

# An Examination of Land Use Act Of 1978 on Real Estate Development in Nigeria

EKWUNIFE CHIDUBEM AZIE<sup>1</sup>, UDOBI ALEXANDER NNAMDI<sup>2</sup>

<sup>1, 2</sup> *Department of Estate Management, Nnamdi Azikiwe University, Awka Anambra State, Nigeria.*

*Abstract- This paper examines the Land Use Act of 1978 and its effect on real estate development in Nigeria. The study also addresses the problems of Land Use Act 1978. The Land Use Act was enacted in 1978 with the aim of stimulating economic development by ensuring effective and equitable utilization of land and land resources in the country. However, the objectives of the Land Use Act 1978 has been impeded by two major obstacles. The first is the inherent contradictions and defects in the law, and the second is institutional weakness and lack of political will to implement the Act fairly and equitably. The paper also discovered that the result of these rarities is a failure of the Act to fulfill some of its major objectives. Land Use Act is both effective in some areas and dysfunctional in others. This is because of the age of the Act and the lack of a pro-poor policy focus. The study found out that government policies/decisions on real estate development have not been effective over the years due to the failure of the government to implement land policies. To re-focus the Act and secure economic development and easy access to land by both government and the citizens, the paper recommends that certain provisions of the Act should be amended and that government should muster the requisite political will to implement the law effectively, fairly and equitably. The paper also recommends that a new policy be enacted that would guide and favour real estate development in Nigeria.*

*Indexed Terms- Examination, Land Use Act, Real Estate, Nigeria, Development*

## I. INTRODUCTION

The frugality of a country depends on natural asset similar as land for survival. Land is the most precious property in the life of man and his development. It is a source of wealth to those who have it and the originator of all properties. In other words, virtually all

the basic needs of human existence are land dependent. In view of the importance and usefulness of land to man and his development as well as the development of his society, every person generally desires to acquire and own a portion of land to achieve the various ends for which the land is meant. Therefore, to make land in Nigeria available to all and to ensure that land is acquired and put to a proper use for the needed development, governments during and after colonial period enacted laws to govern the use or administration of land in Nigeria. Land policy affects the economy of a nation either positively or negatively depending on how effectively the policy is implemented (Okafor and Nwike, 2016). As the population increases, the demand for land also increases; therefore, land tenure security is vital to the growing population of Nigeria.

The Nigerian Land Use Act 1978 is the principal legislation that regulates contemporary land tenure in Nigeria. Upon its enactment, the law brought about radical, if not revolutionary, changes in the erstwhile land tenure systems in the country (Chianu, 1992). The law was aimed among other things, at reducing unequal access to land and land resources, a situation that had caused a great deal of hardship to the citizenry. Massive and unfettered access to land and land resources by the citizens could stimulate real estate development as well as economic growth in an economy. The Land Use Act was equally targeted at reducing the high cost of land required for industrial estates and mechanized agriculture. For these reasons, the law appeared to nationalize land when it placed it in the hands of the government as a custodian, to hold in trust and administer for the use and common benefit of all Nigerians. (Nwocha, 2016) stated that after more than three decades of the operation of the law, it is apparent that most of the problems it sought to cure have resurfaced and certain provisions of the law have themselves worked hardship on the citizens and tended to impede real estate development.

Real estate development is the process of creating value by making tangible improvements to real property. The development process ranges from land speculation and new construction to the renovation of existing buildings. It is the process by which physical places where we live and work are conceptualized, designed, constructed and occupied. Successful implementation of this process is crucial to our economy along with our everyday lives (Bulloch and Sullivan, nd). In spite of the promulgation of Land Use Act since 1978, access to land for real estate development has become even more difficult than ever before, though public site acquisition turned easier and cheaper. Access to developable sites has been a major constraint affecting diverse real estate development purposes, especially residential land uses. Issues like complex and costly acquisition procedures, insecurity of title/ownership and inadequate statutory protection continue to be major setbacks for many real estate developers in the land market, especially in recent times (Babade, 2003; Windapo, 2007).

