

## **A CLOSER LOOK AT THE MANAGEMENT, REVOCATION AND COMPENSATION PRINCIPLES UNDER THE NIGERIAN LAND USE ACT**

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### **ABSTRACT**

*Land use and management has proved to be a source of worry and conflict in the world especially the developing world. In Nigeria, it has proved to be causing a lot of problems amongst the government and the governed, between individuals and even between Governments. The issue of land acquisition and management even heightened with the British invasion of Nigeria and the Colonial rule that for administrative purposes brought some innovations to land ownership.*

*To worsen the issue, the amalgamation of the Southern and Northern protectorate saw a combination of totally two different land uses and ownership of the Northern part governed by the emirs and the South with its family/communal ownership.*

*With the gaining of independence, oil boom and rapid development, acquiring land was more difficult especially in the south leading to setting up of panel to investigate the problem and recommend the way forward. The result was land use Act of 1978, which nationalised land for the whole country, extending what was operational in the North under the Land Tenure Law.*

*This article examines the sections dealing with the management and control and revocation powers given to the Governors of the state as well as the compensation sections for acquisition of land compulsorily acquired for overriding public interest.*

*It ends up with looking at the proposed amendments, the sections that is proposed to be amended, and ends with the writer's opinion.*

### **1. INTRODUCTION**

The coming of the LUA automatically changed the norm and accepted practice in the Southern part of Nigeria and now erodes Nigerians of their land rights. Also, the writer chose to discuss the relevant sections of the Act generally for the reader to understand how it was in the whole country and what led to the enactment of the great LUA. This article discusses land ownership before the colonial rule, during colonial rule, after colonial rule before the LUA and relevant sections of the LUA. There will be a discussion on the proposed amendments and a conclusion.

### **2. THE HISTORY OF THE NIGERIAN LAND TENURE SYSTEM**

Before the colonial era, land was mostly owned by settlement<sup>1</sup> and conquest after war.<sup>2</sup> Predominantly kings, rulers, religious groups carved out lands for their communities and followers, which they eventually claim dominion over.<sup>3</sup> Customary Land Tenure was the only recognized land tenure System. Customary law is simply a system of accepted practice; well recognized, enforced and regarded as "a mirror of

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<sup>1</sup> Settlement without any adverse claim, see *Owonyin v Omotosho* (1962) W.N.L.R 1

<sup>2</sup> See the Privy Council in *Mora v Nwalusi* (1962) 1 All N.L.R 681. See also C.O. Olowoye 1974, Title to land, Evans Brother Ltd 35 at p.41.

<sup>3</sup> This was a kind of practice and norm predominant at that time

accepted usage.<sup>4</sup> In the pre-colonial North, the nomadic Fulani rare their cattle over large expanse of land without boundaries, settle and claim dominion over any area they see market.<sup>5</sup> After the 19<sup>th</sup> century Jihad, a feudal pattern of land ownership was developed with Emirs claiming ultimate title to land, with fief holders. To the southerners, land had economic, social, political, and religious significance. Land was conceived as a sacred institution given by god for the sustenance of all members of the community.<sup>6</sup> Therefore land belonged to the dead, the living, and the unborn with the living merely holding land as a kind of "ancestral trust" for the benefit of themselves and generations yet unborn. Chief Elesi of Odogbolu, confirmed that while testifying before the West African Lands Commission in 1908. He said: "I conceive that land belongs to a vast family of which many are dead, few are living and countless members are still unborn."<sup>7</sup> In fact Chubb opined that the interest of the dead and unborn count more than that of the living.<sup>8</sup>

The chief manages and controls the whole communal land like a trustee for the benefit of other members, but he is not a trustee 'stricto sensu' as he is not the legal owner of the trust/land he holds. This community ownership was buttressed by Viscount Haldane in the leading case of *Amodu Tijani v. Secretary of Southern Nigeria*.<sup>9</sup> Before 1900, the Royal Niger Company administered the North by charter of the British Government where the company acquired all the land along the Rivers Niger and Benue. When the country became a colony of Britain, the colonial officials used the "tools" found locally in the North to introduce The Public Lands Proclamation 1902 as an agreement between Sir Lord Lugard and the Royal Niger Company under which all lands, rights and easements were vested in the High Commissioner in trust for His Majesty. The government then conquered the Fulani's, took over their land and named it Native Lands and took over the earlier acquired lands after declaration of Northern protectorate and converted to Crown Lands.<sup>10</sup> The Crown Lands were vested in the Governor in trust for her majesty and the Public/native Land was vested in the Governor in trust for the people.<sup>11</sup> Here, the Emirs who exercised "proprietary" rights were appointed or re-appointed and given "letters of appointment" which transferred their feudal pattern of land holdings to the Crown. In that case, all lands were regarded as "native lands" with empowerment of the Commission for Lands and Survey to grant rights of occupancy and no title to the use and occupation of land was valid without the consent of the Government. In 1910, Lands and Native Rights Ordinance was enacted and amended in 1916 after amalgamation.

In the south, several laws were enacted by the colonial government to ensure total control of all lands in Lagos and environs between the years 1863 and 1876. Some legislations were introduced by the Colonial Administration to compulsorily acquire land for public purposes with payment of compensation to the landowners and named them crown lands (now state lands).

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<sup>4</sup> *Ononiyun v Omotosho* (1961) 1 All NLR 304; *Kindey and ors v Military Gov' of Gongola State & Others* (1988) 2 NWLR (pt 77) 445.

<sup>5</sup> See Adedeji (2006) as quoted by Olusola Atilola, Land administration reform Nigerian: issues and Prospects

<sup>6</sup> This was actually the custom/norm that existed from one generation to another.

<sup>7</sup> See West African Lands Commission (1908) p.183, para. 1048.

<sup>8</sup> Chubb Ibo Land Tenure (1961) p. 18

<sup>9</sup> (1915-21) 2 A.C. 399 cited in R.W. James, modern land law of Nigeria 15 (1973). 1990] *Nigerian land tenure* 47

<sup>10</sup> Here, all those lands not in actual possession were declared crown lands.

