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**LAND POLICY
FOR NIGERIA:
ISSUES AND
PERSPECTIVE**

By Y. L. Fabivi



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INTRODUCTION

Agricultural progress is a pre-requisite for industrial development and no country, whether developing or developed can achieve economic development if its Agricultural Sector is in a state of neglect. The recent experience of this country where most agro-allied industries which relied on imported raw materials were almost grounded due to lack of foreign exchange to effect importation of essential parts and components and lack of locally produced substitute for the imported components is instructive.

The great contribution which an "efficient" land tenure system can make to economic development is no longer a subject for much debate. However, what constitutes an efficient tenure arrangement will be debated for a long time to come (Uchendu, 1970).

Though ideological arguments on the best ways of organizing agriculture continue, no land tenure system can be adjudged best in the abstract. Any judgment concerning a particular system must take note of the institutional and technological conditions in a society and the stage at which that society lies in the transformation from an agrarian to industrial economy. "Judgement must also consider what specific groups and individuals in that society are attempting to accomplish" (Dorner, and Kanel, 1971:1).

The thesis of this address is that the Nigerian economy is still an agrarian economy and that agrarian structure determines the kind and nature of access that farmers have to subsistence opportunities on the land. "The ownership of land carries with it ownership of government - the right to tax, the right to judge, the power to enact and enforce police regulations. It dominates every crucial decisions about investments in social infrastructures - education, transportation, hospitals, power projects (Penn, 1962).

Land tenure institutions are important means for providing security of expectations and are key determinants of income distribution in the farm sector.

The traditional land tenure system which emphasis group survival is decaying and unless it is succeeded by another ideology which stresses group survival, there will be no limitation to personal ambition. According to Bertrand Russell (1975:57) as the beliefs and habits which have upheld traditional power (system) decay, traditional power gradually gives way to either power based upon some new belief, or to 'naked' power. People with economic power would subjugate their less fortunate brothers and this may eventually lead to class conflict. The government needs to provide alternative in-

stitutions since "institutions give some stability to human relations by providing security of expectations with respect to accepted procedures of human interaction and response" (Dorner, 1971:14). Without the provision of an alternative institution, emphasizing group ideology to replace the traditional institution, there may be anarchy and chaos. The society may revert to the "Hobbesian condition of war by all against all, where the life of man is solitary, poor, nasty, brutish and short" (Dorner 1971:14).

The meeting of the requirements of a modern agricultural economy requires that new sets of working rules be designed and adopted. While some progress toward the establishment of such rules can be achieved by farmer associations, the generalization of such rules and harnessing them to economic performance requires governmental action. The sanctions themselves must be applied by objective rules, if justice is to prevail. We are here concerned with changing rules of land tenure to enable farmers modernize as well guarantee social justice.

The focus of this inaugural address will be on rural land tenure institutions. The recent land reform - land use decree (Act) - will be analyzed with a view to proffering solutions to the problems that subsist.

SOCIO-ECONOMIC AND HUMAN SIGNIFICANCE OF LAND

According to Barlowe (1978), the term "Land" often means different things depending upon the context in which it is used and the circumstances under which it is considered. Land may be viewed as: space, nature, a factor of production, a consumption good, situation, property and capital.

Land is a measurable entity divisible into thing-like "parcels" by means of mathematical and technical processes of surveying and cathography (Bohannan, 1963). Land is an expression of territorial sovereignty and constitutes a set of important political factors. The value of land increases with the amount of work and money invested in its improvement. (Podedworny, 1971).

Legal maxim of land states that land extends "up to heaven and down to hell." As with any other factor of production, the value of land is determined by the interaction of demand and supply, whether overtly in a relatively free market or covertly as latent value in a controlled society (Ratcliffe, 1976).

Land in the Nigerian context takes on fundamental significance as a commodity in daily use for multivarious purposes. Over the years, it has markedly influenced, and continues to influence, the

daily lives of Nigerians as expressed in social, economic, and political organizations of the various communities in Nigeria. In the processes, a complex set of relationships (inter-personal, inter-ethnic, and intra-social) was evolved for securing, limiting, and regulating individual rights of access to land in the "federated communities" of Nigeria (Gandonu, 1975).

Land is the foundation for food production, provision of shelter and utilities, manufacture of goods, and of institutions to support basic administrative needs of modern communities. In addition to economic importance, land is itself fundamental and basic to important traditional institutions, whilst certain sociological and religious concepts are associated with it by the Nigerian society.

