# CHAPTER ONE
# INTRODUCTION

## 1.1 Background to the Study

The importance of land to man on earth through all ages can hardly be overemphasized. Land, though represents only about two-fifth of the earth's surface[1], it provides a platform on which man's activities are predicated. It is however ironical that while the world population increases, the land in supply appears to be receding. Hence land is never thought to be sufficiently available to meet the need of man in a society. The ownership of land is jealously guarded against. Wars are fought, territories conquered to assert and preserve the ownership of land. For few available land to be equitably administered among the people and be maximally utilized, there is need for a good land policy to be put in place for effective control and management of land in order to witness the desired development in the society.

It is pertinent to note that before the advent of the Land Use Act on 29th March, 1978[2], there were plethora of land laws applicable to the administration of land in Nigeria. These laws were fully operational before, during and after the advent of the colonial rule in Nigeria and they continued to apply until they were found defective or too feeble to address the problem of land. Despite the existence of these laws, the problems of land tenure persisted in Nigeria, leading to difficulty in the acquisition of land. Not even the government of Nigeria was spared in this problem, as it found it difficult to acquire land for national development, especially in major urban centres. This was due to the activities of land speculations, racketeering and high cost of compensation[3] usually demanded by the land owners whenever government needed land to execute its projects.

[1] Sadiq, E.R., The Land Use Act of 1978: *Appraisal, Problems and Prospects*" http://uniloring.edu.ng/studproj/law/0640ia 168.pdf (Accessed 15/01/2024)
[2] The Land Use Act No. 6 March 29, Cap L5. LFN 2004
[3] The Public Land Miscellaneous Decree, 1976.

Arising from this, the Federal Government in an attempt to unify land tenure, streamline and simplify ownership of land in Nigeria, set up the Land Use Panel in 1977[4] with certain terms of reference. The recommendations of this panel which particularly centered on the land tenure system in the Southern Nigeria, was studied and adopted by the government to the land tenure system in the Southern States. Acting on this adoption, the Federal Military Government under Gen. Olusegun Obasanjo, promulgated the Land Use Act, 1978[5]. The concern of this study is to evaluate the Land Use Act against its set objectives to see whether land is better managed and controlled under the Act. It also looks at some inherent problems of the Act that range from interpretation to practical implementation of its provisions. This dissertation also considers the prospects of the Act in providing sustainable housing and land management in Nigeria.

It is pertinent to state that the Nigerian system of land tenure governed by the Land Use Act as promulgated on 29th March, 1978[6] by the Military Government of Lt. General Olusegun Obasanjo, has remained controversial. The Land Use Act, in matters of land policy, is a shift from land tenure system in Nigeria. Before the enactment of the Land Use Act in 1978, ownership of land in Nigeria was either regulated by the English Statutes of General Application enacted in England before 1st January 1900[7], statutes enacted by local legislature or Colonial Statutes made expressly applicable in Nigeria. It is noteworthy that there was dualism in the acquisition of land pre-enactment of the Act. The Northern states adopted what resembled a nationalized system of land tenure as far back as 1916, while the Southern Nigerian States practiced customary land law tenure system.

There is no doubt that the Land Use Act since its promulgation, is laced with varied controversies as a land tenure system. Thus, raising questions about its essence, whether it is a

[4] The Land Use Panel set, 1977.
[5] *Ibid*
[6]Land Use Act 1978 Cap L5 LFN 2004
[7]Statutes of General Application 1900

curse or blessing. It is some of these questions, this dissertation wishes to discuss. Under the customary law, three categories of persons were capable of holding land, but was later reduced to two categories - the family and the community excluding the individual. Before the enactment of the Act, there were two different land systems in the Northern and Southern Nigeria as earlier noted.

> Án Act of the National Assembly for the alteration of this constitution, not being an Act to which section 8 of the Constitution applies, shall not be passed in either House of National Assembly unless the proposal is supported by the votes of not less than two-thirds majority of all the members of that House and approved by resolution of the House of Assembly or not less than two – thirds of all the States.

The land Tenure Law 1962[8] governed the situation in the north with a provision for occupancy rights. Under this nobody had absolute ownership of land rather, it was occupancy right people could possess. The Land Tenure Law, 1962 entailed that, British inherited from the Muslim rulers of the North, a system of land tenure which vested the control and ownership of the land in the rulers with the natives being entitled to beneficial use of it. This position was retained by the British with all sense, in that, they promulgated ordinances to give it a legal shape. The history of land tenure can be said to have started in 1910 in the form of the Land and Native Rights Proclamation of 1910[9] which vested control of land and disposition thereof in the governor. In 1961, the Land and Native Right Proclamation of 1910, was reenacted with amendments by the Land and Native Rights Ordinance 1961[10] in line with the Land and Native Rights Proclamation cap to law of Northern Nigeria (1916). The 1916 ordinance apart from

[8] Land Tenure Law 1962
[9] Land and Native Rights Proclamation, 1910
[10] Native Rights Ordinance Proclamation

declaring all lands as native land, went further to provide that it shall be held and administered by the natives. The government, by virtues of the ordinance was able to control and supervise transactions on land between natives and non-natives. The native was taken to mean a person whose father belonged to a tribe indigenous to Northern Nigeria. The basic philosophy of the Land and Native Right Ordinance could be deduced from the passage culled from the report of the Northern Nigeria Land Committee that was set up in 1908[11].

The leading principle ought to be that government right to retain the dominion of all the land in the country and that control should be exercised so as to align with native rights. The law should not permit any dealing with the land which should deprive the government of that dominion and control … all grants of the occupation, use or enjoyment of land … should be in nature of leases or licenses and not absolute property of freehold interest.

The Land Tenure Law of 1962 was enacted in furtherance of these principles, it legalized customary right of occupancy without the consent of the Governor. The interest which an individual could hold, was a right of occupancy (i.e title to use and occupy land). The land use Act, 1978 borrowed as many as 43 sections from the Land Tenure Law 1962 with some vital modifications, the total number of the Act being so. The Land Use Act therefore qualifies a modified copy of the Land Tenure Law. The land tenure system in effect, kept the ownership and management of land with Local Authorities and State Government.

The land tenure system in the South was characterized by a variety of customary land laws, that is, various patterns of ownership and control of land was predominant. This was contrary to what was obtained in the North where the land tenure system had become united, first by the imposition of Islamic Land law and later by British colonial policy.

In the South, there was private ownership of land in which land was owned by individuals or communities freehold, such land coming either by inheritance, outright purchase

[11] Section 2 and 16 of Land Tenure, 1962.

or gift. Due to lack of government's control over use and disposition of land, successive governments had to embark on the promulgation of statutes empowering compulsory acquisition of land for specific matters. The Public Land Ordinance of 1897[12] was the first of such legislation and was re-enacted with modifications as the Public Land Acquisition Act, 1917[13]. The Act empowered the Government to acquire land compulsorily for public purpose subject to the payment of compensation to the expropriated owners. The Native Land Acquisition 1908[14], prevented the exploitation of native land by aliens. The Lagos Town Planning Ordinance, 1928[15], regulated the development within the town of Lagos by establishing Lagos Executive Development Board. Most of the lands were however the subject of private ownership and an article of commerce. Individuals or families had absolute liberty to sell, mortgage, lease or retain their land without reference to a superior authority.

Under this period under review, land was an article of free commerce that was freely sold and purchased by citizens upon naturally agreeable terms. There were no compulsions to the acquisition of land. The commercial potentials associated with the land tenure system gave rise to some of the malpractices that led to the promulgation of the Act. There arose a group of merchants popularly known as speculators, it purchased land at a cheap rate and held it for the purpose of re-sale at exorbitant rate.

However, in the 70s, there was a spread of development because of the oil boom that led to a high demand for land in building a residential, commercial and industrial premises and structures. The lands purchased cheaply by the speculators were within a short time sold to property developers at exorbitant rate. The development brought untold hardship on genuine property developers and citizens seeking to acquire land for the building of residential houses especially workers.

[12] The Public Land Ordinance, 1897.
[13] Public Land Acquisition Act, 1917.
[14] The Native Land Acquisition, 1908.
[15] The Lagos Town Planning Ordinance, 1928.

It was gradually becoming clear that at least between 1960 and 1976 that the cost to government industrial entrepreneurs and to the business world in general of acquiring land by purchase from land owners was getting rather prohibitive. In some cases, land owners even refused to sell their land thereby hindering development. Not even government could under statutes, acquire land directly for use by deserving private companies for development purposes as was in the case of *Ereka v The Military Governor of the Mid-Western State*[16]. The effect of the above problem was that, government of the federation found it difficult to acquire land for public project and government had to pay high compensation to land speculators for land acquired through the instrument of compulsory acquisition. Communities preferred to retain private ownership to leasing the land to government and government found it difficult most times very costly to acquire land for the purpose that would benefit the people of Nigeria.

It was under this prevailing circumstances that the Federal government in the 70s started thinking of modifying the land tenure system to one that would make land more readily available to citizens, individuals and organizations at affordable rates. It was a general view that the feudal grip on land by the land speculators was undesirable and an obstacle to the socio-economic development of the country. The need therefore for a more equitable distribution of land, a free gift of nature, became imperative to the Federal Government. Disturbed by the ugly situation, the Federal Government moved to set up the Anti-Inflation Task Force and the Rent Panel[17]. The task force in its report, submitted that the high cost of land, especially occasioned by the activities of land speculators, was unbearable.

The importance of land to the provision of adequate housing cannot be overemphasized. Availability and accessibility of land provides the physical substratum on which houses are built. Land as an economic asset is also a source of wealth creation for the general development

[16] (1974) JELR 37576 (SC) 100/1971
[17] (1974) 10 sc 59.

of the -economy through sale, leases, mortgages and charges. Above all, land also provides the sources of material for construction purposes. It is trite therefore to conclude that the extant land policy and administration in any nation determines substantially the adequacy or otherwise the stock of housing in the country.

## 1.2 Statement of the Research Problem

The land Use Act, 1978 was primarily aimed at providing solutions to the varied challenges arising from the control and management of land in Nigeria. Some of these problems include high cost of compensation, land speculations, high market value of land; issues as to corruption of officials of land departments. With time, land became a rare commodity, due to the activities of land speculators and urbanization. Rural-urban migration has made land scarce in the cities and when such is available, it is at an exorbitant rate. This development has led to the increase in the number of tenants and landless people.

However, the Land Use Act which was originally thought to be a panacea to the problems of land acquisition, later came with it ugly hands on land management in Nigeria. some of the controversies in the Land Use Act include the issuance of certificate of occupancy which can be issued to two or more persons at the same time. Another controversy is the consent of the Governor that must be obtained by owners of land before such land can be alienated. The Governor also has the power to revoke certificate of occupancy arbitrarily without recourse to the fundamental right of an individual to own immovable property anywhere in the country as constitutionally guaranteed. The Land Use Act has also empowered the Governor to arbitrarily designate any land in the State to be urban. The appointment of the Land Allocation Committee and the Advisory Committee solely by the Governor as well as the

power for compulsory acquisition, negate democratic principles and tenets. On this note, it is important to raise the following questions which this research will answer;

a. What is the legal framework for the challenges in control and management of land under the Land Use Act with regards to housing in Nigeria?
b. What are the real natures of the challenges posed by the Land Use Act to Land Management?

## 1.3 Aim and Objectives

The sole aim of this research is to investigate the challenges of the Land Use Act and their effects on Housing in Nigeria; and the objectives are;

a. To examine the effects of the challenges of the Land Use Act, 1978 on Housing in Nigeria.
b. To examine the management of land under the Land Use Act and the attendant problems.
c. To make useful recommendations on how to improve on the Act.

## 1.4 Scope and Limitation of the Study

The primary focus of this research is to reappraise the challenges of the Land Us Act to effective housing in Nigeria. The research work will critically attempt the analysis of the various provisions of the Act as related to the provision of housing to the Nigerian populace. The views of scholars and various court interpretations bothering on the subject matter, will be analysed. The right of Nigerians to own land as enshrined in the constitution will also be discussed. The research will holistically look at the provisions of the Act and as well as the Nigerian Constitution. Judicial precedents will also be made recourse to in this investigation. The nature of this research will require that challenges will be encountered against the backdrop of the brevity of the timeframe for its submission. Another constraint is the limited

resources including finance that are needed to meet up with the enormity of the demand for this research.

## 1.5 Research Methodology

This research adopts only the doctrinal approach which comprises of textbooks by erudite legal scholars, journal cases, statutes as well as the Land Use Act CAP L5 LFN, 2004. The information relied on for this research study is sourced from both primary and secondary sources. In this regards, the Land Use Act, CAP L5, LFN, 2004, the Land Tenure Law, 1962, Public Land Acquisition Act, the Constitution of the Federal Republic of Nigeria, 1999 (as amended) among others are analyzed as primary sources. On the other hand, the secondary sources include materials from the internet, books, essays, journals and articles published on the subject matter and the opinions of the Courts (Judicial decisions)

## 1.6 Significance of the Study

The whole of man's existence on earth is hinged on land. This makes it obligatory for the State to protect the right of Nigerians to acquire and own immovable property which is a fundamental right for all. This calls for the need for checks on the powers of Government, especially State government which often infringe on the rights of citizens on the acquisition of property. Only an efficient control and management of land can bring about an effective housing delivery and this can be discovered through research work which this dissertation aims to achieve. This research hopes to provide a reasonable knowledge of existing loopholes and the needed reforms in the control and management of land. It is on this note that this research is significant and its findings will provide the following;

a. Suggests a better way to land management and control.
b. Proffers solution to the problem of housing in Nigeria.

c. Recommends possible review of the Land Use Act, 1978.

## 1.7 Chapter Analysis

Chapter one is concerned with the introduction. A background of what the research entails.

Chapter two is the conceptual, theoretical framework and literature review.

Chapter three examines the management and control of Land under the Land Use Act and as well as its problems.

Chapter four examines the effects of the challenges of the Act on housing.

Chapter five is the conclusion of the work.

# CHAPTER TWO
# CONCEPTUAL, THEORETICAL FRAMEWORKS AND LITERATURE REVIEW

## 2.1 Conceptual Clarifications

The conceptual clarifications explain some terms as used and as well as issues raised. Some of which include;

### 2.1.1 Land

Land is any found soil on earth whatsoever as meadows, pastures, woods, waters, marshies, furze and hearth. It has an indefinite extent upwards as well as downwards. Land includes all houses and other buildings standing or built on it and whatever that is in direct line between the surface of the center of the earth[1].

### 2.1.2 Land Use Act

It is formerly known as Land Use Decree, 1978, but became an Act (Land Use Act) in 19.. when some Decrees of the former military governments were converted to Acts[2].

### 2.1.3 Acquisition

It is the Act by which one procures the property of a thing[3].

### 2.1.4 Compulsory Acquisition

It is the power of the government to acquire private rights on land for public use without obtaining the consent of its owners or occupants[4].

[1] Bryan A. Garner, Black Law Dictionary, 11th Ed (2019)
[2] Land Use Act CAP L5 LFN, 2004
[3] Bryan A. Garner, Black Law Dictionary, 11th Ed (2019)
[4] Bryan A. Garner, Black Law Dictionary, 11th Ed (2019)

### 2.1.5 Compensation

It is something typically money, awarded by someone in compensation of loss, or injury suffered by him[5].

### 2.1.6 Decree

They refer to laws promulgated by a government (military) without passing through a legislative process[6].

### 2.1.7 Occupancy

It is the gaining or having physical possession of real property subject to or in the absence of legal right or title[7].

### 2.1.8 Possession

It is the control that a person intentionally wields over a thing[8].

### 2.1.9 Public Interest

It is the welfare of the general public in which the whole society has a stake[9].

### 2.1.10 Fair Hearing

Giving an equal opportunity to parties to be heard in Court[10].

[5] *Ibid*
[6] *Ibid*
[7] *Ibid*
[8] *Ibid*
[9] *Ibid*
[10] *Ibid*

### 2.1.11 Fee Simple

It is an estate not restricted to a particular class of heirs. It lasts until a grantee of it or a subsequent alliances dies interstate and leaves no heir, and it discards to collateral if there are no heirs[11].

### 2.1.12 Fee tail

It is the freehold estate in which there is a fixed line of inheritable succession limited to the issue of the body of the grantee or devisee and which the regular and general succession of heirs at law is cut off[12].

### 2.1.13 Gift intervivos

A gift made when a donor is living and provides that the gift takes effect while the donor is living.[13]

### 2.1.14 Intendment

The true meaning, the correct understanding or intentions of the law[14].

### 2.1.15 Life Estate:

An estate which duration is limited to the life of the holder or some other person[15].

### 2.1.16 Nemo Judex in Causa sua

A man ought not to be a judge in his own case[16].

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[11] Bryan A. Garner, Black Law Dictionary, 11th Ed (2019)
[12] *Ibid*
[13] *Ibid*
[14] *Ibid*
[15] *Ibid*
[16] Bryan A. Garner, Black Law Dictionary, 11th Ed (2019)

### 2.1.17 Nemo dat quod non habet:

He who has not, cannot give[17].

### 2.1.18 Duicquid plantatur solo solo cedit:

Whatever is affixed to the soil, belongs to the soil[18].

### 2.1.19 Right of Occupancy

The title to use and occupation of land, including statutory and customary rights of occupancy, but does not include licenses[19].

## 2.2 Theoretical Framework and Historical Background

Land like every other thing on earth is governed by laws. These laws help to regulate how it is used and maximized by man. Land in Nigeria is governed by land law. Land law forms a major aspect of the Nigerian legal system. The laws governing land in Nigeria can be tied to historical evolution. Before the advent of the Land Use Act in 1978, there were number of laws and regulations governing the use of land in Nigeria even before the advent of colonialism. The indigenous customary practices here applicable across the various regions in Nigeria. these customary practices included communal land holding where the land was believed to belong to the whole community and every member of the community had a collective responsibility towards the use of land. There were also customary means of acquiring land which included, acquisition by descent, by conquest and other means; in a customary land tenure system, communal land could not be totally alienated and the sale of commercial land was prohibited.

[17] *Ibid*
[18] *Ibid*
[19] *Ibid*

However, there were provisions for conditional leases and rent of land for both members of the community and as well as strangers.

The colonial era saw the introduction of the laws applicable in England from January 1 1900, become applicable in the colony of Lagos and later the entire Nigeria. This was sequel to the interpretation Act[20] which stated that all common law, rules of equity and statutes of general application in force in England as at January 1, 1900 would be in force in the colony of Nigeria. The English Law of Real Property was applicable in Nigeria subject to the exceptions contained in the Section. Also, the England common law rules relating to tenures dispositions of real property, estates, inheritance, perpetuity and a number of others became enforceable in Nigeria. The doctrines of equity which included the construction of wills, institutions and settlement of land, legal and equitable estates and interests in land and the doctrines of notice, also became applicable by virtue of the section.

The colonial administration went further in enacting ordinances to regulate the public use of land by and for the government and some of these ordinances[21] which empowered the Government to acquire land compulsorily for public purposes subject to the payment of compensation to the land owners. This also made the land acquired become state (formerly crown) land and therefore a property of the State. This strategy as adopted to help price land from the prevalent customary land tenure which restricted the land ownership and holding strictly to the family and communal and hardly individual. This allowed for the increase in urban development without customary restrictions. The Act also empowers the Government to grant lease of Land to private individuals. The title of such grants is therefore free from any

[20] Section 45 Result o the Interpretation Act
[21] Includes, Public Land Ordinances of 1876 later re-enacted as public land acquisition.

communal claims. Some of the other ordinances[22] passed with the aim of acquiring land for use of government and private development[23].

In 1935, the Registration of the Title Act of that year was enacted. This Act provided for the registration of land instruments recognized under the Act, Land Registration Act Cap 99 and the Registered Land Act 1965 was also enacted for the purpose of registration of titles of land.

In 1958, an Act was enacted which vested the ownership of all public lands in the State[24]. This also saw each region enacting laws regarding its land.[25] In the Eastern Region, the Land Tenancy Law 1935 was enacted and there is also the acquisition of Land by Aliens Law 1957, Land Instrument Registration Law 1963, Land Instrument Preparation Law, 1963 and Recovery of Premises Law, 1963.

In the Northern Region, Crown Lands Proclamation 1902, which was an agreement between Sir Frederick Luggard and representatives of the Royal Niger Company under which all lands, rights and easements were vested in the High Commissioner for the time being in trust for His Majesty, was enacted; Niger Lands Ordinance of 1916; Land and Native Rights Proclamation 1908 which was re-enacted with amendments by the Land and Native Rights Ordinance of 1916. This was the position until the Land Tenure Law 1962 was enacted by the Northern House of Assembly, basically re-enacting the 1916 Law with some amendment. Coming from a long line of historical evolution of land law in Nigeria, the Land Use Act of 1978 (formerly

[22] *Ibid*
[23] Include; Native Lands Acquisition Proclamation 1900, the Native Lands Acquisition Proclamation 1903, the Crown Lands Management Proclamation, 1906, as amended, the Native Acquisition Ordinance 1917, the Niger Lands Transfer Ordinance 1916 and the Crown Ordinance 1918.
[24] State Lands Act Cap 45 close the gap between note 42 and 43.
[25]The Western Region Enacted the Property and Conveyancing law, Cap 100 Laws of Western Nigeria 1959; Land Instruments Preparation Law Cap. 55; Land Instruments Registrations Law, Cap 56; Administration of Estates Law, Cap. 2; Public Lands Acquisition Law, Cap 105; Registration Law, Cap 56; Administration of Estates Law, CAP. 2; Public Land Acquisition Law, Cap 105; Registration of Titles Law Cap 57; Native Lands Acquisition Law Cap. 80; and Recovery of Premises Law, Cap 110.

a Decree) has come to stay as the primary and most important legislation on land matters in Nigeria and this has proved to be a sustainable legislation for the regulations of land in Nigeria.

The era pre-existing the Act in land holding systems in Nigeria, was characterized by commercialization of land as opposed to effective use of land. The concept of land ownership under the pre-existing systems, did not impose the duty of developing such lands on the owners, instead they encouraged the growth of speculators and land holding. The speculators bought lands and held them for as long as they liked until the value had appreciated or bought at a cheap rate and sold at exorbitant rates. In the same vein, government found it difficult to acquire sufficient lands for developmental propose because of continued fragmentation by unguarded alienation.