<sup>11</sup> This is just maintaining the pre-existing property rights under a new regime

### **3. THE BEGINNING OF COMPENSATION FOR ONLY OCCUPIED LAND**

With the amalgamation of Northern and Southern protectorate in 1914, there was obvious multiplicity of land tenure systems and land holding ranging from the feudal pattern of the North to the traditional ownership structure of the southern Nigeria and freehold of the Europeans. There was indeed operational conflict between this freehold system and the customary systems in place before the introduction of freehold system resulting in endless litigation.<sup>12</sup> The Public Land Ordinance in 1876 was modified as the Public Lands Acquisition Act 1917 to provide for compulsory acquisition of land for public interest and compensation was for only occupied land. This was the beginning of the problem regarding compensation for acquisition empty land in the Southern Nigeria.

Accordingly, there were basically four different land tenures operating in Nigeria before LUA: tenure under the received English law,<sup>13</sup> State Land Laws,<sup>14</sup> Land Tenure Law,<sup>15</sup> and the indigenous tenure under customary law. The received English law and state Land Law operated nationwide while the other two followed the north south dichotomy issue Nigeria.

The Land Tenure Law of 1962 was enacted and it provided for the management and control of these native lands was vested in the Minister (later Commissioner) for Lands and Survey to administer for the use and common benefit of the natives. This in effect led to recognition of both customary rights of occupancy administered by traditional authorities who covered all those tenure systems administered by communities or their leaders since pre-colonial times; and statutory rights of occupancy administered by State Governments with title of about 99 years. In the South, there were several laws applicable before the enactment of the LUA 1978 which have not been repealed. Apart from the laws operational in both the Northern and Southern part of Nigeria, foreign legislation were imported to deal with land and landed properties.

### **4. PROBLEMS OF THE TENURE SYSTEMS AND THE DEVELOPMENT OF LEGISLATION ON LAND BEFORE THE LAND USE ACT, 1978 IN NIGERIA**

There were obvious problems associated with the various land tenure systems operating in Nigeria in the seventies especially with oil boom which led to changes in the economic spheres leading to rapid urbanization, hence the need to improve housing, sanitation, medical care, educational facilities and many other facilities. Land became very exorbitant; more difficult to acquire even for the government, with land speculation and profiteers. To worsen the case, security to title to Land became an issue of concern as the same piece of land could be sold to different persons at different times and in many cases resulting to violence to secure interest in land. More civilized aggrieved persons go to court, but end up with

<sup>12</sup> See Elias, 1971, the Nigerian Land Law

<sup>13</sup> The English law started with 1863 Ordinance No. 3 in the Colony of Lagos. Some of the received English laws are: the Conveyancing and Real Property Act of 1882, Settled Land Act 1881, Fines and Recoveries Act 1888. *See also* A.O. Obilade, The Nigerian Legal System 18 (Sweet and Maxwell, London, 1979).

<sup>14</sup> *See, e.g.*, State Lands Act, ch. 45 (Nig. 1958), and the State Land Laws of each state of the federation, *e.g.*, Western States, ch. 29, Eastern States, ch. 122. These statutes are mentioned in TOBI, NIGERIAN LAND LAW (Ahmadu Bello Univ. Press Ltd. 1987).

<sup>15</sup> See the Land Tenure Law of 1962

frustration especially with time spent in court.<sup>16</sup> Even the courts looked helpless in some cases. In *Ogunbambi v. Abowab*:<sup>17</sup> Judge Verity said:

...[T]he case is indeed in this respect like many which come before the court: one in which the Oloto family either by inadvertence or design, sell or purport to sell the same piece of land at different times to different persons. It passes my comprehension how in these days, when such disputes have come before this court over and over again, any person will purchase land from this family without the most careful investigation, for more often than not they purchase a law suit and very often that is all they get.<sup>18</sup>

The land officials in government became very corrupt, with enormous challenges that average Nigerians could not acquire land. Even when land became alienable under the indigenous system, it actually created more problem than solving the problem because the modalities on how and who to transfers this valid title was in issue. The right of occupancy system in northern Nigeria was not spared. Thus Professor Jegede laments that "even in the Northern States where the Land Tenure Law and its predecessors have been in operation for about a century, there is the cry against rich and influential members of the society using their position to seize the land of the less privileged members of the society".<sup>19</sup> All these led to the establishment of a task force by the then Obasanjo military Government to examine the causes of the problem and possibly come up with lasting solution and the result was LUA.

In addition to the panel, and to ease the immediate problems, the Public Land Acquisition (Miscellaneous Provision Decree 33 of 1976), which provided for compensation for bare land to ease the problem of land acquisition, was enacted. The rent review panel recommended that land ownership should be vested in the state and the end result was the enactment of LUA nationalizing land for the whole country which was a minority opinion of the Land Use Panel extending what was operational in the then Northern Nigeria to the whole country and even entrenched it in the 1979 constitution. With this entrenchment, LUA amendment needs 2/3 majority as in the constitutional amendment (no matter how small). The question here is why this stringent amendment condition and why accepting the minority report that recommends nationalisation of land instead of the majority?

## **5. THE LAND USE ACT OF 1978**

The LUA was introduced to ensure that all Nigerians have easy access to land<sup>20</sup> and to ensure that the "rights of all Nigerians to the land in Nigeria be asserted and preserved by law". The whole idea was for Nigerians to acquire land in any part of the country which they desire, on payment of minimal fees and without any risk of being duped or being subjected to strong and unreasonable negotiations with chiefs and landowners. LUA was also seen as a way of reducing land disputes between communities.<sup>21</sup> The introduction of the LUA radically re-positioned Nigerian land rights by neutralizing "all traditional impediments to land acquisition

<sup>16</sup> See *Ariori and Others v. Muraimo Elemo and Others*, I Sup. Ct. Nig. L. Rep. I (1983) (action commenced in October 1960, appeal heard and retrial ordered by the Supreme Court in 1983).

<sup>17</sup> 13 W. Afr. Ct. of App. 222 (1951)

<sup>18</sup> *Ibid.* at 223

<sup>19</sup> M.I. JEGEDE, LAND LAW AND DEVELOPMENT 37 (1981)

<sup>20</sup> That's one of the objectives as stated in the Act

<sup>21</sup> See the objectives of the Act

under customary laws with the main thing being that individual presumably now only have right of possession while ownership is in the state.

