear that the life of man and that of the society revolve around land and its resources. Thus, the United Nations at the United Nations Conference on Human Settlement (Habitat II) 1996 resolved that countries should commit themselves to;

> promoting optimal use of productive land in urban and rural areas and protecting fragile ecosystem and environmentally vulnerable areas from the negative impacts of human settlements, *inter alia,* through developing and supporting the implementation of improved land management practices that deal comprehensively with potentially competing land requirements for agriculture, industry, transport, urban development, green space, protected areas and other vital needs.[6]

It is on the above premise and consideration that every nation of the world ought, in the interest of its citizens, take its land use and management very seriously and never allow it to fall in disarray. Thus, it is important that no nation handles the issue of land management within its borders with levity.[7]

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[2] *Ibid.*
[3] A Otubu, 'Private Property Rights and Compulsory Acquisition Process in Nigeria: The Past, Present and Future' (2012) *8 AUDJ*, 5.
[4] E Onyekpere, 'Legal Security of Tenure, Poverty and the Nigeria Environment' (2001) 1 *JESCR*, 30.
[5] Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap C23 L.F.N. 2004. ss. 43 & 44.
[6] United Nations, 'Declaration of United Nations Conference on Human Settlement, <www.un.org/conference/habitat> last assessed on 01/02/2022.
[7] P Z Datong 'The Role of the State Government in the Implementation of the Land Use Act' in O Adigun (ed) *The Land Use Act Administration and Policy Implementation* (Lagos: University of Lagos Press, 1991) 64.

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The promulgation of the Land Use Act was borne out of the necessity to generally, achieve an efficient land use and management regime as highlighted above, and more specifically, to harmonize the land tenure system in the country and address the problem of land speculation as well as the difficulty in obtaining land for business and developmental purposes.[8] It seems that it is this need that appears to have given rise to the provision of Section 1 of the Land Use Act and other provisions of the Act relating to land use administration.

It has been posited by Prof. H.A. Amankwa that land reform usually aims at the extirpation of the perceived inequities in the land rights distribution pattern in a State and the inauguration, in its stead, of a more equitable system of land distribution.[9] All law reforms involve changes. But whereas drastic land reforms usually involve revolutionary changes in ownership or control of land sometimes in the type and efficiency of land use,[10] other forms of law reform may only amount to acts of government which limit individual land rights. However, it has been posited that a necessary component of successful land reform is that the State should be armed with the necessary legal authority to bring under its control all the land required for development.[11]

The effect of a poor land management and administration regime cannot be over-emphasized. It has the effect of displacing families from their homes, farmers from their fields and business from their neighbourhood. It may separate families, interfere with livelihood, deprive communities of important religious or cultural sites and destroy network of social relations.[12] Poor land management and administration regime also has the effect of leaving people homeless and landless and most times, with no way of earning a livelihood as well as without access to government and community support and with the feeling that they are suffering grave injustice under the hand of the government. Moreover, it leads to lack of security of tenure and discourages private persons and corporations from venturing into developmental projects.

In order to avoid these situations, it is therefore imperative that the State should, at all times, endeavour to put in place adequate mechanisms for the management and administration of land. This would ensure that land as a veritable tool for national development is put to an optimal and judicious use. These mechanisms also need to be reviewed over time and in line with the socio-economic realities in the nation. Good governance is therefore imperative to provide these mechanisms.

In view of the fact that the Land Use Act contains an elaborate provision for the management and administration of land in Nigeria which has been a subject of a prolonged academic debate, this study sets out to critically examine the regime for management and administration of land under the Land Use Act.

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[8] A Nnamani, 'The Land Use Act; 11 Years After' (1989) *GRBPL,* 31.

[9] H A Amankwa, *The Legal Regime of Land in West Africa: Ghana and Nigeria* (Tasmania, Australia: Pacific Law Press, 1989) p. 130.

[10] I A Umezulike, *ABC of Contemporary Land Law in Nigeria* (Enugu: Snapp Press Nig. Ltd, 2013) p. 69.

[11] H A Amankwa, *loc cit.*

[12] Z Nkosi, 'Spirituality, Land and Land Reform in South Africa <http//www.wcc-core.org/wec/what/jpc/echoes>last assessed on 02/08/22.