According to Chapter 202 of the Laws of the Federation of Nigeria 1990, Land Use Act is an Act to Vest all Land comprised in the territory of each State (except land vested in the Federal government or its agencies) solely in the Governor of the State, who would hold such Land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State and to organizations for residential, agriculture, commercial and other purposes while similar powers will with respect to non-urban areas are conferred on Local Governments. Damilola (2020) stated that the Land Use Act in Nigeria is one of the important laws that need to be understood by a land-owner or land-owner to be. He further stated that activities of land grabbers, scam agents and the number of professionals required are some of the biggest challenges in legitimately and successfully acquiring a land in Nigeria

Prior to 29th March, 1978 when the Land Use Act was enacted, there were land laws which governed land tenure systems in Nigeria. These laws were in use in the country and were later found to be substandard because despite their existence, the problems of land tenure continued in Nigeria. One major problem was the difficulty in obtaining land by the government in major urban centers for national development because

of land speculations, racketeering and high cost of compensation usually demanded by the land owners whenever government acquired land to execute its projects (Public land decree, 1976). The Federal Government in a deliberate effort to unify land tenure, streamline and simplify ownership of land in Nigeria, set up the Land Use Panel in 1977 with certain terms of reference (Ojigi, 2012). The references were considered and adopted by the government which promulgated the Land Use Act, 1978. However, this study was carried out to critically examine Land Use Act of 1978 and its effect on real estate development in Nigeria.

## II. LITERATURE REVIEW

### 2.1 Land Use Act of 1978

The Land Use Act was promulgated in 1978. It replicates the land tenure law of 1962 in nationalizing all land in Nigeria and placing it under the control of the state governors. Many academicians and legal experts have expressed different opinions on the interpretation of section 1 of the Land Use Act that states that subject to the provisions of this Act, all land comprised in the territory of each State in the Federation are hereby vested in the governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act. While land is the primary asset of the rural poor, the Land Use Act has reportedly failed to meet its objectives and is said to have caused many distortions to the land rights and access to land of Nigerians (Uchendu, 1979). The resulting tenure insecurity impacts negatively on real estate development.

Oseni, (2011) opined that prior to the enactment of the Land Use Act in 1978, there were three main sources of land law: Customary Law (varied from custom to custom), English received law (which comprises of the common law, doctrine of equity and statutes of General application), and local legislation. The Parliament of the then northern Nigeria passed the Land Tenure Law in 1962, which governed all interest affecting land. In the then Southern Nigeria, however, customary system of land tenure governed land interest and land was owned by communities, families and individuals in freehold (Bolaji, 2011). Land was acquired either by inheritance, first settlement,

conveyance, gift, outright purchase or long possession, as such, causing conflicts and violence in terms of ownership. The Land Use Decree was promulgated on 29 March, 1978 following the recommendations of a minority report of a panel appointed by the Federal Military Government of the time to advice on future land policy (Adegboye, 1967). The land use act distinguishes throughout between urban and non-urban (hereafter 'rural') land. In urban areas (to be so designated by the Governor of a state), land was to come under the control and management of the Governor, while in rural areas it was to fall under the appropriate local government (Udo, 1985).

Before the arrival of the colonial masters, there were customary laws which governed the administration of land in Nigeria. These customary laws varies from one locality to another because of the differences in customs of the people. This accounted for the multiplicity of land laws in Nigeria prior to the promulgation of the Land Use Act of 1978. These laws were applied in each region to regulate land in the region.

Notwithstanding the existence of laws regulating land, the problems of land tenure and land administration persisted both in the Northern and Southern Nigeria. There were new problems such as land racketeering and speculations. Exorbitant compensations were demanded by landowners whenever the government acquired land for development. Thus, acquisition of land by government or individuals was becoming almost impossible in Nigeria. To break this barrier, the Federal Military Government set up some panels to consider how best to solve the problems associated with land tenure and administration in Nigeria. The report of one of these panels i.e., the Land Use Panel of 1977 eventually formed the basis of the Land Use Act No. 6 of 1978.

The Land Use Act as promulgated in 1978, was motivated by the need to make land accessible to all Nigerians; prevent speculative purchases of communal land; streamline and simplify the management and ownership of land; make land available to governments at all levels for development; and provide a system of government administration of rights that would improve tenure security. To achieve the foregoing objectives of the Act, various provisions

are made in the law to fast-track a seamless administration and implementation of the policy of the Act. However, after many years of implementing and administering the Act, one could say that the Act has failed to achieve its set objectives. It is well-known, for instance, that the Act divests citizens' freehold title to their land. And, of course, this is antithetical to their economic prosperity as land ceased from being an article of commerce upon the commencement of the Act (Nwocha, 2016).