The LUA merely copied land tenure law of 1962 which was applicable in the northern Nigeria with as many as thirty-four identical provisions with some vital modifications. To the South, it was like a revolution because land was owned privately by the community, individuals or inheritance, outright purchase or gift, although this had been infringed upon by the gradual growth of freehold land since the colonial period.

### **CRITICAL EVALUATION OF THE RELEVANT SECTIONS OF THE LUA**

Section 1 of the Act vests all land in each state in the state's governor to be held in trust and administered for the use and common benefits of all Nigerians in accordance with the provisions of the Act.<sup>22</sup> This section seemingly looks same with that of Chief/head of family authority under the indigenous land tenure system; though differ in relation to the power of management and control of the land.

The wordings of this section will be critically analyzed to interpret its meaning. The first interesting word is 'vest'. The simple dictionary meaning according to Vest dictionary.com<sup>23</sup> is to confer on a person the right of immediate or future legal ownership or possession and use, of land or other property, to confer particular legal authority, power, or rights and designation of the endowment of authority, power, or rights. But a lot of interpretations is been given to this word. Ogundare J. (as he then was) interpreting the meaning of 'vest' as used in section 1 in the case of *Akinloye v. Oyejide*<sup>24</sup> gave it the simple dictionary meaning when he said that 'vest' in the LUA means transferring to the Governor ownership of all the land in the state, with effect to deprive citizens of ownership rights without compensation. This was also *Eso JSC* view in *Nkwocha V. Governor of Anambra State*.<sup>25</sup> But Irikefe JSC (as he then was) disagreed with *Eso JSC* in *Nkwocha's* case<sup>26</sup> when he said:

...by this piece of legislation a legal trust ... is created. Constituting every state Military Governor as trustee in respect of land within the limits of his State for the benefits of Nigerians.

In *Savannah Bank v. Ajilo*,<sup>27</sup> *Belgore JSC* interpreted section 1 and 2 together to say that LUA only vested ownership of land in the Governor as trustees to administer and manage for the benefit of all Nigerians.<sup>28</sup> To Chianu<sup>29</sup> the word 'vest' as used by the LUA only means vesting in reversion. He interpreted that word 'vest' alongside its section 11 which gives the governor right to enter upon and inspect land only at reasonable hours in the daytime. By this the governor does not have absolute powers and ultimately absolute ownership of land as interpreted by *Eso*

<sup>22</sup> By section 49, land vested in the federal government or its agencies is exempted from the vesting declaration of section 1.

<sup>23</sup> Read more: <http://www.businessdictionary.com/definition/vest.html#ixzz1nX4F5ZRT> Last accessed on 29<sup>th</sup> December, 2012.

<sup>24</sup> (Unrep.) Suit No.HCJ/9A/81 of 17/7/81-High court of Ijoro Ondo state now Ekiti state.

<sup>25</sup> (1984) 6 SC 362 at 392 or (1984) 1 S.C. Nig. L. Rep. 634, 652 and Obaseki, J.S.C. in *Salami v. Oke*, (1987) 4 NWLR (pt.) 63, identified a right of occupancy as a *possessory interest in land*

<sup>26</sup> (1984) 6 SC 362

<sup>27</sup> (1989) 1 NWLR (Part 97), 305 at 352-353.

<sup>28</sup> This interpretation is in tandem with the provisions of sections 34 and 36(4) of the Act.

<sup>29</sup> Land use policy management and public interest. Lecture delivered in Unilag.

JSC<sup>30</sup> and Ogundare J.<sup>31</sup> One tends to believe that the LUA couldn't have meant vesting the whole land of the state to the governor for his beneficial use; rather it stripped private owner's right to total ownership.

The next worrisome aspect of LUA is the nature of trust established by the LUA, which several scholars and judges had actually interpreted in different ways. Balogun J. in *Adewunmi v. Ogunbowale*<sup>32</sup> opined that the trusteeship created by LUA is a loose one as no one expects the Governor to account for any benefits accruing from land held by him which Uwais JSC (as he then was) in *AG Bendel v. AG Federation*<sup>33</sup> disagreed with. *Fekumo*<sup>34</sup> on his part said that the trust created is simply trust ownership and not legal estate and of course this is not the actual meaning of trust. Again *Adigun and Utuama*<sup>35</sup> faulted Fekumo's position when they said that trustee in orthodox sense is true legal owner. It is worthy of note here that trust relationship is fiduciary relationship and voluntary and in the writer's opinion LUA, is a decree forced on Nigerians being a minority opinion, there should be no basis for trust relationship. Accordingly L. Babatunde said<sup>36</sup>

...The creation of trust relationship all over the civilized world is a voluntary act of its creator. It is an office of confidence and strict accountability. A trusteeship is an office of very high fiduciary responsibility, which can never or should never be assumed by force of arms as under the Land Use Decree. This bulldozer of a decree, enacted without proper consultations, vests ownership and management Rights over other peoples land in a stranger element whose only qualification is that of overlord...Here lies the fallacy of this fake trusteeship created under section 1 of the said Decree...A forced trust with powers vested on the Trustee to convey trust property to any one he pleases, including himself, without question, must by common sense be bizarre and monstrous indeed. .... In the circumstance, there is the urgent need for the Constitution Debate Committee to take a very close look at this Decree, as it presently stands. The Decree needs to be either abrogated or moderated.

With LUA, landowners can dispose property with the Governors consent which is inconsistent with the standard position of law that a beneficiary does not have right in 'rem' to dispose. Accordingly as Adigun<sup>37</sup> argued that the trust relationship created by the LUA has no place in English jurisprudence. These interpretations create more confusion that one could imagine.

With all this argument and confusion as to meaning of 'vest', 'trust' and benefit of all Nigerians', one worries about the true effect of LUA. Some scholars

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<sup>30</sup> Supra note30

<sup>31</sup> Supra note29

<sup>32</sup> (unrep) suit No ID/115?81 of 28/5/82 Ikeja High court.

<sup>33</sup> (1983) 6 SC 8 at 154-155.