2.0. Historical Justifications for the Introduction of the Act

The basic rule under customary law is that land belongs to the communities or families with the chief or headman of the community or the family as the 'manager' performing purely administrative functions in a representative capacity.[13] The customary land tenure system before 1978 can be aptly described as one undermining effective control of land by the government; and use and availability of land for public purposes.[14]

In the Northern part of the country where the Land Tenure Law of 1962 obtained, there was no effective machinery to handle the rapid increase in urbanization and industrialization.[15]

Furthermore, the intrusion of English law into the indigenous system gave rise to difficulties.[16] With the prevalent corporate ownership, this development unfortunately fell prey to unscrupulous hands. Traditional chiefs as well as individuals saw land as a means of enriching themselves at all costs. Thus great and unprecedented racketeering characterised administration of group-owned lands.[17] The consequence was insecurity of title to land, as the same piece of land could be sold to different persons at the same time.[18]

The situation created by the pre-Land Use Act legal regime was not limited to privately owned land or communal land, the allocation of State land was also greatly affected as the distribution was either to government functionaries, person closely connected to them or others who invariably had more wealth. This prompted the Nigerian Constitution Drafting Committee to observe that 'it would be laying a foundation for a major explosion in this country if the present system of abuse and profiteering [were] allowed to continue unchecked and unredressed'.[19]

It is also pertinent to note that FAO[20] Report on 'Agricultural Development in Nigeria 1965-1980'[21] prepared at the request of the Federal Government of Nigeria recognized the seriousness of the land situation in Nigeria's economic development. The report also identified the land tenure system in Nigeria as a most complex and delicate problem facing agricultural development.[22] It

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[13] *Alli v Ikusobiala* [1985]1 NWLR (Pt. 4) 630.

[14] R O Adegboye, 'Land Tenure in Some Parts of West Africa' , A Paper delivered at the Department of Agricultural Economics and Extension, University of Ibadan on 1st December, 1969, p. 5.

[15] P E Oshio, 'The Indigenous Land Tenure and Nationalization of Land in Nigeria' (1990) 10 BC Third World L.J. 48-49 <http://www.lawdigitalcommons.bc.edu/twlj/vol10/iss1/3> accessed on 03/07/2022.

[16] A A Allot, 'Towards the Definition of absolute Ownership' (1961) 5 *JAL*, 99-102; OR Marshall, 'A Critique of the Property Legislation of the Western Nigeria' (1965) *1 NLJ No 2*, 151-172; C M N White, 'Aspects and Problems of Land Tenure in Africa' (1965) *1 EALJ*, 276-283; P A Oluyode, *Nigeria Law of Conveyancing* (Ibadan: University of Ibadan Press, 1978) pp. 26-27; *Oshodi v Balogun* (1936) 4 WACA 1; *Balogun v Balogun* (1943) 9 WACA 78.

[17] S N C Obi, *The Ibo Law of Property* (London: Butterworths, 1963.) pp. 45-46; P C Lloyd, *Yoruba Land Law* (London:Oxford University Press, 1962) pp. 360-361.

[18] P E Oshio, *op cit. Ogunbanbi v Abowaba*, (1951) 13 WACA 222.

[19] 2nd Report of the Constitution Drafting Committee (1976) p. xii. See also M I Jegede, *Land Law and Development-A*n Inaugural Lecture delivered at the University of Lagos on Thursday, 17th January, 1980 (Lagos: University of Lagos Press, 1981) p. 37. <http://repository.unilag.edu.ng/bitstream/123456789/553/1/Inaugral%20-Prof.%20M01.%Jegede.pdf> accessed 05/05/2022.

[20] Food and Agricultural Organization of the United Nations.

[21] FAO, *Agricultural Development in Nigeria: 1965-1980* (New York: United Nations, 1966)

[22] I A Umezulike, *ABC of Contemporary Land Law in Nigeria,op cit,* p. 51.

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observed that, 'as the country moves from tribal to national state and from a traditional to a modern society, a fundamental revolution in land tenure is inevitable'.[23]

It was clear therefore that the pre-existing land tenure system in Nigeria was bridled with a number of difficulties which occasioned insecurity of title to land and posed a great impediment to its economic utilization.[24] Moreso, the country witnessed a rapid rate of urbanization and subsequently, an increased demand for the use of land both in the cities and rural areas for physical development, especially for basic necessary infrastructure. This situation was increased by the major change in the socio-economic development in the country as a result of the oil boom in the early 1970s. All these factors made land to be of high market value and a scarce commodity both to the government and for developmental projects for private sector. Based on the forgoing, it became imperative to establish an effective land administration and management regime to cater for the needs of the society and eradicate the multifarious problems associated land in Nigeria.