## 2.2 Objectives of the Act

The main objectives of the Land Use Act were:

1. To effect structural change in the system of land tenure;
2. To achieve fast economic and social transformation;
3. To negate economic inequality caused by the appropriation of rising land values by land speculators and landholders and;
4. To make land available easily and cheaply, to both the government and private individual developers. Although, experts have argued that rather than make land cheaper, the contrary has happened.

However, the Act sought to accomplish its objectives and these may be encapsulated for the sake of clarity. First, the Act was intended to curb land speculation, which accounted for the astronomical rise in land values especially in urban areas. It was believed then that once ownership of land was vested in the government, speculators would be forced out of business and government would then be able to stabilize the value of land. Second, the Act was intended to assist the citizenry irrespective of their social status to realize their ambitions or aspirations of owing the place where they and their families would live a secure and peaceful life. Third, investing ownership of land in government sought to remove the difficulty which government encountered in acquiring land for public purposes. Fourth, the Act intended to harmonize the tenure systems throughout the country especially in the southern part of the country (Land Tenure Law, 1962). In most parts of the South, the situation gave rise to multiple and endless litigations, which hampered economic development especially as it concerned the location of industries, the siting of infrastructural projects such as hospitals, schools, and the operation of mechanized agriculture. These

problems, among others, were expected to be eliminated or at least drastically reduced by the enactment of the Land Use Act.

### 2.3 Problems of the Act

One of the central objectives of the Land Use Act is to make land readily available at an affordable rate to all Nigerians. The stated objectives of the Land Use Act have not been achieved because of the problems inherent in the Land Use Act and the problem of implementation. The problems inherent in the Land Use Act are the lack of implementation guidelines, the entrenchment of the Land Use Act in the Constitution, the inalienability of land in rural areas, the vesting of all land in government for the use and collective benefit of Nigerians only, inadequate compensation provisions, compensation outside the jurisdiction of courts, clarity regarding rights to land for grazing purposes, and the age of the Act (Otty, Nwosu and Udobi, 2021). Revocation of right of occupancy by the government is also another problem faced by the landowners. The problem of implementation lies in the abuse of power by the governor, the inefficient public service and too much bureaucracy, and a lack of political will. Institutional weakness is seen as the cause of the astronomical rise in land value and the increase in land speculation in Nigeria.

### 2.4 Features of the Act

Some of the key features of the land use act of 1978 are the four major issues it addresses, which includes: The problem of lack of uniformity in the laws governing ownership and land-use; the issue of uncontrolled speculation in urban land; the question of access to land rights by Nigerians on equal legal basis; the issue of fragmentation of rural lands arising from either the application of traditional principles of inheritance or population growth and the consequent pressure on land (Damilola, 2020).

### 2.5 Real Estate Development

Real estate can be conceptualized as the properties that are domiciled in the form of land and landed properties, buildings, flora and fauna (Muli, N. F. (2013). Real estate development is regarded as purchase, management, rental land, sales of real estate with a purpose of making profit (Abraham, M. 2009). Real estate development evokes many feelings depending on the particular perspective. It is an

exciting and occasionally frustrating, increasingly complex activity involving the use of scarce resources. It is inherently risky, with high barriers to entry reflecting the cyclic and capital-intensive nature of the sector, providing a product that is relatively indivisible and illiquid, and the typically slow payback period (Wilkinson and Reed, 2008). A real estate developer's ability to acquire land is dependent on the availability of land at any particular time; and the availability of land is dependent on the state of the market, planning policies and physical factors, and any particular case will also depend on the motives of the particular landowner (Wilkinson et al, 2008). Despite the complexity of the real estate development process, the problems (and challenges) vary from one nation to the other. Some countries have dealt with theirs in a pragmatic manner while other countries have backed off from looking at it objectively. In Nigeria, many factors have been identified as militating against effective participation of the real estate developers in real estate development. Windapo (2007) identified increase in construction costs, high cost of capital, access to land, sharp depreciation of the Naira, access to housing finance facilities, cost of labour, poor infrastructural provision, extortion by government agents, cost of building materials, and government policies and guidelines as challenges facing development of real estate.

