

**LAND USE ACT: A RE-ENACTMENT OF COLONIAL LAND POLICY IN
POST-COLONIAL NIGERIA**

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Abstract

The paper establishes a link between Land Use Act and neo-colonial imperialism. It delves into history to trace the origin of land use Act to the promulgation of land use ordinance during the colonial administration which sought to hedge land ownership and acquisition with government based laws that were quite different from the hitherto pre-colonial communal land administration. Using a historical analytical descriptive approach that revolves around a combination of historical literature where both secondary and primary sources of data were utilized. The study reveals that the colonial land use ordinances markedly transferred what used to be communally owned land to the government, thereby dispossessing the natives of their landed right. The study argues that this act of land usurpation during the colonial era, has not only been seamlessly transferred into the post-colonial era, but has further been enhanced and adopted by the successive post-colonial administrations through legislations, decree and acts of the parliament. The paper therefore concludes that Land use Act being a neo-colonial instrument of exploitation and deprivation has indeed altered the pre-colonial system of land acquisition and ownership among the Nigerian people.

Keywords: Land Use Act, Pre-colonial, Imperialism, Post-colonial, Ordinance land policy

Introduction

From recorded history, land acquisition and appropriation has been a source of concern to any society. It has remained an issue of conflict and conflict resolution.

The land system of a given society is the manner in which land is owned and possessed. It is an institutional framework within which decisions are taken about the use of land, embodying that legal or customary arrangement whereby individuals or groups or organizations gain access to economic and social opportunities through land (Udo, 2003). The land system is also constituted by the rules and procedures which govern the right and responsibilities of both individuals and groups in the acquisition, use and control of land Denman (1978) argued that all societies of whatever culture and political creed have land systems woven of property rights. These property rights lend form to the proprietary land units. The proprietary land unit is the decision-making unit which is fundamental to all positive decisions about land use and comprises two elements, the run of property rights and the area of physical land to which they pertain (Denman and Prodano, 1972). Thus, the various segments of the society which were welded together to form the entity called Nigeria had different land tenure systems rooted in their cultural heritage, which functionally served them before the advent of colonialism. Colonialism altered the pre-colonial landscape of land appropriation and land use which the people were accustomed and introduced an alien type that metamorphosed into the present precarious land use policy in the post-colonial Nigeria, which seems to have alienated the people from their land if the policy were to be strictly observed and enforced. In the light of above, the study is set to discuss in details how the colonial land policy influenced the postcolonial land use policy. To achieve this, the paper briefly examines the pre-colonial land use regimes; the colonial land use policy, how the colonial land use policy influenced the post-colonial land use policy; and finally, its implications for the alienation of the people from right of land ownership in Nigeria.

Pre-colonial Land Use Regimes

The predominant land tenure system in Nigeria during the pre-colonial period was the customary land tenancy where land holdings were owned by villages, towns, communities and families. Land was deemed not owned by individuals but by communities and families in trust for all the family members (Omuojine, 1999). According to Adeniyi (2013), land was held under communal ownership in Nigeria during the pre-colonial era. It was managed on the basis of the customs and traditions of the various ethnic groups that formed the country. Traditional rulers and family heads were vested with the right to manage land in accordance with the political, socio-economic, cultural and traditional norms that existed at that time. Community members had only use rights. The use rights were heritable

and partible inheritance was common among male children, with few ethnic groups allowing females to inherit. However, there were variations in land regimes between the Northern and Southern territories of Nigeria before the advent of colonial administration.

Land Tenure in Pre-colonial Northern Nigeria

Prior to the Islamic jihad, the predominantly nomadic Fulani rare their cattle over large expanse of land and, they found settlements and markets (as they move) without defining boundaries for any group of communities or settlements (Mabogunje and Oguntoyinbo, 1997). For the main Hausa, land was held by family. Hence, the rural householder farms with his sons' help; from the old farm, he allocates to them small plots, which he enlarges as they mature. New family fields are cleared from the bush (Encyclopedia.com, 2019).