<sup>34</sup> J.F. Fekumo 'Does the Land expropriate? A rejoinder' (1987 &1988) 8 &9 JPPL. P.10.

<sup>35</sup> *Adigun and Utuama* "A decade of Land Reform in Nigeria-The Land Use Act, 1978 in Perspective" on NALT proceeding op cit 31 at 40.

<sup>36</sup> Comments by L. Babatunde in "The Future of the Land Use Decree" in L. Babatunde, *Hints on Land Documentation and Litigation in Nigeria*, (Lagos, 2002) at pp. 220-226.

<sup>37</sup> J.O. Adigun, "Law and Language in Nigeria: The tyranny of imposed values", in J.A Omotola and A.A. Adigun (Eds) *Law and Development* (1978-Lagos University Press) 188 at 191.

like Prof. Oretuyi argue that LUA nationalised land ownership in Nigeria,<sup>38</sup> while others disagree with the position. Omotola for instance disagreed with that position in totality and said that nationalization means total ownership, but LUA left individuals with interest therefore did not nationalise land.<sup>39</sup> He said that though LUA divest absolute individual ownership, giving absolute ownership to the governor, there wouldn't have been need for section 28 on revocation power of the governor if there was nothing left for individuals to revoke.<sup>40</sup> In the same vein, Belgore JSC (as he then was) in the case of *Savannah Bank v. Ajilo*<sup>41</sup> says that some section of LUA protect individual dealing subject to the provisions of the Act which is inconsistent with the concept of Nationalisation.<sup>42</sup>

The primary question which is of importance here is: does private ownership of land exist with the enactment of LUA? The obvious answer is no, although it does not seem to be so different from a feudal system where title is derived from the feudal superior, but land can still be held and sold privately. Nnamani JSC (as he then was) agreeing with this said<sup>43</sup> “*it seems that while the Land Use Act may not have nationalised land in the proper sense of that term, it certainly did enough to terminate the concept of private ownership of land for there is sense in which a mere right of occupancy which is granted and can be revoked by the Governor can be compared to a fee simple title absolute in possession.*”

The Supreme Court per Karibi-Whyte in the case of *Ogunmola v Eiyekole (1990)* 4 NWLR (pt 146) p 632 at 653, observed, that though land is still held under customary tenure, the owners of the land are no longer ultimate owners as they now requires the consent of the Governor to alienate interests which hitherto he could do without such consent. By removing absolute ownership, it was believed that access to land for public and private use will be facilitated with promotion of security of tenure as well as curbing of land speculation. But after 34 years of being in force, these goals are far from being achieved. Instead, it has created problems with more problems even foreseen.

Having identified reasons why government enacted the LUA, the fundamental question becomes why the land is vested in the governor? The governor can still take control of the land and achieve even better purpose without making actual land-owners tenant at the will of government. The reasons put forward by government cannot be justified and one tends to believe that there is more to reason. My opinion is that individuals must not be eroded of their inheritance land rights before the governor of a state takes control of the lands. The governor of each state of Nigeria is for example the chief security officer of the state, but does not head security position, so why is LUA case different?

The next section is revocation section. Section 28 says that it shall be lawful for the Governor to revoke a right of occupancy for overriding public interest. Subsections 28(4) and (7) are interesting provisions of the Act. Section 28(4) actually says that the Governor shall revoke a right of occupancy or acquire land for public purposes *by mere issue of notice* and by subsection 7, once he/she receives that notice it is right extinguished or on a later date as specified. Again this one of the most horrendous things heard of. The individuals' right to land is removed to the extent

<sup>38</sup> Prof. Oretuyi: Title to land in Nigeria: past and present (1996-Obafemi Awolowo University Press Ile-ife-A1991 Inuagral Lecture), p. 15. See also Eso in Nkwocha, s case supra note 29

<sup>39</sup> (1985) 3 JPPL. 1at 2-3

<sup>40</sup> Ibid at p.6

<sup>41</sup> 1989) 1 NWLR (Part 97), 305 at 332

<sup>42</sup> See also Nnamani JSC in that same case

<sup>43</sup> Hon. Justice (Dr.) Nnamani “The Land Use Act 11years after” (1989) 2 G.R.B.P.L., No 6 p.31 at 36-37

that your right ceases automatically by mere receipt of a notice. This work did show neither any judicial pronouncement nor opinion on this matter, but the writer suggest that there should be a closer look to this section as occupiers cannot just be left at the mercy of the Governor.

This section cannot be concluded without looking into is the term ‘overriding public interest’. Who determines what overriding public interest is? What is/are the criteria for determining what overriding public interest? It is inconceivable that the so called LUA did not even make an attempt to define or even give a guide on what constitute overriding public interest. The only definition or guide in defining overriding public interest is in section 28 that defines it to include “the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith” or that it depends on the right being held by the holder. What we then see in practice as a result of this lacuna is that overriding public interest is what government of the day deem so and this leads to abuse of office and somewhat deprivation, cheating and all sorts of vices against human rights principles.<sup>44</sup> The Act even went further in section 38 to say ‘Nothing in this Part shall be construed as precluding the exercise by the Governor or as the case may be the Local Government concerned of the powers to revoke, in accordance with the applicable provisions of this Act, rights of occupancy, whether statutory or customary, in respect of any land to which this Part relates.’ So the revocation power cannot be taken away from the governor no matter the circumstance, once it is in accordance with the draconian LUA. This is indeed a source of worry.

Another important section of this Act is Section 29. It provides for compensation for land revoked or acquired for overriding public interest, but this compensation is limited to the value of their unexhausted improvements at the date of revocation, but the Minerals Act applies if revocation is for mining or oil pipelines purposes.

What is more, section 29(3) gives discretion to the governor to decide who receives the money (and possibly how it may be utilised). He can decide that it be paid to the community; or its chief or leader or into some fund specified by the governor. This is yet another wide power given to the Governor as nothing in the Section precludes him from deciding that compensation for community land be paid to him or someone else to be used for the benefit of the community as sub section 3 (c) says fund can be paid into some fund specified by the governor for the purpose of being utilized or applied for the benefit of the community. As usual this may lead to abuse of office. More so, the community leader can decide on how he can disburse the compensation hence the extensive litigations regarding this in the courts by even fellow community members.