Also, most lands held under customary tenancy, had no documentary evidence of ownership and as such, lay waste and could not be used as security for loan for other projects. The system in the North was even more backward for National integration because of its discrimination against other Nigerians[26].

According to *Smith*[27], "the customary right of occupancy created by the land Tenure Law was merely designed to let indigenous landlords continue their use and occupation of the land until the Federal, State or Local Government found a better use for land". In his view, the whole legislation lacks a precise or definite state policy and land holding. The poor performance of the economy; the inability of the country to feed herself; the failure of both the public and private sectors to provide sufficient shelter for the people and the inflationary trends have been blamed on the system of land tenure.

[26] (1912) 2 NWLR P.7.
[27] Smith I.O. *Practical Approach to Law of Real Property in Nigeria* 2nd Ed./Lagos: Ecouratch Publishing Ltd; 007) p 78.

In the third National Development plan 1975 - 1980[28], the Federal Government was emphatic on the need to build a just and egalitarian society. The plan identified land as one of the constraints to national development, it further emphasized that several projects in the Second National Development Plan failed to take off because of the inalienability of land or the exorbitant price which land was acquired. Where land was available, the issue of high compensation demanded by the owners, was another inhibition.

Arising from this, the Federal Government set up different panels on different occasions to look into the problem associated with land. The first was the Anti-Inflation Task Force, 1975[29] followed by the Rent Panel in 1976[30]. Both panels were tasked with the responsibility of carrying out certain studies related to land. In their separate reports, the two panels identified the land tenure system as contributory to the inflationary tendencies in the century. Based on their findings, the panels recommended that all lands should be vested in the State. The government white paper on the report of the Rent panel accepted the recommendation in principle, but called for a further study of its practical implications. It is worthy to note that the reports of the two panels above provided the grounds for the setting up of the Land Use panel[31] on the 16th of May 1977. With the following terms of reference;

i. To undertake an in-depth study of the various land tenure, land use and conversation 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

[28] National Development Plan, 1975.
[29] Anti-Inflation Task Force, 1975
[30] Rent Panel in 1976
[31] Land Use panel,1977

iv. To examine steps necessary for controlling future land use and also opening and developing new lands for the needs of the government of Nigeria's growing population in both Urban and rural areas and make appropriate recommendations[32].

The recommendations of the panels were very strong, particularly on the tenure system. The recommendations were duly studied and adopted by the Government under the then military government of General Olusegun Obasanjo. Acting on the recommendations, the Federal military government, promulgated the Land Use Decree[33] No 6 on 29th March 1978, later Act in Pursuance of the following objectives;

i. To remove the bitter controversies resulting at times in loss of lives and limbs, which land is known to be generating.
ii. To streamline and simplify the management and ownership of land in the country.
iii. To assist the citizenry, irrespective of his social status, to realize the ambition and aspiration of owning the place where he and his family will be secured and have a peaceful life.
iv. To enable the government to bring under control the use to which land can be put in all parts of the country and thus facilitates planning and zoning programme for particular use;
v. To generate revenue for the state by empowering the government to impose rents, reverse rents and penalties.
vi. To eliminate litigations in matter of sale, mortgage. Lease or any other form of alienation of land by making it necessary for an alienation to obtain the consent of the governor or local government chairman. Otherwise the transaction is not lawful.

[32] *Ibid*
[33] Land Use Decree, 1978.

vii. To avoid concentration of land in the hands of only few people by fixing a sealing on land and on introducing the half hectare rule in urban areas.

viii. To facilitate acquisition of land for the Federal, state or local government by vesting it in a state government.

ix. To curb speculation in land which largely accounted for the astronomical rise in land values especially in the urban areas;

x. To encourage development by laying down terms and conditions for a holder and providing compensation for unexhausted improvement only[34].

The Act sets out in its section to assert the State ownership of Land. Thus, the power of control and management of land in Nigeria is conferred on the government. The section provides as follows;

> Subject to the provision 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 provision of this Act.

The implication of the provision above is that the erstwhile owners are divested of their ownership of land whether occupied or unoccupied.

## 2.3 Literature Review

This research is carried out with reference to the views of other legal scholars and judicial authorities on the Land Use Act[35] No doubt, the Land Use Act which was promulgated in 1978 as Decree by the then military government of General Olusegun Obasanjo was later

[34] Umezuruke, N.O. "*The Land Use Decree 1978: A Critical Analysis*" ( Jos: Fab Anie Nig Ltd; 1989).
Abugu,U. "Principles of Land Use Act" ( Kaduna: Joyce Graphic Printers Publisher; 2008).
[35] *Land Use Act.* 1978, CAP L5, LFN, 2004.

captioned in the Law of the Federation Cap L1, LFN, 2004[36]. Many works have been published on this subject matter, few of which are worthy of mention here.

*J.A Omotola* in his book. "Essay on the Land Use Act, 1978[37]; wrote on various provisions of the Land Use Act. Among these provisions is section 1 of the Act which vests all land comprised in the federation in the Governor of the state and such shall be held in trust and administered for the use and benefits of all Nigerians. He noted further that sections 5 – 15 of the Act bother on the principle of land tenure system, power of the Governor and the local government in relation to land. *Omotola* [38]further observes that the Land Use Act by its tenor does not operate as a nationalization of land in the country; the rights of the citizen to enjoy his interest in land remains and his right to alienate their interest is only impaired to the extent that the land relates to land coming under Section 36 of the Act. This, in effect, not much has been altered in terms of tenure and citizens ownership interest on land.[39] The learned writer advances further that existing rights are preserved in its transitional provisions to be enjoyed as a right of occupancy. He sees these rights as permanent character and no time limit is set for their existence[40]. He also does not see the Governor being vested with absolute power, but limited powers. There is still supremacy of private property rights vested in the individuals but subjected to the need to obtain consent before any alienation of land. He argues further that if the Governor is the owner of all lands in the state, it would not have been necessary to insert Section 28 of the Act which gives the Governor the power of revocation[41].

On his part, *Fekumo*[42] shares the same line of thought with *Omotola* in his work when he asserts that Sections 24, 29 (3) and 35 of the Act recognize the various forms of ownership

[36] *Ibid*
[37] J.A Omotola "*Does the Land Use Act Expropriate*? JPPL (1985) Vol. 3 P. 1
[38] *Ibid*
[39] Omotola J.A,"*Tenth Anniversary of the Land Use Act* (1978/88) Vol. 8 No. 9 PP 4.
[40] Omotola J.A (N. 38)
[41] *Ibid*
[42] Fekumo J.F "*Does the Land Use Act Exprapriate?* A Regional (1987/88) Vol. 8 No. 9 pp 5 – 20.

before the Act; thus, customary right of occupancy as defined in the sense, pre-dates the Act. In his view, looking at the whole context of the Land Use Act, it will appear to one that there are three types of ownership; Customary ownership, customary right of occupancy, and statutory right of occupancy. That what has happened under the Act is that the Governor as trust-owner, has a radical title in the land which the real ownership still lies in the indigenous owners. Smith also agrees with the views of *Omotola* and *Fekumo* to an extent when he notes that "the whole Section 1 of the Act swept away all the unlimited rights and interests Nigerians had in their lands and substituted it therefore with limited rights in the form of a right of occupancy, the transitional provisions recognize and protect the existing rights in land in that limited form." However, *Smith*[43] agrees with the fact that what obtains presently under the Act is a user right which is less than ownership.

*Smith*[44] observes further that, with the advent of the Land Use Act, 1978, the ownership structure in Nigeria has been radically transformed. According to him, the radical title to all land within the territory of a State in Nigeria having being vested in the Governor of that State. What Nigerians enjoy are rights of occupancy. On the effect of the Act on Customary land tenure system in Nigeria, *Smith* observes that the conception of the Land Use Act as a piece of legislation is far from being an emasculation of the pre-existing system of customary land tenure rather, it is meant to solve the various socio economy problems associated with it; establish a uniform land policy to cater for the need of the society; eradicate the multifarious problems associated with the issue of title to land in Nigeria and ensure availability of land for agricultural and industrial development.

[43] Smith I.O. *Practical Approach to Law of Real Property in Nigeria* 2nd Ed./Lagos: Ecouratch Publishing Ltd; 007) p 78.
[44] *Ibid*

This research work disagrees with the opinions of *J.A. Omotola, Fekumo* and *Smith* on the ground that the power vested in the Governor by Section 28 of the Act, which allows the Governor to revoke certificate of occupancy, and statutory rights of occupancy, is at variance with the supremacy of private property rights recognized by the Act. This is so by the virtue of the provision of the Act which makes the need for the consent of the governor to be obtained as obligatory before any alienation of land can be valid. This position of obtaining the governor's consent before the alienation of land, negates the customary rights of occupancy, that pre-existed the Land Use Act which gives a holder of a land the right of ownership.

It is worthy of note to state that both Sections 1, 34 (2) and 36 (4) of the Act are contradictory. Section 1 says all land in all the states of the federation have been vested in the governor. On the other hand, sections 34 and 36 respectively, say that "where a piece of land is developed in urban and non urban areas respectively, such land shall continue to be held by the person in whom it is vested immediately before the commencement of the Act as if the holder of the land was the holder of a statutory or customary right of occupancy." If Section 1 attempts to nationalize all lands in Nigeria that would amount to taking away such lands from their former holders. It cannot therefore turn around to retain same rights as statutory or customary for holders in possession before the commencement of the Act.

*Sadiq*[45] in his work attempts to identify the land as well as the prospects of the Land Use Act, 1978. He mentions that the Land Use Act is the first and only legislation that has brought the land tenure system in his country under a uniform land policy. He listed the intendments of the Land Use Act to include; state ownership, control and trusteeship policy; right of occupancy or the leasehold policy; certificate of occupancy, or the leasehold policy; certificate of occupancy; prescription of discrimination against fellow Nigerians and revocation

[45] E.R Sodiq "*The Land Use Act of 1978, Appraisal problems and prospects*" *http/www.unilorin.edu.ng/studyprojlaw40ia168pdf. Accessed 25th October 2022.*

of right of occupancy under the Act. However, he observes that the Act came with its problems when it inserted Section 1 which bothers on trust concept into its provisions. Section 1 provides interalia "that all land comprised in the territory of any state in the federation shall be held in trust and administered for the use of and the common benefit of all Nigerians by the governor of the State." He goes further to identify the unfettered power of the Governor to designate certain areas as urban land, and as well as the attitude of the former owners of the land, are the problems plaguing the Land Use Act. According to him, one of the most serious of these problems was the difficulty in acquiring land by the government in major urban centres for national development because of land speculations, racketeering and high cost of compensation usually demanded by land owners whenever government needed land to execute its projects. This development prompted the Federal Government to set up the land use panel[46], 1977 with the aim to unify land tenure, streamline and simplify ownership of land in Nigeria. The recommendations of the panel were studied and duly adopted by Government and eventually gave way for the promulgation of the Land Use Act, 1978. He specifically refers to the Act in his work as the only piece of legislation that has brought uniform land policy in the history of Nigeria land laws.

Corroborating *Sadiq's* views on the Act, *Otubu*[47] harps on the importance of land to man. He opines that the life of man and that of the society revolve around land and its resources. His work makes reference to the United Nations Conference on Human Settlement (Habitat 11) 1996, where many countries committed themselves to promoting optional use of productive land in urban and rural areas and protecting fragile ecosystem and environmentally vulnerable areas from the negative impacts of human settlements. *Interalia* through developing and supporting the implementation of improved land management practice that deal

[46] Land Use Panel, 1977.
[47] Otubu, T. "*Land Reform and the Future of Land Use Act in Nigeria.*

comprehensively with potentially competing land requirements for agriculture, industry, transport green space, protected areas and other vital needs. He states further that no nation can fold its arm and allow its land management to fall to disarray.

*Otubu* goes further to assert that the need for the promulgation of the Land Use Act, 1978 was borne out of the necessity to harmonize the land tenure system in the country; to solve the problem of land speculation and the difficulty of government and individual for acquiring land for development purposes. However, he quickly adds that the Act is faced with variety of controversies among which, is the duration and extent of a right of occupancy obtainable under the Act particularly with reference to a deemed grant. He maintain that the Land Use Act does not make provision for the renewal of an expired certificate of occupancy, thus, giving the Governor absolute discretion as to whether the expressed grantee will continue to hold the land or not after the expiration of the time stated in the certificate. The implication of this is that, it will come to a point in time when the administration of the Land Use Act will fail particularly with respect to the administration of the land in possession of an express grantee. This will automatically lead to the increase of land in government possession and discretion at the expense of individual land ownership. Though, the government has not been compelled to grant the maximum duration of interest obtainable under the Act, it has not been known to grant a right in excess of 99 years with respect to express grant under the Act. This again means that it will come to a time when the security or proprietary value of the certificate of occupancy expressly granted will diminish when compared to that of a deemed grant, particularly where the deemed grantee possesses a registered conveyance prior to the land use Act. This is because, it will come to a time that the express grant (Certificate of Occupancy) will expire while the registered conveyance of the deemed grantee will remain sacrosanct as some is still recognized by the Act.

From the views of the scholars above, it is pertinent to point out that owing to the original intendments behind the promulgation of the Land Use Act, 1978, it was a lofty idea. However, a careful perusal of the Act and its operations since 1978 till date, will reveal that, that noble idea of the Act has since been defeated. It is on this note that this research will disagree with the opinions of the learned scholars above that the Act came to solve the problems of land speculations, racketeering and high compensation that resulted to the difficulty in acquiring land in Nigeria by individual and government for development purposes. The policy of land nationalization intended to provide adequate housing to the generality of the people, has failed. These problems are still staring at us boldly, thus calling for an urgent overhauling of the Act to allow for the provision of adequate housing for the teeming Nigerian populace and as well solve the problem of food security currently facing the nation. All these are achievable through the availability of land. Land is a part of man's destiny no doubt, it defines nearly all the sectors in life, agriculture, commercial activities and social harmony inclusive.

On the control and management of land under the Land Use Act, *Madaki A.M* and *Augustine R.A*[48] Posit in their work that before the introduction of the Land Use Act, the power of control and management under customary law was vested in the family and community heads.

According them, section 1 of the Act is concerned with the vesting of land in the state governor but there are lands that are not vested in the Governor, which include land vested in the Federal Government at the commencement of the Act and are outside the scope of the Governor's power in line with Section 44 (3) of the 1999 Constitution of Nigeria as amended. Section 297 (2) of the same constitution also vests all lands in the Federal Capital Territory in the government of the Federation. They agree with the position that while it is true that the Act

[48] Madaki, A.M and Augustine R.A. "A critique of the Governor's Powers of Control and Management of Land Uner the Land Use, 1998. Ahmadu Bello University, Zaria, *Journal of Comparative Law (2014) vol. 6 and 7, pp 149 – 167.*

preserves the right of private owners who owned land prior to the commencement of the Act, such interests have been reduced from absolute ownership to right of occupancy. As for the nature of trust created by Section 1 of the Act, they view as different from the trust known under the English law as being that the interest of the holder of a right of occupancy is always legal and the Governor cannot validly grant a right of occupancy in which a prior right of occupancy subsists in another person that has not been revoked, and that the holder cannot as well impose or enforce any of the duties of a trustee under a trust on the governor. They view the trust crated under Section 1 as a trust in ordinary sense which requires the governor to be honest and fair in his dealing with Nigerians in relations to land in the State. They maintained that in furtherance of the Governor's powers by section 3 which was previously in rural area, can become urban land, once it is designated by the Governor.

One thing that is clear in their work is the issue that may arise from this position of Section 1 is that if the Governor refuses to designate land in the state as urban and non-urban as the case with the FCT, Abuja or declared all parts of the State as Urban area as in the case of Lagos State. The scenario this will create is that local governments which are supposed to control and manage land within the non-urban areas are removed completely from the scheme of the Act. Thus in the words of *Amos Utuama* according to them to hold that the Governor has an "unquestionable power to designate or not, would make nonsense of the Local Government as envisaged by the Act and could not have been intended by the framers of the Act.

They note that the position of the Lagos State and the FCT, Abuja where all land is designated as urban as well as the decision of the Court of Appeal in *Joseph Una v. Atenda*[49] is erroneous. The Governor has power to constitute the Land Use Allocation Committee and the Local Allocation Committee for each local Government in consultation with local

[49] (2000) 5 NWLR (pt. 665) 244

governments by section 2, they note that the abuse relating to the revocation of Rights of Occupancy would have been considerably reduced if the Land Use Act had provided an effective procedure for the payment of adequate compensation in the event of revocation of Right of Occupancy. The Act, in spite of its ostensible compensatory provision, has left the assessment and quantum of compensation to be decided by the Chief Land Officers who are appointed by the Governor capriciously. The Governor determines the number of persons to be appointed which cannot be an independent and impartial Tribunal. They go further to state that the Act further complicates the matter by excluding the courts from entertaining cases relating to compensation under the Act by virtue of Section 47 (2) of the Land Use Act, 1978 which states that "No courts shall have the jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid under this Decree." The conflict of this provision of the Act with the provision of Section 44(1) (b) of the 1999 Constitution with regard to access to courts, has contributed immensely to abuses under the Act[50].

*Ogundare J.* in *Akinloye v. Oyejide*[51] maintains that the word "vested" in Section 1 of the Act has the effect of transferring to Governor of the State, the ownership of all land in the State. In the literal reading of the Act, the judge was of the view that the intelligible result is to deprive citizens of this country of their ownership in land and vest it in the respective state Governor. He rebutted the presumption that the lawmaker does not desire to confiscate the property or to encroach upon the right of persons as the provisions of the Act were clear and unambiguous. This position of the Act is also buttressed in the case of *Nirohacha v. Governor of Anambra* State[52] where Eso, JSC said that the tenor of the Act as a single piece of legislation

[50] Land Use Act, 1978, CAP L5 LFN 2004.
[51] (1981), HCJ/9A/83 of 17/9/81
[52] Unreported Suit No HCJ 19 – 183 decided in the High Court, Yero, Ondo State.

is the nationalization of all lands in the country by the vesting of its ownership in the State, leaving the private individuals with an in land interest which is a mere right of occupancy.

*Umezurike*[53] posits that section 1 of the Act hints at only the radical possibility, namely, the expropriation and nationalization of land. By this provisions, the Act altered the existing land laws (particularly in the Southern part of the Country) on the three fundamental ways; it removed corporate groups, families and chiefs from the trusteeship of land and replaced them with the state Governor, individuals interests in land which have expanded with economic development arising from the "oil boom" are now one of the occupancy and therefore fall short of the plenary. Consequently, the community's allodia interest in land are densed or frozen; and the Act broke local sovereignties and merged them into a single sovereign.[54]

In supporting *Umezurike*, *Mobogunje A.L*[55] asserts that the Act presents an absorbation of the rights of ownership of land hitherto enjoyed by Nigerians, at least in the Southern half of the century and its nationalization by government is inconsistent with democratic practices and the operations of a free market economic system. *Aluko* and *Aminu*[56] share the same view at the fifth Regional Conference of promoting land administration and good governance held in Ghana. The decree 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 tenure including access, successive duration and rents.[57] According to *Nwabueze*,[58] the meaning and

[53] Umezuruike , I. A. "Does Land Use Act, 1978 Expropriate? *Journal of Private Property Law (1986) 5 p. 61*
[54] Uchendu, C. "State Land and Society in Nigeria: A critical Assessment of the Land Use Decree, 1978" *A Seminar Paper, Institute of African Studies, Universities of Nigeria, Nsukka, 1979.*
[55] Mobagunje, A.L. *"Land Reform in Nigeria; Progress, problems and prospects*, http:www.siteresaces.woldbank.org. (Accesses, June 2023)
[56] Aluko, B.T and A.R. Amidu. *"Women and Land Rights Reforms in Nigeria* in http:www.fig.netpub/accurapapers/ts09/ts00/24alukoamidupdf (accessed 4th June 2023.
[57] SERAC, "*Implication of the Land Use Act in Lagos State*. In http:news.seract.org/SERAC-landuseact
[58] Nwabueze, B. "Nationalization of Land in Nigeria "*Paper delivered at the annual Bar Dinner, Onitsha Branch, 8th December (1984) P. 1*

effect of vesting all lands in the government is that private ownership is hereby abolished and the title of the former private owners transferred to government.

*Adebisi L. Raimo* notes that one of the problems of the Land Use Act is the misuse or abuse of Section 28 of the Act which deals with compulsory acquisition of land by government for public Use. For instance, commercial banks are uncertain as to the value of certificate of occupancy which they are being asked to take as security for loans, bearing in mind that these certificates can be revoked at the whims and caprices of the Governors. Similarly, the Act appears to hinder economic progress because of the unwillingness of and the inability of Banks and other financial institutions to give out loan on mortgage. This is because of the right of occupancy is revoked, a mortgage has no right of compensation as the definition of "holder" and "occupier" does not include a mortgagee.

In line with the views of the scholars above, the research work disagrees with the provisions of the Act that gives the State Governor absolute powers. With the vesting of lands in the Governor, individuals are divested of their lands. The State Governors wield too much power by the virtue of the Act. It is therefore the opinion of this research work that both sections 1 and 28 of the Act which provides for the vesting of all lands in the States of the Federation in the State Governors, and as well as the power of compulsory acquisition, be expunged in a possible overhauling of the Act. These powers conferred on the Governor by the Act have been largely responsible for the problem of housing in Nigeria. Many Nigerians have been rendered landless and others perpetual tenants because of these provisions of the Act.