The customary land tenure in northern Nigeria suffered early disruptions by the Fulani jihadists, who introduced a kind of feudal tenure under which they claimed over lordship of the land after the Islamic conquest (Oshio, 1990). Following on the conquest of the Hausa states, the operations of the Maliki Law was invoked which passed the land of the conquered to the conquerors (Mabogunje, 1992). Thus, after the Fulani Jihad in the early 19th century, a quasi-feudal pattern developed with Emirs claiming ultimate title to land, with fief holders (Atilola, 2010).

During the pre-colonial era, in northern Nigeria the formation of the Sokoto Caliphate in the 1800s brought the Islamization of the land management system. The power to control and govern land shifted from the Royal *Gandaye* to the Emir. Islamic values revolutionized the way land was perceived by northern Muslims. One of the cardinal principles of Islamic land law is that land belongs to nobody; it is perceived as a gift of God and every person has usufructuary rights. Although no legal title was granted by the Emir under this tenure law, occupiers had the right to access and use the land and to prevent others from using it. Land tenure law under the Emirate vested the control of land in the Emir, who granted final consent before any land transaction was concluded, mostly granting clear possessory rights on undeveloped or otherwise idle land. For example, plots of land could not be transferred to a stranger without the Emir's consent. During this era, a clear dichotomy arose in the management of urban land (close to the Emirate Capital) and rural land. Rural lands could be acquired, cleared, and cultivated freely by all, including strangers, without requiring the consent of the Emirate

Council (Gheru and Okumo, 2016). Furthermore, Islamic land tenure law does not recognize landholding free of taxes. Land taxes were levied on land occupiers by the Caliphate for the management of the extensive land and the Caliphate. Mamman (2004), citing Yakubu (1985), explained that the Emir had overarching rights over the inhabitants of land, as distinct from rights over the land, and taxes were paid on produce from the land rather than on the land value itself.

Land Tenure in Pre-colonial Southern Nigeria

In the Southern Nigeria, land was held by the community, village, or family. In the main land was owned by extended lineage, individuals having only usufructuary rights by virtue of being members of the group (Atilola, 2010). The legal estate under customary land tenancy is vested in the family or community as a unit. During this period, land belonged to the community or a vast family of which many are dead, few are living and countless members yet unborn. Thus individuals had no such interest as the fee simple absolute in possession as the actual ownership of land or absolute interest was vested in the community itself. Interests or rights of individuals in community land were derivative interests. According to Dosumu (1977) and Aniyom (1978), the customary land tenure in the areas comprising the Southern States of Nigeria before colonial rule was held in the following ways:

- (i) Communal Lands
- (ii) Stool or Chieftaincy lands
- (iii) Family lands
- (iv) Individual or Separate property (Udoekanem, Adoga, Onwumere, 2014)

The community lands comprised lands which the entire community has an individual or proprietary interest. Such community lands were supervised and administered by the chiefs and traditional rulers. The stool or chieftaincy lands were found mostly among the Yoruba and comprised the Oba's palace and the surrounding lands. The family lands were lands that were vested in the members of the family as a corporate group. Individual property comprised lands whose title was vested on individuals and was obtained by partitioning of the family land to individual members of the family. However, during the pre-colonial period, land held under customary tenure cannot be sold or alienated. Such an act was generally regarded as capable of depriving the future generations of the opportunity to acquire land (Bardi, 1998).

Land Ownership in Nigeria during Colonial Rule

The colonial era brought British administration to land governance in Nigeria. Colonization of Nigeria by the British transformed the land tenure regime in that it introduced multiple land policies, while derogating the existing pre-colonial land use system. The window through which the colonial imperialists usurped the native lands of then would be Nigeria could be mirrored through the occupation of Lagos. The arrival of Europeans in Southern Nigeria in the later part of 19th century drastically changed the land holding system. As soon as the European traders who were used to freehold began to acquire land parcels in Lagos colony, they did so with the concept that the transactions conferred on them absolute ownership and the right of alienation. The transactions in land by the Europeans and the introduction of English freehold system in 1861 (Elias, 1971), caused deep conflicts between the customary system of land tenure and imported freehold system. Thus, while the British colonial administration signed a Cession Treaty in 1861 that transferred the sovereign rights to manage land to the colonial masters, individual property rights in southern Nigeria still resided with native citizens. To govern land more effectively, the colonial administration promulgated the Native Lands Acquisition Proclamation in 1900, under which the High Commission alone had the right to consent to any land transaction to a non- native by a native. Furthermore, only natives could either directly or indirectly acquire rights in or over land within southern Nigeria without the consent of the High Commissioner. In 1906, the Crown Lands Management Proclamation was introduced to regulate the management of all Crown lands. This proclamation provided that the management (that is, lease, sale, transfer, and exchange), control, and disposition of all Crown lands in the southern Nigeria be vested in the High Land Commissioner. In 1908, the Native Land Acquisition Ordinance was promulgated, which regulated the acquisition of land from natives. Nine years later, this legislation was repealed by the Native Lands Acquisition Ordinance No.32 of 1917 (Mamman 2004). The essence of this ordinance was to further deepen the regulation of land acquisition from the natives within the Protectorate; without the approval of the Governor, no foreigner could acquire the interest or rights of a native over any land. With these laws, and given that the existing land tenure system was an indigenous system of land management and administration, the colonial regime facilitated the transfer of land from natives to non-natives and foreigners (Gheru and Okumo, 2016).

