**45 Years of the Land Use Act: To whom it may concern**

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**Abstract:**

In 2023, Nigeria will have implemented the Land Use Act of 1978 for 45 years. within that time, a lot has changed. The Land Use Act has become a cornerstone of Nigerian land law, allowing for the government to control the use of land and protect the rights of all stakeholders. The Act has also been the foundation for land reform initiatives that have taken place throughout the country. Land reform has been essential in helping to reduce conflicts over resources and has enabled communities to access land they may not otherwise have been able to. There have also been economic development initiatives that have used the Land Use Act to spur investment in the Nigerian economy. As a result of these efforts, Nigeria has seen an increase in agricultural production, an increase in access to land, and the creation of jobs, even though there has been perceived flaws and challenges of the Act and its implementation. As the Land Use Act continues to be a key part of the Nigerian legal system, protecting the rights of all citizens and helping to reduce conflicts, there is need to have a critical look at the Law 45 years after and also serious engagement of the professional Estate Surveyors and Valuers in future discourse for more robust inputs in terms of implementation.

**Keywords:** *Land, Land Use, Land Use Act, Land Tenure, Land Law*

**1.0 Introduction**

The Nigeria Land Use Act of 1978 (Decree No. 6 of 1978) is a law in Nigeria that regulates the use of land in the country. It provides for the control, utilisation and conservation of all land in Nigeria. The law was enacted by the then military government.

The Act gives the Governments the power to albeit though state governors, acquire, hold and manage all land in the country, including urban and land. It also establishes the National Council on Land Use. Non-urban which is responsible for developing and implementing land use policies and regulations.

The Act has been instrumental in regulating land use and ownership in the country, and it has had far-reaching effects on the economy, environment, and overall development of Nigeria. It sets out the procedures for the acquisition of law by the government in including the payments of compensation to the dispossessed persons.

This Act also seeks to streamline land use regulations and the process of obtaining related permits. In addition, the Act also helps to protect the environment from land use abuses and pollution. The Act requires permits for activities that may have environmental impacts, such as mining and deforestation, and it also mandates that environmental impact assessments are conducted for large-scale projects.

The Land Use Decree/Act otherwise known as Act No 6 of 1978 was promulgated on the 27th day of March, 1978 but became effective on 29th of March of the same year. The Law is 45 years old, 27th March, 2023 was the birthday of the monster to many, but a source of joy to the state Governors and sustenance to very many professionals most especially the civil servants and practising Estate Valuers and lawyers.

Now known as CAP 202 of LFN, 1990, the Law was made with the main aim of streamlining the hitherto land tenure systems in operation in the country. Before the Law, there were in operation two main land tenurial systems: customary and received English systems. With the Act, three categories of land possession and ownership were introduced as follows: Federal, State and Individual. The Act has 8 parts with 51 sections of which 50 are germane while the last is dedicated to interpretations.

As Estate Surveyors and Valuers, the Act is very important to us as it, apart from fulfilling a major attribute of a profession, which is recognition by law of our profession, it talks specifically of us and so it forms part of our studies and platforms of operation.

**2.0 Definition of concepts**

**Land**

The concepts of land differ from one profession to another and from one belief to another. It could be viewed from social, legal, political, abstract, economic and religious perspectives.

Land is a naturally occurring physical entity, usually associated with a particular geographical area. It is an immovable property that can be used for various purposes such as farming, housing, industry, recreation, and conservation. The term “land” encompasses all of the physical features of the earth, including soil, rocks, minerals, water, and vegetation. It also includes all the rights associated with the land, such as the rights to use, inhabit, cultivate, or develop it.

Land can be referred to as the physical land itself, such as its soil, minerals, flora and fauna, or the legal rights associated with it, such as private ownership, collective ownership, use rights, etc. It can also refer to the symbolic meaning of land, such as its spiritual significance or cultural importance.

Land is a delineable area of the earth's terrestrial surface, encompassing all attributes of the biosphere immediately above or below this surface including those of the near-surface, climate, the soil and terrain forms, the surface hydrology (including shallow lakes, rivers, marshes, and swamps), the near surface sedimentary layers and associated groundwater reserve, the plant and animal populations, the human settlement pattern and physical results of past and present human activity (terracing, water storage or drainage structures, roads, buildings, etc.), (FAO 1995).

**Land use**

Jansen (2006) states that the term land use has different meanings across disciplines and that those different perspectives may all be valid. Land use can often be inferred from simple observation of land cover but to identify some land uses, additional information regarding the human activities on land or the presence of specific elements in the landscape have to be taken into account, Silva, (2011).