### 2.6 Review of Empirical Studies on Land Use Act of 1978

This section reviews literature that are relevant to the study.

Babalola, and Hull (2019) examined the Land Use Act of 1978 and its effects on tenure security in Nigeria: A case study of Ekiti State, Nigeria. The study adopted a mixed methodology approach using a single case study. Three groups of respondents contributed to the study: land professionals, civil servants and students. The study found that securing title to land is difficult, compensation provisions need to be reviewed, formal land registration is not in the interest of the poor, land is not available at an affordable rate, land speculators are still active in Nigerian land markets, the composition of the two committees is inadequate, and the refusal to grant certificates to people below the age of 21 is age biased. It further revealed that the power granted to the governor is enormous and unnecessary.

Otty, Nwosu, and Udobi (2021) carried out a study on critique of Nigeria Land Use Act of 1978. The study stated that the Land Use Act was enacted in 1978 with the aim of improving economic development by ensuring effective and equitable utilization of land and land resources in the country. However, achieving this objective has been hampered by two major obstacles. The first is the inherent contradictions and defects in the law, and the second is institutional weakness and lack of political will to implement the Act fairly and equitably. The study further stated that the Land Use Act of 1978 (LUA) has failed to achieve some of its objectives. The failure is ascribed to problems inherent in the Act and poor implementation. To secure economic development and easy access to land by both government and the citizens, the study recommends the amendment of certain provisions of the Act as well as government to implement the amended version of the Act in a fair and equitable way. Akintunde (2018) examined the Land Use Act and land administration in 21st century Nigeria. He opined that Land administration is important in the sustainable use and management of land. He further stated that the administrative structure under the Nigerian Land Use Act is inconsistent and devoid of clarity of functions and purpose. The study recommends a uniform right of occupancy regime, single administrative structure for land administration in the country, and a repeal of the governor's adjudicatory powers in the Act.

Opafunso, Bruno-Imokhai, and Akinbosade (2015) appraised the effects of the 1978 land use act on sustainable mining and petroleum industries in Nigeria. The study identified the vital land policies that guaranteed smooth land acquisition, operation and management in the industries. The study find answers to the research questions by using a survey design and a precise sampling technique to collect data from 200 respondents. Data for the study was analyzed using Statistical Package for Social Science (SPSS). The findings revealed that the 1978 land use act has enabled the government meet the land needs of Nigerian, especially for developmental need in mining, gas and petroleum industries. The study recommends the right sense of justice and fairness to be played by the government in terms of land use administration to greatly reduce further allegations

and critics by Nigerians in terms of this act enriching government officers.

Nwocha, (2016) examined the impact of the Nigerian Land Use Act on economic development in the country. According to him, Land Use Act was enacted in 1978 with the aim of energizing economic development by ensuring effective and equitable utilization of land and land resources in the country. The paper stated that achieving this lofty objective has been hampered by two major obstacles. The first is the inherent contradictions and defects in the law, and the second is institutional weakness and lack of political will to implement the Act fairly and equitably. The study recommended the amendment of certain provisions of the Act in addition to mustering the political will by government to implement the amended version of the Act in a fair and equitable way. Okafor and Nwike (2016) examined the effects of Land Use Act on rural land development in Nigeria with reference to Nnobi as a rural area. Questionnaire and interview methods were used. The purposive sampling technique was used and One hundred twenty (120) respondents. Personal observation was also used to complement the information gathered. The study shows that people especially those living in rural areas are mostly not aware of the Act let alone its provisions on rural land as an avenue for rural land development. This wide ignorant of the Act, by the people has completely retarded the pace of development in our rural areas as well as the socio-economic conditions of the people.