Having hoisted the British style of land administration, thereafter the British colonial administration intensified its effort to extend its land management and administration policies to the northern region of Nigeria, but followed a different strategy. The British government granted the Royal Niger Company a royal charter in 1886, thus representing the Crown, which allowed it to impose an indirect rule system of management in the north. The Company signed many treaties, including land management treaties with the traditional chiefs and emirs who were leaders over their subjects. These treaties empowered the Company to acquire lands that then were assigned to the colonial government when the British administration assumed direct control of the territory after the revocation of the royal charter on January 1, 1900. Absolute property right over Crown land was transferred to the colonial government. The conquest of the Fulani further ceded all lands in their territories to the government. These lands were referred to as public land. The government had exclusive rights over all Crown lands, while natives were allowed user rights over public land (Gheru and Okumo, 2016).

The Lands and Native Rights Proclamation of 1910 was a major milestone in land governance during the colonial era. This legislation came into force as a result of perceived anomalies in the management of the land tenure system, particularly in northern Nigeria. The Northern Nigeria Lands Committee was set up in 1909. This Committee had the responsibility of establishing legislative and administrative land tenure systems for northern Nigeria. The outcome of its work was the Land and Native Rights Proclamation No. 9 of 1910. The recommendation of the Committee was akin to the Land Use Act in the post-colonial Nigeria as it empowered the Governor General to control all Crown and native lands and the rights over them. By this proclamation, the Governor General was to hold and administer public lands for the use and common benefit of natives. This proclamation vested the control of all lands in the state for the first time and empowered the Governor to compulsorily acquire or expropriate land without compensation. The Proclamation served as the springboard for formulation of the Northern Nigeria Lands Tenure Law of 1962.

Hence, the Native Rights Proclamation of 1910 nationalized all land and placed it under the control and administration of the Governor in the interest of the indigenous population (Atilola, 2010). Subsequently, in 1914 Lord Lugard amalgamated the Southern and Northern Protectorates into one centralized Nigeria ruled from Lagos, with each region retaining its land tenure system. In 1954 under regionalization scheme, three regions emerged with the Northern

Protectorate becoming the Northern Region, and the Southern Protectorate divided into West and Eastern Regions (Atiola, 2010).

From the foregoing, it is pertinent to observe that the land ownership structure in Nigeria under colonial rule was designed to suit the motives of the British imperialists. Historians and scholars including Dike (1960); Ade-Ajayi (1962); Anene (1966);¹ Oyebola and Oyelami (1967); Onwubiko (1976) have stressed that European conquest and occupation of West Africa and particularly, British colonial rule in Nigeria were based on two main motives. These were initially economic interest and later governance. Oyebola and Oyelami (1967) pointed clearly that:

The British occupation of Nigeria began on a very small scale. It first began along the coast and subsequently went from strength to strength until it had spread all over the country. The occupation was progressive rather than sudden. Traders led the way and their motive was purely economic. They came neither to acquire territories nor to administer the country. But there is no doubt that while they were trading, they were spreading the influence of their country at the same time, thereby paving way for the subsequent occupation of the country with which they traded.

