**THE LAND USE ACT 1978**

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**PRE-LAND USE ACT ERA**

Prior to the Land Use Act 1978, Nigeria operated three systems of land tenure viz: customary, non-customary and special system of land tenure which was applied in the former Northern Nigeria. Generally, the pre-Act Nigeria land tenure systems emphasized landholding and commercialization of land as opposed to putting the land into effective use. The concept of ownership under the systems did not go with the duty to develop such lands. As such they encouraged the growth of a horde of land speculators who bought lands, held them for as long as they liked until the value had appreciated sufficiently before disposing such lands. In the same way the continued fragmentation of land by unguarded alienation made it difficult for government to acquire sufficient lands to execute its projects. Also, most lands held under customary tenancy lacked any documentary evidence of such ownership. Consequently, such lands lay waste and could not be used as security for loan for other projects.[[1]](#footnote-1)

**Some of the Factors Necessitating the Promulgation of the Land Use Decree 1978 include:**

1. No Uniformity of Tenure

* Dualism in the South: Received English Law and Customary Land Tenure
* Land Tenure Law in the North

2. Insecurity of Title to or Interest in Land

Improper documentation of the security and collateral/financing, thus leading to endless litigation

3. Land Speculation and Attendant Profiteering

4. Difficulties Encountered by Government and its Agencies in Acquiring Land for Development

5. Slow Pace of Agricultural Growth: caused by

* Absence of well-defined titles which has an ill effect on financing for agricultural purposes
* Communal and individual ownership of land, leading to impediments on erection of permanent agricultural structures
* Discouragement of cultivation of trees with long gestation periods e.g. cocoa, cola nuts, palm trees, coffee, etc.

6. Inequality in Ownership and Distribution of Land, etc.

**The Land Use Panel 1977**

As a follow up  to the reports of the Rent Panel of 1976 and the Anti-Inflation Task Force of 1975 which highlighted the challenges of ownership and use of land in the country, the Federal Military Government set up the Land Use Panel on 16 May 1977, with the following terms of reference:

i. To undertake an in-depth study of the various land tenure, land use and conservation practices in the country and recommend steps to be taken to streamline them;

ii. To study and analyze the implications of a uniform land policy for the country;

iii. To examine the feasibility of a uniform land policy for the entire country, make necessary recommendations and propose guidelines for their implementation; and

iv. To examine steps necessary for controlling future land use and also opening and developing new lands for the needs of the government and Nigeria's growing population in both urban and rural areas and make appropriate recommendations.

The report of the panel thus informed the enactment of the LUA.

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**Philosophy and Objectives of the Act**

As can be gleaned from the preamble to the Act, its explanatory notes and the various challenges enumerated above, the reasons for the coming into force of the Act can be summarized as follows:

i. To provide a uniform land tenure law in the country;

ii. To create an enabling environment for security of title to land or interest in land;

iii. To make land easily and cheaply available to all Nigerians;

iv. To curb speculation in land and profiteering;

v. To reduce if not eliminate litigation concerning title to or interest in land;

vi. To facilitate acquisition of land by government and its agencies for developmental purposes;

vii. To enable Nigerians, high or low, rich or poor, to realize their ambitions and aspirations of owning and using land;

viii. To set up a central control mechanism for the use, allocation and administration of land in the whole country; and

ix. Lastly, to assure, assert, preserve and protect the rights of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity for themselves and their families.

**Problems Addressed by the Land Use Act**

The four major issues it addresses include:

* 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.

**Advantages of the Land Use Act**

1. Ensuring that whoever requires land for any purpose with the ability to make optimum use of it will obtain it.
2. Making it illegal for indigenes to allocate land without prior government’s approval as only the Governor of each state has the power to allocate urban lands, and the local area councils have the power to allocate rural lands.
3. Reducing the practice of land speculation
4. Allowing for easy acquisition of land for agricultural use as it provides farmers with not more than 500 hectares of land for crop production or 5000 hectares of land for grazing.

**Disadvantages of the Land Use Act**

1. Abuse of Office: the transfer of title and ownership of land from individuals and communities to the Governors who hold the land in trust has given rise to abuse of office as many of them have been known to have abused the power and privileges conferred on them by the Act.
2. Delay in land acquisition: Acquisition of land by individuals and corporate bodies for commercial and economic development purposes have been extremely difficult as a result of the Land Use Act. The government’s approval amongst other reasons from the Land Use Act results in the delay in making land accessible to an average Nigerian.[[2]](#footnote-2)

**The Land Use Act and the Constitution**

Section 315 of the 1999 Constitution (see section 274of the 1979 Constitution) provides that:

(5) Nothing in this Constitution shall invalidate the following enactments, that is to say -

(a) the National Youth Service Corps Decree 1993;

(b) the Public Complaints Commission Act;

(c) the National Security Agencies Act;

(d) the Land Use Act,

and the provisions of those enactments shall continue to apply and have full effect in accordance with their tenor and to the like extent as any other provisions forming part of this Constitution and shall not be altered or repealed except in accordance with the provisions of section 9 (2) of this Constitution.