A careful and detailed analysis of what role land has played in the lives of the people and, more importantly how the system of land tenure that has evolved has affected the lives, beliefs, and general disposition of the people who live off the land reveals fundamental attitudes. Thus, the attachment of peasants to their land is not just a mythical one. It is a value that has developed over centuries of uninterrupted dependence upon the land they have come to recognize as their sole means of livelihood.

The typical villager recognizes land in its entirety. To him, land is a home and work place. He shares it with the entire biotic complex. He has learned through experience the utility of expecting or attempting to draw more from the land than he puts into it, hence he practices rotational (shifting) cultivation. In his wisdom, he develops respect for nature and treads humbly on the land. He understands only too well, contrary to the belief of urban speculators, that he belongs to the land, not the land to him. At death he rests in literal peace inside the land (or earth) which had nourished him all the days of his life.

The urbanite, on the other hand, expresses predominantly materialistic values. To him, city land is simply a commodity to be grabbed, invaded, bought, sold, and even stolen. The land is to be "owned" as a symbol of wealth, power and prestige.

Land serves a social security function to most Nigerians because after all else have failed they could still return to their villages to stake a claim on a portion of the family land and raise crops on this for subsistence. A landownership and use policy must recognize the fact that the very existence of some people rests on their having access to a piece of land and any attempt to wrest this from them would be strongly resisted.

Land is perhaps the single most important natural resource in the

sense that it affects every aspect of a people's life - their food, clothing, shelter, etc. It is the base for producing raw materials for the manufacturing industry. It is an important resource, no nation - city or rural area - can survive as an entity without it. Thus, every person in a nation - the banker, the industrialist, the labourer, the educator, the student, the farmer - has a vital stake in the country's land problems and its proper utilization (Acquaye, 1976). Non-farm employment opportunities are not available in adequate numbers coupled with continual retrenchment in all sectors (including the service sector such as universities) of the ailing economy to change the dependence on land by a majority of the people. Thus, the enduring phenomenon of the continuous essentiality of land and agricultural activities to the maintenance of the people, give to land a status and an aura approaching the spiritual (Fabiye, Adegboye and Afolayan, 1981).

"Historically, land and politics have maintained a close, inter-dependent relationship. The type of land tenure constituted a significant determinant of the pattern of political power, and a specific power perpetuated a particular type of land tenure" (Tai, 1974:1).

The "Control of land has meant power, and the search for a conceptual base to justify claims to land has been an essential part of the power struggle. Rulers, ecclesiastics, richmen, poormen - all have bent theories of land ownership to support their political ends" (Strong, 1979:2).

NIGERIA'S LAND TENURE SYSTEM: AN APPRAISAL

Land tenure arrangement embodies those legal and contractual or customary arrangements whereby people (in farming) gain access to productive opportunities on the land. It constitutes the rules and procedures governing the rights, duties and liberties of individuals and groups in the use and control over the basic resources of land and water (Dorner, 1972). Thus, land tenure system defines the relationship among men in the use and control of land resources.

The basic concept of ownership is that of tenure. This means the right or capacity to have and to hold land for certain uses. The word "tenure" means the holding of property, especially real estate, or by reference to a superior. Inherent in the word 'held' is the ideal of exclusion, that is, to set aside and keep as one's own by shifting out and excluding others. Another indispensable dimension of tenure is the period of time for which the property is held (Harris, 1953)

Land ownership (tenure) is a bundle of rights held jointly by individuals, groups, corporate bodies and the state. The land owner-

ship systems in Nigeria, constitute the basis of property rights in land resources. The traditional land tenure system in Nigeria was pre-state, based upon local sovereignty in land matters.

The land tenure system in Nigeria is not uniform due to local variation in land matters. There are, however, some identifiable common factors which facilitate analysis. In the early stages of the native system, upon the acquisition of lands, by conquest or settlement by members of a given community, the land so acquired or settled upon would be apportioned among those worthy of them in the order of merit (Hayford, 1971:55) Alternatively, the original immigrants acquired the land by squatting on it.

The commonest type of land ownership system is corporate (group ownership) and this accounts for about 80 percent of the land, while family and individual ownerships account for the remaining 20 percent. The relationship between the individual and the group in the corporate land ownership system is rather complex but distinct. Individual right of ownership is derived from the group to which one is born or adopted. The group manages the family land and allocates this to members according to needs. The individual does not possess absolute title to the land, but has right to use it - usufructuary rights. The individual use rights are established by initial clearance and use of land, by mixing his labour with the solid and appropriating the land from the state of nature.