Being a major factor of production, land was inevitably required by the colonial authorities to achieve their economic, social, and political objectives. The British merchants who came to the country purely on economic motive required land to establish their merchandise. The National African Company and its successor, the Royal Niger Company required land to expand its business in Nigeria. The colonial governors also required land for public purposes. Because land ownership in pre-colonial Nigeria was communal, the colonial authorities initiated laws and regulations governing land ownership, land use and development among others to enable them acquire and convey titles to land for the purposes of commerce and governance (Udoekanem, Adoga and Onwumere, 2014).

The major British colonial land legislations that set the stage for usurpation of native lands in Nigeria include the following:

- The Treaty of cession (1861);
- Land Proclamation Ordinance (1900);

- Land and Native Rights Act (1916);
- Niger Lands Transfer Act (1916);
- Public lands Acquisition Act (1917);
- Native lands Acquisition Act (1917);
- State Lands Act (1918); and
- Town and country planning Act (1947)

The treaty of cession of 1861 was principal of all the treaties signed by the colonialists with traditional chiefs in Nigeria. As rightly stated by Elias (1971), the legal effect of the cession of 1861 was that the root title of the land comprised in the Treaty was passed to the British crown. Pursuant to the 1861 Treaty of Cession, the Land proclamation ordinance, which was enacted by Lord Lugard in 1900 disregarded the principles of native law and custom and provided that title to land can only be through the High Commissioner. The land Proclamation Ordinance was enacted to derogate and relegate the institution of family and communal land ownership by facilitating the acquisition of title to land through the High Commissioner (Udoekanem, Adoga and Onwumere, 2014). More so, the Land and Native Rights Act was enacted in 1916 to vest in the colonial Governor all rights over all native lands in Northern Nigeria. Sections 3 and 4 of the Act provided thus:-

- (3) All native lands and right over the same are hereby declared to be under the control and subject to the disposition of the Governor, and shall be held and administered for the use and common benefit of the natives of Northern Nigeria and no title to the occupation and use of any such lands shall be valid without the consent of the Governor;
- (4) The Governor, in exercise of the powers conferred upon him by his Proclamation with respect to any land, shall have regard to the native laws and customs existing in the district in which such land is situated.

As captured by Elias (1971), later sections of the Act further provided, inter-alia, for the Governor's power: -

- (a) To grant rights of occupancy to "natives" as well as to "non-natives",
- (b) To demand and revise rent for such grants;
- (c) To render null and void any attempted alienation by an occupier of his right of occupancy without the Governor's consent.

(d) To revoke the grants to occupiers for “good cause”.

Nevertheless, the Land and Native Rights Act of 1916 (with later amendments) was repealed and replaced by Land Tenure law of 1962, which governed land tenure in Northern Nigeria up till 1978, before the promulgation of the Land Use Decree (now Act). Also in 1916, the Niger Lands Transfer Act was enacted. This law transferred the rights of the then Royal Niger Company in lands acquired by it and vested such rights in the British crown. The major legal effect of the Act was that lands held by the company based on treaties and agreements made with the people of Nigeria were transferred to the colonial government, thereby creating some landownership problems for the people. Again in 1917, the Public Lands Acquisition Act was enacted to empower the colonial Governor to acquire lands when required for public purposes. This law covered the then colony and protectorate of Nigeria. It empowered the colonial government to compulsorily acquire land whether occupied or unoccupied and provided for non-payment of compensation if unoccupied lands were acquired. Also in 1917-, the Native Lands Acquisition Act was enacted to regulate the acquisition of land by aliens from the people of the southern provinces of Nigeria (Udoekanem et al, 2014).

The 1917 legislation provided in section 3 that: -

- 3(a) No alien shall acquire any interest or right in or over any lands within the protectorate from a native, except under an instrument which has received the approval in writing of the Governor
- (b) Any instrument which has not received the approval of the Governor as required by this section shall be null and void.

Furthermore, section 3A provided the following: -

- 3 A Where any interest or right in or over any land has been acquired by an alien from a native with the approval in writing of the Governor as provided for in Section 3, such interest or right shall not: -
 - (a) Be transferred to any other alien without the approval in writing of the Governor. Whereas Section 4 of the Act provided that it shall be unlawful for any alien or for any person claiming to be an alien to occupy any land belonging to a “native” unless the right of the alien to occupy or authorize the occupation of the land is evidenced by an instrument which has received the approval of the Governor (or his delegate) in writing.