(6) Without prejudice to subsection (5) of this section, the enactments mentioned in the said subsection shall hereafter continue to have effect as Federal enactments and as if they related to matters included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.

What is the effect of section 315 of the Constitution as it relates to the Land Use Act? Does it make the Act part of the constitution to the extent that the provisions of the Act will also be supreme just as the provisions of the constitution are supreme? Or does it merely give it a coloration of an existing law? What happens if the provisions of the Act conflicts with the provisions of the constitution, which of the provisions will prevail?

Consider **section 47 of the Land Use Act** for example which attempts to oust the jurisdiction of the courts in some cases.  The section prescribes, inter alia, that no court shall have jurisdiction to inquire into any question concerning the amount or adequacy of any compensation under the Act, "NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ANY LAW OR CONSTITUTION OF THE FEDERATION" or of a State. Isn't this at variance with the provisions of the Constitution on the jurisdiction of courts? Can the Constitution defeat itself?

The view that is taken by some commentators is that the Land Use Act is an ordinary law which is not part of the Constitution in spite of its inclusion by virtue of section 315(5) of the 1999 Constitution, as amended. See dictum of Kayode Esho JSC in **NKWOCHA VS GOVERNOR OF ANAMBRA STATE AND OTHERS,** (1984) 1 SCNLR 634. Others interpret it to mean that it is a veritable part of the Constitution.

Whatever might be one's preference between these two views, it is believed that on a grammatical construction of the section, the following characteristics of the Act vis a vis the Constitution can be established, namely:

i. The Act cannot be invalidated by the Constitution;

ii. The provisions of the Act shall continue to apply and have full effect in accordance with its tenor and to the like extent as any other provisions forming part of the Constitution;

iii. The Act cannot be altered or replaced except in accordance with the provisions of section 9(2) of the Constitution; and

iv. The Act shall continue to have effect as a Federal legislation.

**POST LAND USE ERA**

The Land Use Act abolished all existing freehold systems and provided for a nationwide leasehold system. The leases are typically granted for 99 years, the maximum period stipulated by the Act.

**Which Laws and Policies Govern Land Administration?**

The laws that govern land administration in Nigeria include the following:

1. Land Use Act of 1978
2. Registration of Titles Law (Lagos State, 2003)
3. Land Instrument Registration Law (1925)
4. The Registration of Titles Law
5. Registered Land Act of 1965 (Replaced the 1925 law in Lagos State)
6. Property and Conveyancing Law (1884)
7. Land Use Charge Law (Lagos state)
8. Urban and Regional Planning Land Law (Decree 88) of 1992.

**How is Land Secured in Nigeria?**

* Through certificates of occupancy, which are instruments of title issued by state governors and local government chairpersons, as evidence that the state has conferred on the holder of the certificate the statutory/customary right to occupy the land for a defined period of time (99 years in most cases). These certificates are the highest level of land security certification in Nigeria.
* Through deeds of assignment: A deed of assignment outlines the agreement between the person with the rights to a piece of land and the person to whom the rights are being transferred. It contains, among other things, a detailed description of the land (including its ownership history), the agreed cost, and the date from which transfer takes effect.

**Which Government Organizations are Responsible for Land Registration and Administration?**

* Land Use and Allocation Committees (to advise state governors regarding urban land),
* Land Allocation Advisory Committees (to advise local governments regarding non-urban land),
* Federal and State Land Registries.[[3]](#footnote-3)
1. O J Ogunniyi and J O Akpu, ‘Land Use Act 1978: Prescription of Discrimination Against Fellow Nigerian’

(2019) 3 SocialSci Journal 242 [↑](#footnote-ref-1)
2. Awosusi Damilola, ‘Land Use Act in Nigeria – Explained’ (*PropertyProInsider*, 18 April 2017) <<https://www.propertypro.ng/blog/land-use-act-in-nigeria-explained/>> [↑](#footnote-ref-2)
3. Africa Check, ‘Factsheet: ‘Who owns the land in Nigeria?’ <<https://africacheck.org/factsheets/factsheet-who-owns-the-land-in-nigeria/>> [↑](#footnote-ref-3)