According to *Kalbro Thomas*[59] changes of land use, property subdivision, ownership and rights can often be achieved by voluntary agreement, based on negotiations between buyer

[59] T. Kalbro. "*Private Compulsory Acquisition and the Public Interest Requirement*" (2007), http://www.fig.net/resources/monthlyarticles/2007/September2007/Kalbro (accessed 4th June, 2023).

and seller but property owners can be forced to surrender property and rights against their wishes. Thus, it is legally possible for a buyer to acquire properties/rights as a lower price than would probably have resulted from free negotiations with the seller. Fundamentally, then, the coercive rules are related to the amount of compensation to be paid. This price regulation, then, presupposes the existence of public interest, the more detailed implications of which have been defined through legislation and case law in different countries. He goes further to state that the sitting of many facilities – roads, railways and utilities, for example – is often more or less confined to certain places. In other words, certain specified areas of land are needed for the purpose, and so the buyer (Government) cannot approach any property owner whatsoever with a view to acquiring the necessary land on the open market. The seller, accordingly, has monopoly status in relation to the buyer. If then, compulsory purchase was not possible, these measures could be prevented by the owner refusing to part with his land. The owner of strategically situated land could frustrate measures which are desirable from community viewpoint. In other words, the owner would veto the implementation of a planned use of the land. One argument in favour of compulsory purchase legislation, then, is that it prevents the individual property owner from acquiring such power.

*Kalbro*[60] further states that in the situation described above, it is also conceivable that the property owner is not prepared to go the extent of refusing to sell on any account. But in order to agree to a sale, the owner, conscious of occupying a monopolistic situation demands a very high, "unreasonable" price. A second argument in favour of the legislation, is that it prevents a property owner from obtaining monopolistic profits by owning land, which happens to occupy strategic position. So the main reason for sanctioning compulsory acquisition is the buyer's (Government) need of certain specified areas of land, and the concomitant risk of his having to pay higher price than he would if there were more potential sellers, and also of the

[60] *Ibid*

cost of negotiations being unnecessarily high. The buyer's need of a certain particular area of land is commonly regarded as necessary precondition for the justifiability of compulsory acquisition but it is not the sole precondition. Finally, he opines that in order to legitimate compulsory acquisition, the purpose of the purchase has to be "profitable" in the view of society, i.e the value of the new land-uses must exceed the value of the existing use.

This research agrees with the position of *Kalbro* on the argument in favour of compulsory purchase legislation that prevents the individual property owner from acquiring monopoly power, thereby refusing to part with his land. It helps to prevent a property owner from obtaining monopolistic profits probably in a higher price for property that occupies strategic position. No doubt, the Act was passed to prevent private selfishness as against public interest.

In a research carried out by *Food and Agricultural Organization of Land Tenure*[61] "compulsory acquisition is the power of governments to acquire private rights in land without the willing consent of its owners or occupant in order to benefit society." It argues further that in compulsory acquisition, there is the need for balance between what the public needs for land, the provision of land tenure security and the protection of private property rights. Providing for such a balance has led to limitation on the part of government in compulsorily acquiring land to compensate individuals on one side while the public also takes lands. It was further observed in the FAO land tenure studies, that compulsory acquisition if not properly managed, may lead to problems such as reduced tenure security, reduced investment in the economy, weakened land markets, opportunities created for corruption and the abuse of power, delayed projects as well as inadequate compensation paid to owners and occupants.

[61] FOA Land Tenure Studies 10, "*Compulsory Acquisition of Land and Compensation*", in http://www.fao.org/docrep/011/10506e0.html (Accessed 27/11/2022

According to *Umeh, J.A,.*[62] compulsory acquisition of land is the coercive taking of private lands (individual or communal) or estates and interests in those lands for public purposes. Compulsory land acquisition is an activity dominated by the government transferring the land ownership or interest in land from privately owned to state owned where the public interest is involved.

*Bell. A*[63] also observes that without the power to force private property owners to transfer their title, the government many desirable projects would be undermined by various holdouts. Without a mechanism like eminent domain, these desirable projects would grind to a halt.

*Omotola*[64] observes that compulsory acquisition has its other side. For instance, the land owner is compelled by law to surrender the land together with all rights and privileges attached to it, to the government. Thus, apart from dispossessing the owner, it also imposes very severe hardships on the original landowners in the form of total extinguishment of means of livelihood. *Omotola* goes further to identify other problems to include : inaccurate enumeration of assets; lack of clear definition of assets for payment of compensation; inadequate and untimely compensation; difference in compensation for annual versus perennial crops, and Non-Compensation of acquired land with access to adequate land elsewhere.

This research agrees with the position of *FAO land tenure studies*, and *Umeh. J.A,. Omotola*, on the payment of compensation for land by government for public purpose. The compensation paid to dispossessed owners will go a long way to cushion the effect of the dispossession and will also help to curtail the conflicts that often arise from aftermath of

[62] J.A Umeh, *Compulsory Acquisition of Land and Compensation in Nigeria* (London Sweet & Maxwell: 1973)
[63] A,. Bell, "*The Hidden Function of Taking Compensation*" in http://www.ssm.com/abstract-1569416 (Accessed 27/11/2022)
[64] J.A., Omotola, "Compensation Provision of the Land Use Decree." *Nigerian Bar Journal, (1980), Vol. 16.pp 37-40*

compulsory acquisition. Sometimes, in many instances where the rights of the people to land have been curtailed, there have been dire consequences like poverty, hunger and landless groups among the people whose sustenance as peasant farmers has been adversely affected. If the issue of compensation is not properly handled, it can result in total dispossession and displacement of people. It is worthy of note that although, government pays compensation to original landowners for crops, economic trees and buildings, the compensation is often inadequate and sometimes unnecessarily delayed with inflationary losses owing to devaluation.

Section 28 of the Act, according to *Babalola*[65] gives the governor the power to revoke a right of occupancy for overriding public interest or for a breach of any of the provisions of the Certificate of Occupancy, but a lot of injustice has been perpetrated under the provision for overriding public interest. *Babalola* notes further that, although the Act clearly defines what constitutes overriding public interest, government officials have oftentimes substituted their personal interest for that of the public interest in several cases of acquisition.

*Landford*[66] examines power relationships in compulsory land purchase from grassroots and human rights perspective and suggests that compulsory acquisition proceeds rapidly where the political, economic and legal power of those affected is weakest. Within the last decade, large scale public infrastructure projects – dams, roads, electrical networks, major events like Olympics, have resulted in millions of people being forcibly evicted. Also the definition of 'public purpose' is increasingly stretched to include private purposes. This research agrees with *Landford's* position on the definition of public purpose being converted to private purposes. Many cases abound as seen from the Courts where the

[65] A. Babalola, *How Land Use Act Impedes Socio-Economic Development*" in http://www.ijawmoitor.org/news.php?ct=3&article=158 (Accessed 27/11/2022)
[66] M. Landford and U. Halm, " *Expropriation and Eviction: A Human Rights and Grassroots Perspective*" (2007) in http:///www.tkk.Yksikot/Kintelsto/FIG/pdf-fils/06092007

Government give out lands to private persons or corporate bodies in which Government owns shares, stock or debentures or use such land acquired compulsorily for their personal purpose.

*Justice Innocent Umezulike*[67] observes that typically, the definition of public purpose for which such property could be requisitioned or revoked under section 28 of use or exclusive use by government or its agencies and parastatals but also the use of registered company in which government has shares, stock or debentures as well as use for or in connection with economic, industrial or agricultural development. He goes further to state that it is therefore not an abuse of statutory power to revoke a right of which a private company is holder and grant same to another private company if the state has shares or economic interest in the latter company. He further contented that the Act only forbids a revocation of right of a private company over land only for the governor to grant the same right to another private company in which it has no share or economic interest.

*Nwano T.C* [68] observes that the importance of land in realizing the basic necessities of life is indispensable. Thus, land has a profound and undoubted religious significance in most African societies and as such has been described as a deity, the source of all life, of food and fertility; the custodian of social and moral norms. He defines compulsory acquisition as the power of the government to acquire private rights in land without the willing consent of its owner in other to benefit the society. The process by which Local and National Governments obtain land and premises for development purposes when they consider it to be in the best interest of the community. He states further, that the term compulsory acquisition has a number of connotations which include compulsory purchase, expropriation, land take-over or eminent domain. That in all circumstances, the owners or occupiers are denied their proprietary rights

[67] Section 51, Land Use Act, CAP L5, LFN 2004.
[68] T. C Nwano, "Compulsory Acquisition of Land in Nigeria: An Analysis of its process and procedures. *"BIU Journal, (2015), Vol. 1, No. 1. P 474 - 498*

for overriding public interest or public benefit. He maintains that sometimes, the acquisition meant for direct government use for public purposes are often used for public-private use.

His work points out that before the commencement of the Land Use Act, the Public land Acquisition Act and its state counterparts regulated compulsory take-over of land by the government. These laws empowered both the Federal and State Governments respectively to compulsorily acquire land for public purposes when necessary for an estate in fee simple or a term of years, as the case may be. He notes that Government compulsory acquisition introduced under the Act is an inexorable and inherent component of a right of occupancy; that all holders of rights of occupancy whether customary or statutory, deemed or actually granted by the State, enjoy their rights subject to their inherent revocability any time within the provision of the Act. [69] He sees it as odd to contend that the pre-owners of the land are not subject to revocation of the land provision of the Act and as such cannot have their right revoked by the Governor.

He further highlights that the power of revocation is given exclusively to the State Governor which he must exercise by himself or his delegates. It is beyond the competence of a Local Government to purport to exercise the power of revocation over land in the non-urban areas within its jurisdiction and that it is not envisaged in the scheme of revocation at all. If the Local Government must enter upon and use land within its area of competence, it must get the Governor to revoke the rights of occupancy existing over the said land for its public use.

According to him, the provision of the Section [70] provides for two variants of the power to revoke a right of occupancy; non penal revocation for overriding public interest and penal revocation for failure of the holder to fulfill the terms of the grant in one way or the other. revocation under the first leg will entitle the holder to compensation as provided in Section

[69] *Ibid*
[70] Land Use Act, 1978 CAP L5 LFN 2010.

28,[71] while revocation under the later regime confers no compensation on the holder under the Act, Revocation under Section 28 (1) – (3)[72] must be premised on overriding public interest for its validity, while revocation under subsection (5) needs not be premised on any overriding public interest but on the terms of the grant and on the provisions of the Act. The revocation under Sub-section (4) of section 28[73] is only expected to meet the requirements of defined purposes.

His work states that three institutions are empowered to revoke rights of occupancy under the Act, which include the Local Government, the State Governor and the Federal Government. Local Government in respect of land in non-urban areas can grant customary rights of occupancy for agriculture, residential, grazing and other purposes ancillary to agricultural purposes as may be customary in the area, the importation of which is that it cannot lawfully grant a customary right of occupancy in respect of land in the urban area as stated in the cases of *Gankon v. Ugochukwu Che. Ind. Ltd*[74] and *Dabo v. Abdullahi.*[75] The Governor is another authority vested with the power to revoke a right of occupancy for overriding public interest with no restriction as to whether the land is in the urban or rural areas. In his view, a Governor's power of revocation extends to all land within the Governor's domain, developed or undeveloped, customary or statutory right of Occupancy. However, he maintains that; the Governor's powers do not extend to the Federal lands or lands held by agencies of the Federal Government in the State in accordance with Section 49[76] and as seen in the case of *Una v. Atenda*[77]

[71] *Ibid*
[72] *Ibid*
[73] *Ibid*
[74] (1993) 6 NWLR (pt. 2957) 55.
[75] (2005) ALL NWLR (pt. 55) 1039.
[76] Land Use Act 1978 CAP. L5 LFN 2010.
[77] (2000) NWLR (Pt 665) 244

He goes on to say that the Federal Government is the third institution and that the power of the Federal Government is in two-folded. One may be exercised directly by the President or his designate and the other indirectly through a Governor in line with Section 51 (2)[78]. In his view, the combination of Section 49 and 51 (2)[79] of the Act has the effect of curtailing the power of the Governor to revoke a Right of Occupancy in respect of Federal lands as defined by the Act in his State and Land in the Federal Capital Territory. That as a matter of fact, a Governor can only acquire a Federal land or that of its agency for a public purpose if, and only if; the other party consents to the acquisition.

He identifies Section 28 (4)[80] of the Act as the second variant of the Federal Government's power of revocation. That if the Federal Government is desirous of revoking a right of occupancy in respect of a land in a State whether or not in an urban area for a public purpose, it may do so indirectly by issuing a notice stating the fact through the Governor of the State. The attention to procedures of compulsory acquisition is important if g the exercise government's power is to be efficient, fair and legitimate.

The Act expressly states the procedures to be followed prior to the revocation of a holder's right of occupancy in sections 28 and 29[81]. He submits further that though the Governor's power to revoke is not contestable, regard must be had to the laid down procedures, failure of which will nullify the revocation. The Governor cannot revoke for no reason, his reason must be specified in the acquiring document and such reason is strictly for an overriding public interest or for a public purpose. Merely stating in the notice of revocation that the compulsory acquisition is for 'public purpose' absolutely does not satisfy the requirements

[78] Land Use Act 1978 CAP. L5 LFN 2010.
[79] *Ibid*
[80] *Ibid*
[81] *Ibid*

under the Land Use Act of 1978. That the public purpose must be made public, that is to say it has to be specifically stated and communicated to the land owner.

*Nwano* concludes in his work by stating that the reason for insistence on the strict observance of the rules of procedures during revocation of right of occupancy is in two folds; firstly, the Nigerian Constitution 1999 as amended 2011 guarantee rights of individuals toll own interest in property and protect against such proprietary interest being unjustly denied or taken away as provided for in sections 36 and 44. Secondly, case law has lent its voice to strict compliance with procedures laid down for valid revocation of proprietary interest. From the above opinion of the scholars, it is clear that the main aim of compulsory acquisition is to serve public purpose. However, it has often been observed that the intention behind the taking-over of land for public purpose by government is often defeated due to the ambiguity that arises from it. Such intended public purpose is often converted to private purpose and the lands compulsorily acquired are handed over to private companies to benefit private individuals. The controversy surrounding such change of hands becomes contentious when competing. This research though does not disagree with their contributions fully, proposes that the use of compulsory acquisition of land for private development should undergo a public scrutiny that ensures that the balance between the public need for land and the protection of private property rights is considered the compensation should be adequate and commensurable as well.

*Scott, L.J.,*[82] contends that the owner compelled to sell his property through compulsory acquisition has the right to receive a money payment not less than the loss imposed on him in the public interest, but on the other hand, no greater. However, subject to certain provisions, compensation for compulsory acquisition is treated under the 1917 Statutes, and the Nigerian Constitution of 1999 reflect matters affecting fundamental human rights. Section 40 (1) of the same Nigerian Constitution states: "No movable property or any interest in an immovable

[82] Per Seen, L.J., *Horn v. Sunder Land Corporation (1941) 2* K.B. 26. P.42

property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by law that, among other things: (a) Requires the prompt payment of compensation thereof; and (b) Gives to any person claiming such compensation a right of access to the determination of his interest in the property and the amount of compensation to a Court of law or tribunal or body having jurisdiction in that part of Nigeria."

*Adedapo Adeniran*[83] states that it is unfair that government should take over without compensation for capital invested in land ownership when capital invested in other fields for example government loans, bonds, companies, shares in industries and commercial businesses are left untouched. In his contribution, *Denyer Green*[84] states that taking land compulsorily for public projects, such as road and airports, is understood and accepted as a proper use of powers of acquisition. There is resistance to the use of these powers where a private undertaking is able to profit from the taking of land at a price which disregards the value of the land to the project.

*Nuhu, M.B.,*[85] points out that claimants whose interest are revoked are always at the losing end and usually left in a situation far worse than they were before the revocation: thus defeating the aim of compensation, *Nuhu*[86] concludes that the implementation of Public Land acquisition and payment of compensation in Nigeria has generated controversies, lapses and disputes in the past. Inadequate revocation notices; inadequate compensations; illiteracy of Claimants; inadequate funding of the compensation exercise; non-payment of interest on delayed payments, problems of conflicting claims; use of low rates of assessment of economic

[83] A. Adeniran "*The Futility of the Land Use Decree, 1978*" (cited in Oruteyi in his inaugural lecture titled "Title to Land in Nigeria: Past and Present")
[84] B. Denyer Green, *Compulsory Purchase and Compensation,* the 8th ed. (London: Estate Gazette, 2005). Pp 3, and 110.
[85] M.B Nuhu., "*Compulsory Acquisition and Payment of Compensation in Nigeria: A case study of the Federal Capital Territory (FCT) Abuja*" In http://www/ojs.tsv.n/index.php/njsarticle/view245-1 (Accessed 4th June, 2023)
[86] *Ibid*

trees & crops; non-enumeration for some crops/economic trees; problem or identifying claimants (owners) disallowance of surveyors to represent claimants; communication problem; non-payment for undeveloped land; corruption of Government officers etc. Nuhu further observes that when land is compulsorily acquired for a just motive, there should be prompt and adequate payment of compensation that will better the lots of the concerned parties in question in order to enhance their livelihood and contributions to the economic and social activities of the society.

In a collaborative research by *Nuhu* and *Aliyu,*[87] aimed at reviewing the compulsory revocation of communal titles by the Governor of Niger State Nigeria within the realms of statutory procedures for just and fair acquisition of communal land and payment of compensation. It was shown that "private convenience" does not translate to "public purposes" or "public infrastructure uses", thus, the compulsory acquisition of communal lands for private purposes become void. It was recommended that a radical harmonization of all conflicting laws on compulsory purchase and compensation should be effected as it will enhance the building of logical and sound valuation basis that would ensure that a person deprived of his property through compulsory purchase is entitled to no more and no less than what he is being deprived of. Beyond the local shore, *Rowan-Robinson and Hutchison*[88] set out to establish the purpose of compensation arising from the compulsory acquisition of commercial premises for a city centre redevelopment scheme in Scotland. Findings from the study identified: delays, blight, the loss of goodwill, bank charges as disturbance claims, extinguishment of business, incurred expenses on relocation pending time of compensation payment, amongst key indicators to determine adequacy of compensation. "Most of the claimants expected that, as they were

[87] MB Nuhu, and AU Aliyu., "Compulsory Acquisition of Communal Land and Compensation Issues: The Case of Minna Metropolis" in https://www.fig.net/pub/fig2009/ppt/ts07c/t507e-nuhualiyu_ppt_338.pdf
[88] Rowan-Robinson, J. "Compensation for the Compulsory Acquisition of Business Interest: Statisfaction or Sacrifice" *Journal of Property Valuation & Investment. (1995)* Vol. 13 No 1 P. 44-65 in http://dx.dol.org/10.1108/14635789510077287 (accessed 4th June, 2023)

experiencing some loss in the wider public interest, there would be recognition of and sympathy for their plight. However, they were uniformly disappointed." Most of the claimants were dissatisfied with both the process and settlement.

*Nwano, T.C* and *Bello, J.B.,*[89] opine that one of the commonest abuses under the Land Use Act relates to the power given to the governor to revoke certificate of occupancy, stating that public purpose has been enlarged to include "use by a body corporate directly established by law or a body corporate registered under the Companies and Allied Matters Acts[90] in which Government own shares, stock or debentures."[91] They note further that, this negates the previous position of courts[92] that land cannot be compulsorily acquired for use of an incorporated company or a private institution. In respect to compensation provision under the Act, they observe that the abuse relating to the revocation of Rights of Occupancy would have been considerably minimized if the Land Use Act had provided an effective procedure for the payment of adequate compensation in the event of revocation of Right of Occupancy. The Act has not done this, in spite of its ostensible compensatory provision but left the assessment and quantum of compensation to be decided by the Chief Land Officers which is a body consisting of such number of persons as the Governor may determine which cannot be an independent and impartial Tribunal.

They went further to state that the Act further complicated the matter by excluding the courts from entertaining cases relating to compensation under the Act by virtue of Section 47 (2) of the Land Use Act, 1978 which states that "No courts shall have the jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation

[89] T.C Nwano and J.B Bello. "The Land Use Act of 1978: Reflections on its objectives and the imperative for a Repeal" *A Journal of Contemporary Legal Issues (2013) Vol. 4, No. 4*
[90] CAP C20, Laws of the Federation of Nigeria, 2004.
[91] Section 50 (1) (b), Land Use Act, CAP L5 LFN 2004.
[92] Section 50 (1) (b) Land Use Act. CAP L5 LFN 2004.

paid under this Decree." Stating that his conflict with the provision of Section 44(1) (b) of the 1999 Constitution as amended. They went on to hold that the inadequacy of compensation under the Act and obstruction of access to courts have contributed immensely to abuses under the Act.

This research work agrees with the opinions of the scholars as expressed above that compulsory acquisition of land for public purpose should be utilized as such. A deviation from it and converting it to private use as against the original intention of public use will amount to abuse of the entire exercise. In this, there should be proper measure of ensuring full compliance with the purpose of compulsory acquisition. Land forms part of man's entire existence and its importance to man cannot be treated with levity. Thus, it will be an injustice to deprive one of his land for public interest and reinvest same in a private individual or company for private use.

**2.4 Discussion on the Gaps**

The works of the authors subjected to review in this research, have so far revealed that little or nothing has been done on the problems of housing that the Land Use Act 1978, has created. thus this research focuses on the challenges posed by the Land Use Act 1978 to the provision of adequate housing in Nigeria. this is done through a critical review of the land use Act with a view to pointing out the defects that pose challenges to effective housing delivering to the teeming Nigeria populace.

the highlight of the literature review have shown that the land Use Act 1978 is the first and only legislation that has brought the land tenure system in Nigeria under a uniform land policy. However the Act has not been able to address the housing problem prevalent in Nigerian society. This is largely due to the inefficiencies and controversies plaguing is various provisions. The gaps to be filled in this research are mainly captioned in chapter three and four of the study which border on the administration and management of land in Nigeria and the

effects of the challenges of the Land use Act 1978 on the provision of Adequate Housing in the country.