Any default is punishable by fine or imprisonment or both (Udoekanem et al, 2014).

An alien was defined in section 2 of the Act as “any person who is not a native of Nigeria”. The Native Land Acquisition Act 1917 had, since the advent of the federal system of government in Nigeria, been replaced by the Native Land Acquisition Law of 1952' in the Western and Mid- Western states and by the Acquisition of Land by Aliens Law of 1956 in the Eastern states (Udoekanem et al, 2014). Sequel to the above act, the State Lands Act was promulgated in 1918 to regulate the use, occupation and development of crown (state) lands in which the whole public have an interest. Under section 2 of the Act, “State land” means all public lands in the Federation which are for the time being vested in the Governor-General (at that time) on behalf or for the benefit of the state as the case may be, and all lands heretofore held or hereafter acquired by any authority of the federation for any public purpose or otherwise for such benefit, as well as land so acquired under any Act of parliament, but does not include lands which although acquired and so held are subject to the Lands and Native Rights Act. The Act restricted the sub-lease of occupiers of state lands in the country. Again in 1946, the Town and Country Planning Act was enacted as a law of general application. The law came into force on 28th March, 1946. It was a law enacted to make provision for the re-planning, improvement and development of the different parts of Nigeria. The law provided for the establishment of planning Authorities to regulate land use, planning schemes and development control. This law was replaced by the Nigerian Urban and Regional Planning Decree (now Act) of 1992 (Udoekanem et al, 2014). Interestingly, while these laws were enacted to make lands available for use by the colonial government, they were implemented to eliminate the pre-colonial land tenural system in the country and facilitate private ownership of land, particularly in Southern Nigeria. Thus with the advent of colonial rule, commerce and commercialization, it had become possible for individuals to own private land and deal with such land liberally (Omuojine,1999) and subsequently, land began to be sold, leased or mortgaged to individuals or groups (Bardi,1998).

Elias (1971) in summation of the land ownership system in Nigeria during the colonial rule stated that: -

In the result, therefore, the Government (the colonial government) has pursued a policy of restricting alienation of land in the former Southern provinces only to dealings among the people themselves, while frowning upon any out- and- out transfer to aliens. No claim to absolute ownership has been made, nor has any rigid distinction been drawn between crown and other lands except, perhaps that whereas

in the case of certain lands taken over from the Royal Niger Company no compensation to any occupier will be paid for their appropriation to public purposes, compensation is as a rule paid in the case of all other lands within the former Southern provinces. This contrasts markedly with the Northern policy of paying only for unexhausted improvement by native occupiers and not for the acquisition of the land itself. A corollary of this has been that while in the North, the Government has formally laid down the policy that no freehold title can exist in land but only a right of occupancy, there has been a benevolent neutrality on the part of the Government with respect to the form which titles to land in the former southern provinces should take.

From the foregoing, it will not be out of place to say that the subsequent post-colonial land appropriation and land use system as we shall discuss below, is but a re-enactment of the colonial land policy of usurpation and alienation. The only difference is that the post-colonial land policy is a policy crafted by the Nigerians and its attempt to consolidate on the existing colonial policy and later, enactment of a uniform policy for the entire country.

Land Policy in the Post-Colonial Nigeria

With the attainment of Independence in 1960, management and control of Nigeria's territories and resources were transferred to Nigerians. The early years of independent Nigeria witnessed very little change in land management from those systems that were put in place in the colonial era. In the south, land continued to be customarily held by the indigenous population or natives,

with chiefs as the key managers. However, the scenario was different in the northern part of Nigeria where the then government of the north in 1962 enacted the new Northern Nigeria Land Tenure Law to replace the colonial era Native Lands Acquisition Ordinance. The new law placed all lands in northern Nigeria in the hands of state Governors, who were to administer land for the use and common benefit of the natives of northern Nigeria. This new law introduced customary and statutory rights of occupancy. Customary rights of occupancy were administered by the Emirate Council and covered all public land, while statutory rights of occupancy were administered by state governments. A certificate of occupancy was usually issued by the state Governor as evidence of land granted to both natives and foreigners, usually for a defined purpose and for a prescribed

period of time, depending on land use (Gheru and Okumo, 2016). Two principal legislations have been enacted to regulate land ownership in Nigeria since independence. These are: -