The Anti-inflation Tax Force constituted in 1975 to identify the causes of inflation in the economy, and recommend short and long term solutions[25] identified the land tenure system as one of the causes of inflation and in its interim or first report, recommended that, with respect to land tenure, that a decree be promulgated which will have the effect of vesting all lands in principle on the government.[26] This approach, according to the task force, will remove in one stroke all the racketeering and interminable litigation which then characterised land transaction in country.[27] The government rejected this recommendation.

There was no doubt however, that prior to the promulgation of the Act, land use and administration was bridled with a lot of difficulties which occasioned insecurity of title to land and posed great impediments to its economic utilization.[28] It was in the light of the foregoing, *inter alia*, that the Federal Military Government, in January 1976, constituted a panel to review the level and structure of rents in relation to the housing situation in the country with particular reference to urban centres. The panel was also giving the duty to examine the adequacy of the housing programme in the country and to suggest appropriate remedial measures and make recommendations. This panel, in its report submitted to the Federal Government on 20th May, 1976, also identified the land tenure system as a major hindrance to rapid economic development in the country. The panel recommended that in the long term interest of future economic development in the country, the government should look into the question of vesting all lands in the state.[29]

[23] F A O Report on Agricultural Development in Nigeria (1966).
[24] I A Umezulike*, op cit,* p. 50; M Jegede, 'Land Use Decree – Six Years After', a paper delivered at the National Symposium of the Nigeria Institute of estate surveyors on 22nd November, 1984. p.3.
[25] P E Oshio, *loc cit.*
[26] First Report of the Anti-inflation Taskforce October, 1979
[27] *Ibid.*
[28] I A Umezulike, *Nigeria's Major Land Reform and Adaptive Strategies of Harnessing its Social Justice Objectives* (Abuja: NIALS Press, 2011) p.20; I M Jegede, *op cit*.
[29] P A Oluyede, *op cit,* 274-279; Report of the Land Use Panel (1977) pp. 2-4.

The government in its white paper on the panel's report accepted the recommendation of the Panel in principle while promising to study the practical implication viz-a-viz land acquisition and usage in Nigeria before any further action was taken.[30]

Later, the Constitution Drafting Committee in the same year, based on findings of these bodies, strongly recommended a comprehensive national policy and the nationalization of all undeveloped land in Nigeria to curb the abuse and profiteering which existed in land acquisition, and allow the landless citizen to have equal opportunity for shelter and sustenance.

The report of the Rent Panel and Anti-inflation Task force provided the requisite impetus for setting up of the Land Use Panel on the 16th day of May, 1977.[31] The Land Use Panel was appointed to, *inter alia*, undertake an in-depth study of the various land tenure, land use and conservation practices in the country and recommend steps necessary for controlling future land use.[32]

The panel worked between May & November 1977 but the report was never made public neither was any Government white paper released. However, the Federal Military Government proceeded to promulgate the Land Use Act which came into force on 29th March 1978.[33]

3.0. Management and Administration of Land under the Land Use Act

The Land Use Act makes provisions for schemes or frameworks within which the general control and management of land should effectively be undertaken by the State Government and the Local Government.

3.1. Vesting of Land in the Governor: A Nationalization Policy

The Land Use Act in furtherance of its general principle provides thus:

> Subject to the provision of the Act, all land comprised in the territory of each state in the federation are vested in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of Nigerians in accordance with the provision of the Act.

The effect of this piece of legislation on title to land is to reaffirm state government's title over land within the territory of the state whilst preserving the title of the Federal Government and its agencies[34] over limited areas of land.[35] The absolute forms of ownership that existed before the introduction of the Act became extinguished and became vested in the Governor of the state. The governor is the 'land owner' or 'landlord' who now grants right of occupancy to other citizens. It

[30] U Abugu, *Principles of the Land Use Act, 1978* (Kaduna: Joyce Graphic Printers and Publishers, 2008) p. 8.
[31] Main Report of the Land Use Panel, 1977. See also R K Udo, 'Minority Report of the Land Use Panel' (1977)
[32] N Tobi, 'The Land Use Act and Judicial Activism' (2003) *Vol 23 JPPL,* 1; N Tobi*, Nigeria Land Law* (Zaria: Amadu Bello University Press, 1987) p. 15; W Egbewole, 'Nigerian Land Use Act: Import and Challenges', a paper delivered at the Nigerian Army School of education, Sobi, Ilorin, on 16th June, 2014. <http://docslide.us.documents-nigerian-land-use-act-import-and-challenges.html> accessed on 04/04/2022.
[33] O Abugu, *op cit,* p. 10.
[34] Land Use Act s. 48.
[35] I O Smith, 'Title to Land in the Former Federal Capital Territory of Lagos upon Creation of Lagos State: Matters Arising' (2004) *Vol. 25 JPPL*, 21.