## CHAPTER THREE

## LAND MANAGEMENT UNDER THE LAND USE ACT AND ITS PROBLEMS

### 3.1 Intendment of the Act

The policies intended by the Land Use Act which are also referred to as reforms and innovations for the purpose of this study, shall include the following;

### 3.2 Uniform Land Policy

The Land Use Act 1978[1] can be described as a watershed in terms of land tenure system in Nigeria. it is the first legislation that has brought the land tenure system in this country under a uniform policy. No doubt, they were series of policies and legislations on land before the promulgation of the Act in 1978, but non was poignant enough to address the issues of land that presented themselves as glaring realities. The Southern part of Nigeria, for instance, was plagued by endless litigations arising from land disputes because of lack of uncoordinated and formalized tenurial arrangement. This became a clog in the wheel of economic development. The promulgation of the Act was able to unify the various laws relating to land tenure in Nigeria. Thus, qualifying a piece of legislation called the "The Land Use Act." The various state laws that pre-existed the Act, were done away with. This development brought about a dramatic change in land tenure system in Nigeria by reducing areas of conflict. The realization of this was aimed at the enactment of a legislation vesting land in the Governor of a State. With the Governor in charge, land is brought under the firm control of the government, thus, reducing the nefarious activities of land speculators that held sway in the country. According to Nigerian former President, Shehu Shagari, "it has harmonized the land tenure system in this country and has eased access of government land[2]." This development has brought a great relief to both litigants and the courts, and as well as the entire citizenry. Also commenting on this, *Jakande*[3]

[1] The Land Use Act, 1978, CAP L5, LFN 2004.
[2] Daily times" May 12th 1988
[3] Jakande, L. "*National Workshop on the Land Use Act, 1978*" (University of Lagos; 1981).

puts it "any appraisal of the policy of the Land Use Act, it is the first time in this country that any government has undertaken an exhaustive and comprehensive review of land policy in all its ramifications, and has come out with clear-cut decisions, law and regulations.

### 3.3 State Ownership, Control and Trusteeship Policy

Absolute control and ownership of land is one of the policies intended by the Land Use Act in Land Tenure System in Nigeria. The idea is to nationalize land in such a way that the absolute ownership and control of land in Nigeria will no longer be within the powers of the communities, families or individuals, but the government. Section 1 of the Land Use Act states:

> Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation is 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[4].

The concept of State trusteeship for the entire country, is to take away the ownership of land from the individuals. This concept has therefore divested the individuals of the ownership of land and vested same in the governor who shall act as a trustee of such land for all Nigerians. The former Northern Nigeria under the Land Tenure Law, the state ownership of land as well as customary rights of the natives were duly recognized thus, creating a dual system of land tenure. This led to difficulty in interpretation and implementation. However, under the Act, the ownership concept is simplified – the Act vests the radical title in land in the Governor as the trustee and the rights of occupancy in the people. This position was judicially given air to in *Abioye* v *Yakubu*[5] (Supra) and Ogumola v. Eiyekale[6].This view is also supported by Smith

[4] Section 1 of the Land Use Act
[5] (1990) 4 NWLR (pt 146) 632 at 647
[6] Smith I.O. *Law of Real Property in Nigeria* (Lagos: University of Lagos Press; 1995).

when he observed that with the idea of the Land Use Act, 1978[7], the ownership structure has radically transformed. He stated further that the radical title within the territory of a State in Nigeria having being vested in the Governor, what Nigerians enjoy are the rights of occupancy so that the ownership concept in land in Nigeria today may be construed in terms of right of occupancy.

*Oputa JSC* as he then was noted in *Safuratu Salami & Ors v. Eniola Oke*[8] that… the innovation introduced by the Land Use Act was to divest claim to a right of occupancy.

It should be noted that the Land Use Act by its policy of trusteeship is different from the paternalistic system of land tenure adopted in the former Northern Nigeria which allowed members of ethnic groups the use and occupation of land in discrimination against members of other ethnic groups. The concept of trusteeship is aimed at securing the fundamental objectives of national policies and proscribes discrimination in land matters.

The only way of realizing these objectives of national policies on land, was to vest all land comprised in all the state other than Federal land[9], in the Governor of the State for the use and benefit of all Nigerians. The following are the principles of the National policies.

a. The maximum interest the citizen is allowed in land is right of occupancy, but the developer owns his improvement of the lands[10].
b. Dispositions are subject to control without reference to ethnic origin of the transferee.
c. Private land rights are subject to and must give away to overriding public interest and securing of tenure is depended on land use.

The essence of this policy is to facilitate government's access to land for development purpose. Thus it was held in *Makeri v. Kafinta*[11] that under the Act, a legal notice that the entire

[7] Land Use Act, 1978, LFN, CAP L5.
[8] *Ibid*
[9] Section 49 of the Land Use Act, 1978
[10] Section 1, 5, 6 and 15 of the Land Use Act.
[11] (1990) NWLR (pt. 163) 411 at 419

land has been acquired by the government for public purpose without any further assurance would dispense with any certificate of title. This is so, especially now that all lands in the state's territory have been vested in the Military Governor by Section 1 of the Land Use Act, 1978[12]. No doubt, the state ownership and control of land by the trusteeship arrangement, has put the activities of land speculators to check. The speculations in land that was largely responsible for the astronomical rise in the value of land, especially in urban areas, has been checkmated. This has further stabilized the value of land as speculators have been shown their way out of business. The policy has succeeded in making land available for both the state and Federal governments in realizing their commitments to public sector housing, infrastructural developments and the implementation of conservation schemes. The policy has secured for every Nigerian a piece of land within his financial means. Finally, the policy has drastically reduced the incidence of land disputes among Nigerians.

### 3.4 Planned Development and Environmental Protection Policy

One of the intendments of the Land Use Act, is physical or town planning which comprises of master planning of urban areas and local planning of lay-out development plan or site lay-outs. The physical or town planning is described as the wise and most optimum use and management of the resources as well as the direction and control of an area. This is one in such a way that will efficiently promote and safeguard the health, safety, convenience, economic, cultural, social and general welfare of the people and the amenities of a given area – small or big. It is worthy of note that before the enactment of the Land Use Act, 1978, people used land randomly by building without proper planning, but all that changed with the enactment of the Act. Although, there is nowhere in the Act where town planning is expressly mentioned, but a careful perusal of the Act, reveals that some physical planning terminologies

[12] Section 1 of the Land Use Act.

are stated in the Act. For instance, "urban areas", "Resettlement of person affected by the revocation of rights of occupancy", "Developed land," "underdeveloped land," "erection of any building," "wall fence or any other structures upon any land" "Contravention"[13], are clear indicators of town planning.

Under the Act, some areas in the State are declared as urban areas where any person has the right of occupancy of not more than half hectare (1.2 acres) underdeveloped land that can be used for all "purposes.[14]" "Establishment of both State and Local Governments Allocation Committee[15]. In non-urban areas, the Governor has the power to grant a right of occupancy to a person on '400 hectares' (984 acres) of land prospecting for building materials like stones, gravel[16] e.t.c. The local Government has the power to use up to '500' hectares (1,235 acres) for 'agricultural purposes' and up to '5,000 hectare' (12,355 acres) for 'grazing purposes'. If any local government wants to grant more than the above to any person, it must obtain the Governor's consent before doing so. No person or group of persons has the power to subdivide or lay-out any land above half hectare (1.2 acres) in any urban area and transfer any plot therein to any person without the consent of the Governor[17]. This means that no person or family or company e.t.c can lay out any land more than half hectare in any urban area and submit same to the Governor for 9 as was the practice before the promulgation of the Land Use Act in 1978. 'Contravention' in town planning, means an illegal or unauthorized development without an approved building plan. Section 43 of the Act[18] frowns at any structure erected anywhere above or underneath the ground without any approval. The national policy on land has helped town planner to put land in beneficial uses and bring harmonious relationship among the people in an area or state. The policy has also succeeded in eliminating the activities of speculators that

[13] Section 1 of the Land Use Act
[14] Section 5 (1) (a) 34 (15) of the Act
[15] Section 2 (2) (a) (5) of the Act
[16] Section 12 of the Land Use Act
[17] Section 34 (7) of the Act
[18] Section 43 of the Act

brought untold hardship on land developers. Finally, by physical planning under the Act, freehold interest in land has been cancelled since such interests have become leasehold interest for a limited period of time as from 29th March, 1978.

The Land Use Act, 1978[19] introduced the principle of Land Use tenure system in Nigeria. Under the Act, the right of occupancy introduced is construed on the bases of securing for all Nigerians the use and enjoyment of land as well as the national fruits thereon. This position of the Land Use Act is contrary to the freehold system under the common law – the Land Use Act emphasizes the utilization of land, while the freehold system protects title to ownership of land. The Land Use Act has introduced the principles of effective utilization of land into the Nigerian land tenure system.

The Act identifies four aspects of land use policy that are needed to be distinguished. The control of the manner in which land is used; the obligation imposed on the right holder to utilize his land and the consequence of breach of these obligations. The third one is the effect of occupation and use on title. While the fourth one is the protection that the law accounts to the developer which may be expressed in terms of the incentives to develop land and the guarantee of his rights to the unexhausted improvements therein.

### 3.5 Right of Occupancy or the Leasehold Policy

The Land Use Act, empowers both the state and local government to grant rights of occupancy, in appropriate cases which could either be statutory or customary rights of occupancy. It is statutory if granted by the state and customary if granted by the local government. Both statutory and customary rights of occupancy can be expressly granted or granted by the operation of the law.

By vesting all land in the territory of each state in the Federation in the Governor of each state, the radical title to land is now inherent in the State. However, by the policy of right of

[19] *Ibid*

occupancy which is equivalent of a leasehold interest in land, a claimant is entitled to a declaration of title to a right of occupation and use of land. This was the decision in Madam Safuratu Salami's case. A right of occupancy is a possessory interest in land which is devoid of the concept of absolute ownership or radical title by virtue of Section 1 of the Act[20]. A statutory right might be granted for a term of year under section 8 of the Act[21]. As a proprietary interest, it confers possession on the user and this possession is exclusive against all other persons except the Governor[22]. Some of the rights, powers and privileges which a right holder enjoys with reference to land include the following;

a. The use, occupation and beneficial enjoyment.
b. Possession
c. Disposition i.e the right is transmissible.

The right holder exercises these rights for a fixed period in some cases or an indefinite period in others[23]. He is entitled to a document called a certificate of occupancy as the evidence of his title to the Land[24], and this certificate is a registered instrument. The right of the holder to peaceful enjoyment of land and improvement therein cannot be indiscriminately infringed upon at the instance of the Governor or other authorities. Thus, these rights of enjoyment, of property possession thereof and security of interest are constitutionally safeguarded.

On the whole, the policy of right of occupancy or leasehold policy is a system intended by the Act to unify and simplify the land tenure system in Nigeria by a way of making land available for developmental purposes. The principle of the right of occupancy guarantees the right holder security of tenure subject only to the principle of overriding public interest. The holder of a right has a special property in his improvement to the land for which he is

[20] Section 1 of the Act
[21] Section 8 of the Act
[22] Section 14 of the Act.
[23] Section 8 of the Act
[24] Section 9 of the Act

guaranteed compensation on the revocation of his right of occupancy. He is also permitted to dispose of the land or improvements therein but with the approval of the appropriate authority[25].However, he is not permitted to fragment his holding into uneconomic portion either intervivos or on death.

### 3.6 Land Holding System in Nigeria Prior the Land Use Act, 1978

Prior to the Land Act, 1978, Nigeria operated three land tenure systems viz: Customary, non customary and special system of land tenure. The last one was applicable in the former Northern region of Nigeria. These laws and systems as practiced assumed different shapes.

### 3.7 Customary System of Land Tenure

It is a system of landholding indigenous to the people, but varied according to the different customs. The system was straight and free from external influences and judgments. The evolution of this system and the various principles regulating it, exhibit the historical credentials rooted in the custom and tradition of the different ethno cultural grouping in Nigeria over a period of time[26].

The principles of customary system of land holding is that land belongs to the villages, communities or families with the chief, community or the family head as the "manager" or "trustee" holding land in trust for the use of the whole community or family. Title to land under customary law, is vested in the corporate unit; land cannot be owned by an individual.

This position was clarified in the case of *Amodu Tijani v Secretary of Southern Nigeria*[27] where the Court observed that, the basis of ownership under customary law is communal ownership. The court held that, land belongs to the community or family and that the concept of individual ownership is alien to native idea. This means that, no individual can lay claim to the ownership

[25] Section 15 of the Act
[26] Smith I.O; "*The Law of Real Property in Nigeria* (Law Centre, Lagos State University, 1995).
[27] [1921] 2 AC 399

of land corporately owned, the individual's right is limited to the use and enjoyments of the land and as such, cannot alienate same without requisite consent. This position was also buttressed in the case of *Eze v Igiliegbe & Ors*[28]. According to *Oluyede*[29], Customary system of land tenure is a collective asset against an individual claim;

> group ownership in African Context is an unrestricted right of the individual in the group to run stock on what is held to be the common asset of land; the right of all in the group to claim support from the group's land; and the understanding that absolute ownership is vested in the community as a whole.

It is noteworthy that the Chief, village or family head in the exercise of his power of control and management of land, is often regarded as a "trustee". He is a caretaker performing an administrative function in a representative capacity. However, the concept of this trusteeship is different from the English Trusteeship. Unlike the trustee in English law, the title to land is never vested in him, but in the community or corporate unit.

It is also worthy to note that the trio of *Elias*[30] , *Cooker*[31], *Bensti-Enchill*[32] and among others have disagreed with *Lord Haldein* in *Amodu Tijani's* case (Supra). They observed that the concept of individual ownership under customary law, is not foreign to naïve notion. In their view, individual ownership under customary law forms basis of either communal or family ownership in land thus, the concept of gift intervivos and devolution of his property on his children when the founder of the family dies, affirm the concept of individual ownership

[28] Eze v Igiliegbe & Ors
[29] (1921) A.C. 199 at p. 404.
[30] Elias, *Nigerian Land Law* (London: Street and Maxwell; 1971)
[31] Cooker, *Family Property among the Yoruba* (Street and Maxwell; 1966)
[32] Bensti-Enchi; *Ghana Land Law,* (Street and Maxwell; 1964) p. 81

under native and customary land law. One feature that is very peculiar to the system is common ownership.

The customary land tenure and law was characterized by ownership problem which in turn created problem for many unsuspected purchasers. Many Nigerians spent their hard earned money to purchase landed properties but only to discover later that they bought from those without valid title in such property. Thus, Verity noted in *Ogunbambi v. Abowaba*[33], "that among owners that sprang up were dishonest in the manner they deliberately swindled the people all in the name of buying land." This view was corroborated by Adigun when he remarked that "the means of verifying the authority or otherwise of the title of the family was not in existence." In the same vein, the Europeans after colonizing Nigeria did not also find it easy with the customary land law in terms of acquisition of land. The entire system was seen very disappointing to the Europeans who wanted to commercialize land in Nigeria. They likened the system to as archaic, primitive and confused. One of the serious allegations of the unsatisfactory nature of the Nigerian customary Land law was the inalienability of land. This was seen as a serious inhibition on the right of an owner of land. Another strong criticism of the Europeans of the customary land law was that it was unwritten and its principles unascertainable like the common law. This factor was responsible for the introduction of the English land law into Nigeria that applied side by side with the customary land law. The English law prepared the ground for the *Land Use Act, 1978*[34].

### 3.8 Non Customary Land Tenure System

The non-customary tenure is the system under the Received English Land Law which comprises of the common law, Doctrine of Equity and statutes of General Application. By the

[33] [1951] 13 WACA 222
[34] Land Use Act, 1978, LFN, CAP L5.

virtue of the interpretation Act, Section 45, the English Law of Real property, was applicable in Nigeria subject to exceptions contained in the section. Also, the English common law and rules of equity relating to tenures, disposition of Real property, estate and a number of others, became applicable in Nigeria. The Received English law is based on the doctrine of tenure. By the doctrine of tenure, all lands in England belong to the crown. The radical title sometimes called allodia title for absolute ownership is vested in the crown to the exclusion of all the subjects.

The doctrine of estate which could be freehold or less than freehold estate is the only right to possession held by individuals either directly or indirectly to the crown as tenants. All titles of land under this doctrine are ultimately based on possession or "Seism". The right to seism entitles its owner to exercise proprietary right over the land for the prescribed period subject to the observance of the tenure duties, and it may be disposed off as freely as any other subject matter of ownership. Freehold estates are not subject to superior title unlike the estates less than freehold which usually have overlords or landlords. Also, the period of seism in a freehold estate is uncertain unlike a leasehold estate which is characterized by certainty of period.

Therefore, while a leasehold estate can be equated with the right of occupancy created in Section 5,6 of the Land Use Act[35], estate of freehold is more than that. Nonetheless, it may find equivalence in the deemed grant of rights of occupancy created in sections 34 and 36 of the Act[36] because such a grantee is not obliged to so limit his interest by obtaining a certificate of occupancy which creates a term of years. This doctrine of tenure and estate applied in Nigeria, especially in Lagos colony. Upon the Treaty of cession in 1961, the British crown became the absolute owners of lands in Lagos by virtue of Article 1 of the cession Treaty, but

[35] Land Use Act, 1978, LFN, CAP L5.
[36] *Ibid*

the rights of properties existing in the inhabitants under the grant were respected as in the case of *AG of Southern Nigeria v John Holt*[37] .

In this case, it was contended by the White-cap Chiefs (Idejo) that King Docemo could not transfer the land to the British Government because of the principle of nemo dat quod non habet. From the foregoing, it can be deduced that despite the absolute ownership granted to the crown by the cession, the interest of the people in land remains sustained. This is in line with Smith's view that "the theoretical ownership of the crown in English is no bar to the existence of freehold estate in England". By implication, the English land tenure system also emphasizes individual land holding in the form of freehold estate. However, this is capable of creating confusion as to who is entitled to the ownership of land. Is it the crown or a freehold estate holder? In *Oduntan Osiniwo v. A.G of Southern Province*[38], it was held that this problem or confusion was created by the Treaty of Cession 1861 which failed to state in express terms, the nature and scope of the right of the British crown over the land in Lagos. It is noteworthy that the Received English Land Tenure System operated side by side with the customary land tenure system in Nigeria before the enactment of the Act.

### 3.9 The Special Land Tenure System in the Former Northern Nigeria

This land tenure system was a landholding system that applied in the Northern Nigeria under the Land Tenure Law of 1962. It was also called paternalism. Consequent upon the move by the British government to take over ownership of land in Nigeria, the land and native rights proclamation 1910 was enacted. It was later repealed and replaced by the Land and Native Rights Ordinance, 1916 which in turn was repealed and replaced by the Land Tenure Law, 1962. The Land Tenure Law, 1962, vested all lands comprised in Northern Nigeria under the control and management of the Governor for the use and benefits of the natives of any particular

[37] (1915), A.C. 599
[38] (1912) 2NWLR p.77

area. The interest an individual could acquire in any land was a right of occupancy as opposed to right of absolute ownership.

The Land Tenure Law could be viewed as the first attempt to introduce state control of land into Nigeria. All the land in the former Northern Nigeria whether occupied or unoccupied was declared to be natives' land subject to the provisions of Section 48 and 49 of the Law. No title to the occupation and use of such lands by an outsider is valid without the consent of the permanent secretary in line with Section 5 of the Law. This made the law to be discriminatory against the non-natives and in favour of the natives who the land was meant for their use and common benefits. This distinction between natives and no-natives was shown in the right of occupancy granted to them. Section 5 of the Law entitled natives to customary rights of occupancy which was their exclusive preserve. However, a statutory right of occupancy could be granted to both natives and non-natives by the minister.

The expression "native" meant a person whose father was a member of any tribe indigenous to northern Nigeria. The system entailed that Nigerians who were not indigenous to any parts of the former Northern state and aliens could only acquire statutory right of occupancy, while the customary right of occupancy was reserved only for the natives.

This land tenure system was criticized for being expropriatory by converting rights of ownership into mere rights of occupancy. While the law seemed to assert state ownership of land, it also protected the customary rights of the natives. This dual system brought about confusion in respect to absolute ownership in land. This system adopted in the Northern part of the country was viewed to be retrogressive for national integration due to its discriminatory provisions in favour of the natives.

### 3.10 The Land Use Act and Pre-Existing Land Laws in Nigeria

The Land Use Act as promulgated in 1978 by the then Federal military government of Nigeria, has not abolished the pre-existing land laws and tenure, though the Act has brought

some modifications upon the pre-existing laws. Section 48[39] of the Act provides expressly as: "All existing laws relating to registration of title to an interesting land or the transfer of title to or any interest in land shall have effect subject to such modifications … as will bring those laws into conformity with this Act or its general intendment". Suffice to say that the principles of the pre-existing land laws and tenures are in conformity with the provisions and general intendment of the Act.

### 3.11 The Land Use Act and Customary Land Laws and Tenure

The provisions of Section 48 of the Act[40] are true about the concept of customary land laws and tenure that were in existence before the promulgation of the Act. Section 1 of the Act[41] abolishes the radical title to land existing in the owner prior to the Act and substitutes it with the limited title in form of right of occupancy. The transitional provisions under the Act recognize and protect the existing customary rights on land in that limited form. By the combined effects of Sections 34, 35, 36 and 37 (1) paragraph 3 and 15 of the Act[42], the rights of a person or community using or occupying land in accordance with customary law are preserved though in a limited form of the rights of occupancy under the Act; The devolution of rights under customary law upon death of the holder of a right of occupancy is preserved subject to section 24 of the Act[43], thereby sustaining the concept of family property.

The preservation of customary tenancy by the Act finds judicial air in the case of *Okunola v. Oluwo*[44] where it was established that the Act has not destroyed the concept of customary tenancy and it was not intended to transfer the possession of the land from the owner

[39] Land Use Act, 1978, LFN, CAP L5.
[40] Land Use Act, 1978, LFN, CAP L5.
[41] Land Use Act, 1978, LFN, CAP L5.
[42] *Ibid*
[43] *Ibid*
[44] (1987) 4NWLR p. 141

to the tenant by whom the owners in possession. By the combined effect of Sections 2 (1), (b), (5)[45], and other relevant provisions of the Act, the customary right of use, control, and management is also preserved, this is so, since no member of the family or community can validly apply for and obtain a certificate of occupancy to family property nor can a prospective tenant by-pass the customary land owner to apply to local Government for a lease of land, the alienation of such land also requires the requisite consent of the family or community. The Act has also provided for the remedies available to a customary landlord whenever a tenant disputes the title of the land or alienates without the consent of the landlord. *Salami v. Oke*[46]. The reversionary interest of the landlord is also preserved by the Act. See the case of *Abioye v. Yakubu*[47].