The rights of the individual to use the land are protected as long as he continues to make a beneficial use of the land. Furthermore his rights to use the land evidently extends to, and is transferred temporarily to, the pledgees, should he pledge the land to another person as security for debt.

Individual use rights are transferable along family lines becoming a family property to be shared out among the heirs according to the rules of inheritance adopted when the initial user dies. This right to use the land remains with the initial user of the land and his heirs who also become part owners until the land is abandoned. When the land is abandoned, the residual interest of the community in the land is re-asserted and reverts to the community to be held until it is required by another member of the group, or it may be allocated to any stranger who "requests" for it. The holder of usufructuary rights lacks the capacity to alienate the land due to the allowable field of discretionary action implicit in the terms of the grant. Also, "non-economic factors", like the pride of family, social interest, political ideology and social and political status may define who gets what interest in land and how much interest. These factors also institu-

tionalize the channels through which interests in land can be acquired and disposed" (Uchendu, 1970:480).

Tenant farmers had no security of expectations, while large-scale farmers found difficulties in acquiring sufficient amount of contiguous tracts of land for agricultural purposes either by lease or purchase. The above stated land tenure system has given rise to a number of problems - duplicity of ownership with the consequent excessive transactions costs, fragmentation of land into uneconomic sized tracts and inalienability of land which makes land part of the physical capital but not a part of the financial capital. However, Johnson (1972:261-262) argues that "restriction on sale of land have the effects of raising the cost of transferring land to certain uses and users. This reduces the size of land market and limits the way of capturing wealth in-land."

The need to ensure equitable access to productive opportunities on the land and the security of such access once gained, makes land reform measures mandatory. To exacerbate the situation, wide-scale speculative purchases of large tracts of (communal) land, in the absence of land taxes has reached a crescendo. Most of the purchases are done by wealthy non-farmers who hold the land idle, waiting to capitalize on an appropriate market situation, while food production is on the decline (Fabiya, 1974).

Many government development projects have been stifled by a prohibitive amount of compensation demanded by speculative purchasers who had previous knowledge of government intentions (Famoriyo, Fabiya, and Gandonu, 1977). In other instances, disputed claims and counter claims over ownership of the proposed site and the attendant law suit coupled with court injunctions which often prevent the development of land subject to litigation make such land unavailable.

All the above changes and inconveniences have "led to the questioning of the relevance and equity of traditional relationships and established institutions of the land and have given moral sanction to the demand for change" (Acquaye, 1976:3) of the land tenure system.

ISSUES IN THE FORMATION OF LAND POLICY

A national land policy is an integral part of the politico-economic systems adopted by a country. It should bear relation to the achievement of a new national economic and political order, in which the provisions for national land policies will be fundamental. Consequently, the-general structure of the emerging national order as well

as the constituent land policy will be deeply influenced by the ideology of those who exercise powers of government (Parsons, 1982).

A national land policy touches the earth and the lives of a farming people through the system of farming which it supports, or at least permits. It specifies the scope of the permissible freedom of choice in the use and occupancy of land in farming systems; this is the matrix of choices regarding the use and occupancy of land in farming systems, the practice of conservation, and the intensity of exploration in use. At issue is whether to permit the free reign of market forces and individualized tenure or to tamper with market or free enterprise solutions to land ownership and use problems (Parsons, 1982).

The objective of land use policy is to ensure rational allocation of land among competing uses. Therefore rational rural land use policy is that which ensures that the country is self-sufficient in food production as far as practicable. To achieve self-sufficiency in food production the patterns of agricultural production needs to be reorganized from individual fragmented small-sized farms towards more efficient large scale production.

The above situation calls for the use of authority of the state to modify the working rules of customary associations in traditional agricultural economies to create a modern system of agriculture by transforming the antecedent rules and sanctions.

In his "Theory of Economic Growth," Arthur Lewis identified nine categories of functions of government which are relevant to economic growth: maintaining public services, influencing attitudes, shaping economic institutions, influencing the use of resources, influencing the distribution of income, controlling the quantity of money, controlling fluctuations, ensuring full employment, and influencing the level of investment" (Lewis, 1955:376-377).

A national land policy should however be cast in procedural terms so that it not only builds upon and pulls together differing historical strands of local or ethnic land tenure relationships, but also relates land policies to the achievement of a new economic and political order, in which the provisions for national land policies will be fundamental (Parsons, 1982).