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must be observed that the Governor holds the land for the benefit of all Nigerian; this is as against 'indigene' as provided by the land Tenure law. This provision is in furtherance of the provisions of the Constitution which guarantees the right of every Nigerian 'to acquire and own immovable property anywhere in Nigeria'.[36] This includes land and housing, by implication. These provisions of the Act and Constitution were made to correct the effect of the application of the principle of 'indigeneity' which required people to identify themselves by the area and community from which they originate to be entitled to any benefit from that area.[37]

There has been divergence of opinion as to the true import of this provision. While some persons opine that it amounts to a nationalization of land, others hold a contrary view. Some other persons have described the governor as a trustee while others describe him as a mere manager. We shall not go into the attendant arguments as it does not fall within the scope of this work. It must be observed however, that each side of the divide concede that the Act has curtailed the erstwhile freehold interest hitherto enjoyed by land owners and converted same to a mere right of occupancy which gives very restricted interests and rights over land. This, in the opinion of this study, amounts to nationalization of land especially when one considers that land is not just the physical part of the earth surface but include the rights and interest attached thereto.

It is also the position of this study that the import of Section 1 of the Act on the relationship between a Nigerian land user and the land comprised in the territory of every state of Nigeria is that of 'right of occupancy' and not one of ownership. We also submit that the economic interest and the benefits of rights of occupancy are limited to a great extent by the Act and thus, it does not amount to ownership as known under the law. This is because absolute interests in land are lost and claims relating to the land are restricted to improvement made on the land. As have rightly been observed, the Act removed corporate groups, chiefs and families from the trusteeship of land and replaced them with the State Governor. By this act, Nigeria now operates a contractual system of tenure validated by a certificate of occupancy, which sets out terms of the tenure.[38] C. Ilegbune on his part also opined that the effect of combined effect of Sections 1 and 49 of the Act is to repose the ownership of the maximal title to all land in Nigeria in only 3 categories of owners, namely the Federal Government, existing federal government agencies and the State Governors. All pre-existing ownership sources like the community, chieftaincy, families and individuals are completely excluded.[39]

It is the position of this work that the idea behind the provision of Section 1 of the Act is to nationalize all land.[40] This conclusion is inescapable given the fact that the ultimate reversionary

[36] Constitution of the F.R.N. ss. 43 and 44.

[37] J Akande, *Introduction to the Constitution of the Federal Republic of Nigeria 1999* (Lagos: M I J Professional Publishers, 2000) p. 108; N J Udombana, *op cit,* pp. 76 -77.

[38] A Adefulu & N Esionye 'An Overview of Nigeria Land Use Amendment Bill'<Http://www.mondaq.com/x/81844/agriculture+land+law/An+Overview+of+Nigerias+Land+Use Amendment Bill> accessed on 22/07/2022.

[39] C Ilegbune 'Land Ownership Structure under the Land Use Act 1978' (2003) *23 JPPL*, 33.

[40] L K Agbosu, 'The Land Use Act and the State of Nigerian Land Law' (1988) *Journal of African Law*, *Vol. 32, No. 1* p5; AL Mabogunje, 'Land Reform In Nigeria: Progress, Problems & Prospects <http://siteresources.worldbank.org> accessed 04/06/2022

interest in all lands within the State is vested in the State as represented by the Governor.[41] As has rightly been observed, the logical sovereign in land matters, though not specifically mentioned in the Act, is the Nigerian State.[42] Moreover, it is acknowledged and conceded by all the proponents of the 'private property school of thought' that the radical title is vested in the Governor and/or that the ownership retained by individuals is less in character, form and incidents than absolute ownership.[43] Thus, they concede that this type of ownership is an 'inferior' or 'determinable' interest in land.[44] In fact, Professor I.O. Smith, one of the chief proponents of the private property schools, in a lecture, has vividly conceded this point when he stated thus:

> Section 8 of the Land Use Act subjects an actual grant of statutory right of occupancy by the Governor to a fixed term. The term is usually expressed to be for a duration of 99 years. It could be less because a fixed term will invariably come to an end by effluxion of time, technically, all rights appertaining to the land reverts back to the reversioner, i.e. the Governor at the expiration of the term, and like the situation under a leasehold interest, the holder is expected to relinquish possession.[45]

It is thus clear that the Act nationalized all land in favour of the state, while allowing private ownership of improvement on the land. The power of revocation as contained under Section 28 of the Act is an incident of the 'nationalization' policy. Section 1 of the Act when read in conjunction with Section 29 Subsections (1) and (4) will bring to fore the realities of the present day land law regime, to wit, the Act has divested individuals of private beneficial interest in land and vests such in the state. Thus, the holder or occupier is only entitled to compensation for the value, at the date of revocation of their *unexhausted improvements.*[46] This simply means that the beneficial value in land is vested in the State as private rights to compensation to land, *per se,* is lost to the state.

As has rightly been observed it is not the physical invasion of property that characterizes nationalization or expropriation that has assumed importance, but the erosion of rights associated with ownership by State interference.[47]

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[41] A Otubu, *art cit; C* Uchendu, 'State Land and Society in Nigeria: a Critical Assessment of the Land Use Decree of 1978' being a seminar paper presented at the Institute of African Studies, University of Nigeria, Nsukka, Nigeria in 1979.

[42] V C Uchendu, 'State, Land and Society in Nigeria. A Critical Assessment of the Land Decree' (1978) *Journal of African Studies Vol. 6*. 62-74. See also RK Udo, Understanding Nigeria's Land Use Law. Paper delivered at Nigeria Land Rights Forum Speakers and Papers available at <http://www.course.earthrights.net/node/416 --> accessed 17/04/2022. See also R K Udo, *Land Use policy and Land Ownership in Nigeria* (Aba: Ebieakwa Ventures, 1990)

[43] R W James, *op cit;* I O Smith, *op cit*; U Abugu *op cit*; J.A. Omotola Does the Land Use Act Expropriate, *op cit;*

[44] R W James, *op cit;* U Abugu, *op cit.*

[45] I O Smith, *Sidelining Orthodoxy in Quest for Reality: Towards an Efficient Legal Regime of Land Tenure in Nigeria. An Inaugural Lecture delivered at the University of Lagos on Wednesday, 18th June, 2008* (Lagos: University of Lagos Press) pp. 20-21.

[46] Emphasis mine

[47] United Nations Conference on Trade And Development Series(2000) <https://www.google.com/url?q=http://unctad.org/en/docs/psiteiitd15.en.pdf&sa=U&ved=0ahUKEwjg-NCK4cjLAhUiCZoKHZEyBp0QFggPMAE&sig2=LjsrYw9vXWH-MjxSKpQrjg&usg=AFQjCNFsgY1tR51fiJMNPWmdPiDUTV-Mkw> accessed on 16/03/2022.

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3.2. Management of Land not vested in the Governor

It has been observed, and rightly, so, that in interpreting Section 1 of the Act, it is advisable to proceed from the opening caveat entered therein ie 'subject to the provision of the Act'.[48] The use of that caveat, *ipso facto,* means that there other provisions of the Act may oust the application of section 1. There are some landholdings within each state not vested in the Governor. One of such exceptions is all land which, immediately before the commencement of the Act, was vested in the Federal Government or any of its agencies.[49] The Federal Government retains and holds the absolute and beneficial ownership of all such lands, wherever located, whether they are developed or undeveloped.[50] The major example of such land is the land comprising the Federal Capital Territory, the ownership of which is vested in the Federal Government since 1976 by Section 1 (3) of the Federal Capital Territory Act.[51] Other examples include all lands occupied or owned by Federal Government agencies upon the commencement of the Act. The Federal Government holds the ownership of such lands absolutely for its own use or benefit and not in trust for any Nigerian.[52] Section 49 (1) of the Act provides thus:

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

Sub-Section 2 of the Act defines agency to include any statutory corporation or any other body (whether corporate or unincorporated) or any company wholly owned by the Federal Government. It has been suggested, and rightly so, that the principle enunciated in Section 49 of the Act applies in respect of lands subsequently acquired by the Federal Government.[53]

One seemingly controversial issue with regard to such land which has been glossed over is what would happen to such land vested in any Federal Government agency if such agency is subsequently privatized or partly privatized; for instance, as in the case of NITEL and defunct NEPA.