In discussing these compensation rights, it will be worthwhile to look into the meaning of land and what it connotes. It is generally agreed that land includes all objects attached to the earth surface, this includes Trees, Rocks, Buildings, and other structures naturally attached or constructed by man. But land in law means more than this, and it includes further abstract, rights and interests like incorporeal

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<sup>44</sup> See recent court proceeding between wife of the present Nigerian president Dame Patience Jonathan and wife of former president Turai Yar’adua over plot 1347 Cadastral Zone, Abuja, one of the choicest areas in Nigeria. See the vanguard newspapers: <http://www.vanguardngr.com/2012/07/turai-vs-patience-fg-opts-for-out-of-court-settlement-of-land-dispute/> Last accessed on 29<sup>th</sup> December, 2012. See also the Daily trust newspapers of 24/7/12: Court rules today in Turai vs Patience land dispute. Available at: <http://www.dailytrust.com.ng/index.php/news/172546-court-rules-today-in-turai-vs-patience-land-dispute> Last accessed on 29<sup>th</sup> December, 2012.

hereditaments, right of way, easements and profits enjoyed by persons over the property or ground belonging to other persons. The property and conveyancing law of Western Nigeria 1959 says 'land includes land of any tenure, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way), and other corporal hereditaments; also a rent and other incorporeal hereditaments; and an easement, right, privilege or benefit in, over, or derived from land, but not an undivided share in land'.<sup>45</sup> *The property and conveyancing law of Western Nigeria* adopted the common definition of land, all inclusive and also in tandem with the general principle of land law *quicquid plantator solosolo cedit*- whatever is affixed to the soil, belongs to the soil which most Nigerian scholars also agree to.<sup>46</sup> It is in my view a better definition.

Incidentally, by Section 29(4) of LUA, compensation is limited to surface rights as accessed by prescribed *method of assessment* as determined by the *appropriate officer* less any depreciation, together with interest at the bank rate for delayed payment of compensation and in respect of any improvement in the nature of reclamation works, being such cost thereof as may be substantiated by documentary evidence and proof to the satisfaction of the appropriate officer. This negates the general principle of land law that whatever that is affixed to the soil belongs to the soil (*quicquid plantatur solo, solo cedit*) as here government owns land and individual owns attachments.

Noteworthy here is the choice of word of the statute '*compensation is limited to the value of their unexhausted improvements at the date of revocation*'. The LUA ignored all scattered laws on compensation and provided for compensation for acquisition<sup>47</sup> which this writer considers inconsistent with provisions of the 1999 Constitution. Though compulsory acquisition is not contractual,<sup>48</sup> as there is no agreed price that must be paid, but Section 44(1) of the 1999 constitution states that no moveable property or any interest in an immovable property shall be taken possession of or acquired compulsorily in any part of Nigeria except in the manner which is subject to payment of *adequate compensation promptly*.<sup>49</sup>

Here section 44(1) of the 1999 constitution says *adequate compensation* while Section 29(4) of the Act says compensation. There is obvious conflict and the question is in a democratic setting which of the laws overrides the other having in mind that the Constitution is the Nigerian *grund norm* at least in democracy. If Constitution is truly the *grund norm*, one wonders why adequate compensation is not paid. In practice, it appears the LUA is displacing the Constitution. How can one justify the fact that an individual's property is compulsorily acquired and adequate compensation is not paid, it is double jeopardy?

The next question is whom the *appropriate officer* is? An officer appointed by same government. One may ask how independent this officer will be. Another issue is that of *method of evaluation*. A study conducted by Nuhu<sup>50</sup> showed that compensation mostly paid to affected people is grossly inadequate. According to

<sup>45</sup> Section 2 Cap. 100 laws of W.N. 1959

<sup>46</sup> See Coker op.cited. p.45, Elias op.cit. p.174, C.O. Olawoye 1974, Title to land p.9, Evans Brother Ltd, Nwabueze, op cited.

<sup>47</sup> See the Petroleum Act of 1969, The Mining Act of 1977, The Public Lands Acquisition Act of 1917 and many others.

<sup>48</sup> Brett F.J. in Nassar and Sons Nig Ltd vs LEDB(1959)4 FSC242 at 250 and this is the writer's view.

<sup>49</sup> Emphasis mine

<sup>50</sup> Nuhu, Muhammad Bashar: Compulsory Purchase and Payment of Compensation in Nigeria: A Case Study of Federal Capital Territory (FCT) Abuja. *Nordic Journal of Surveying and Real Estate Research, Special Series, Vol. 3 (2008)*. Available online at: <http://ojs.tsv.fi/index.php/njs/article/viewFile/2454/2280>. Last accessed on 29<sup>th</sup> December, 2012.

Nwosu<sup>51</sup> government pays compensation for crops, trees and buildings, but examples abound where compensation has been inadequate, or was subject to considerable delay with inflationary losses owing to devaluation. He also highlighted other problems associated with compulsory acquisition of land to include inaccurate enumeration, lack of agreement on the definition of assets for which compensation is paid, the basis of compensation, illiteracy and ignorance of customary occupants, differences in compensation for annual versus perennial crops or trees, and failure to compensate for compulsorily acquired land with access to adequate land elsewhere. On this, Obot<sup>52</sup> preliminary ethno botanic surveys in Cross river National Park by Okafor indicates how a woman spends one day in the forest to collect about ten bundles of Okazi and sells each at the Cameroon border at about N14 each and how a mango tree with life span of 20 years with production of about 2000 fruits at N5 per fruit twice a year which gives N20, 000 per annum is valued at N1000 per stand according to Oil Producers' Trade Section's (OPTS) rate.<sup>53</sup>

Also the question of *less depreciation* would be looked at in context of the poverty level in Nigeria. What that simply means is that if you are being compensated for a building of N1 million and it has depreciated to N500, 000, the compensation may be so low in the hand of the person compensated not to get another accommodation for the compensated, and this in the opinion of the writer is counter-productive as it leaves the person compensated homeless.