### 3.12 The Land Use Act and the Received English Land Law and Tenure

Section 48 of the Act also succinctly provides for the Received English land law. Under the Land Use Act, 1978, the English doctrine of estate has been modified. Section 31 of the Act[48] can be said to have enacted the equivalence of the English doctrine of tenure by which all land in England is vested allodially in the Crown. No individual can claim the radical title to land. Under the Land Use Act, the concepts of English freehold estate; "fee simple," "fee tail" and "life estate", seem to have been abolished by right of occupancy created in Sections 5,6,34, and 36 of the Act[49]. However, the concept of non-freehold or leasehold estate remains in as much as the Act recognizes a sublease as a means of dealing in a right of occupancy. The Act has also preserved the principles of concurrent interests, settlement and mortgages as there is nothing in the Act that suggests that such estate cannot be created.

[45] Land Use Act, 1978, LFN, CAP L5.
[46] [1987] 9-11 SC 43.
[47] [1991] 5 N.W.L.R (Part 190)
[48] Land Use Act, 1978, LFN, CAP L5.
[49] *Ibid*

### 3.13 The Land Use Act and the Land Tenure Law, 1962

Subject to Section 48 of the Act[50] earlier referred to, the principles of land Tenure Law which are in conformity with the provisions of the Act still apply. The Land Use Act borrowed as fourty three (43) sections from the Land Tenure Law[51], 1962 with some vital modifications. It is therefore safe to conclude that the Land Use Act is a modified copy of the Land Tenure Law, 1962 with some vital modifications. It is therefore safe to conclude that the Land Use Act is a modified copy of the Land Tenure Law. The impact of the Act in the Northern States is clear from the analysis of the differences between the Act and the Land Tenure Law of 1962. Under the land Tenure Law, it was possible to grant customary rights of occupancy in urban areas. However, under the Act, the customary rights of occupancy granted under the Land Tenure Law, could be converted to statutory right of occupancy by the application of Section 5 (2) of the Act[52]. The Land Use Act has also made a tremendous impact on the Land Tenure Law on the payment of compensation. For instance, the provision for the payment of compensation for the inconveniences suffered during the revocation of the right of occupancy is explicit in Section 35 (1) of the Land Tenure Law[53] and has been modified in Section 28 and 29 of the Act[54]. In the Case of *Benue River Basin Development Authority v. Auta Auka & 7 Ors*[55] , it as held that Section 35 (1) of the Land Tenure Law has been modified by the combined effect of Section 4, 28, 29 and 48 of the Act. This was done by way of omission of provision for inconveniences to persons whose lands are compulsorily acquired for public purpose under the Act in order to make it conform with the Act and its general intendment.

### 3.14 Certificate of Occupancy

[50] Land Use Act, 1978, LFN, CAP L5.
[51] The Land Tenure Law, 1962.
[52] Land Use Act, 1978, LFN, CAP L5.
[53] The Land Tenure Law, 1962.
[54] Land Use Act, 1978, LFN, CAP L5.
[55] (2008) 1 NWLR … INEC & ORS.

Certificate of occupancy is another important reform of the Land Use Act. Section 9 (1) (a) (c) of the Land Use Act is in pari materia with Section 10 (1) (a) – (c) of the Land Tenure Law of 1962[56] which provides thus:

It shall be lawful for the Governor:

a. When granting a statutory right of occupancy to any person; or
b. When any person is in occupation of land under a customary right of occupancy and occupied in the prescribed manner; or
c. When any person is entitled to a statutory right of occupancy, to issue a certificate of occupancy under his land in evidence of such right of occupancy.

The importance of a certificate of occupancy as provided in Section 9 above is that, when issued under the hand of the Governor, it shows title as opposed to conferment of ownership. One of the effects of the Land Use Act is that, no person can now own land as compared to the ownership of the right to use land. Under this situation, it is necessary that there must be a document specifying the quantum of rights which a grantee has over a parcel of land.

The nature of certificate of occupancy is that it is a title document and evidences the grant of right of occupancy whether statutory or customary. The provisions of the Act in Section 9[57] empowers the state Governor to grant a certificate of occupancy to any person. The Act clearly provides that only the Governor has the express power to issue a certificate of occupancy. However, where such power to issue a certificate of occupancy has been delegated to the State commissioner, such certificate shall be expressed to be granted on behalf of the Governor. The exclusivity of this power by the Governor is so crucial that even a grantee of a customary rights of occupancy has to apply to the Governor for the issuance of certificate of occupancy. The certificate of occupancy is a primary evidence of title to land that establishes that the holder is

[56] The Land Tenure Law, 1962.
[57] Land Use Act, 1978, LFN, CAP L5.

in exclusive possession and has a right over land. However, where a certificate of occupancy is defective, it evidences nothing as Smith submits, it becomes a 'miserable scrap of paper.'24 Also, where it is shown that another person has a better right to the grant, the court will, if asked to do so, set aside the grant. In the case of *Ogunleye v. Oni*[58], the Supreme Court affirmed that a certificate of occupancy issued pursuant to the Land Use Act, only gives right to use and occupy land and never conferred title. In the words of Nnemeka Agu JSC as he then was;

> It would be wrong to assume… that all that a person who resorts to a grant as a method of providing title to land needs is to produce a document of grant and rest his case. Rather, whereas, depending upon the issues that emerged on the pleading it may be suffice where the title of the grantor has been admitted, a different situation arose in a case like this where an issue has been raised as to the title of the grantor. In such a case, the origin of the grantor's title has to be averred on the pleading and proved by evidence.

Section 10[59] of the Act implies that a certificate of occupancy should entail: (a) that the holder binds himself to pay to the Governor the amount found to be payable in respect of any unauthorized improvements existing on the land at the date of his entering into occupation; (b) that the holder binds himself to pay to the Governor the rent fixed in accordance with the provision of Section 16 of the Act[60]. Furthermore, a certificate of occupancy confers some advantages on the holder such as:

[58] (1990) NWLR (Pt. 135
[59] The Land Use Act, CAP L5, LFN, 2004.
[60] The Land Use Act, CAP L5, LFN, 2004.

1. It is the best evidence of title and valuable for the prevention of fraud, since failure to produce it at once, alerts a third party who agreed to deal with the person who purported to have an interest in land.
2. If the practice is adopted of recording therein, dealing by the holder, the certificate could be most convenient source of notice and record of their party's rights. A certificate of occupancy is a convenient means of security for loans.
3. As the best evidence of title, it would be normal document which will be deposited with the charge or mortgagee of land, thus facilitating the equitable mortgage or charge by depositing the document.
4. It can be a means of identifying land registry entries efficiently and quickly without the risk of official error, for it gives the land, official number.

It should be noted that the certificate of occupancy as devised by the Act, when compared to a Deed of Conveyance under the existing land tenure system, is a better title document which also mitigates the pre-Act land disputes in the country.

### 3.15 Redistribution and Equitable Policy

Prior to the Land Use Act, the land policy that governed the administration of land in Nigeria, was not inclusive enough to effectively capture the hopes and aspirations of many Nigerians. The State lands were shared among the ruling classes. With some individuals owning three or four state plots when thousand others had none. This was clearly pointed out by the constitution Drafting Committee when it posited in its report that it is revolting to one's sense of justice and equity that one person alone should own 3 or 6 more plots of State land in any State when others of comparable status have none. Under this condition, the monopoly of land by a few individuals, dominated the pre-Act land tenure system in the Southern Nigeria. This gave enough room for the free flow of land speculators activities thus, leaving land in the hand of a few influential individuals at the expense of the majority.

However, with the policy of equitable redistribution under the Act, the situation has changed. By the virtue of Section 34 (5) and 6 of the Act[61], all undeveloped lands which were held in excess by the occupiers or holders before the Act, were reduced to only one plot not more than half hectare which they can now retain. The remaining plots revert to the governor and to be held in trust for the use and common benefit of all Nigerians. By this policy, the Act has drastically reduced speculations and racketeering over land. The half hectare rule as provided by the Act, has been viewed to be land pooling which makes for presumable the equitable redistribution of undeveloped land in urban areas. It is worthy to note that as from 29th March 1978 when the Land Use Act came in vogue, hence there is no room for holding undeveloped land in urban areas in excess of one plot not more than half hectare.

### 3.16 Proscription of Discrimination against Fellow Nigerians

With the ownership and control of land vested in the Governor by Section 1 of the Land Use Act[62] ensures that such land so vested are held in trust for the use and common benefit of all Nigerians. Sections 5 (1) (a) and (b) (1) of the Act[63], the Governor or the Local Government Council is empowered to grant either statutory or customary right of occupancy to any person. The land Use Act, 1978[64] has been able to bring all Nigerians together. This it has done by regarding them as 'Nigerians' unlike the Tenure Law of 1962 that regarded some as 'natives' and 'non-natives'. The Act has ended the discrimination against fellow Nigerians who were regarded as non-natives under the Land Tenure Law of 1962[65]. The Act does not divest any Nigerian his land with the aim of granting it to another for no justifiable reason. It grants any Nigerian from any part of the country the privilege to be granted a statutory or customary right

[61] The Land Use Act, CAP L5, LFN, 2004.
[62] *Ibid*
[63] *Ibid*
[64] The Land Use Act, CAP L5, LFN, 2004.
[65] The Land Tenure Law, 1962.

of occupancy except in a very restricted case in the circumstances of a person under the age of 21 by virtue of Section 7 of the Act[66].

### 3.17 Revocation of Right of Occupancy under the Act

The power of the Governor to revoke a right of occupancy under the Act is exercised in public interest. Section 28 (1) – (3) of the Act[67] empowers the Governor to revoke a right of occupancy for overriding public interests among other things. However, the individual's right to acquire and own immovable property anywhere in the country is a fundamental right. Thus, government rarely and whenever it becomes inevitable, reluctantly invokes the power of compulsory acquisition. In order to protect the fundamental proprietary right of the individuals, the Act is very clear on the procedures for a revocation which must be strictly complied with. The procedures as provided for by the Act in revocation of a right are stated accordingly; first, the notice of compulsorily acquired land must be published to the whole world with specific deadline for realizing of objectives[68]. Secondly, the revocation of the right of occupancy shall be signified under the land of a public officer duly authorized in that behalf by the Governor and the notice thereof shall be given to the holder[69].

Also, where the overriding public interest for which a right of occupancy as revoked failed or where the procedures for revocation are not strictly complied with, such revocation should be null and void. See the case of *Lagos State College of Education ors v. Dr. Kolarole Edun & Ors*[70] where the giving of adequate notice was in issue. Also, in *J.M Aina & Co Limited v. Commissioner for Land and Housing, Oyo State of Nigeria Ors*[71], where the notice of revocation of a right of occupancy was not served on the plaintiff and it was published only in the newspapers and not in the gazette as required by the law, the court held that this omission

[66] Land Use Act, 1978, LFN, CAP L5.
[67] *Ibid*
[68] Section 28 (4) of the Act
[69] Section 28 (6) of the Act.
[70] (2004) LPELR-2929(SC
[71] (1989) N.M.L.R (pt. 97) p.305

rendered the revocation null and void. If the public purposes for which the land in dispute was acquired which led to the purported revocation had failed, upon failure of these purposes for which the plot was required, the plot should by operation of the law revertt to the owner. See *Ali & Co Ltd v. Commissioner for Land and Survey & Ors*[72].

It should be noted that the power of revocation conferred on the Governor by the Act has brought about positive development. For instance, in 1980, the Lagos State government required land for the construction of over 11,000 classrooms and there was no government land available for such project. The Government resorted to compulsory acquisition of private land in order to realize that objective. The Governor's power of revocation is one of the easiest way to achieve a sustainable housing scheme in Nigeria. In some years back, the same Lagos State Government was able to build 2,000 housing units in Amuro Odofin; 1,000 in Ipontri; 3,000 in Dolphin; 3,000 in Abesan-Agee and 120 in Abule-Nla through the revocation of rights of occupancy previously allocated to some citizens.

### 3.18 Alienability of Right of Occupancy

One of the criticisms against the pre-Act customary land law was that it did not allow alienation to a total stranger. This became a very strong inhibition to the value and merchantability of land held under native law and custom. A major objective of the land use act was to make transfer of land easy with the aim of enhancing the value of land. Thus, by the combined effect of Sections 21, 22, 23, 24, 26 and 34 of the Act[73], the objectives of transferring land from one hand to another is guaranteed, but such alienation must be subject to the consent of the appropriate authority.

The position above is contrary to the belief of many Nigerians on absolute prohibition of alienation or transfer of right of occupancy by the Act whether in respect of developed or

[72]1990, CAP 17. BOM (1982)
[73] The Land Use Act, CAP L5, LFN.

underdeveloped land. With the requisite consent obtained, the Act allows a holder of a right of occupancy to alienate or transfer all or part of his interest in such right. Thus, in *Savannah Bank Ltd v. Ajilo*[74] *and National Bank of Nigeria Ltd v. Adedeji*[75], the Courts held that … the requisite consent is required for an effective and valid alienation on both actual and deemed grants. The Act also recognizes that a right holder having sole and absolute possession of the improvement on the land, is entitled to dispose same with the consent of the Governor by virtue of Section 14 (a) (b) of the Act[76]. The holder of a right is also entitled to compensation in the event of revocation of a statutory right of occupancy. Thus, the maxim, cedit quod plantato solo solo cedit does not apply to a holder of a statutory right of occupancy with improvements there on since 29th March, 1978.

[74] (1989) 1 NWLR (pt 97) 305
[75] (1989) 1 NWLR (pt 76) 212
[76] The Land Use Act, CAP L5, LFN.

## CHAPTER FOUR
## THE EFFECTS OF THE LAND USE ACT ON HOUSING IN NIGERIA

### 4.1 Right to Property (Housing)

Shelter is one of the most basic human needs that impacts largely on the health, welfare and productivity of the individual[1]. The importance of shelter to man cannot be overemphasized – it gives protection from the elements of nature. Shelter in accordance with contemporary modern standards, must offer such infrastructure and services that would make dwelling conducive[2]. Housing particularly urban housing remains an issue in the developing countries of the world, Nigeria inclusive. The severe shortage of housing particularly urban housing in the developing world was the subject of World Bank report[3] "that the urban poor typically housed in slums or squatters settlements, often have to contend with appalling overcrowding, bad sanitation and contaminated water. The sites are often illegal and dangerous. Forceful eviction, floods and landslides and chemical pollution are constant threats."

The problems stated above are traceable to population explosion and uncontrolled rural-urban migration that has continued to exert pressure on housing demands in the cities. A study of the housing situation reveals that, it is characterized by inadequacy for which combinations of social, economic, demographic, technological and legal factors are responsible[4]. Throughout Africa, statistics shows quite clearly that urban dwellings in general, are overcrowded and lacking in most elementary amenities and surrounded by the deplorable urban landscape situation.[5]

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[1] Amokaye, O. *The Role of the Judiciary in the Administration of Rent Control and Recovery of Residential Premises. Edict No. 6 of 1997.*
[2] Otubu J.T. *Nigerian Real Property Law.*
[3] World Bank Report (1990) p. 30 – 31.
[4] Otubu, T. (n. 2)
[5] Ebenezr Aeguaye. "*A Theological Review of Housing Problems in Developing Countries."*

The shortage of housing is so severe in Nigeria that the Federal Ministry of Works and Housing in 1994, estimated that 5 million housing units needed to be delivered in the Year 2000. It was put at the rate of 833,000 unit per year over a period of 6 years to relieve the National problem[6]. Recently, the Federal Mortgage Finance Limited suggested that in Lagos State alone, an immediate delivery of 500,000 housing units are required to relieve the stress in the Housing sector.[7]

The Government at different levels on several occasions, has attempted to address the problem of inadequate housing. Thus, it has come up with four national development plans to address the problem, but, to no avail. The first attempt was in 1981 when the Federal Government came up with the first National Housing which was revealed in 1990. The latest policy is an attempt to create a new housing finance system; encourage housing sector capital market linkages; establish a national housing fund within the framework of the Federal Mortgage Bank of Nigeria and expand private sector role in housing delivery. This policy completes the framework for establishing and sustaining primary mortgage institutions.

Despite the various efforts made by the government in addressing the problems, they appear insurmountable. This situation has remained unabated largely due to government's land policy and administration. It is worthy to note that government has not properly directed its energy and resources to the fundamental issue in the housing sector, instead it has focused on other variables in the housing sector of the economy. The problem of land accessibility and security which is as a result of the inept land policy and administration has remained the burning issue in effective housing delivery in Nigeria. There is no substitute to the availability and accessibility of land in the provision of adequate housing. Land provides the physical substratum in which houses are

[6] See Five Years of the National Housing Fund 1992 – 97.
[7] Otubu, J.T. *Nigerian Real Property Law*.

built and as well as the sources of material for construction purposes. It suffices to say therefore that the extant land policy and administration in any nation, determines substantially the adequacy or otherwise the stock of housing in that country. No doubt, the current and extant legal regime for policy and administration of land in Nigeria remains an albatross to production, supply and delivery of adequate housing for the generality of Nigerian

The right of property means a right of ownership[8] and ownership involves a bundle of rights – the right to use, sell, pledge, bequeath and subject to some limitations the right to destroy[9]. The right to own private property is recognized and acknowledged throughout the world. May philosophers, jurists and commentators have highlighted the privacy of property rights for the orderly development and growth of the State. According to the commentator[10] the right to private ownership of property is the most philosophical and economic theories on the origin and justification of the right are legion. Most religious thinking to a varying degree, accepts that private ownership of property is essential for the full expression of personality under the conditions of this life and therefore regards it as one of the basic personal rights. In the words of *Lord Cander C.J in Entick v. Carrington*.[11]

> By the laws of England, every invasion of private property, be it ever minute, is a trespass. No man can set his foot upon my ground without my licence. If he admits the fact, he is bound to show by way of justification that some positive law has empowered or excused him.

[8] Roger, B." Osborn Concise Law Dictionary
[9] N.J. Udombana. "*Weighted in the Balances and Found Wanting: Nigeria's Use Act and Human Rights."* Journal of the Land Use Act, *(2003).*
[10] E.Y Eshaw. "*The Right to private ownership in Fundamental Rights.*
[11] (1975) 1986, Tr 1030 at 1067.

The right to private property is given due recognition in International law, Regional laws and treaties and National laws. The Universal Declaration on Human rights Instruments[12] provides that 'everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.[13] The African charter on Human and People's Right[14] also recognizes the existence and preservation of private rights to property. Article 14 states that the right of individual to property shall be guaranteed and may not be encroached upon except in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws. At the national level, the 1999 Constitution of Nigeria[15] clearly provides for the right of every citizen of Nigeria to acquire and own immovable property anywhere in Nigeria.[16] Section 44 of the Constitution further provides that no such private property shall compulsorily required by the State except on payment of prompt compensation and a right to access to Court or tribunal for the determination of his interest in the property and adequacy of compensation.[17]

The right to Housing is synonymous with the right to property. A secured place to live is one of the fundamental elements of human dignity, physical and mental health and overall quality of life, enabling one's development.[18] No doubt, human rights to adequate standard of living, and human dignity is very crucial to man's existence. The right is available to all individuals without discrimination; it is available to all persons irrespective of economic or social status. It means the right to live anywhere in security. Article 25 of the universal declaration of Human Rights states

[12] Universal Declaration of Human Rights Adopted Dec, 10, 1948.
[13] 17th of the American Declaration of the Rights and Duties of man.
[14] OAU Adopted Document, June 27, 1981.
[15] Cap C23 Laws of the Federation of Nigeria, 2004.
[16]Ibid Section 43 of the 1999 Constitution.
[17] Section 44 of the Constitution
[18] *Ibid.*

that "every man has a right to as standard of living adequate for the health and well being of himself and his family, including food, clothing, housing, medical care and necessary social services.[19]

The provision on rights to adequate housing is not explicitly recognized in the African character on Humans and Peoples Right, but the African Commission gave a robust interpretation to the provision of the charter to include a right to adequate housing. Thus, in the *Social and Economic Rights Act and the Centre for Economic and Social Rights v. Nigeria*[20], it was held that:

> Although the right of housing or shelter is not explicitly provided for under the African Chatter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under Article 16, the right to property and the protection accorded the family forbids the wanton destruction of shelter because when housing is destroyed, property, health and family life are adversely affected. It is thus noted that the combined effect of Article 14, 16, and 18 (1) reads into the charter a right to shelter or housing …

It is worthy to note that the pronouncement in the above case, exerts a strong influence on Nigerian Courts considering the high regard for the African charter within Nigerian law. A good example is the case of *Fawehinmi v. Abacha*[21]. However, the extant National law on the subject matter does not give recognition to right to adequate housing. The 1999 Constitution of the Federal Republic of Nigeria (as amended) recognizes the individual private rights to property particularly land and

[19] Principles 7 (6) of Agenda 21 of Universal Declaration of Human Rights
[20] Ibid
[21] (2000) 6 NWLR 228

its resources[22]. Rights to adequate housing are not clearly enunciated in the 1999 Constitution, but it recognizes the need to provide houses and shelter for the citizens. Thus, it provides that, "the state shall direct its policies towards ensuring …. *That suitable and adequate shelter ... are provided for all citizens*."[23] Although the provision above is laudable, but it is non-justifiable and cannot be a subject of an enforceable right by the Courts[24]. The non-justifiability of this provision has made the acclaimed right to shelter, a mere one. This has also made the position at variance with the United Nations Charter on Universal Declaration of Human Right, 1948. The only positive purpose of this provision is that, it has put the State on its heel on the need to provide shelter for its citizens. It also serves as a reminder on the performances of government policy in providing shelter for the people.