Addressing this issue becomes imperative in view of the definition of agency as contained under the Section 49 (2) of the Act. Implicit in the definition is that any corporation or body which is not wholly owned by the Federal Government is not a Federal Government agency for the purpose of the Act; so that the exemption contained in section 49 of the Act does not apply to lands vested in such corporations or bodies. Such land is subject to the overreaching powers of the Governor under the Act, including the Governor's power of revocation. We also submit that this is applicable to land revoked by the State Governor in favour of the Federal Government if such land is used for a joint venture involving the Federal Government and private individuals or corporations or bodies.

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[48] U Abugu, *op cit,* P. 16
[49] Land Use Act S. 49
[50] C Ilegbune, 'Land Ownership Structure Under the Land Use Act 1978' (2003) *Vol. 23 JPPL*, 33.
[51] Cap F6 Laws of the Federation of Nigeria 2004.
[52] C Ilegbune, *op cit.*
[53] P O A Oluyode, *Modern Nigerian Land Law* (Ibadan: Evans Brothers, 1989) p. 299.

We therefore submit that upon a strict interpretation of the Act; the State Governor has a right to revoke the right of the Federal Government to occupy a piece of land if the land is not being used wholly by the Federal Government or its agency. We further submit that it would not be a bar or defence to proposed revocation of land that such land was vested in Federal Government agency upon the coming into the effect of the Land Use Act or that it is vested in the Federal Government agency if it is not used by a corporation, company, body, etc wholly owned by the Federal Government.[54]

Another issue which has also usually arisen with regards to land vested in the federal government is the issue of the proper authority to make regulations or legislations for land vested in the Federal Government. The Supreme Court has, in *Attorney General Lagos State v Attorney General of the Federation and 35 Ors*[55] by a majority of 4 to 3 held that urban and regional planning is a residual matter in respect of which only the state house of assembly can legislate. The court went further to declare null and void a purported offensive provision of the Urban and Regional Planning Decree which conferred authority on the Federal Government or any of its agencies to engage in, or be concerned with, town planning matters or to grant permits, licences or approvals which ordinarily ought to be the responsibility of the State Government or its agencies. The Federal Government or its agencies do not have the authority to legislate on; or exercise any physical planning or development control with respect to land vested in the Federal Government or any of its agencies either in pursuance of an Act made or deemed to have been made by the National Assembly under the 1999 constitution without concurrent of the state.[56]

However, with respect to the Federal Capital Territory, the court held that the National Assembly has full legislative powers in urban and regional planning and development control over all the land therein by virtue of section 299 of the Nigerian constitution.[57] This is because, the provision of that section, *inter alia*, gives, with respect to the Federal Capital Territory, legislative powers, vested in the House of Assembly of a state in the National Assembly to exercise in accordance with the provision of the Constitution.[58]

It must be emphasized that planning power is not an incident of ownership of land. One of the issues raised in the case of *A.G. Lagos State v A.G. Federation (Supra)* was whether the Federal Government had planning powers over its lands known as "federal land and estates" to the exclusion of the State Government in whose territory this land or estate is situated. This issue raises the larger issue of whether the power to make planning law is dependent on ownership rights by the planner. The Federal Government, in this case, contended that its right of ownership of land in a state territory conferred on it the power to control and regulate the planning and physical

[54] This is provided that the land is situate in the territory of a state of the federation and not the FCT.
[55] [2003] 12 NWLR (833) 1
[56] O Kuye, 'Dual Title on Federal Government Property in Lagos State: A Review of Law and Practice' (2015) *6 GRBPL No 4*, 71.
[57] I O Smith, 'Power to make Town Planning laws in a Federation; The Nigerian Experience' (2004) *Vol. 24 JPPL,* 21.
[58] *Ibid.*

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development in relation to such land.[59] This view was endorsed by Niki Tobi JSC (as he then was) in consonance with his postulation in *Abraham v Olorunfumi.* [60]

However, the majority, in dismissing the foregoing argument, held that like any other landowner ownership of land by the federal government is primarily limited to the question of title, right of possession and use. It is the opinion of the researcher that the majority decision in this case falls more in line with the realities of the present day incidents of ownership of land, to wit, a drastic erosion of land rights both at common law and by increasing regime of statutory provisions.[61] This is moreso as planning laws usually impose a system of regulatory restrictions upon the general right of every land owner to use or develop his land the way he likes.