Ojigi (2012) carried out a study on evaluation of the efficiency of the Land Use Act 1978 of the Federal Republic of Nigeria and its implications in Minna and Environs, in order to identify the challenges and the way forward in the strategic and speedy land use planning and development in the area. Data collection methods adopted include personal interviews, examination of the existing maps and the Land Use Act 1978, No.6 provision in offer of C of O, and questionnaire administration. The questionnaires were based on four (4) key elements consisting; survey and cadastral information system, adherence to statutory conditions in the C of O, land use/development control, and government housing policy implementation in fifteen (15) selected ward areas. The results of the survey shows that, the poor physical

development and informal settlement trend in Minna and environs is a combined effect of slow procedures and bureaucracy in obtaining C of O, inconsistency and inefficiency of relevant authorities responsible for land administration, rapid population growth and rural-urban migration, lack of political will and poor implementation of government housing programmes since 1978. The study also revealed that, the fear of being harmed or attacked by property owners and the patriotic will to refuse bribes when offered were parts of the major problems faced by land use inspectors. The study recommended that, the current inefficiency in land administration system be addressed, and where government housing programmes are not realistic, robust cadastre, urban facilities and infrastructure should be provided for all development layouts in order to automatically check informal settlements.

#### 2.7 Effect of Land Use Act on Real Estate Development

Land cannot be treated as an ordinary asset controlled by individuals and subject only to market forces, rather should be used in the interest of society to achieve social goals like decreasing inequalities in access to land and tenure, land registration and administration and improve development quality. This was the basis upon which Land Use Act No. 6 of 1978 was established by the Federal Government of Nigeria in March 1978. The Act transferred the ownership of land to the state, which is to hold the land in public interest. Government policies/decisions on real estate development have not been effective over the years due to the failure of the government to implement land policies. The activities of speculators who are into land business emerged to be questionable as they can sell one parcel of land to different buyers and that becomes a problem.

The entire real estate development takes place on land, purchase of land from individuals involves exorbitant price due to the activities of land speculators. The Land Use Act was promulgated in 1978 to solve this problems but it failed too. Land Use Act was enacted to enable Nigeria have access to land, allow property developers to acquire land for real estate development but it fails. Land Use Act didn't solve the problem of land acquisition, the cost of processing of certificate of occupancy is high and cumbersome this have negatively affect real estate development. Inadequate

government land policy such as Land Use Act is one of the challenges facing real estate development that hampered it from realizing its potential.

The predicament of the landowner is compounded by section 28 of the Land Use Act that empowers the Governor to revoke for overriding public interest any right of occupancy he had earlier granted. Overriding public interest includes when the Government requires the land for public purposes, projects or infrastructure. Sadly, the circumstances under which the Governor can exercise his power of revocation include where the occupier or holder of a right of occupancy assigns, mortgages, transfers possession, subleases or otherwise deals adversely with his right of occupancy or part thereof contrary to the provisions of the Act. However, as a result of the power granted to governor to revoke right of occupancy, some land owners in some areas are afraid of engaging in real estate development. The inherent contradictions and defects in the law, and the institutional weakness and lack of political will to implement the Act fairly and equitably affect real estate development.

### III. CONCLUSIONS AND RECOMMENDATIONS

The Land Use Act, at the time of its enactment, was hailed as a revolutionary law that would propel Nigeria into the path of economic prosperity. It effectively abrogated absolute ownership or freehold interests by the community, the family and the individual and created same in favour of government to hold in trust for the use of all Nigerians. Unfortunately, the optimism that heralded the Act gradually and steadily faded into disillusionment as its lofty aims turned out to be defeated due to inherent defects and contradictions in the Act on the one hand, and institutional failure and lack of political will to implement the Act firmly and equitably on the other. Finally, having identified the major issues and problems of the Land Use Act of 1978 greater achievements will be made to review some aspects of the Act which is ambiguous as well as proper re-orientation been introduced to address short comings on real estate development in Nigeria.

The objectives of the Land Use Act are no doubt lofty and well-intentioned but the Act turned out to be

defective in many respects. Shackled with institutional failure, dearth of political will and inherent defects, the law could not achieve most of its set objectives. Notwithstanding, the desire for economic development through effective, fair and equitable utilization of land and land resources could be attained if the law is holistically amended to overturn certain anachronistic and antithetical provisions and replaced with realistic and effective policies that would put the Nigeria on the part of economic progress.

To re-focus the Act and secure economic development and easy access to land by both government and the citizens, the paper recommended amendment of certain provisions of that act and that government should muster the requisite political will to implement the law effectively, fairly and equitably. The paper also recommend that a new policy be enacted that would guide and favour real estate development in Nigeria.