Again there is evidence that most times compensation are delayed with non-payment of interest at bank rate on delayed payment as provided for in section 29(4)(b) of LUA and section 44(1) of the Constitution. Nuhu (2006b)<sup>54</sup> revealed that compensation assessed in respect to the acquisition of site for University of Abuja in 1990 was yet to be paid as at 2006 when he conducted his research, thus leaving claimants at a position worse than they were before the revocation, this defeats the aim of compensation even if it is eventually paid. Sometimes compensations are not paid at all, but the court in its magnanimity and its equitable jurisdiction has held that where no compensation was paid at all to the plaintiff, the subsequent grant to another person was void *ab initio*.<sup>55</sup> This decision to this writer is a step in the right direction. Not only does it appear very unfair to dispose a land/house owner without compensation or even with delay before compensation, the decision gives aggrieved individuals a positive light to at least challenge a non-timeous payment of compensation even though they may not challenge the adequacy of compensation. What is in the mind of this writer is what the government and her official think when a land is being taken away without prompt compensation, when one of the government responsibility is to provide a decent accommodation to the governed. A major problem hindering compensation and its process as seen by the writer is that most people whose lands are being acquired are poor and uneducated without

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<sup>51</sup> Nwosu, A.C. 1991. The impact of the large-scale acquisition of land on smallholder farmers in Nigeria. In C.Doss & C. Olson, eds. Issues in African rural development. Morrilton, AR, USA, Winrock International Institute for Agricultural Development.

<sup>52</sup> Obot E. A. (2002) Status of Forest Resource and Environmental Management in Nigeria Ecolink Journal; 7 – 10 vol 1, Issue 2, September – October 2002 as reported by Austin Otegbulu in RICS COBRA Research Conference, University of Cape Town, 10-11th September 2009, pp 1763-1777

<sup>53</sup> OPTS is the organ representing the interests of petroleum producers in the Lagos Chamber of Commerce and Industry (LCCI) and OPTS's recommendations was guided by government rates used when its 'public interest' projects encroached on private 'surface rights'

<sup>54</sup> Available at: [http://www.fig.net/commission7/verona\\_fao\\_2008/papers/09\\_sept/4\\_2\\_nuhu.pdf](http://www.fig.net/commission7/verona_fao_2008/papers/09_sept/4_2_nuhu.pdf). Last accessed on 29<sup>th</sup> December, 2012. See also Nwosu Supra note 79.

<sup>55</sup> Hassan Doma Bosso v. Commissioner of Lands and Anor, NSHC/MN/101/2002.

access to state structure; hence, middlemen pursue government officials for the due compensation. The end result is that the rightful owners do not get full compensation because the middlemen claim operational cost and sometimes they don't even disclose that the compensation has been paid. Even when they disclose that compensation has been paid, they may not disclose full payment. To make it worse, verification of facts as to who gets compensated and how much is paid is not easy as records are not set straight in most government offices and land registry is not an exception. Again, hijackers may get compensated with inappropriate records.

Even section 47 (1) worsen the issue. It ousts the jurisdiction of the court to enquire into the actions of either the Governor or LG Chairman acting in accordance with the provisions of the Act. It says

...no court shall have jurisdiction to inquire into:-

...Any question concerning or pertaining to the vesting of all land in the Governor: or question the right of the Military Governor to grant a statutory right of occupancy in accordance with the provisions of this Act; or a Local Government to grant a customary right of occupancy under this Act.

By that sub-section, even where the provisions of the Act conflicts with the constitution, provisions of the Act prevails. One now queries the legality of this Act which presumed to be more powerful than the constitution even in a democracy. One even queries the place of LUA in a democratic regime even with the re-designation of decrees of 1980? The confusion or the query is, is it because of the wording of this Act that it is annexed to the Constitution of the Federal Republic of Nigeria 1979? Are they now both the *grund norms* in Nigerian democratic setting or is the LUA more powerful than the constitution? This is food for thought.

Furthermore, section 47(2) of the Act purportedly ousts the jurisdiction of courts to question the adequacy of this compensation. It says: "No court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Act". What an autocratic and obnoxious law. Again this section leaves land owners at the mercy of the Governor. In fact, most of the sections of LUA is arguably anti-democratic and against the principles of administrative law. Section 30 for instance states 'Where there arises any dispute as to the amount of compensation calculated in accordance with the provisions of section 29, such dispute shall be referred to the appropriate Land Use and Allocation Committee.' While it is not wrong to draw the attention of the Allocation Committee to the anomaly, it is obviously undemocratic because the committee members are appointed by the state governors. In this case, the cardinal principle of administrative law which states that you cannot be a judge in your own cause, (*nemo iudex in causa sua.*) is breached as the government here is a judge in her own cause. With that provision, Nigerians are forced into arbitration without the option of going to court.<sup>56</sup> With these sections, even if the compensation is too good, it will still be questioned as justice may be done, but seen to be done.

Again one queries the aim of this law. Why should LUA oust the jurisdiction of the court and why should the Nigerian so called democratic regime uphold such draconian decree hook line and sinker? Who ensures the independence and

<sup>56</sup> See section 47 (2) of the Act

impartiality of these bodies? The democracy and justice system in Nigeria is put to question by this section of the Act. Why should an aggrieved person not seek redress in the court in a democratic setting? Answers to these questions are yet to be found. It is quite understandable that court processes might stall governmental development and will somewhat make a mess of the aim of enacting the law, but it is not enough reason for an aggrieved person to be forced into arbitration. It is not surprising though as LUA is a product of a military regime and truly does not fit into a democratic process. The writer opines that aggrieved persons should have option of going to court, but if the aggrieved person decides to go through arbitration process it will be his/her choice. In that case, the two parties both the government and the aggrieved will agree on the terms of the arbitration. This obviously will sort out the court delay in delivering judgement. Again choosing to go through arbitration will not close the door for this aggrieved person, should he/she decides to challenge the arbitral award.