Land use is the human management of activities and processes on land, including how land is used, developed, and maintained. It encompasses the range of human activities associated with using land and its resources, including agricultural production, forestry, mineral extraction, construction, recreation, and conservation. Land use is an important factor in considering the sustainability of different land systems and is closely linked to land cover, which is the physical cover of the land.

Land use can be seen as human modification of natural land surfaces for the purpose of creating structures, activities and/or other uses. This includes activities such as urban development, agriculture, forestry, mining, and recreation. Land use is often regulated by local, state, and federal laws.

**Land Use Decree/Act**

A land use act is a legal document that sets out the rules and regulations for the use of land in a particular region. It usually covers issues such as zoning, planning, and environmental protection. It can also include other topics such as health and safety regulations, taxation, and land ownership rights. It is a formal ruling or law made by a government body that regulates the way that land can be used and developed. It is designed to ensure that land is used in a manner that is beneficial to the public and in line with the overall government policies.

A land use decree or act is a law or regulation issued by a government to regulate the use of land in a particular area. It may include zoning regulations, restrictions on development, and other measures designed to protect the environment or promote certain types of land use.

**3.0 Literature and Discussion**

The Land Use Act elucidates the fact that all Nigerians have right to land in any part of Nigeria. It added that the right of Nigerians to use and enjoy the land of Nigeria in sufficient quantities to cater for his and her family is unfettered.

For the 45 years after, there has been varied opinion on the impact of the Act. **Ochojila, (2023),** stated that in separate papers delivered by senior lawyers such as, Dr. Muiz Banire (SAN) and Remi Olatubora, titled, ‘Land Use Act: Some Reflections, 45 years After’ and ‘Land Administration in Nigeria: 45 Years After, the Enactment of the Land Use Act, 1978’ respectively, held that Nigerians have failed to get the expected benefits from the LUA. They recommended that land matters should be placed on the Concurrent Legislative List to assist in developing an integrated, uniform and consistent land management policy. They further opined that the present dichotomy between land in urban and nor-urban, where land under LUAC/Governor’s management and LG Council’s management should be abolished.

Oyesanya, (2023) stated that since the Land Use Act came into effect on 29th March, 1978, the efficacy and impact can be said to be relatively positive; it has structured and regulated the order of acquiring and developing land all over Nigeria under uniform rules with public registries situated in each state and the Federal Capital Territory. He further added that there has been also contrary views i.e., a cross-section of opinions by respondents reveal that in some cases, the government has made land acquisition and development more cumbersome than the traditional Customary practices.

**The objective of Land Use Act includes.**

They include; to unify the tenurial system, make land available to all Nigerians, curb land speculation, remove land litigation, control development, solve inflationary problems, ease compulsory acquisition or power of eminent domain and encourage agricultural modernisation.

**Part 1 Salient Provisions**

Termed 'general', the Act gives 4 sections to this part. Section 1 vests all land in a state in the hand of the state Governor to hold in trust for all Nigerians.

Here the country may be said to be the settlor, the Governor is the trustee and Nigerians, the beneficiary. Section 2 divides the land in each state into urban and non-urban and gives the control and management of land in urban to the Governor and non-urban to Local Government (L.G.) to control and manage. We must not forget that the whole land in a state is vested in the Governor so L.G. are derivatives of the state government.

The Section legalizes the establishment of Land Use and Allocation Committee (LUAC) to advise the Governor on management, allocation, compensation disputes and resettlement of the dispossessed. The LUAC shall consist of such a number but with at least 2 Estate Surveyors and Valuers.

For the LG, the corresponding advisory committee is Land Allocation Advisory Committee (LAAC) as agreed to by the Governor.

In the state of Osun and town, Iwo, for example, each local government headquarters is an urban area subject to 3 km radius from the CBD of the town. I can't talk of Osogbo, Ilesa or other cities with 2 composite local governments.

Conversely, in Lagos State, I learned that all lands were designated urban since 1980. The implication of the above is that a customary court cannot adjudicate on a land case in an urban area.

Thus, some local governments may never grant a Customary Right of Occupancy (C R of O) if there lands are purely urban, and if as usual of Nigerians, they may never request for a CR of O when they can take a Statutory Right of Occupancy (SR of O). An example is the 5 local governments in the metropolitan or cosmopolitan city of Ibadan.

**Other Salient Provisions**

Section 5 makes it lawful for a Governor to grant a statutory right of occupancy (S R of O) to any person for all purposes, grant easements appurtenant, levy rents, demand rental, revise the said rental, impose penal rent for breach of conditions, give a waiver of rent or covenants etc.

The L.G. is also empowered to grant a customary right of occupancy (C R of O) for all purposes.