- (i) The Land Tenure Law of Northern Nigeria of 1962
- (ii) The Land Use Act of 1978

The Land Tenure Law of 1962 contains the basic principles as those in the Land and Native Right Act of 1916. It was enacted to replace the Land and Native Rights Act of 1916. The land Tenure Law provided that all lands in each of the states in Northern Nigeria whether occupied or unoccupied are “native lands” and are placed under the control, and are subject to the disposition of the Minister responsible for land matters, who holds and administers them for the use and common benefits of the “natives”, in other words, persons whose fathers were members of any tribes indigenous to each state in Northern Nigeria. This means that all other persons who are not indigenous to each of such states are “non-natives”. Under this law, no title to the occupation and use of any such lands by a non-native is valid without the Minister’s consent. The natives of Northern Nigeria were granted right of occupancy to land for a limited number of years. For the purpose of the law, a right of occupancy means a title to the use and occupation of land and includes both customary and statutory right of occupancy. An occupier enjoys exclusive right to his land against all persons other than the Minister. He may, with the Minister’s consent, sell, mortgage or transfer any lawful improvement on the land. Also, on the determination of a statutory right of occupancy, all the improvements on the land revert to or vest in the Minister without payment of any compensation to the holder. Alienation of a statutory right of occupancy is prohibited without the Minister’s prior consent (Udoekem et al, 2014). The Land Tenure law of 1962 was repealed and replaced by the Land Use Decree (now Act) of 1978.

The Land Use Act of 1978

The Land Use Act was promulgated in attempt by the Nigerian government to resolve the challenges encountered in the implementation of the existing land policies. For instance, the government and private individuals to acquire land for development purposes from both individuals and communities was a huge hurdle. Urbanization led to increased demand for land, and land speculation become the order of the day as the national economy grew in view of the increased revenue associated with the oil boom of the 1970s. Lack of uniformity in the laws

governing land use and ownership was also an issue. Population growth induced land fragmentation, particularly in rural areas, and unequal access to land rights by all citizens. These challenges, coupled with the rising cost of land acquisition in urban areas, grossly affected the implementation of several projects outlined in the second National Development (1970-1974). Thus, the Northern Nigeria Land Tenure Law of 1962 was modified into the Land Use Act (LUA) of 1978 (Gheru and Okumo, 2016).

The Act came into force in 1978 based on the recommendation of an Anti-Inflation Task Force set up by the federal government on August 15, 1975, to examine the existing causes of inflation in the economy. The committee identified the challenges associated with existing land tenure laws as one of the causes of the looming inflation in the economy and recommended a national land policy to unify the diverse land tenure draws in the north and south. The Act vested all land in the territory of each state (except land vested in the federal government or its agencies) solely with the state governor. The governor was to hold such land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the state and to organizations for residential, agricultural, commercial, and similar powers with respect to non-urban areas were conferred on local governments (LUA 1978).

Land Use Act No. 6 of 1978 was promulgated into law with effect from 29th March, 1978 as the nation's land policy document. Since then, it has remained so in the country till date. To all intents and purposes, the Act regulates the ownership, alienation, acquisition, administration and management of land within the Federal Republic of Nigeria Section 1 of the Land Use Act vests all land comprised in the territory of each state in the Federation of Nigeria in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of the Act. Section 5(1) of the Act empowers the Governor of a state to grant statutory right of occupancy to any person for all purposes in respect of land, whether or not in an urban area and issue a certificate of occupancy in evidence of such right of occupancy in accordance with the provisions of Section 9(1) of the Act. Also, Section 5(2) of the Act provides that "Upon the grant of a statutory right of occupancy under the provisions of sub - section (1) of this section, all existing rights to the use and occupation of the land which is the subject of the statutory right of occupancy shall be extinguished." Thus, the statutory right of occupancy granted by a Governor is presently the highest right to land in Nigeria. This right of occupancy is a right which allows the holder to use or occupy land to the exclusion of all other persons

except the Governor and is granted for a maximum holding period of 99 years, subject to the payment of ground rent fixed by the Governor throughout the holding period. Sections 21 and 22 of the Act prohibit alienation, assignment, mortgage, transfer of possession, sub - lease or otherwise howsoever customary or statutory rights of occupancy in Nigeria without the consent and approval of the Governor of the state where such right of occupancy was granted (LUA, 1978).