3.3. The Dichotomy between Urban and Non-Urban Land

One of the major features of the Land Use Act is the introduction of dichotomy between urban and non-urban land. This distinction introduced by the Act has both theoretical and practical implications. An urban land, by virtue of Section 51, means 'such area of the state as may be designated as such by the governor pursuant to Section 3 of this Act'. Section 3 of the Act provides that 'subject to such general conditions as may be specified in that behalf by the National Council of State, the Governor may for the purpose of the Act, by order published in the State Gazette, designate the parts of the area of the territory of the state as constituting land in an urban area'.

On the other hand the Act fails to define non-urban area but a practical approach would be that all part of the territory of the state not forming part of the urban area are non-urban area. The practical implication of this dichotomy as may be seen from the Act is that for urban areas, land was to come under the control and management of the Governor, while for rural areas, it was to fall under the appropriate local government authority.[62] The Land Use and Allocation Committee appointed for each state by the Governor was to advise on the administration of land in urban areas while the Land Allocation Committee were to exercise equivalent functions with respect to non-urban land.[63] Another incident of the dichotomy is that the statutory right of occupancy granted or deemed granted by the governor relates to urban land[64] whereas customary right of occupancy granted or deemed granted by the Local Government relates to non-urban land.[65] The implications of the dichotomy introduced by the Act between urban and non-urban land is seen throughout the body of the Act as it relates to the practical significance of the two types of land. For instance there are majorly two types of Right of Occupancy- statutory and customary rights of occupancy- with their different legal and practical implications.

The problem with this scheme is the unfettered power of the Governor to designate any part of the state as urban land. By this discretionary power, it is suggested that the Governor reserves the

[59] See argument of learned counsel to 1st defendant in the case pp. 109-110.
[60] *Supra.*
[61] I O Smith 'Power to make Town Planning Law in a Federation, The Nigeria Experience', *op cit,* p. 23.
[62] Land Use Act s. 2(1) (a) & (b).
[63] Land Use Act ss. 2(2) & (5).
[64]Land Use Act ss. 5 & 34.
[65] Land Use Act ss. 6 & 36.

right to designate without restriction.[66] This may lead to a Governor designating the entire land in his state as urban land, thus leaving the local governments in such state without any land to control pursuant to the power conferred on them by Section 2(1)(b) of the Act. Regrettably, the failure of the Act to set the standard by which particular parts of the state may be declared as urban land has led to indiscriminate designation and has succeeded in defeating the objectives of the Act. This unquestionable power of the Governor to designate certain areas as urban land and in fact, the silence of the Act[67] on any criterion for determining the basis of any such designation as urban land is a serious erosion of the power of control and management conferred on the Local Government by the Act.

By this unfettered power, the Local Government which is closer to the people could be ousted from the performance of its duties. This creates an anomalous situation in which the power of the Local Government can be swallowed up, undermined and seriously eroded at will by the State Government without any platform for redress.

3.4. Advisory Bodies and Management of Land under the Land Use Act

Control and management of land under the Land Use Act is quite different from the pre-Act era. The Land Use Act, upon dividing the territory of each state as urban and non-urban areas, has provided framework within which the Governor and the Local Government shall administer and manage lands with the help of advisory bodies.[68]

3.4.1. Lands in Urban Area

By Section 2(1)(a) of the Act, all land in urban area shall be under the control and management of the Governor of each state. The governor performs a plethora of functions which include:

1. to grant statutory right of occupancy and to issue certificate in respect thereof;
2. to grant easements appurtenant to statutory right of occupancy;
3. to demand rent for such land granted to any person;
4. to revise such rent at intervals;
5. to impose penal rent for breach of any covenant in the certificate of occupancy, etc;
6. to approve the alienation of a statutory right of occupancy;
7. to revoke right of occupancy for overriding public interest.[69]

To assist the Governor in the general management of such land, the Act established a committee known as the Land Use and Allocation Committee[70] which has the responsibility of advising the Governor on any matter connected with land use and administration.
In particular, the Land Use and Allocation Committee are responsible for

(a) Advising the Governor on any matter connected with the management of land in urban area;

[66] Thus Former Gov. Lateef Jakande of Lagos State by the Designation of Urban Area Order 1982 designated all Lagos Land as urban area.
[67] I.e., vide Section 3 of the Act.
[68] *Gankon v Ugochukwu Chemical Industries Ltd* [1993] 6 NWLR (Pt. 297) 55; *Ofodile v Commissioner of Police, Anambra State* [2001] 3 NWLR (Pt. 699) 139.
[69] U Abugu, *op cit,* p. 26.
[70] Land Use Act s. 2(2).