Having discussed the issues that led to the enactment of LUA and having looked into some of the relevant sections of this Act, the next big question is whether the LUA has helped in any way to solve any or all the listed problems to justify its enactment and its continued existence. LUA as earlier stated is a product of military government after setting up a laughable panel, as it is to this writer Nigerian resource wasted. The fact that the then military government chose to uphold the view of a minority report is sending a message that there was a preconceived idea by the Government, so why wasting time and resources and why deceiving Nigerians. All the government did was just propaganda. According to the then government, several reasons for enactment of LUA as earlier stated in this work include: To enhance equitable access to land, encourage and enable proper, productive and efficient use of the land and streamline and simplify the management and ownership of land in the country. Others are to make land cheap, curb land speculation and stop land disputes. The points will now be taken and analyzed in bits.

The first factor is equitable access to land. This is indeed a mirage. Lands are allocated to highest bidder, people in government and their cohorts.<sup>57</sup> Apart from being a serious digress from what was in operation, provisions has led to abuse of office in practice especially with Section 28 (2) of the Act that gives unchecked powers to governor to revoke a right of occupancy for overriding public interest. Paul Francis<sup>58</sup> in his study reveals how access to state structure enhanced the ability of the political elites to benefit disproportionately from the Act by consciously manipulating the allocations committee. To worsen it all, lands are being taken away from the poor owner and allocated or re-allocated to the rich. A typical example is compulsory acquisition of Maroko area of Lagos state Nigeria.

Another reason for its promulgation is to streamline and simplify the management and ownership. This again is not been achieved. Today what we see is mixed and confused system. Apart from various land holding, the powers of Governor and Federal Government is not too clear in practice. In Abuja for instance the administration of Mallam El-Rufai, demolished a lot of building and revoked lots of lands allotted by area council for arguably lack of power by the Council Chairmen to make such allocations leaving helpless Nigerians with lots of losses without compensation from either quarter. Recently the governor of Ogun state Nigeria

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<sup>57</sup> See President Goodluck wife's case cited above

<sup>58</sup> Paul Francis, "For the Use and Common Benefits of all Nigerians" *Consequences of the 1978 Land Nationalization* Africa, 54(3): 1984:5-28

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revoked certificate of occupancy given by the Otunba Gbenga Daniel led administration(former Governor of the same state) to a church built in honour of the late father of the then Governor.<sup>59</sup> This is in another dimension may be an abuse of office by the then Governor Gbenga Daniel as the Church was in honour of his father.

Again, the LUA presumably encourage and enable proper, productive and efficient use of the land. This to some extent could be true based on the intent of the government, but in practice, it is another story. Because the LUA concentrates both economic and political powers in the hands of few, this particular spirit is abused. Accordingly, Olayiwola and Adeleye quoting Geoffrey Nwaka observed that the law made "the procedure for obtaining and developing land become excessively bureaucratized, obstructive, and riddled with corruption. Restrictions on the availability of land, especially for the poor, encouraged the growth of more and more irregular settlements on the fringes of the towns or on vacant public land." Ironically, Professionals, private property developers and the organised private sector have always fingered the law as the greatest disincentive to real estate development and the growth of the real sector of the nation's economy as it limits access to land for development purposes. What is seen in practice since the enactment of LUA are: stringent procedure for an average Nigerian which tends to favour the government or few rich individuals at the detriment of vast poor peasant, delays the execution of projects, delays in payment of compensation, insecure inheritance land and irregularities.

The next reason is that LUA will curb development and acquisition problems before 1978. Again, problem of acquisition continues especially for individuals, though with positive change for the government. LUA is as good as nothing for individuals. Making land cheap: It is unfortunate to note that LUA is far from achieving the goal of making land cheap. In fact, it is doing more harm than good as most states use the act as a way of making money. This power granted to governors also aggravates land charges. In 2009, the FCTA announced a 150-percent increase in its land charges. The cost of processing land documents alone is ridiculous. In Abuja, for a plot of land, which was purchased at the cost of N8 million Naira, the processing fee to get the Certificate of Occupancy (C-of-O) is about N15 million. How ridiculous. The situation is not different in other parts of Nigeria. Even obtaining a certificate of occupancy after the payment is a problem. Some state governments even give and cancel certificates of occupancy for no good reason.<sup>60</sup>

The cost of obtaining land is not worthy of mentioning. In Abuja (FCT) for instance, some Land in Asokoro or Maitama cost as high as 60 million<sup>61</sup> and in some place in Lagos like Lekki Peninsular it cost as much as N70 million. This is a real and worrisome problem today as it continued to increase every year. In fact, the business of Land speculation is real money. Those close to powers that be always know where the next development is going to be and what they do is to buy off all the land in the place for peanuts and wait to make millions out of it. Other rich ones buy and hoard land for many years without developing them, to sell them when the value appreciates.

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<sup>59</sup> See the Sun Newspapers online of 23/02/12: available at: <http://sunnewsonline.com/> Last accessed on 29<sup>th</sup> December, 2012.

<sup>60</sup> See Ogun state Government revocation of Gov. Gbenga Daniel's allocation supra.

<sup>61</sup> A plot was advertised for sale at Maitama Abuja for N60 million (equivalent of £240,000 or \$375, 587) in Church of the assumption Catholic Church bulletin of 29<sup>th</sup> January 2012. There are so many plots advertised at equivalent prices.

Land does not even have value as no law made provision for the determination of market value, so it is the market forces that determine the value. Because of that, land values are steadily rising and are now out of the reach of the common man whose hope is to one day own his own home. Another factor is stopping disputes: another mirage. It is even now that we really have land disputes in court ranging from family land, customary and statutory R of O land and C of O lands.

The next issue is promotion of security of tenure. This is also another mirage, before the LUA families hold lands from generation to generation, no limitation on tenure. The land use Act brought about 99 years maximum ownership. One is yet to understand what happens to the development in the land after 99 years. In fact instead of encouraging development of land, LUA deter it. In practice, land moves from one person to the other, if one buys land when the tenure is remaining ten years; he/she may not develop for fear of losing investment. On the other hand, the LUA has impacted on the local communities by removing perpetual ownership limiting occupation to 99 years. Individual can now sell land subject to the Governors consent with LUA, but removed radical title in land from individual Nigerians, families, and communities and also removed the control and management of lands from family and community heads/chiefs.