*Udombama*[25] observed that it will be impossible for government to provide houses for every citizen since a state's resources are not enough to provide for all social needs. On the other hand, the right to housing means that government must provide the enabling environment for the realization of that right and must adopt legislative and other measures to prevent any violation to individual's right to an adequate housing.[26] The present state of the law in Nigeria vis – a- viz international legal regime on the subject of effective housing and enjoyment of other fundamental rights, calls for review. This can be done by making section 16 (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) justiciable. The justicability of the right to housing is fore grounded in the case of *Social Economic Right Action Centre and The Centre for Economic and Social Right v. Nigeria*[27]. This case emphasizes the rights provided under the African charter to

[22] (1996) 9 NWLR (Pt 475) 710 CA.
[23] Section 43 of the 1999 Constitution
[24] Section 16 (2) of the 1999 Constitution.
[25] Ibid
[26] Eze Onyekpere, *The Right to Adequate Housing* – The Concept of Legal Security of Tenure.
[27] Ibid.

include right to housing. On the other hand, the case of *Fawehinmi v. Abacha*[28], dwells on the superiority of international instrument over local legislation where there is a conflict of their provisions.

Considering the importance of housing to the overall development of the individual and the nation at large, there should be a mandatory law regulating the provision of effective housing. The provisions of section 16 (2) (d) of the 1999 Constitution[29] should be mandatory.

Although the State cannot provide houses for every citizen, efforts should be made towards addressing those issues that affect the effective delivery of houses to the majority of citizens. What is paramount to achieving effective delivery of houses is for the state to formulate policies that will guarantee availability of an access to land. This, if done, will also ensure development and growth of a robust mortgage financing system in the economy.

### 4.2 Housing Policies

Housing is an important factor in the economy of any nation. In developed economy such as the United Kingdom and America, housing accounted for more than 55% of construction out-put between 1992 – 1994[30]. In Nigeria, like any developing nation, the housing share of construction output is about 70% considering the low level of industrialization in the country.[31] The importance of the housing sector cannot be overemphasized. Thus, a commentator once said that 3.89% growth in the construction sector in 1995 gave a corresponding growth of 4.10% in the nation's GDP.[32]

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[28] Eze Onyekpere, *The Right to Adequate Housing* – The Concept of Legal Security of Tenure.
[29] Section 16 of the 1999 Constitution.
[30] Isaac D. *Property Development Appraisal and Finance (*London: Oxford Press, 1996, p. 38)
[31] Adam O, "*Management Training of Nigerian Indigenous Contractors and their preferred Delivery System:* Unpublished Ph.D Thesis, University College, London (902).
[32] Ogu V. *Housing and Environmental Services in Benin City.* Unpublished Ph.D Thesis University of Cambridge, England (1996) P. 56

The present statistical report will not be different considering the state of our population which is put presently above 120 million people. Despite the importance of housing to the socio-economic development of the nation, the housing problem remained intractable in Nigeria, especially in the urban areas. Research has shown that most of the urban population lives in dehumanizing housing environment while those that have access to average housing, do so at very high cost. Rents in various cities in Nigeria is about 60% of an average worker's disposable income which is much higher than the 20-30% recommended by the United Nations[33].

To address the problem of Housing in Nigeria, there is a need to produce and deliver more houses for the populace. It is worthy of note that achieving this objective only the government might not be able to do it alone, it will require the support of the private Sector With a bid to solve the problem of housing in Nigeria, the government came up with a three dimensional approach to the problem.

The first was the National Housing Policy in 1981[34] and the promulgation of the National Housing Fund Act in 1992. Secondly, the government liberalized and increased the number of primary mortgage loan to developers and mortgagors in the Housing Sector. The last one, was the attempt by government to liberalize and privatize the building materials industry in order to encourage private investment in the area. This was aimed at bringing about growth of the sector towards the delivery of the necessary construction inputs into the system. However, it is pertinent to note that the extant land policy put in place by the Federal Government of Nigeria since 1978, remain unchanged despite the changes introduced into the variables including the housing sector of the economy.

[33] Onibokun, A.G *Housing Finance in Nigeria (*University Press, Ibadan, 1985.
[34] National Housing Policy, 1981.

## 4.3 National Housing Policy

The problem of adequate housing for the masses was a serious issue in the second Republic (1979-1983). It became an issue of national concern that it featured most in the campaign promises of most of the political parties of the time. Many of the political parties promised to deliver affordable housing to the electorate on owners occupiers basis. A good example is the Jakande Estates scattered around Lagos State and the Shagari's Estates that dot the Nigerian landscape. To properly address the problem of inadequate Housing, the Federal Government came up with the National Housing Policy of 198132 which set out to achieve the following objectives;

i. To increase and improve the overall quantity and quality of housing in Nigeria.
ii. To ensure that the provision of housing units are based on realistic standards which the prospective home owners can afford.
iii. To give priority to housing programmes designed to benefit the low-income groups.
iv. To mobilize housing finance from all sources.
v. To encourage every household to own its own home by providing more credits.
vi. To encourage and support private initiatives and activities in the production of housing.
vii. To encourage local production of building materials.
viii. To provide infrastructural services particularly suitable for self help housing programmes.
ix. To promote the quality of rural housing and rural development through integrated rural development.

To achieve these objectives, the Federal Government embarked on extensive construction of dwelling houses across the states of the Federation. A total number of 10,000 housing units were projected for each state of the Federation, especially for the low and middle income earners of the

society[35]. Unfortunately, the noble idea of delivering effective housing to the Nigerian masses failed. Only a partial success was recorded in most parts of the country. The Federal Government Housing programme was plagued by a variety of factors ranging from political, socio-economic and cultural problems. Most of the houses built were of inferior quality and sub-standard. The military intervention that truncated the Second Republic in 1983, compounded the problem as the dream of many Nigerians becoming home owners was finally brought to an end.

In 1990, the Federal Government reviewed the National Housing Policy by refocusing and redirecting its objectives towards the provision of backup finance for housing delivery. The policy aimed at creating a new housing finance system; encourage housing sector capital market linkages; establish National Housing Fund within the framework of the Federal Mortgage Bank of Nigeria and expand private sector role in housing delivery[36].

### 4.4 The Federal Mortgage Bank Act[37]

The Federal Government promulgated the Federal Mortgage Bank Act to facilitate the granting of long term credit facilities to Nigerians desiring to acquire houses of their own. This include granting of long term credit facilities to primary mortgage institutions with a view to enabling these institutions grant comparable credit facilities to Nigerians. This was largely due to the fact that an average dweller needs a good and effective mortgage finance system as an alternative to the traditional sources of housing finance.

[35] National Housing Policy, 1981.
[36] Agboola T.A and Olatubora CO "*Cost Recovery in Nigeria Public Housing."* The Journal of Habitat International (1992)
[37] CAP Pg. 16 LFN, 2004.

Another function of the Bank is to provide credit facilities to commercial property developers, estate developers and developers of office and other specialized building at a competitive commercial rate of interest. The Bank is also mandated to embark on research on mortgage finance and activities and the construction industry and to invest in companies engaged in the manufacture and production of building materials in the country with a view to stabilizing the cost of such materials. In addition, the Bank has the mandate to license and encourage the emergence and growth of viable secondary mortgage institutions to service the need of housing delivery in all parts of Nigeria[38]. It is also to encourage and promote the development mortgage institutions at rural, local, state and federal levels and to supervise and control the activities of mortgage institutions in Nigeria[39]. The Federal Mortgage Bank Act provides that the Bank shall be funded directly from the Federal source as it is wholly owned by the Federal Government.[40] Other sources of fund for the Bank included depositor's fund, interest received from money borrowed, by way of loan or grant internally and from foreign sources[41].

No doubt, the Act establishing the Federal Mortgage Bank, can be said to have laid a foundation for the development and growth of mortgage financing institution and practices in Nigeria. The Act however does not make provision for the inclusion of the States as part of the funding agencies, this could be an oversight. The States should be fully integrated into the scheme and of course be allowed to be part owners of the Bank; this will increase and broaden the financial base of the Bank. The current share of the one hundred million naira is grossly insufficient to salvage the deficit financing in the housing sector of the economy especially in the area of Bank

[38] Section 5 and 6 of the Land Use Act.
[39] Section 11 of the Act.
[40] *Ibid*
[41] Section 7 of the Act.

recapitalization that requires up to the tune of twenty five billion naira. The inclusion of the States will engender cooperative Federalism and inter-governmental relations and as well prevent institutional fragmentation.

From the provisions of the Act, the modalities of granting loan and advances are at the discretion of the Board as the Act was silent on this. The problem with this is that, one cannot guarantee consistency and continuity of policy direction with respect to loan advancement of the Bank. There is also the possibility of abusing this power by persons appointed into the Board. It is worthy to note that the Bank has not lived up to expectation inspite of the enormous fund at its disposal and it is not unconnected with the inadequacy in the legislation establishing it. Based on this, there is a need for a clear cut loan and advancement policy to be put in place as a benchmark. This will help to realize the dreams of all Nigerians to quick and efficient mortage finance system.

### 4.5 The National Housing Fund Act[42]

The National Housing Fund Act was promulgated by the Federal Government in 1992 to increase the capital base of the Federal mortgage Bank and to encourage the habit of saving towards home ownership by the citizens. The objectives of the Act are to facilitate the mobilization of fund for the provision of houses for Nigerians at affordable prices and as well as ensuring the constant supply of loans to Nigerians for the purpose of building, purchasing, and or improvement of residential houses. It is also to provide long term loans to mortgage institution for on-lending to contributors to the fund amongst other things[43]. The resources of the fund are to be sourced from deductions of monthly salaries of employees, both in public and private sectors. Private self-employed individuals are also encouraged to contribute to the fund as well as financial institutions

[42] CAP N 45 LFN, 2004.
[43] CAP N 45 LFN, 2004.

like Banks and insurance companies.[44] Insurance companies are expected to contribute 20% of the non-life fund and 40% of its fund to the coffers of the fund[45]. The Federal Government is to make adequate financial contributions to the fund for the purpose of granting long term loan and advances for housing development in Nigeria.

The fund is to be managed by the Federal Mortgage Bank in financing the housing sector of the economy through wholesale mortgage lending to primary mortgage institutions that registered under the Mortgage Institution Act[46]. The primary mortgage institutions are empowered to grant direct housing loans to individual depositors who apply through them. To ensure continuity of the loan and guarantee repayment, the fund facilities are to be secured by a first mortgage on the property (the subject matter of the loan). In the case of loans granted to mortgage institutions, it shall be secured by a block of existing mortgages under cover sales and administration agreement to be executed between the Federal Mortgage Bank and the mortgage institutions[47]. The Act further provides penalties for offenders, this is to ensure compliance. The Act also provides for the eligibility for loan and advances under the fund for specifying that an individual must be a contributor to the fund for not less than 6 months. Employers are required by the Act to rent the deduction from salary within one month of such deductions. An individual application shall be submitted to the Federal Mortgage Bank through a licensed mortgage institution and the Bank shall not grant more than 80% of the approved loan from its fund. The mortgage institution is to provide the remaining 20% of the approved loan. The ceiling from the

[44] *Ibid*
[45] CAP N 45 LFN, 2004.
[46] *Ibid*
[47] *Ibid*

fund to an individual borrower shall not exceed N500,000.00 or such other sum as the minister may from time to time prescribes.

To secure a loan and ensure its repayment, the fund shall be secured by a first legal mortgage of the property. The property mortgaged shall be required to be stamped and registered at the borrowers cost at the land registry. Also, the property shall possess sufficient values to recover the loan, a fact to be attested to by the legal report of the Bank on the acceptability or otherwise of the title of the property. The loan is repayable on monthly basis spanning a period not more than 25 years.[48] From its objectives, the promulgation of the Act is a noble idea that is commendable. A proper administration of the National Housing Fund Act, will foster a robust financial base for an enduring mortgage finance practices in the country. However, the percentage of contribution by the Federal government and participation by the various states in its funding, will go a long way at stabilizing the resources of the fund.

Investigation has revealed that the fund has generated a lot of money in its coffer awaiting disbursement. Through mandatory savings into the National Housing Fund, about N13 Billion was mobilized between 1992 and 2004, but less than 10% was disbursed as loans for private home ownership. This situation is disturbing and unhealthy for the housing sector.

## 4.6 Problems of the Act with Regards to Housing

The land use Act is an organic document that has continued to apply in land administration, acquisition and enjoyment in Nigeria since its enactment in 1978. No doubt, offering an appropriate interpretation to the Act, has been a knotty issue since its enactment. The Act, through a compact document with only 52 sections, has generated many controversy on the true import

[48] Tanimu, Y. *The New Federal Mortgage Bank of Nigeria,* House and Property Magazine (June 2004) p. 43.

and purport of its provisions than even the constitution, such controversy is hinged on two major factors; the negligence of its draftsmanship and its military antecedent.

### 4.7 Problems in Respect of Trust Concept

Section 1 of the Act provides inter alia, that all land shall be held in trust and administered for the use and common benefits of all Nigerians by the Governor of the State.[49] By the provisions of Section 1 of the Act, a trust is set up in which the Governor is the trustee holding land in trust for all Nigerians who in turn, are regarded as the beneficiaries. However, complications arise when the Act fails to mention in express terms, how this trust shall be administered and discharged. In a normal trust relationship for instance, several duties are imposed on the trustee in respect to the trust property. Some of these duties include; duty to act unanimously; duty not to delegate; duty to account to the beneficiary e.t.c. But in the case of this trust created by the Act, there is no mechanism put in place to check the fettered powers of the Governor as a trustee. It should also be pointed out that the beneficiaries of this general trust, are Nigerians, not indigenes of the individual states. Another question that begs for answer is that; under this concept of trust, can Nigerians as the beneficiaries impeach all persons involved in the performance of this trust like the beneficiaries under the normal trust have the right to do? All these and many issues, the Act fails to address. Thus, *Balogun J*. remarked in am obiter dictum in the case of *Otumba Bola Adewunmi v. Mike Ogunbowale & Ors*[50].

The concept of trusteeship is used in section 1 of the Land Use Act as enacted in a loose sense. It is not intended to confer upon every citizen of Nigeria the benefit which the beneficiary has against the trustee under the common law. No Nigerian citizen can under that section … claim

[49] Land Use Act, 1978 CAP L5, LFN, 2004.
[50] Suit N.ID/115/81. High Court of Ikeja 28/5/82.

against the military Governor an account for any benefit accruing from the land held by him under the Act in trust and administered by him for the common benefit of all Nigerians.

The common law concept of trust is different from the trust created by the Act in many areas. Thus, it suffices to conclude that the position of the Act does not represent the real concept of normal trust. The beneficiaries of the global trust under this Act i.e Nigerians are denied many of the benefits they ought to enjoy against the trustee (the Governor) in relation to the trust property (Land).

### 4.8 Problems in Respect of Power of Control and Management by the State

The Act by the provisions of section 1[51] which vested all land in the territory of each state in the Federation in the Governor of that State has altered the existing land laws in Nigeria particularly in the Southern part of the Country. It usurps the power of control and management of land which was hitherto vested in the families, villages and communities. It has also removed corporate groups, families and chiefs from the ownership of land and replaces them with the State Governors. This usurpation of the power of control and management from the former owners, has placed land beyond the reach of the natives. The vesting of all land in Nigeria in the Governor, has made acquisition, use and enjoyment of land more difficult for most Nigerians. With the divesting of the individuals, their land and vesting same on the Governor, the individuals have lost control of the land and the objectives of the Act can be said to have been realized to a great extent. The provisions of the Act which have allowed for the consent of the Governor to be obtained for a valid grant, it is harder to acquire land by an individual than it was before the enactment of the Act.

[51] The Land Use Act, 1978 CAP L5, LFN, 2004.

## 4.9 Attitude of Former Land Owners to the Act

The land Use Act as a piece of legislation is laced with controversies and as such does not gain much acceptability from the people it is meant to serve. It should be noted that both sections 34 and 36 of the Act in general preserve the existing rights of the citizens in land as customary Landlords. The implications of this is that, there is no change at all in the attitude of the citizens to land or in the number of land disputes. The overlords still go to court to ask for the forfeiture of the right of the customary tenants and families still sue for a declaration of title to land. The struggle for land by individuals still lingers despite the Act. This position has been given air to judicially in the cases of *Animashoun v. Sufiami*[52] and *Davies V. Ilo*[53] where the Court held that refusal to pay tribute would amount to denial of the overlords' title which will incur forfeiture. The decision of the court shows that the ownership of land remains unaltered. Also, in some cases, revocation order made by the Governor could not be implemented because of stiff resistance by group owners. Thus, *Niki Tobi*[54] notes;

> A more fundamental problem is in respect of the attitude of the land owners before the promulgation of the Act. Despite the provisions of the Act and the notices sent to the previous land owners to evaluate the land for the purpose of survey, they do not generally corporate with the surveyors. This results at times to physical confrontation or court actions. The lack of co-operation from previous land owners has also resulted in some practical difficulties of developing master plans which materially affect the physical development of the land.

[52] Suit No LD/19/77
[53] Suit No IK/3/73
[54] Land Use Act, 1978 CAP L5 LFN 2004.

This attitude of former land owners to the Act, has often resulted in communal clashes over land disputes. Some customary tenants have refused to pay tributes to overlords on the ground that the Act has abolished the customary system.

### 4.10 Requirement of Consent

The Land Use Act has a major objective, easy access to land and as well as easy transfer of land. However, any alienation without the consent of the Governor is unlawful. By the provision of Sections 21, 22, 23, 26, and 34 (7), no alienation or transfer of any interest in land whatsoever can be validly made under the Act until the requisite consent is obtained. The requirement of consent in the case of alienation applies to both actual and deemed grants. In the case of *Savannah Bank Ltd v. Ajilo*[55] where the issue of consent was first considered, the Supreme Court held that both actual and deemed grants have the same effect under the general tenor of the Act, and that the requisite consent is required for effective and valid alienation of both types of grants.

The issue of consent has come under a heavy criticism for being the reason for the unnecessary delay often faced by both prospective vendors and purchasers in such transactions. It usually takes between months to three years to obtain a Governor's consent to alienation thus, making alienators of land even more difficult than it was under the pre-Act Laws. This has become a serious constraint for those willing to sell or buy a piece of land for industrial, residential or agricultural purposes. Some writers have condemned the consent requirement, describing it as a clog in the wheel of economic development in Nigeria. The adverse effects of this consent

[55] (1989) N.W.L.R (Pt 97) 305.

requirement on the commercial life of Nigeria, have become very alarming thus, *Obaseki J.S.C in Savanah Bank Ltd V. Ajilo*[56] (Supra) noted that;

> In my view and I agree with Chief Williams expression of anxiety over the implementation or consequences of the implantation of the consent provisions or clauses in the Act. It is bound to have a suffocating effect on the commercial life of the land and house owning class of the society who use their properties to raise loans and advances from Bonks … These areas of the Land Use Act need urgent review to remove their problem nature.

It is worthy to note that there is no provision in the Act that says consent shall not be unreasonably withheld. It is quite clear from the wordings of the sections relating to consent that an occupier who wants to alienate his right of occupancy, cannot demand for the Governor's consent as a right. The implication of this, is that, where the Governor refuses his consent, there is nothing the affected person can do.

In *Majiyagbe v. A.G. Ors*[57], the Court maintained that the affected party cannot compel the Governor or the local government as the head of the family or the community to grant consent. Also, in *Queen v. The Minister for Land and Survey Experte the Bank of the North*[58], where an order of mandamus was applied to compel the minister to give consent. Reed J. stated inter alia, that an order of mandamus does not have to compel the exercise of discretionary powers conferred by the statute.

[56] (1989) N.W.L.R (Pt 97) 305.
[57] (1957) NRNLR 158.
[58] (1963) NNLR 58.

### 4.11 The Governor's Power to Designate Certain Areas as Urban Land

Section 3 of the Act[59] confers on the Governor an unfettered power by order published in the States Gazette to designate parts of the areas of the State as Urban land. This like the consent clause of the Act, is discretionary power that leaves the Governor with the choice to designate only part of the State at will. A good example is the case of former Lagos State Governor, Lateef Jakande, who by Designation of Urban Areas Order, 1982, designated all Lagos land as urban. This development left the local government in the State without any land to control contrary to Section 2 (1) of the Act which confers power on both the Governor and the Local Government. The unfettered power of the Governor to designate certain areas as urban land and the silence of the Act on the designation of 'other land' is an erosion of the power of control and management conferred on the Local Government by the Act. The silence of the Act on which parts of the State should be declared an urban land and which parts of the state should not be declared, has led to indiscriminate designation. This is a conflicting aspect of the Act that has defeated its objectives as the Local Government is schemed out. This might be the reason for the failure of the Act in meeting agricultural needs in the country especially in rural areas due to insufficient lands.

It is very conflicting that the same Act which vested the control and management powers of land in two independent authorities – state and local government[60] turned around to create another scenario where the power of one of the authorities, undermines or tend to erode that of the other.

[59] CAP N 45 LFN, 2004.
[60] Section 2 (1) of the Act

## 4.12 The Half Hectare Rule

The half Hectare Rule is a policy of re-distribution and equity that was enshrined in the transitional provisions[61] of the Act. The motive of this rule is to revert the land in excess earlier held by the former owners to the government, leaving such former owners with a plot not more than half hectare. The excess land so reverted is administered for the common benefit of all Nigerians as provided for in Section 34 (5) and (6)(a) & (b) of the Act. The above section has been interpreted as having confiscated land in excess of half hectare without payment of any compensation. This rule has been viewed as oppressive to the former owners who lose their many portions of land to the government without compensation.

## 4.13 The Powers of the Land Use Allocation Committee

Section 2 (2), (5) of the Act[62] mandates each state and Local Government to establish a committee known as Land Use and Allocation Committee and Land Allocation Advisory Committee respectively. The Committee shall perform such functions as; advising on matter related to compensation, resettlement of persons affected by the revocation on ground of overriding public interest and overall management. By Section 2 (3) and (4), the Governor shall determine the composition of the Committee's membership and presides over the proceedings of the committees. Section 2(2) (c) of the Act confers on the Land Allocation Committee at the State level with the adjudicating role of determining disputes as to the quantum of compensation payable under the Act for improvement of land compulsorily acquired by the Government[63].

[61] Section 2 (1) of the Act.
[62] *Ibid*
[63] Section 34 (5) 6 (6) of the Act.