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(b) Advising the Governor on any matter connected with the resettlement of persons affected by the revocation of rights of occupancy on the ground of overriding public interest under the Act; and
(c) Determining disputes as to the amount of compensation payable under the Act for improvements on land.

The Land Use and Allocation Committee, according to section 2(3) of the Act, shall consist of such a number of persons as the Governor may determine and shall include in its membership a legal practitioner and not less than two persons possessing qualifications approved for appointment to the civil service as estate surveyors or land officers and who have had such qualification for not less than five years.

The Land Use and Allocation Committee shall be presided over by such one of its members as may be designated by the Governor and, subject to such directions as may be given in that regard by the Governor, shall have power to regulate its proceedings.

3.4.2. Lands in Non-Urban Area

Lands in non-urban areas, on the other hand, are under the management and control of the Local Government where the land is situated.[71] To advise the Local Government in the general management of such land, the Act established for each Local Government a body known as the Land Allocation Advisory Committee.[72] The Committee is to be appointed by the Governor and shall consist of such person as may be determined by the Governor after consultation with the appropriate local government authorities and performs same functions as the Land Use and Allocation Committee performs in respect of land in urban areas.

It must be noted that unlike the membership of the Land Use and Allocation Committee which must comprise of a legal practioner and not less than two persons possessing qualifications as estate surveyors or land officers, there is no particular requirement for qualification for membership of the Land Allocation Advisory Committee. This suggests that the Governor can constitute a Land Allocation Advisory Committee without the need to appoint any professional as a member. This omission by the Act needs to be addressed.

It is also worthy of note that, in most states of the federation, the Governor does not appoint these Committees as provided by the Act. The implication of the above is that the Governors now superintend the management and administration of land either personally or through their agents without the benefit of the advice that could come from the Committees. It is also worthy of note that the above mentioned respective bodies, where established, are distinct and separate legal entities distinct from its members and officers.[73]

[71]Land Use Act s. 2(1)(b).
[72] *Supra.*
[73] *Sachia v Kwande Local Government Council* [1990] 5 NWLR (Pt. 152) 548.

4.0. Conclusion

There is no doubt that the Land Use Act has provided legal and institutional frameworks for the administration and management of land by the Governor and the Local Government. However, it is the finding of this research that the said Legal and Institutional Framework are not adequate for plethora of reasons. In the first instance, the nationalization policy has serious practical implications one of which is the power to revoke a right of occupancy without the obligation to pay compensation for the land *per se* or the right of occupancy.

Secondly, the unfettered power of the Governor to designate any part of the state as urban area and the failure of the Act to prescribe any criterion for determining the basis of any such designation as urban area leads to a serious erosion of the power of control and management conferred on the Local Government by the Act.

Thirdly, the fact that there is no particular requirement for qualification for membership of the Land Allocation Advisory Committee leaves the appointment entirely at the discretion of the Governor who may even choose persons who may not have the requisite skills for the job.

5.0. Recommendations

It is trite that the provisions of the Act may easily be abused and opportunities for corruption created if the law is uncertain, unclear and ambiguous, in which case the effect would be unpredictable. On the other hand, if the law is clear and there are clear policies which define the processes of its implementation, conflicts will be reduced and the law will be able to achieve its role as an engine of social engineering.

In view of the foregoing, it is recommended as follows;

1. That the Act be amended to prescribe the criterion for determining which particular parts of the state may be declared as urban area and the basis for same. This will help to forestall the erosion of the power of control and management conferred on the Local Government by the Act.
2. That the Act be amended to prescribe the requirements for qualification as a member of the Land Allocation Advisory Committee as it is obtainable for the Land Use and Allocation Committee. This will check the power of the Governor to arbitrary appoint persons who may not have the requisite skills for the job.
3. The Governors of the states of the federation should make sure that an effective and efficient Land Use and Allocation Committee and Land Allocation Advisory Committee is established in each state and Local Government Area respectively. Moreso, traditional rulers or village heads[74] should be involved in the administration of land in Nigeria by being made part of these committees.

[74] Whose positions are held in high esteem in the rural areas.

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