The LUA created problems evident on the conflicting decisions of several courts in Nigeria,<sup>62</sup> controversial commentaries of learned writers,<sup>63</sup> and the continuous alienation of land by laymen in complete disregard of the rights of occupancy system. Even in urban areas, majority of the population lives in informal settlements. In fact the deficiencies of LUA were summarized by Mr Justice Augustine Nnamani who ironically was AG who was involved in the drafting and incorporation into the constitution thus:

In the course of these years, it has become clear that due to its implementation not its structure or intendment, the objectives for which the land use act was promulgated have largely remained unfulfilled; indeed, they have been distorted, abused and seriously undermined. The lofty hope in the second stanza of the preamble – that the rights of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity to enable them provide for the sustenance of themselves and their families be assured, protected and preserved or in section 1 “that all land be held in trust and administered for the use and common benefit of all Nigerians” – has been nothing but a forlorn hope, a pipe dream....<sup>64</sup>

The LUA has also made it difficult to acquire land because of government bureaucratic process of acquiring land, the issuance of Certificate of Occupancy and the vesting of lands to the government. The Land Use Act has an impact on property development in a way that brings sanity and gives an insight or idea of the

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<sup>62</sup> See, e.g., cases cited in J .A. Omotola, cases on the Land Use Act, (Lagos Univ. Press, 1983).

<sup>63</sup> For contrasting commentaries, see generally THE LAND USE ACT, REPORT OF A NATIONAL WORKSHOP (J.A. Omotola ed. Lagos Univ. Press, 1982).

<sup>64</sup> As quoted by Lasun Mykail Olayiwola and Olufemi Adeleye, Land Reform – Experience from Nigeria: Promoting Land Administration and Good Governance, 5th FIG Regional Conference Accra, Ghana, March 8-11, 2006. P.1/10 Available at: [http://www.fig.net/pub/accra/papers/ts18/ts18\\_02\\_olayiwola\\_adeleye.pdf](http://www.fig.net/pub/accra/papers/ts18/ts18_02_olayiwola_adeleye.pdf) Last accessed on 29<sup>th</sup> December, 2012.

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kind of property to be constructed in an area for a particular purpose by zoning into either commercial, residential, the harm appears to be more than the good.

The view in this paper is that the powers granted the governors are too wide. i) The abrogation of the right of private ownership is inconsistent with democratic practices and the operations of a free market economic system; Also, the abuse of power of revocation “for overriding public interest” is overwhelming. Again the fact that compensation is not adequate and cannot be questioned is a serious issue and so many other factors this work will discuss below.

## 6. THE PROPOSED AMENDMENT

There have been calls from several quarters to either repeal the LUA or at least amend it. This is because the Act is a piece of dysfunctional legislation. Apart from the intentions of the lawmakers, which are believed to be awkward, obstacles not foreseen by the lawmakers came up during its implementation. For example, Prof. Ehi Oshio, on his part while delivering a lecture entitled ‘Perfecting the Imperfections in Nigerian Legislation’ at the University of Benin, called for the repeal of the Act, saying that it cannot provide land for agriculture.

In line with these calls, the then Nigerian President; President Umaru Musa Yar’adua proposed its amendments to the National assembly. He sent 14 Amendment clauses (titled Land Use Act (Amendment) Act 2009 or the Constitution (First (Amendment) Act 2009) to the National Assembly for the amendment. The proposed amendments sections are sections 5,7,15,21,22,23 and 28 of the existing Act. Specifically, the bill proposes restriction on the requirement of the Governor’s consent in land transactions to assignment only, thereby hopefully curtailing the excessive powers of state governors in land matters. The bill also sought to vest ownership of land on those with customary right of ownership, and also enable farmers to use land as collateral for loans for commercial farming to boost food production in the country.

The step this work views as a step in the right direction, but simply does not meet the expected requirement. The amendment did not even say anything about the problems seen in practice over the years regarding compensation, ownership of land, and overriding public interest and its removal from the constitution as clamoured by Nigerians over the years. It is noteworthy at this stage that this bill is yet to see the light of the day, but assuming it was passed after going through the process of constitutional amendment with 2/3 majority of state house of assembly, the clamour for change will continue. It simply means that that same process will be passed through again if ever. It is the writer’s opinion that a right thinking government should remove the LUA from the constitution.<sup>65</sup>

Secondly, obnoxious and anti-development provisions of the Land Use Act should be removed or amended to suit the realities of our time. Precisely, Governors consent provision should be scrapped not even amended as suggested by the bill as

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<sup>65</sup> See Chief Emeka Onuorah, President of the Nigerian Institution of Estate Surveyors and Valuers (NIESV), <http://www.nigerianbestforum.com/index.php?topic=29161.0> Last accessed on 29<sup>th</sup> December, 2012. Mrs. Victoria Ogueri of SERAC, Mr. Babatunde Ogala of Lagos State house of Assembly, NIS), Mr. Adeleke Adesina. Available at: <http://www.vanguardngr.com/2011/05/tempers-continue-to-flare-about-land-ownership/> Last accessed on 29<sup>th</sup> December, 2012.

amendment will though be better than nothing but will not meet the expectations of Nigerians.

## **7. CONCLUSION**

This work has actually tried to understand regime before and after colonial rule as well as before and after the enactment of Land use Act 1978. Relevant sections of the LUA were analyzed showing that the LUA is doing more harm than good as the law have failed to achieve this assumed role in practice. Also considered is the brain behind adoption of the minority opinion to enact LUA and having LUA as part of constitution which the *grund norm* of the country. The impact of LUA on Nigerians in general, the compensation and its process and its effect on the Niger Deltans were also considered with the concluding part bothering on amendment proposal. LUA is seen to concentrate land in hands of few people connected with government, therefore works possibly unintended hardship on the poor masses. The writer's opinion is that the LUA has produced an unintended effect and has worked hardship; therefore an occasion arises for its repeal or amendment. The writer therefore suggests the LUA be either repealed or that a major reform is done in the LUA or land tenure in Nigeria. In that case, LUA should be abolished and a truly democratic land use law that is going to be fair, just and not counterproductive be enacted. Expunging the Act from the Constitution is of immediate need for the act to be amended easily and as at when needed.