The crucial issues in the formation of a national land policy arose from the need to address the problems posed by increasing population numbers (which grows at an estimated rate of 3.0 percent per annum and is expected to reach 200 million in the year 2000) on a fixed amount of land resources with the attendant reduction in the available land per person. Coupled with this is the fact that the

population pressure is not uniform all over the country. Secondly, the need to ensure equitable access to land of Nigeria by all Nigerians irrespective of their station in life. Thirdly, the need to provide enhanced productivity in the agricultural sector and fourthly, the issue of social control over private interests in land to protect public interest in the nation's land resources.

Society has inherent interest in private land use because of the roles the society played in granting, recognizing and protecting private property in land. Social control over private land use often, but not invariably, take the form of laws and regulations. Society can regulate private land use through the police power – the power to compel an individual to do something or refrain from doing something; the taxation power - through which the society appropriates some of the private income from land use and ownership for social or group purposes, eminent domain - power of compulsory acquisition from private owners without their consent but with payment of fair compensations; and through proprietary powers by providing subsidy or other direct incentive for the private landowners to do something he would otherwise not choose to do.

Land tenure problems received the attention of the federal military government (under retired General Obasanjo) for a number of reasons. Firstly, there was no national land policy for guiding the development of land tenure systems that was conducive to the general economic development of the country. Secondly, there was a need to co-ordinate and streamline the sometimes conflicting dual systems of law-customary and statutory rules - that regulate the allocation, use and control. Thirdly, there was the problem of providing and ensuring the security of those aspects of customary and tenure systems that are conducive to agricultural development. Fourthly, the problem of land tenure was interlaced with that of increasing agricultural productivity and the levels of rural income. Fifthly, there was a need to establish a procedure for resolving conflicts arising from transactions in land, especially the conversion of essentially arbitrary powers of compulsory acquisition into responsible powers. This was to enable those adversely affected by the exercise of public purposes (actions) to ask for reasons, that these reasons could be reviewed by third parties, and that all affected (the weak and the strong) could participate in making and changing the rules which governs the relations between them. To this end the Federal Military Government introduced a national land policy in the form of Land Use Decree (Act) No.6 of 1978.

This land reform measure is discussed below:

LAND REFORM

Land reform is concerned with the interrelated aspect of productivity and equity of land use. It is a means of bringing about structural change in the agricultural sector, thereby altering the size distribution of holdings or distribution of income.

Land reform can take one of the following forms (World Bank, 1975:208).

- (i) Redistribution of public or private land in order to change the patterns of land distribution and size of holdings;
- (ii) Consolidating of individual holdings, thereby reorganizing the physical patterns of control;
- (iii) Changes in land-ownership and tenurial rights with or without physical redistribution of land; and
- (iv) Changes in conditions of tenure without changing ownership or redistributing land.

The objectives of land reform are to attain just relationships among the agricultural population and to improve the utilization of land. Tai (1974) posits as follows:

- (1) Land reform requires that agrarian changes be effected within a short span of time.
- (2) Where land reform is necessary, evolutionary change is often impracticable or impossible and
- (3) Prompt execution is necessary to maintain spirit of reform, which tends to dissipate or fluctuate with the passage of time and to avoid the creation of opportunities for evasion of reform laws. FAO Report (1979) also stated the criteria which an administration of land would have to satisfy to successfully implement the programme. These are:
 - (a) The Administrative machinery for land should provide for a (single) line of command from the centre to the field levels, in order to ensure that the policy is enforced and supported at all levels.
 - (b) There should be motivation, resources and capacity to transmit this command down to the field levels.
 - (c) Local knowledge and participation of beneficiaries should be brought in at all levels especially at the field levels.
 - (d) There should be supporting services like credit, extension and cooperatives which must be co-ordinated by the administrative agency.

However, when government tries to increase its control over an area that has many meanings for people, such as lands, the issues

that its efforts stir tend to be important ones (Healy, 1977:16). The Land Use Act is no exception.

We shall employ Tai's postulates as well as FAO's criteria in evaluating the Nigerian Land Use Act to enable us decide whether it should be modified or replaced.

Land Use Act 1978

The Federal Military Government of Nigeria issued a Land Use Act (No.6) of March 1978, which purports to take over the ownership and control of land in the country thereby providing a uniform legal basis for a comprehensive national land tenure system. Hitherto, the land tenure systems in the northern and southern parts of the country had been different. The Act embodies procedure for the transition from customary to state sanctioned tenure of land by substituting the authorities of the several (21) states for the traditional owners or local chieftains in the sanctioning of the working rules regarding the use, occupancy, and transfer of land. Article 1 of the Act states that "all lands comprised in the territory of each state in federation are hereby vested in the military governor of that state."