Section 30 of the Acts provides that any dispute as to the amount of compensation that may arise under Section 29[64] shall be referred to the Land Use and Allocation Committee. No doubt, the issue of quantum of compensation is constitutional and of public importance. For the decision of the committee to be final on such issue as provided for in Section 47 (2) of the Act, is anti developmental and inimical. The provisions of Section 47 (2) of the Act is at variance with the Constitution of the Federal Republic of Nigeria. Section 36 of the Constitution of the Federal Republic of Nigeria 1999 as amended, guarantees the right to fair hearing to a citizen by a Court or tribunal established by law and constituted in such a manner to secure its independence or impartiality. The Land Use and Allocation Committee does not qualify a Court or Tribunal envisaged by the Constitution. The Committee is set up by the Governor who also has the power to revoke statutory right of occupancy for overriding public interest. the committee on the other hand handles disputes arising from compensation. The Governor's powers to set up the Land Use Allocation Committee and as well presides over its proceedings, is ultra vires the rule of natural justice of fair hearing as expressed in the legal marxim, Nemo judex in causa sua (a person cannot be a judge in his case).

### 4.14 The Governor's Exclusive Power of Revocation

The Governor is mandated by Section 28 (4) of the Act to revoke the right of occupancy in the event of the issue of a notice by or on behalf of the President, declaring such land to be required by government for public purposes. Only the Governor has the power to revoke rights of occupancy under the Act. The Governor can revoke on behalf of the Federal Government and not the Federal Government directly. This provision makes the State Government indispensable to the

[64] Section 28 of the Act.

Federal Government in the acquisition of land within the State for its use. This again is compounding and conflicting as the Federal Government is subjected to the bureaucracy of the relevant state government.

There is no provision in the Act enabling the Federal Government to revoke rights of occupancy under any circumstances. If the Federal Government needs a land and the Governor refuses to revoke a right of occupancy upon the Federal Government's notice, it is to enter into negotiation with the holders or occupiers affected by such acquisition. Such holders or occupiers can voluntarily surrender their rights and be compensated by the Federal Government for such rights. If this happens, the Federal Government is most likely to pay more than the compensation the Act recommends or the State's Committee would have recommended. If the private holders or occupiers are not satisfied with what the Federal Government is willing to pay as compensation, they might want to join forces with the State Government in refusing to cooperate with the Federal Government.

A good example is when an agent of Oyo State Government once demolished houses being built by the Federal Government under the low cost Housing Scheme. The action was on the ground that the land on which the houses were built, was not allocated to the Federal Government by the Oyo State Government, and that the Federal Government does not have the right to acquire land directly or by private treaty from any individual in the State. The project continued to suffer until the Federal Government was able to secure a court order compelling the State governor to revoke the subsisting rights of occupancy. It is worthy to note that this position of the Act is inimical, as it tends to traduce land for public purpose which is only exercisable at the mercy of the State governor.

### 4.15 The Governor's Concurrent Possession with the Occupier's Right

By the provision of Section 14 of the Act, the Governor holds possession concurrently with the occupier. Also, Section 11 of the Act gives the Governor or any public officer duly authorized by him, the power to enter and inspect the land comprised in any statutory right of occupancy or any improvements affected thereupon at any reasonable hour in the day time. Although, it is in the interest of the society that the Governor or any public officer duly authorized by him, has a right of entry, such right obliges the Governor to exercise the power to enter reasonably and for the specific purpose of inspecting the land and any improvements. However, such power of entry cannot be exercised capriciously by the Governor or any other authority for that matter. An unjustifiable invasion of the possession of the occupier will amount to actionable trespass.

However, from the express provision of Section 14 above, such action in trespass is maintainable against the Governor or his duly authorized officer for such entry because the occupiers' possession is not exclusive of the Governor's. it is a trite law that an action in trespass is not maintainable against a person by another with whom he shares concurrent possession. Thus, in *Akpansam Adua v. Akpan Udo Udo Essien*[65], the Court of Appeal said:

> For a plaintiff to commence an action in trespass, he must show that he is in exclusive possession in the sense that he does not share his right of possession with any other person. He needs to

[65] (1972) 2 ULR (pt iv) 424

show ownership of the land; proof of possession can sustain an action of actual trespass.

Relying on the Land Tenure Law of 1962, it was held in *Ogunche v. Iliyasu*[66] that the entry upon land comprised in a statutory occupancy by the defendant on the authority of the Commissioner to demolish the building the plaintiff erected on the land amounted to trespass. The same is applicable in the present situation.

### 4.16 The Land Use Act is Discriminatory and Restrictive

Section 1 of the Act[67] states that the Governor holds the land for the benefit of all Nigerians. The wordings of Section 5 (1) 6 (1) (a) and 35 (5) must be construed in accordance with the express provision of and in a way with the spirit of Section 1 above. In line with the statutory interpretation, all Nigerians will mean Nigerians simplicita and nothing more. By this, foreigners are discriminated against by the Act, they are not in the category of persons for whose common benefit the Governor holds the land.

The non-inclusion of 'foreigners' in Section 1 or any other relevant provisions of the Act and failure to lay down the procedure for acquiring land in Nigeria by foreigners, leaves much to be desired. One wonders whether the foreigners are entitled to have access to right of occupancy in land in Nigeria. In interpreting Section 1 of the Act, the Court in *Ogunola v. Eiyekole*[68] held that the foreigners cannot apply for certificate of statutory right of occupancy, but only Nigerians. Similarly, in the Act, the Governor is prohibited from granting a statutory right of occupancy to persons under the age of 21 without such express provision in respect of customary right of

[66] (1971) 2 All. N.L.R. 333: 287
[67] CAP N 45 LFN, 2004.
[68] (1990) 4 NWLR (pt 146) at 647.

occupancy. *Niki Tobi* opined that a number of issues arose from this provision; 'What is the rationale behind the age restriction? Could there be any special reason for putting the age limit to 21 years? In Nigeria, the age of puberty under the customary way of life is the age of maturity, while in England, the maturity age is 21 years. *Oluyede*[69] observed that under the English law, a person of under 21 years of age could hold land. *Yakubu*[70] also observed that many Nigerians at the age of 21 years are wealthy enough to own large farms and acquire lands for residential and industrial purposes. The restriction on 21 years by the Act is not justifiable. If a person under age 21 in English law is entitled to hold land, Nigerians should not be contrary. This provision of age limit in the Act is discriminatory and does not conform with the philosophy of the Act which is aimed at ensuring that every Nigerian has the right to a piece of land for its use and enjoyment.

### 4.17 The Land Use Act and the Constitution

When the Land Use Act was promulgated, there was a dire need for an acceptable and progressive land policy crucial for the developmental objectives of Nigeria. the government wanted a new law that was thought to be a panacea to the problems of land management and administration in Nigeria. The Federal Military Government took the decision to annex the Act to the 1979 Constitution[71] with the intention of not making its provisions easily amendable or annulled. This has however led to confusion as to the actual status of the Act. There are also a lot of inconsistencies between the provisions of the Act and the Constitution. For instance, Section 1 of the Act vests all land in the State Government thus, leaving the individual with only the rights of occupancy devoid of ownership. This curtails the proprietary right of the individual as regards

[69] (1990) 4 NWLR (pt 146) at 647.
[70] *Ibid*
[71] Section 1 (1) (3) of the Constitution of the FRN, 1999 (as amended)

the ownership of land in Section 43 of the 1999 Constitution[72] as amended. The aforementioned section of the Constitution guarantees the individual's right to acquire and own immovable property (Land) anywhere in Nigeria. Also, Section 47 (1) of the Act makes it to have effect on any law or rule of law, including the Constitution of the Federal Republic of Nigeria. It ousts the jurisdiction of the Court in probing any issue concerning the vesting of all land in the Governor and as well as the power to grant statutory and customary rights of occupancy by the Governor and the Local Government respectively. Section 2 of the Act specifies that any issue as regards the amount or adequacy of any compensation paid or payable under the Act. Section 47 (1) above is inconsistent with Section (1) and (3) of the 1999 constitution of the Federal Republic of Nigeria as amended. However, the ouster clauses of Section 47 (1) (2) above are consistent with Section 272 of the 1999 Constitution as amended. They guarantee the jurisdiction of the High Court of a State to hear and determine any civil or criminal proceeding involving the existence or extent of legal right, power, duty, liability, privilege, obligation or any claim in issue of penalty, forfeiture, punishment or other liabilities in respect of an offence committed by any person. The jurisdiction of the Court which are important in enforcing the intentions of the Act, are undermined by the provisions of Sections 47 of the Act.

Lastly, the powers of the Land Use Allocation Committee which make their decisions final are at variance with the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The Committee is empowered to handle and take a final decision on any issue referred to it as regards the amount of compensation payable under section 29 in respect of land compulsorily acquired in public interest. The decision of the committee is final and not applicable to Court. This is inconsistent with Section 44 (1) of the 1999 Constitution (as amended) which gives any person

[72] Section 43 of the Constitution of the FRN, 1999 (as amended).

claiming compensation or amount of compensation payable (in the event of compulsory acquisition of his property) a right of access to Court to determine his interest.

On a final note, Section 47 of the Act only confirms the military antecedent of the Act. It can only be operational in a situation where the provisions of the Constitution are suspended and have effect at the pleasure of the Military Government. Under a democratic rule as obtainable in the country presently, the Constitution is Supreme and if any other law is inconsistent with its provisions, the Constitution shall prevail and that other law shall to the extent of its inconsistency be invalid.[73]

### 4.18 Powers of the Governor under the Act and Their Multiplier Effects on Housing

The powers of the Military Governor in respect of land whether or not in an urban area, are stated as follows[74].

a. To grant statutory right of occupancy to any person for all purpose, and to issue certificate under his hand in evidence of such grants.
b. To grant easements appurtenant to the statutory right of occupancy.
c. To demand rent for any such granted to any person.
d. To revise the rent at such intervals as may be specified in the certificate of occupancy or where no intervals as may be specified at any time during the term of statutory right of occupancy.
e. To impose a penal rent for a breach of any Covenant in a certificate of occupancy requiring the holder to develop or effect improvement on the land.

[73] Section 1 (1) a (3) of the Constitution of the FRCN, 1999 (as amended)
[74] Section 19 and 34 Land Use Act Cap l. LFN, 2004.

f. To impose a penal rent for a breach of any conditions, express or implied, which precludes the holder of a statutory right of occupancy from alienating the right of occupancy or any part there by sale, mortgage, transfer of possession, sublease or bequest or otherwise how so ever, without the prior consent of the governor.
g. To wave, wholly or partially all or any of the covenant or condition to which a statutory right of occupancy was subject on the ground of hardship upon the holder.
h. To extend the time within which a holder of a statutory right of occupancy was able to perform any of the condition of the statutory right of occupancy, and
i. To approve the alienation of a granted statutory right of occupancy and a customary right where the property was to some power were centralized in the military governor and affected all rights of occupancy, customary or statutory. They include, issuance of certificate of occupancy.[75]
j. Revoking rights, except in limiting circumstances when customary rights may be revoked by the Local Government as well.[76]
k. Granting licenses to take building materials in land[77] and
l. Promulgating regulations with regard to the prescribed matter.[78]

The local Government in respect of land in a non-urban area within the area of jurisdiction may exercise the following powers.

a. Granting customary right of occupancy

[75] Section 28 and 6 (3) Land Use Act Cap L. LFN 2004.
[76] Section 12 Land Use Act CAP L5, LFN 2004.
[77] Section 46 Land Use Act CAP L5, LFN 2004.
[78] Suit No. Bom/82/81 of 4th March 1982

b. Enter upon use and occupy for public purpose any land within the area of jurisdiction provided that it is not within an area declared to be an urban area, or the subject of a statutory right, or any area compulsorily acquired by the government of the federation of the state or the subject of any law relating to minerals or mineral oils.
c. Revoke any customary right of such land.
d. Pay compensation to the holder in respect of his interest compulsorily acquired by the Local authority and where the land was used by the rights holder for agricultural purpose it shall allocate to such holder alternative land for the same purpose.
e. Approve the disposition of a customary right.

Though, the Land Use Act is aimed at asserting government powers and rights over land in Nigeria, the individual rights on land are preserved in the nature of a right of occupancy. It is clear from the provisions of the Act that a statutory right of occupancy may be obtained expressly by operation of the Act otherwise known as deemed grant. A customary right of occupancy may also be acquired expressly or by operation of law otherwise known as deemed grant. With the introduction of the constitution of the federal republic of Nigeria, 1979, it became confusing as to whether "the state Governors and their Government" or those Governors as Chief Executives in the state, succeeded the former military Governors to powers vested in the latter by the Land Use Act.

However, most of these rights have been questioned on grounds of the "improper use" of the power. A good example is the case of *Umar Ali & Co. Nigeria Ltd v the Commissioner for Land and Survey and Ors*[79] which originated from Borno State. In this case, the plaintiff challenged the purported revocation of his right of occupancy, which was made for public purpose that had failed.

[79] Suit No. 1/439/81 of 24th May, 1982 (Ibadan High Court)

The court found that the revocation was under the hand of the Chief Land Officer acting for the permanent secretary and not by the Governor or his delegate ( Deputy Governor) as required by Section 28 and 46 (2) of the Land Use Act: The court held that;

1. The revocation was void because the Act requires it to be made by the Governor or his delegate.
2. Obiter: the Governor of a state could not exercise the powers formerly vested in the Military Governor by the Land Use Act because the former is by the 1979 Constitution, the lawful successor to the latter of only property right, privileges etc previously held by him. The section did not operate to vest power, the reasoning of the judge was that "powers" have no place in the expression property right, privileges, liability and obligation" construed ejusdem generis. In his view, the military governors of the states had very "wide power" and it could not have been the intention in the State Governor upon the return to democratic government. It may be appropriate to note at this stage that Section 276 (1) of the Constitution provides for succession by the Governor and government of the state to the military Government and not solely the Governor.
3. Obiter: the effect of Section 274 (5) and (6) of the Constitution which
   i. Prescribed any alteration or repeal of the land use act except in accordance with the Section 9 (2) of the Constitution and
   ii. Requires the enactment to have effect as a federal government enactment "as it relates to matters included in the exclusive legislative list, was that the Land Use Act which is part of the constitution can only have effect as originally enacted.

   That is, the powers are exercisable by the military Governor who no longer existed. His lordship concluded as follows "in my humble opinion, for the reason given that unless the

> Land Use Act (which is part of the constitution) is amended in accordance with Section 9 (2) of the 1999 Constitution by substituting the Governor for military Governor, the Governor has no power to revoke the right of occupancy."

Also in *J.M Ania and co Ltd v Commissioner for Land and Housing and Ors*[80], the Chief Judge of Oyo State made similar statements to the case just cited. This action arose from the challenge of a purported revocation of the plaintiff right of occupancy to land in Oyo State. The learned Chief Judge found that the revocation notice was not properly served by the State Government and was therefore of no effect. He then proceeded to examine, in his words "the true position of the land tenure in the Act since October 1979 when the presidential system of Government had ceased to be in vogue since on the 31st September 1979. He concluded that the effects of Section 294 (5) of the Constitution which places the Land Use Act beyond modification to ensure conformity with the constitution and requires that it shall have "full effect" as any other Decree is not an existing law but it is a part and cannot be modified except by an amendment in terms of Section 9 (2) of the Constitution.

Consequently, the expression "the Military Governor" used therein cannot be altered to read "Governor of the State."

"Military Governor" means military Governor simplicita and nothing else. The Land Use Decree must be regarded as a series of commands issued by the then Head of the Federal Military Government and commander in Chief of the armed forces of the federal Republic of Nigeria to his Military Governors.

[80] (1983) 4 NCLR 643.

It is therefore patently not meant to be administered by our present state Governors who are democratically elected to offices. Since 1st October 1979 we had returned to the land tenure that obtained in Oyo State prior to the enactment of the Land Use Decree only we were slow to realize that fact.

However, the decision of *Nwokedi J.* in the case of *Nwokocha v the Governor of Anambra State*[81] differs from the obiter dicta on the states of the land use Act after the adoption of the 1979 Constitution expressed earlier by *Balogun J.* this same view was also shared in *Otumba Chief Bola Adewumi v Mike Ogunbowale and Ors*[82]. These two cases arose from Anambra and Lagos respectively. Both these learned Judges had no doubt in terms of the definition of the expression "existing law" in the constitution (as meaning and including any enactment in force immediately before the date when the constitution comes into force). Firstly, the land use Act being in vogue before 1st October, 1979 is an existing law and its validity is expressly saved by the particular saving clause in Section 275 (s) and (6) of the Constitution[83].

Secondly, the Land Use Act can only be modified by an amendment in terms of Section 9 (2) of the Constitution[84]. The requirement for its provisions to be given full force and effect according to their tenor and the operation of Section 296 of the Constitution[85] which provided for the civilian Government to succeed the Military Government. It vested in the Governor of the states, those powers of management and control of state lands formerly vested in the Military Governors. It is important to note that the individual right on land under the Land Use Act has not been specifically

[81] (1984) 1 SCNLR 634
[82] Suit No E/167/81 of 28th May, 1982 (Enugu High Court)
[83] The Constitution of the Federal Republic of Nigeria (1999) as amended.
[84] Ibid
[85] Ibid

treated. Holders of a right of occupancy enjoys a number of rights, powers, privileges in reference to land.

a. The use, occupation and beneficial enjoyment.

b. Possession and.

c. Disposition

He exercises these rights for a fixed period in some cases or an indefinite period in order of occupancy[86] which is evidence of his title to the land. It is of the nature of the right of occupancy that the occupier puts the land to its best use, if the right holder abandons the land, his right therein will be determined. Development conditions are annexed to grants and non-compliance therewith is a ground for revocation. It is the nature of the right of occupancy system that the rights holders have a power as well as a duty to utilize the land. It is not an unrestricted power and it is a duty exercisable in accordance with the terms of the grant and zoning legislation.

Indeed, one of the aims of the system is to secure planned developments. So if land is for an industrial purpose, it cannot be used for agricultural purpose or vice-visa. Although, the right holder is not the owner of land which is the subject of a right of occupancy, he owns his improvements there to and any deprivation of these will give him an entitlement to compensation for their value. The Land Use Act[87] Section 34 enacts for purposes of the statutory right of occupancy, a principle explicit, in the constitution i.e the rights holder has the sole right to an absolute possession of all of his improvements in the land, interference therewith amounts to an

[86] Section 9 Land Use Act Cap L5. LFN 2004.
[87] The Land Use Act, 1978) CAP L5, LFN, 2004.

infringement of this provision and constitutional guarantee of privacy of one's home and protection of one's property.[88]

The Land Use Act guarantees the statutory rights holder, the sole right and possession of all the improvements on the Land and by Section 14 of the Act[89] , if an occupation, he has exclusive right to the land against all persons other than the Governor.

However, entry upon land under the subject of a right of occupancy, by the Governor or other authorized public officer, is circumscribed by Section 11 of the Act, which essentially regulates the act of entry i.e it can only be exercised by inspection of the land and improvement, thereon and must be affected at a reasonable hour in the day time. If these requirements are not complied with, that would amount to a trespass to the improvement and an infringement of the implied statutory term in the right of occupancy. See the case of *Abdu Abashe v Borini Ptono*[90].The point being made here, is that the rights of the holder to the peaceful enjoyment of the land and improvement thereon, cannot be capriciously or discriminately infringed on at the instance of the Governor or other authorities.[91] Again, the holder of a right of occupancy has a power of disposal of his interest in land including his improvements thereon, by assignment, mortgage, transfer of possession, sub lease and otherwise.

Disposition may be inter vivo or testamentary instrument. On his death intestate, his successors acquire his interest under the appropriate rule of intestacy. Disposition is subject to the overriding principles that land is not a marketable commodity and any transfer is only lawful if approved by the appropriate authority. For the Local Government it is necessary except when it is

[88] *Ibid*
[89] The Land Use Act, 1978) CAP L5, LFN, 2004
[90] (1976) NWLR 80.
[91] Section 5 Land Use Act Cap L5, LFN, 2004.

by sale under a court order where the consent of the Governor is required[92]. But for the disposition of statutory right of occupancy granted by the Governor, the consent of the Governor is required.

### 4.19 Area of Compulsory Acquisition

A right of occupancy may be revoked by the Governor if the land is required for public purpose.[93] Section 28 (2) of the Land Use Act defines overriding public interest in the case of statutory right of occupancy to mean unlawful alienation, requirement of land of the local, state or Federal Government for purpose on the requirement of land for mining purpose or oil pipeline or any purpose connected therewith.

While in the case of a customary right of occupancy, overriding public interest is defined almost the same way as in the case of statutory right of occupancy the only difference being the addition of the requirement of the land for extraction of building material. Again, where the Federal Government issues a notice declaring such to be required by the government for public purpose, the governor of the state is obliged to revoke any right of occupancy in respect thereof.

The protection of the ones properly acquired, is guaranteed in any democratic country, but it is also universally recognized that private right must give way to the overriding public interest. Without these principles, owners will be in a position to hold up schemes beneficial to compulsion,[94] so where the purpose for the acquisition of the property was primarily to benefit an

[92] Section 21 Land Use Act LT, LFN, 2004.
[93] Section 28 Land Use Act, 2004.
[94] James, R.W., *Nigerian Land Use Act Policy and Principles* (Ile-Ife University of Ife Press 1987) pg. 149.

individual company, or the object was to give an individual a clear title of land[95] or perfect a defective one15 matter of private interest, a forced acquisition would violate the constitutional rights of the holder, so would a proposed revocation of a deemed right in order to make a grant to a third party for poultry farming.