#### REFERENCES

- [1] Abraham, M. (2009). An Exploratory study of the factors that influence the capital structure of Real Estate firms in Kenya. Unpublished MBA, Thesis, Strathmore, University.
- [2] Adegboy, R. O. (1967). The need for land reform in Nigeria. *Journal of Social Studies* 9, 339-350.
- [3] Akintunde O. (2018). The Land Use Act and land administration in 21st century Nigeria: Need for reforms. *Journal of Sustainable Development Law & Policy* 9 (1) 81-108. DOI: <https://dx.doi.org/10.4314/jsdlp.v9i1.5>
- [4] Babade, T. (2003). Access to Urban Land in Nigeria: An Analysis of the Activities of Lagos State Land Use and Allocation Committee. In M. M. Omirin, T. G. Nubi, & S. A. Fawehinmi, Land Management & Property Tax Reform in Nigeria. Proceedings of a National Workshop organised by the Department of Estate Management, University of Lagos, Nigeria (pp. 105 - 132). Lagos: The Department of Estate Management, University of Lagos.
- [5] Babalola, K. H and Hull, S.A. (2019). Examining the Land Use Act of 1978 and its effects on tenure security in Nigeria: A case study of Ekiti State, Nigeria. *PER / PELJ* 2019(22) - DOI <http://dx.doi.org/10.17159/1727-3781/2019/v22i0a5803>
- [6] Bolaji, W. A. (2011). Nigerian land system. 34-37.
- [7] Bulloch, B. & Sullivan, J. (nd). The Key to the Real Estate Development Process.
- [8] Chianu, E. (1992). *Title to Improvements on Land in Nigeria*. Benin: Ernslee Ltd
- [9] Damilola, A. (2020). Land Use Act in Nigeria – Explained.
- [10] Land Use Act 1978, The Complete 2004 Laws of Nigeria accessed 19 June 2018.
- [11] Muli, N. F. (2013). An Assessment of the Factors Affecting the Growth in Real Estate Investment in Kenya. Unpublished MBA Thesis. University of Nairobi, Kenya.
- [12] Nwocha, M. E. (2016). Impact of the Nigerian Land Use Act on economic development in the Country: Acta Universitatis Danubius. Administratio.
- [13] Ojigi, L. M. (2012). An Evaluation of the efficiency of the Land Use Act 1978 of the Federal Republic of Nigeria and its implications in Minna and Environs.
- [14] Ojigi, M. L. (2012). Geospatial mapping for crime indexing and monitoring in Minna and Environs, Niger State of Nigeria. *Nigerian Journal of Surveying and Geoinformatics* 2, 83-100.
- [15] Okafor B. N and Nwike E. C. (2016). Effects of the Land Use Act of 1978 on rural land development in Nigeria: A case study of Nnobi. *British Journal of Environmental Sciences* 4 (3), 1-16
- [16] Opafunso, Z.O., Bruno-Imokhai, J.O. and Akinbosade, B. A. (2015). Effects of the 1978 Land Use Act on sustainable mining and petroleum industries in Nigeria.
- [17] Oseni, W. T. (2011). Doctrine of Equity and Statutes in Nigeria (2nd edn) 55-58.
- [18] Otty, E. U., Nwosu, C. C. and Udobi, A.N. (2021). Critique of Nigeria land use Act of 1978. *International Journal of Engineering Science and Computing*, 11(6), 28115-28120

- [19] Public land decree (1976) Public Land Decree No 23. Laws of the Federation of Nigeria, 1990 (Edn.): 24-26.
- [20] Razak, S.E. (2011). The Land Use Act of 1978. Appraisal, Problems and Prospects. Pp 5-55.
- [21] Uchendu, O. (1979). Land Use Act and Customary System of Tenure <http://siteresources.worldbank.org/EXTARD/Resources/336681-1236436879081/5893311-1271205116054/mabogunje>.
- [22] Udo, R. K. (1985). The Land Use Decree 1978 and its antecedent. University of Ibadan 44-46.
- [23] Wilkinson, S., & Reed, R. (2008). Property Development. New York: Routledge.
- [24] Windapo, A. O. (2007). Evaluation of the Roles of Private Developers in the Housing Delivery System in Lagos State