The act has been designed to deal with several problems encountered by the various operatives on the land since colonial times. It addresses four important issues arising from the former tenure system: the problem of lack of uniformity in the laws governing land use and ownership; the uncontrolled speculation in urban lands; the problems of access to land rights on equal basis; and the fragmentation of rural land arising from the application of the traditional principles of inheritance. It approaches these issues through three strategies: the investment of proprietary rights in land in the state; the granting of user rights to individuals; and the use of administrative system rather than the market in the allocation of rights in land (Uchendu, 1979).

Thus the avowed purposes of the Land Use Act are:

- (i) to make investment in agriculture attractive by removing the uncertainty in the control over land;
- (ii) to curb speculation in urban lands;
- (iii) to make opportunities to occupy land generally available to all Nigerians throughout the country thereby bringing about mobility of resources, especially human resources; and
- (iv) to reallocate rural land to large-scale farmers to facilitate large-scale farming (Parsons, 1982).

The Act emphasizes the public purpose of protecting the rights of all Nigerians to the land of Nigeria. The preamble to the Act states "Whereas it is in the public interest that the rights of all

Nigerians to the land of Nigeria be asserted and preserved by law; and whereas it is also in the public interest that the rights of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves and their families should be assured, protected and preserved..."

The responsibility for implementing the Act has been passed to individual states and their constituents units of local government. The Act provides for the establishment in each state of a "Land Use Allocation Committee" to advise the governor and to have jurisdiction in disputes over any compensation that may arise. Similarly, provision is made for a "Land Allocation Advisory Committee" to advise each unit of local government regarding the issuing of customary certificates of occupancy to applicants for rural lands.

One of the innovations in the land use Act is the vesting, in local government; of the authority to issue certificates of occupancy. This authority would seem to supersede and absorb (at least formally) the traditional authority of local chiefs to allocate opportunities to members of the community for the use and occupancy of land. However, the Act reduced all land users to lease holders by converting landowners to landholders, thereby super-imposing the authority of the state on all tracts of land (Parsons, 1982).

Major Provisions of the Land Use Act

The Land Use Act differentiated, rather arbitrarily, the Nigerian land into rural and urban lands with somewhat different policies.

(a) Urban Land Policy

Prior to the promulgation of the Land Use Act the pervasive problem in most urban areas of the country are: speculations in urban lands, and the inability of migrants to cities to secure housing. The urban land speculators accumulate large tracts of land which are held undeveloped in anticipation of a rise in site value in the absence of land taxation. The Act intends to combat the two problems by limiting private ownership rights in urban land by providing that an individual may hold not more than 0.5 ha of undeveloped land. Undeveloped lands held in excess of 0.5 ha are to be surrendered to the government. Holders of conveyances or fee simple title to urban properties are to convert same to statutory certificates of occupancy. This implies that the holders of such certificates (rights) have been converted to lease-holders for a term of years and as state tenants are obligated to pay rent to the state.

(b) Rural Land Policy

Land for agricultural purposes and (except those in which minerals have been discovered or exploited) is to be under the jurisdiction

of local governments. Local governments are to issue customary certificates of occupancy rights. According to the Act, the local governments are empowered to grant customary rights of occupancy to any person or organization for the use of land for agricultural, residential or other purposes.

Furthermore, they are authorized to grant customary occupancy rights in such rural lands in amounts up to 500 hectares for agricultural purposes or 5,000 hectares for grazing purposes (Section 6(2)). And these ceiling may be exceeded by consent of the military governor.

The logic of the provisions are such that rural people would now stand in a new status of liberty - exposure to the state.... they are exposed to the liberty, or capacity for freedom of choice, of local or state authorities to restrict the grants or to assign them to strangers, (Parsons, 1982).

There are some provisions of the Act which suggest a compatibility with native law and custom, especially: (a) the implications that customary occupancy rights would initially simply recognize and validate customary tenure status, and (b) the explicit provision that inheritance follow native law and custom, as indicated in section 24(a).