A statutory right of occupancy may also be revoked by the Governor on the ground of breach of any of the implied covenants under section 10 of the Land Use Act or expressed terms, expressed in the certificate of occupancy or for a refusal to accept and pay for such certificate. For a valid revocation, the condition are contained in Section 28 (6) and (7) of the Land use Act as follows:

1. Revocation must be by a person who has power to revoke i.e a public officer duly authorized by the Governor.
2. Notice shall be given to the holder, by virtue of Section 44[96] of the Act the following constitute good notice.

a. Delivery of notice to the person to whom it is to be served, or
b. By leaving it at the usual or last place of abode of that person, or
c. By sending it in a prepared registered letter addressed to that person at his usual or last known place of abode, or
d. In the case of incorporated company or body by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid letter addressed to the secretary or clerk of the company or body at that office.[97]
e. If it is not practical after reasonable inquiry to ascertain the name or address of a holder or occupier of land on whom it should be served, it can be done by addressing it to him by the

[95] Ereka Military Governor of Midwestern State (1974) 10 Sc. Pg. 59
[96] Chief Commission Easter Proviinces v Ononye (1944) 17 NL2 142 Section 28 (5)
[97] The Land Use Act, 1978) CAP L5, LFN, 2004

description of holder or occupier of the premise, or if there is no person on the premise to whom it can be delivered, it can be done by affixing it, or a copy of it to some conspicuous part of the premise.

Non compliance with the above statutory provision as to notice, makes it void. Thus a notice purportedly given by publication in the newspaper or by any other method without following the provision of Section 44 of this Act, is void because the method was not contemplated.

3. Notice must be provided to have come to the knowledge of the person connected i.e there must be receipt of such notice,[98] the right of occupancy of the holder shall be extinguished forth with upon the receipt of such notice issued on him or on such later date as may be stated in the notice.

Revocation made in compliance with the relevant provision of the Act is valid. This may however be declared void by the court. If the acquisition was not made to fulfill the legitimate ends of government but simply to transfer the required land to an individual or groups of persons with certain vested interest, which the state may acquire other people's property. This was clearly demonstrated in the case of *Lawson & Ors v Ajibulu*,[99]where the respondent in 1975 purchased a parcel of land at Agbara village Egbado, Ogun state measuring some acres from Aina Ala Adoniyi family for which he got a deed of conveyance duly registered. When he started clearing the land for the purpose of development the 1st and 2nd appellants entered the said land and destroyed the signboard, efforts made to settle the matter did not yield any fruitful result. While settlement moves were on, the Ogun state Government acquired an area of land which included the respondent's

[98] The Land Use Act, 1978, CAP L5, LFN, 2004.
[99] (1992) 8 NWLR pt. 281. Pg. 587.

land. The notice of acquisition did not disclose the purpose for which the land was compulsorily acquired.

By a deed of lease dated 12th June, 1978 but which commenced from 10th January, 1978, the Ogun State Government granted a lease to the 2nd appellant, a private company, the area of land covered by the lease included the respondent's land. The respondent brought an action against the 1st and 2nd appellants and also the Ogun State Government represented by the 3rd and 4th appellants claim declaration of title to the land in dispute, damages for trespass and injunction. The respondent holding that in purported compulsory acquisition of the land which was later leased to the 1st and 2nd appellants used the land in carrying out economic industrial and agricultural development.

It should be noted that where a parcel of land is not properly acquired for a public interest, the acquisition is invalid notwithstanding that there was lapse of time between the date of acquisition and the transfer of land to a third party. The 1999 Constitution allows compulsory acquisition for any purpose prescribed by law.

The definition of public purpose is clearly set out in Section 50 of the Land Use Act[100] , this definition is very wide and it includes;

> For use by anybody corporate, directly established by law or by anybody corporate registered under the companies Act, 1968 as respect which Government owns shares stock or debentures.

[100]The Land Use Act, 1978) CAP L5, LFN, 2004

The Act does not permit acquisition for the benefit of companies in which the government has shares. Revocation from expressed or implied terms of the grant consequently, if the public purpose were to fail, the revocation should be invalidated, and the land would, by operation of law revert to the right holder.[101]

## 4.20 Right to Compensation

The right to compensation is a constitutional right enshrined in section 44[102] (1) of the Constitution of Federal Republic of Nigeria 1999 as Amended, which provides:

> No interest in immovable property shall be taken possession of compulsorily and no right or interest in the property shall be acquired compulsorily in any part of Nigeria except in the manner prescribed by law and for the purpose prescribed by law.

Paragraph (a) requires prompt payment of compensation as regards to compensation arising from compulsory acquisition of land.

In *Chief Essi v the Chief Secretary of the Federation*[103] the Supreme Court held that the trial judge was right in the proportion of one third of the shares to the first claimant (Landlord) and two third to the second claimant (Customary tenant). To properly view the fact of the case, evidence was led that the customary tenant had more improvement on the land, a customary tenant must be humble enough to access the true possession of a customary tenant. It is important to note that the

[101] (1991) 1 NMLR
[102] The Land Use Act, 1978) CAP L5, LFN, 2004
[103] (2003) 3 NFR pt. 2 pg 1.

provisions of Section 29 of the Land Use Act[104] on compensation only applies where revocation of right of occupancy is not penal, for example, revocation of right of occupancy on the grounds of unlawful alienation where the Governors consent was not sought and obtained before alienation, breach of expressed or implied covenant in a certificate of occupancy, will not attract compensation for the entrusted improvement.

Where a right of occupancy is revoked on the ground either that the land is required by the Local, State or Federal Government for public purpose, or that it is required for the extraction of building materials, the holder and the occupier shall be entitled to compensation for the value on the date revocation of their unexhausted improvements.

Unexhausted improvement has been defined by the Act as:

> Anything of any quality permanently attached to the land directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf and increasing the productive capacity, the utility or the amenity thereof and includes buildings, plantations of long lived crops or trees, fencing, wells, roads, and irrigation or reclamation works, but does not include the result of ordinary cultivation other than growing produce[105].

It follows from the foregoing that compensation is not payable on vacant land on which there exist no physical improvements resulting from the expenditure of capital or labour. The compensation payable is the estimated value of the unexhausted improvements upon revocation.

[104] Section 29, The Land Use Act, 1978) CAP L5, LFN, 2004
[105] Section 28 (3) The Land Use Act, 1978) CAP L5, LFN, 2004

## 4.21 Compensation under the Mineral Act

Upon revocation of a right of occupancy on the ground that the land is required for mining purposes or oil pipelines or for any purpose connected therewith,[106] the holder and the occupier shall be entitled to compensation under the appropriate provision of the Mineral Act or Mineral Oils Act or any legislation replacing same.[107] The phrase "holder and occupier" shall be construed in the same way suggested in the case of unexhausted improvement.

**Payment of compensation on communal Land**

Where such holder or occupier is a community, payment shall be made to the community or the head of the community, to hold same in trust for the benefit of the community or into some fund specified by the Government or Governor for the purpose of the community[108]. In *Omouka v Ediala* the Supreme Court construed the words "holder and occupier" to mean the customary landowner as opposed to the customary tenant in occupation for purpose of compensation. This decision did not take cognizance of the fundamental objective of institution of customary tenancy which is basically the provision of land for substance which necessarily entails making exhausted improvements on the land by tenant occupier in question. In the event of revocation, it is only fair and just that the owner of the improvements i.e the customary tenant be compensated. **4.22 Quantum of Compensation**

[106] Section 28 (c)
[107] Section 29
[108] (1989) NWLR (pt 96) 182.

Where a right of occupancy is revoked for public purpose within the state, or on the ground of building materials, Section 28 (2), 10 and 28 (3)(c) the quantum of compensation shall be as follows:

a. In respect of the land on amount equal to the rent, if any paid by the occupier during the year in which the right of occupancy was revoked.
b. In respect of building installation[109] or improvement there in, for the amount of the replacement cost of the building installation or improvement to be assessed on the basis of prescribed method of assessment as determined by the appropriate officers less any depreciation together with interest at the bank rate for delayed payment of compensation.
c. With regards to reclamation works, the quantum of compensation is such cost as may be substantiated by documentary evidence and proof to the satisfaction of the appropriate officer.
d. In respect of crops of land, the quantum of compensation is an amount equal to the value as prescribed and determined by the appropriate officer.

Where the right of occupancy is revoked in respect of a part of a longer portion of land, compensation shall be computed in respect of the whole land for an amount equal in rent, if any paid by the occupier during the year in which the right of occupancy was revoked less a proportionate amount calculated in relation to the area not affected by the revocation, and interest payable shall be assessed and computed in the like manner.

Where there is any building installation or improvement or Crops on the portion revoked the quantum of compensation shall follow that outlined in paragraph (ii) above, and any interest

[109] Section 29 (7) of the Act

payable shall be computed in like manner.[110] Dispute arising from the quantum of compensation payable shall be referred to the appropriate[111] jurisdiction of court under the Act. The Land use Act makes provision for jurisdiction of court or matters relating to statutory or customary right of occupancy, including declaration of title in relation thereto, as well as recovery of outstanding rent payable by the holder of a right of occupancy.

### 4.23 Jurisdiction on matter relating to statutory or customary right of occupancy

Section 39 (1) of the Act[112] confers exclusively original jurisdiction on the state High Courts in respect of matters relating to any land under the subject of a statutory right of occupancy granted, or deemed granted by the Governor including matters for declaration of title to a statutory right of occupancy. An area court or customary court or other court of equivalent jurisdiction in a state shall have jurisdiction in respect of a customary right of occupancy granted or deemed granted by a Local Government including matters for declaration of title to a customary right of occupancy by virtue of Section 41 of the Act[113].

While it is law that an Area Court or Customary Court has jurisdiction over land under the subject of a statutory right of occupancy that was ratio in *Salati v Shehu*[114] on the contrary, the High Court jurisdiction cannot be restricted to matters relating to statutory right of occupancy mainly. By virtue of the general jurisdiction conferred on the state High Court by Section 272 (1) 1999

[110] Section 26 (6) The Land Use Act, 1978) CAP L5, LFN, 2004
[111] Land Use Act Allocation, Section 30.
[112] The Land Use Act, 1978) CAP L5, LFN, 2004
[113] Section 41, The Land Use Act, 1978) CAP L5, LFN, 2004
[114] (1986) 1 NWLR (pt. 15) 198.

Constitution[115], the state High Courts have jurisdiction to determine and hear matters affecting land in any part of the state, irrespective of whether the land in question is situated in an urban or non-urban areas.

With the decision of the Supreme Court in *Adisa v Ojinwola*[116] the position of the law on the jurisdiction of the State High Court on land matters within the state, is that while a state High Court has exclusive jurisdiction over lands in urban area, it31 shares concurrent jurisdiction with the customary or other courts of equivalent jurisdiction. Both courts share general jurisdiction under Section 272 (1) which replace Section 236 (1) 1979 Constitution[117].

The exclusive jurisdiction of the State High Court as opposed to Federal High Court which is not included as part of the court conferred with jurisdiction to deal with land matters except where the Federal Government of the federation of any of its agencies is a party to the action.

**4.24 Defects of the compensation provisions**

The Land Use Act has been referred to as the most controversial legislation ever made in the country, the criticism is focused on the compensation provisions. Despite its revolutionary stance the generality of Nigerians welcome it though they are still skeptical in view of the difficulties associated with its application and its unpredictable ultimate impact on the socio economic life of the people.

In the report of the presidential committee on the review of the 1999 Constitution (volume 1 main report of February 2001) the view in some parts of the country is that the Land Use Act is

[115] The Constitution of the Federal Republic of Nigeria (1999) as amended.
[116] (2000) 10 NWLR (pt. 674) 116
[117] Section 39 (1) of The Land Use Act, 1978) CAP L5, LFN, 2004

oppressive and has in fact, outlived its usefulness and should therefore be repealed. Others still see it as a useless tool when it comes to general development as it affects communities and larger interest, so expunging it from the constitution may be very helpful at this stage of the nation's development.

It is accordingly recommended in spite of the arguments in favour of expunging it, that the Act as contained in Section 315 (5) of the 1999 Constitution[118] should be spared. Further consideration of the defect of the compensation provisions, is that the life of a right of occupancy is in most cases 99 years. This is considered short as it defeats people's succession aspiration; worse still, the Act does not specify how development made on land would be treated when the land reverts to the state. The specified compensations presently fall short of people's expectations.

In the second place, there is a tacit resistance to the operation of the entire legislation, this situation is attributable to the defects in the Act. For instance, though Section 1[119] vests all land in a state in the Governor, the same Act in Section 28[120] makes provision for revocation of deemed rights of occupancy before the land could be acquired by the state for its purpose. Close observation shows that in practice, when a state wants land for its purposes, compensation is indirectly paid to communities deemed entitled to the right of occupancy and this must be done prior to the acquisition. This constraint could have been avoided if the Act courageously provided for payment of compensation in every case of expropriation so that the previous owners would have no cause to impede state developments.

[118] The Constitution of the Federal Republic of Nigeria (1999) as amended.
[119] The Land Use Act, 1978) CAP L5, LFN, 2004
[120] *Ibid*

The compensation provision in Section 29[121] is grossly inadequate and concerned persons are never enthusiastic about yielding to the process. The method of assessing the compensation lacks people's confidence as government servants who cannot afford to be neutral are the assessors (Section 2(2)(c)[122].

The Act appears to contradict itself in the provisions of Section (1) 28 (4) (6)[123] as they apply to deemed holders of a right of occupancy. Section 34 and 36 are anomalous, Section 35 (5)[124] seems to ignore the fact that an owner of any land in an urban area must have come by it commercially.

The compensation provision of Section 35 (1)[125] which follows that of Section 29 is inadequate Section 35 (2)[126] is also unreasonable, Section 36 (1) (2)[127] has no problem, but Subsection 3 is anomalous, a person holding right to such a land for whatever purpose should be deemed entitled to a right of occupancy even if the land is used for other purposes.

Section 36 (4) has one fault, it refers to a Holder or occupier. It should have restricted itself to a holder since a tenant who is attached to the holder is subordinate to him and will benefit whatever right conferred on the holder.

Section 36 (5)[128] look a clog on the life of the people. Why should such holders stop admitting customary tenants for their livelihood? Section 36 (5)[129] does not recognize that in customary

[121] *Ibid*
[122] *Ibid*
[123] *Ibid*
[124] *Ibid*
[125] The Land Use Act, 1978) CAP L5, LFN, 2004
[126] *Ibid*
[127] *Ibid*
[128] *Ibid*
[129] *Ibid*

transactions, instrument are not a requirement, therefore, any transaction not embodied in an instrument would not contravene the provision.

# CHAPTER FIVE
# CONCLUSION

## 5.1 Summary of Findings

The enactment of the Land Use Act in 1978 was a great development in the Nigeria Land tenure system. No doubt, if the Act had succeeded in achieving what it was intended for, the whole rule of customary law relating to land in Nigeria would have experienced a radical change and there would have been a great change in the people attitude and interest in land as well. This would have also solved the problems of delivering effective housing to the Nigerian populace, but the reverse is the case.

However, form discovery of this research, it is revealed that there is no change at all, both in the attitude of the citizens to land and the level of land dispute that was prevalent prior to the Land Use Act. The overlords still go to Court to ask for forfeiture of the right of the customary tenants. The difficulty of acquiring land for developmental purpose by Government and private individuals priors to the ct, still continues even stronger. The investigation of this study ahs revealed that the activities of land speculators, land racketeering and high value of land that bedeviled the acquisition of land for beneficial public and private use prior to the Act, are still comfortably staring at us.

On the revocation power conferred on the State Governor by the Act, it is observed that oftentimes, the whole process is abused. The motive behind most revocations are political and self-centered. Thus, an individual's title to land can be revoked by the State Governor and same part re-invested in another individual who is a political loyalist or proxy company as against the public interest loyalist or proxy company as against the Public interest the revocation is hinged on. Same is true of compulsory acquisition where the Governor compulsorily acquires land from individuals for

public use, but often converted to private or personal use. The power of compulsory acquisition is hinged on the revisionary interest in all lands in the country vested in the State Governor by virtue of Section 1 of the Act. It is observed in this study that this provision of the Act is oppressive and geared towards rendering many Nigerians landless and permanent tenants.

This research study so far, has shown that the reason for the deficit in housing in Nigeria is largely due to the ineffective government policy on land management and control.

The Land Use Act, 1978, has failed in meeting the demand for effective housing delivery in Nigeria because of the absurdities plaguing its various provisions. It can therefore not qulify as a panacea for the housing deficit in Nigeria.

## 5.2 Recommendations

Based on the findings of this research, the following recommendations are made;

a. For deficit in housing in Nigeria to be addressed, the control and management of land should be revisited. Section 6 (1) – (6) of the Act which grants the Local Government the power to manage land in Non-urban area, should be reviewed. Such power should be domiciled in the traditional institutions where the traditional institutions where the traditional rulers, village heads or family heads, preside over the allocation of land. The community leaders, from time immemorial enjoy special privilege in relating with their people and are seen as trustees in matter relating to land.

b. If compulsory acquisition plays out as a necessity adequate compensation must follow to mitigate the loss suffered by expropriated owner. Land is a part of man's existence and to expropriate one of his land, comes with untold hardship. The sobbing of the expropriated

owner can only be soothed, if the land is utilized for the public purpose it is acquired for, not converted to private purpose.

c. If the land is to achieve its purpose as intended by its drafters, the provisions conferring powers on the state Governor's and the local government to grant statutory and customary rights of occupancy, should be overhauled. This has often frustrated many developers who jettison their developmental plans and in turn, tells on the economy of the state adversely and as well negates the delivery of effective housing. Moreso, sections 5 and 6 of the Act which put the control and management of land only in the Land's of the Governor and Local Governments, should be revisited.

d. Government should allow traditional institutions control and manage land. However, government can set up advisory committee to monitor the allocation of land by the traditional rulers and family heads.

e. Government should devise a policy regulating the allocation of land and such owners of land must be ready to surrender ownership upon request by the government for public use.

f. The appointment and removal of the Land Use Allocation Committee should be made subject to the approval of the State House of Assembly and the Judicial Advisory Committee.

g. The Land Use Act is overdue for a holistic amendment if it must achieve its objectives.

## 5.3 Contributions to Knowledge

The essence of this research has been underscored in the significance to the study. However, it is pertinent to note some of the cointributions that that this research adds to existing knowledge which include:

1 The research hopes to bring to bear the process of land management and control in Nigeria and as well as creating awareness on the loopholes that exist in it.

2 This research will add to the existing knowledge of the Land Use Act, 1978 in the sense that it will make use of recent reports, views and laws. Thus, it will enhance the knowledge of scholars and researchers on the subject matter.

3 This ressearch will help a grea deal in formulating new policies for the control and management of land in Nigeria. This has been made possible by a careful examination of the vacuums created by the Land Use Act through its various provisions

4 This research will be useful to the government in proffering a lasting solution to the problem of housing deficit in Nigeria.

## 5.4 Areas for Further Studies

In the course of the investigation of this research, it would be ideal to look beyond the chosen topic, if possible a comparative analysis of the Land Use Act in Nigeria and what is obtainable in other jurisdictions. This research work focuses only on the challenges of the Land Use Act with regards to housing deficit in Nigeria. Further studies into the following suggested topics will help in understanding the concept proper. The following topics are hereby suggested for further studies in advancement of the study of the Land Use Act, 1978.

a. The Land Use Act, 1978 and the ownership of mineral resources in Nigeria: A comparison of Nigeria Land Policy and that of Ghana.

b. An examination of the powers of the Governor under the Land Use Act, 1978. A need for a balance in the Scale.

c. Compulsory Acquisition under the Act: The Injustice of Expropriation in Nigeria.

## 5.5 Conclusion

The lofty idea behind the promulgation of the Land Use Act, 1978, especially the section that says that all land be held in trust and administered for the use and common benefit of all Nigerians, has been nothing but a sham. The limit of land allowed each person by Section 34 (5)(6) of the Act has been totally ignored. The position today is that land is less available to the ordinary Nigerian than it was prior to the land use Act. Thus holding most of the citizens to the unenviable position of perpetual tenants.

The allocation policy of land of the various State Governments particularly during the civilian era has been scandalous. The land use Allocation Committees which are supposed to make recommendations on these matters are no more than appendages of the Governors a merely endorsed list approved by him. The result is that allocations are made mostly to friends, relatives and party faithful.

Land is pivotal to man's existence thus, its essence cannot be over-emphasized. Land is the most essential and precious property that can be owned by man. Considering the importance of land to man, the land Use Decree which later became an Act was promulgated in 1978, and replaced the customary land tenure that governed the use of land in Nigeria.

In appraisal of the challenges of the Land Use Act, 1978 with regards to housing in Nigeria, the opinions of various authors were reviewed, provisions of the Act posing controversies are equally discussed. Some of these provisions include; Vesting all lands in the Governor of each state; the power of control and managements of land in the state, the appointment of land allocation committees; the power of designation of urban areas; the power to grant statutory right of occupancy and the issuance of certificate there from; power to enter and inspect land and improvements; the power of revocation, power of compulsory acquisition and rights to compensation.

No doubt, the Land Use Act came as a noble idea when it was birthed in 1978 to solve the problems of land acquisition in Nigeria. it was intended to provide remedies to the defect of the customary land holding systems introduced by customs and the colonial masters. It was also meant to give equal opportunity to every Nigerian to own land and build a house of his own. However, after many years of its existence, the problems it was meant to solve are still staring boldly at us on daily basis, prompting many to question the usefulness of the Act. Some have called for a repeal of the Act, while others have called for a review. Some of these challenges form the basis of this research work to fully examine the areas they have affected housing in Nigeria.

It will be surprising to note that after 46 years of its existence, the Land Use Act has not been able to proffer solution to the problem of land management in the Act is either partially or completely helpless to the situation. The officials tasked with the implementation of the Land Use Act, often do not act in good faith. Landed properties of private citizens are often revoked and re-allocated to other private citizens. The problems of land speculations and racketeering are still prevalent and even in the increase. Exorbitant compensations are still demanded by communities, individuals even take back the land already acquired from them by government but, not developed.

The Land Use Act is plagued with many controversies and ambiguities thus, prompting many people to refer to it as more a curse than blessing. One of such ambiguities is the consent provision which bars an individual from enjoying freedom to enter into a contractual bargain with a land he has a statutory right of occupancy. Having obtained statutory right of occupancy, he should have the liberty to use the land without further permission from the government as long he does not contravene the terms in the certificate of occupancy. It suffices to say therefore, that the Land Use Act has overstayed its usefulness, it should either be repealed or overhauled. The Land Use Act, if it must stay, should be removed from the constitution in order to make its amendments flexible.

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