Each of the rights must be evidenced by a certificate which is erroneously referred to as C of O, not stating whether statutory or customary. Thus, the Governor becomes a Lessor while Nigerians with certificates become lessees. The certificate contains details of the lessor, lessee, holder's address, quantum of ground rent, approved use, covenants schedules, witnesses, signatories, survey plan, stamp duty and registration details.

Thus, the Local Government cannot use and occupy any land that has a statutory right of occupancy, or in urban areas, compulsorily acquired and of minerals.

For our purposes, the Act does not allow a single right to exceed as follows, except with the consent of the Governor

Residential use: 0.5 Hectare (ha) which is 5000 sq metres

Agricultural: 500 ha

Grazing: 5000 ha

Licence to extract building materials: 400 ha

Commercial: Unstated

Each of the above uses is for a maximum period of 99 years renewable.

Sections 21 and 22 prohibit alienation and surrender of right by way of assignment, mortgage, transfer of possession, sublease, sale etc. without the approval and consent of the L.G. and Governor respectively.

The case between old Savannah Bank Plc and Photographic materials dealer Ajilo readily comes to mind here. Students and those wishing to know more on the case are advised to Google the litigations to get more knowledge.

However, a Federal High Court has been alleged to have clarified this aspect by ruling that a transaction between private bodies doesn't need Governor’s Consents while between public and private actually needs Governor’s Consent. One may need more interpretations of the judgement as contribution to the write-up.

Section 28 empowers the Governor to revoke a right of occupancy for overriding public interest. (OPI)

What is OPI? It, in the case of SR of O, means wrongful alienation, the requirements of Land by Federal, state or L.G for public purposes, requirement of land for mining or oil pipelines, and for a CR of O, it means all the above but including requirements of land for the extraction of building materials. See the 400 hectares talked of above.

Other grounds for a revocation are, a breach of a provision in the certificate of occupancy, refusal or neglect to accept and pay for a certificate.

A revocation has a process which must be strictly followed as land is a major source or means of livelihood in our society.

Section 29 is on the issue of compensation to the dispossessed for the value at the date of revocation of their unexhausted improvements.

For revocations of rights bothering on mining or oil pipelines, the Mineral Act or Mineral Oils Act shall take care of them.

Where the compensation is for the community, it shall be paid to it or it's leader or into a fund for the community benefits.

For compensation to individuals (holder and occupier) or parties or businesses, it is headed as follows:

1. The Land: the rent if any paid during the year of revocation. This is ground rent not market or rack rent. Rack rent is full rental value.
2. Buildings, installations and improvements: an amount of replacement. The Depreciated Replacement Cost (DRC) as ascertained by the Estate Surveyor and Valuer (ESV) plus interest at bank's rate for delayed payment. For other initial expenses like reclamation, to be paid if backed by documentary evidence.
3. Crops on land: An amount equal to the value by the Ministry of Agriculture

The issue of interests at banks rate covers only buildings and crops if delayed.

There is provision for resettlement in any other place. If the value of resettlement is higher, the beneficiary shall pay back the difference but where it is lower, it is deemed to have satisfied his right. What a provision that cheats the dispossessed. This is where a dispossessed needs the services of an Estate Surveyor and Valuer who takes full charge for him to prevent wrong assessment and under payments in the process of compensation.

For the time being, a certificate of occupancy issued on land is not a conclusive muniment of title. It means that such a Certificate, would not invalidate defects, if any, in the title of a holder, Chiroma v Madeus Team Suwa (1986). It means the root of title is important before obtaining the certificate. A person cannot improve his title to land by obtaining a Certificate of statutory or customary right of occupancy.

The Question is how far has the Act accomplished it's set objectives? After 45 good or bad years, depending on your view, the answer is rhetorical as it shows different perspective of and to the professionals involved in the implementation of the Act. The issue of compensation doesn't cover severance injurious affection and disturbance.

To some professionals, the name is a misnomer. One thinks it's on the use of land expecting it to dwell extensively on that aspect of physical planning but alas, it didn't come out that way except Sections 34 to 36 which look a bit of it.

The Act has become a thorn in the flesh of Nigerians as it seems superior to the Constitution as it's Section 46 reveals.

The efforts of Nigerians to amend it had been futile but with time, amendments may be possible as life itself is dynamic.

**4.0 Summary and Conclusion**

As the Land Use Act clocks 45 years there are obvious challenges and gains, and these challenges and gains are product of diverse opinions. It is based on the foregoing that this piece is advocating that any Nigerian who is about to transact in interests and rights on land is advised to seek the professional guidance of Estate Surveyor and Valuer so as not to be ensnared. The rule is *caveat emptor* so let’s be guided accordingly.

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