The Act also contains some ambiguities which are tinder boxes ready to explode at the slightest prodding. The Act implies that it is the "occupier" of the land at the time of the promulgation of the Act who is entitled to customary certificate of occupancy to any particular plot of land. For example, section 36(2) states that "both the person with the traditional title to the land and his tenants as well as his tenant's tenants are equally entitled to a grant of certificate of occupancy on the land they are cultivating. This provision may work hardship on the original landowners who gave out all or nearly all their land to tenants and rely on annual tribute being paid by tenants. This is the situation in many parts of the Oyo, Ondo, and Ogun states (cocoa growing areas) of the country. The Act also takes care of compensation to be paid on any improvement made on land subject to approval by the Land Committee concerned. However, the compensation money is only payable to the land holder and not to a mortgagee, leasee or sub - under - leasee of a holder. This may work hardship on creditors who accepted land with a valid statutory certificate or customary certificate of occupancy in case such land is compulsorily acquired.

The Act has abolished the payment of tribute by the tenants and it is capable of making erstwhile customary tenants bonafide "Landowners" by default by granting them a certificate of occupancy (Fabiya, 1979), as can be construed by the provision of section 36(2)

and (3).

The provisions of the Act also hold the potential for hastening the dissolution of the family as a land holding group into an aggregate of individuals holding certificates of occupancy rights to particular tracts of land. Historically the authority and capacity of the head of the land-owning group to allocate opportunities for land use and occupancy to members of the group has been a strong cohesive influence in the social structure. Through the Act many of the "Obas", "Emirs" etc. have lost their influence and legitimacy because they have been stripped of the rights to grant land to their subjects, hitherto the sources of their influence and extra income.

With land allocation authority in rural areas transferred to the local councils which are expected to issue leases for a term of years to particular tracts of land the whole process becomes a part of public or political procedures. "The really significant shift in social relationships is not a substantial shift from kingship-statures to free contract. It is now a shift in procedure ... that is, privileges, rights and responsibilities will now be transferred from the individual and his kinship group to the agents of the body politic as a social entity," (Odetola, 1978).

The Act forbids the alienation of land (urban or rural) by sale, mortgage and assignment without the prior approval of the governor.

The substitution of granted occupancy rights for customary tenure places the status of people on the land in the hands of bureaucrats. The hereditary security of customary tenure which rural people have enjoyed for generations and even centuries, through birthright privileges for persons born into the landholding group, to a subsistence plot and home site, is wiped out, (Parsons, 1982).

It is not difficult to find agreement with the new land policy - The Land Use Act. The critical issue, however, is that vesting all land in the governor has concentrated both economic and political powers in one hand. Concentrating power in the hand of the governor expands the field in which arbitrary discretion and unlimited prerogative could be exercised, (Fabiya, 1979). Evidence now abounds of the abuse of the provisions of the Act. Political opponents have been freely dispossessed of their land for "public purposes." Land allocations of political opponents were freely revoked. For example, the allocation of some plots of land in Kano, (Northern Nigeria) were revoked and reallocated to somebody else three different times, within the space of five years, depending on who is in control.

The political and administrative tasks of devising workable pro-

cedures for effecting the Act entail the creation, state by state, of appropriate land records and ordinances as well as judicial and administrative procedures (Parsons, 1982). Evidence now abounds that the military-instituted implementation bodies and committees were dissolved on the coming into office by the civilian in late 1979 and none was reconstituted till the soldiers took over control of the government on December 31, 1983. No conscious efforts were made by the implementing authorities, when they existed, to set up a separate apparatus to implement the Act.

Revocation of Interest over Land and Payment of Compensation for Unexhausted Improvements.

The government claims the right to revoke the certificate of occupancy of any occupier or holder of land for an overriding public interest or breach of any provision of the Act, with payment of compensation for unexhausted improvement (Section 28). However, for the purpose of payment of compensation, valuation of the unexhausted improvements on the land is carried out and the holder paid accordingly. This can be problematic since ownership or title to land is not usually registered, especially in the rural area.

Problems of Implementing the Land Use Act

As stated earlier, no separate administrative structure was set-up for implementation of the Act in most states of the country. The implementation of the Act posed almost intractable problems (Fabiya and Adesimi, 1979). The problems mainly concern the following: (1) The definition of improvement - there is no unambiguous definition of what constitutes improvements or unexhausted improvements. (2) The methods of assessing compensation for buildings or farm structures and crops - market value is the basis of valuation of improvement for the purpose of compensation, however, market value is not an appropriate method of valuation for non-income producing assets such as religious centres, while the problem of valuation of farmland is especially compounded by lack of information on sales of farmland since such sales are always treated with secrecy. (3) Finding a replacement for acquired agricultural land is extremely difficult because there is no land in Nigeria without an owner (Potential or actual). (4) The payment of compensation has always been untimely - the payment of compensation is to assure no loss of welfare by those dispossessed of their properties, thereby enabling society to maintain Pareto's optimum position in which nobody is made "worse-off" while making some better off (Fabiya, Adegboye and Folayan, 1981). The general principle is that fair market value for the property taken will make the owner "whole," that is, it will

enable him to replace what has been taken from him (Lichfield, 1956). However, it seems that no amount of compensation can assuage the feelings of an average Nigerian to whom land has profound cultural and socio-political values, and spiritual aspects. To the subsistence farmer land is the basis of his survival. It is to him life giving. Thus to take land away from him for a public purpose with which he cannot identify, without prompt payment of adequate compensation or resettlement, is to ask for trouble. (5) The shortage of funds is another major problems as there is a general problem of cash flow in the economy. (6) Finally, there remains the human problem of dishonesty among officials and the general public. For example, many of the declarations made by applicants were found to be false (Fabiya, 1983).

In summary, the Land Use Act has been found to have the following problems:

1. It is essentially an urban legislation which only superficially touches the tenure problems in the rural sector. Besides, the title is a misnomer. It should have appropriately been titled "Land Allocation Act." If it were a Land Use Act, the concept of zoning should have been included.
2. It has not eliminated speculation in land, it has only driven it underground or fueled it.
3. It concentrates both economic and political powers in the hands of governors, military elites, and "robber barons" who use it to dispossess their political opponents and or peasant farmers through large-scale acquisition of land for commercial agriculture, paying only for unexhausted improvement, stipulated by the Act.
4. It has not succeeded in removing the uncertainties in title to land; instead it seems to accentuate it. For examples, a certificate of occupancy can be revoked for "public purpose" or a contravention of the Act. Where a bank gave out loan to a prospective farmer and accepted a certificate of occupancy of pieces of land as collateral, it is not certain who will get paid compensation, the bank or the landholder?
5. The Act does not appear acceptable to a cross-section of Nigerians; the traditional rulers, lawyers and estate surveyors oppose it while the peasant farmers who have birthright claim to the land ignore it.
6. It introduces some uncertainties as to who can register rural land, whether the initial "landowner" who granted it to a tenant or the tenant or his sub-tenants - as stipulated in section 36(2).
7. The requirement in sections 21, 22, 23, and 34(7) for consent by

the governor for statutory right of occupancy or local government for customary rights of occupancy must be first had and obtained before any transfer of right over land can be effected is cumbersome, vexatious and capable of stifling initiatives.

8. The civilian government of 1979 - 83 ignored it and even dissolved all committees set-up to implement the Act.
9. It is axiomatic that the government continues to appeal to various communities to donate land for development purposes despite the fact that the government arrogated ownership and control of all land in the country to itself.

Perspectives on Nigerian's Land Policy

The Land Use Act has been incorporated into the country's constitution and was not allowed to be reviewed by the Constituent Assembly that was charged with fashioning out a constitution for the third Republic. This is a confirmation of the Military rulers' position that optimality of land use is likely to be achieved through public ownership. It is conceded that public ownership of land would place the state in a strategic position to play, control, and monitor land development in all the twenty-one states of the federation.

The analysis of the current land reform - the Land Use Act - showed that all is not well with its conception and implementation. A number of supplementary measures are hereby suggested to ameliorate the weaknesses sported in the operation of public ownership of land.

These are:

1. Land Use Zoning. The zoning concept should be entrenched in the Act whereby good agricultural land should be protected. The rate of conversion of prime agricultural land to non-agricultural uses is very alarming and this should be checked through zoning ordinances and restrictive covenants.
2. Introduction of Cadastral Survey. This will enable us to know the extent of the land of each community, family, individual or any other land owning unit. It is recognized that cadastral survey is expensive; determination of ownership is messy and time-consuming. But it is hightime the country took an inventory of her resources, both human and material. After it has been determined who owns which piece of land, it is then necessary to document ownership through title registration.
3. Land Registration and Adjudication of Title. The idea of land title registration is not new to the country. There had been earlier attempts to register titles to land but it was not carried through. For example, Dr. P.C. Lloyd was commissioned to study the pos-

sibilities of land registration in the mid - 1960's. He submitted a report which was accepted by the government. However, the implementation of the report started in 1975 in Lagos, but it was overtaken by the promulgation of the Land Use Act of 1978.

4. Protection of the interest of small-scale farmers. Provisions should be made to protect the small-scale farmers from being displaced by imposing a maximum size of holding permissible by any individual farmer. The unbridled acquisition of tracts of land for commercial agriculture by individuals and corporate bodies under the provisions of the Land Use Act can easily result in concentration of land in few hands.
5. Property taxation. Investigations reveal that several people have been buying up tracts of rural land for speculative purposes in the absence of property ratings in the form of land taxes (Fabiye, 1974). Tenement ratings should be intensified in the urban centres where it already exists and introduced where it does not exist, while land taxation should be introduced all over the country as a means of generating revenue for the government. The introduction of land taxation is likely to force the people to use their land more intensively to pay the taxes, reduce the price of land due to capitalization effect or force people to dispose of the land as a result of holding cost effect of tax on the landowners, depending on the location of the land and their expectation of future prices. However, taxation of land has the effect of raising revenue for the government.
6. Tenancy Reform. It has been shown in literature that secure tenancy can be as efficient as owner-operator system. Fixed rent also enables the tenants to employ their capital in production rather than tie it down in fixed asset. To this end, there should be a legislation to fix the amount of rent payable by various categories of farmers all over the country. The rent fixed should be such as to give the tenants sufficient incentive to invest on the land rather than milking the land of its natural fertility.
7. Land Use Planning. There is need to introduce comprehensive land use planning and zoning ordinances to rationalize the use of land for various purposes. Many of the urban centres in Nigeria are not planned while prime agricultural land continued to be converted to non-agricultural uses without regard for the needs of the country for food and fibres.
8. There is need for the establishment of a Lands Commission at the Federal with subcommittees at State and Local levels of government. The commission should be an independent body composed

of experts and representatives of all sections of the society. The commission should review the following provisions among others:

- (i) The provisions of the requirement for obtaining mandatory "governor's consent" for land transactions need urgent review to include exemption of short leases (not exceeding five years) from the consent provisions, and streamlining as well as unification of consent procedure in all states.
- (ii) There is need to remove section 36(5), which bars alienation of land in non-urban areas to facilitate the mobility of resources and to serve the interest of agricultural financing and development.
- (iii) There is need to limit the control by a governor over deemed grants and not restrict it to a term of years and rent should not be imposed on such owners.
- (iv) Agricultural land misuse such as bush burning, over-grazing, uncontrolled mining and excavations should be positively discouraged by the Act.
- (v) What constitutes "over-riding interest of the public" should be outlined in order to minimize any tendency towards arbitrary exercise of powers conferred on Governor by the Act.
- (vi) Lands title to individuals should be secured against (capricious) revocation so that land can continue to be a valuable asset.
- (vii) To produce guidelines for monitoring and controlling land transactions in order to ensure social justice and fairplay
- (viii) To produce guidelines for the planning and development of land for various uses.

SUMMARY AND CONCLUSIONS

It has been shown that the traditional tenure system placed major constraints upon the achievement of efficient agricultural production by the failure to assimilate capital, organizing ability, and technical skill essential for agricultural development. The holders of land had become insecure due to a growing "shortage of land and insecurity of expectations generated by the land policies of the government.

The traditional system of land tenure presupposes an abundance of land. However, population pressure has reduced the man-land ratio especially in the South-Eastern part of the country where it is no longer possible to leave land to fallow and continuous cultivation is now the rule.

The Land Use Act promulgated by the government failed to take into sufficient consideration the modifications that have taken place in the traditional tenure system by treating land as a free good. The

Act concentrates both the economic and political powers in the hands of few individuals who are abusing its spirit. It has been shown that the Act does not enjoy wide acceptance and the implementation leaves much to be desired. Sale of land, forbidden by the Act, has been continuing unremitted. The people simply backdate the receipt of the sale.

The limitation of private interest in land to a leasehold for a term of years seems to limit the public claims against land to rent, therefore precluding the taxation of land. In the face of dwindling oil revenue and the absence of a tax upon land, it is difficult to see how local government could become independent of the Federal government in the execution of its programmes. A number of alternative land policy measures ranging from cadastral survey, land registration to comprehensive land use planning have been suggested.

The machinery for land administration at present is considered inefficient; there is need for a thorough examination of the functions, organization and effectiveness of the ministries and other government agencies dealing with land matters. Land policies must be sensitive to changes in the social and economic goals of society. Consequently, it is imperative to establish a research unit charged with the responsibility of carrying out sustained research on land matters so that government would always have relevant and reliable information and advice in the implementation of its land policies.

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Ma Salam.

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