For emphasis, the provisions of Sections 21 and 22 of the Act are as follows:

21. It shall not be lawful for any customary right of occupancy or any part thereof to be alienated by assignment, mortgage, transfer of possession, sub-lease or otherwise howsoever

(a) without the consent of the Governor in cases where the property is to be sold by or under the order of any court under the provisions of the applicable Sheriffs and Civil Process Law; or

(b) in other cases, without the approval of the Local Government

22. (1) It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sub-lease or otherwise howsoever without the consent of the Governor first had and obtained; Provided that the consent of the Governor;

(a) shall not be required to the creation of a legal mortgage, over a statutory right of occupancy in favour of a person in whose favour an equitable mortgage over the right of occupancy has already been created with the consent of the Governor;

(b) shall not be required to the reconveyance or release by a mortgage to a holder or occupier of a statutory right of occupancy which that holder or occupier has mortgaged to that mortgagee with the consent of the Governor;

(c) to the renewal of a sub-lease shall not be presumed by reason only of his having consented to the grant of a sub-lease containing an option to renew the same.

(2) The Governor when giving his consent to an assignment, mortgage or sub-lease may require the holder of a statutory right of occupancy to submit an instrument executed in evidence of the assignment, mortgage or sub-lease and the holder shall when so required deliver the said instrument to the Governor in order that the consent given by the Governor under sub-section (1) of this section may be signified by endorsement thereon (LUA, 1978).

Statutory right of occupancy as interpreted in Section 50 of the Act is a right of occupancy granted by the Governor under the Act for a maximum holding period of 99 years. Customary right of occupancy as also interpreted in that section of the Act is the right of a person or community lawfully using or occupying land in accordance with customary law and includes a customary right of occupancy granted by a Local Government under the Act. Also, Section 28(1) empowers the Governor of a state to revoke a right of occupancy for overriding public interest, subject to the payment of compensation for the unexhausted improvements based on the provisions of Section 29 (4) of the Act (LUA, 1978).

Implications of Land Use Act

The LUA 1978 was a modification of the Northern Nigeria Land Tenure Law of 1962, which was crafted from the Land and Native Right Act of 1916. It completely altered the existing land tenure laws in the south by vesting the trusteeship of land in the then military governor of the state. As a result, local sovereignties, vested in chiefs, families, groups, and institutions, were broken up by the Act. However, Mamman (2004), citing Uchendu (1979, p.71) and Francis (1984, p.12), observes that the Act granted individuals usufructuary rights in land and fostered the use of an administrative system rather than market forces in the allocation of rights in land. The LUA of 1978 attempted to unify the operational land law in Nigeria and validate the property rights of citizens through the issuance of statutory and customary certificates of occupancy. As such, it left room for different interpretations and levels of uncertainty, because it did not repeal previous land laws. It was neither definitive nor determinative, retaining if clauses in some sections of the law. Therefore, the Act was subject to many open-ended interpretations and contestations (Gheru and Okumo, 2016).

Contrary to the expected benefits derivable from the Land Use Act of 1978, corruption and abuse of power challenge land tenure security, adversely affecting the confidence of the private sector in securing property rights, leading to underutilization of land (Gheru and Okumo, 2016).

In Nigeria, the basic legal framework for land administration is the LUA 1978. The absence of a national land policy and the need for just redistribution of land resources, coupled with many other factors, necessitated its promulgation (Ghebru et al. 2014). The main objectives of the LUA are promoting investment in the agriculture sector, creating opportunity for land occupancy to all citizens, and

curbing land speculation in urban areas (Ghebru et al. 2014; Fabiyi 1984). Yet the LUA's various weaknesses have led to inefficient land management.

A central challenge facing effective land governance in Nigeria is the excessive power given to local governments and governors. Local governors have the power to revoke rights of land occupancy and to adjust or eliminate payable compensations. Local governments have the power to grant customary right of occupancy with respect to lands in non-urban areas (Otubu 2010). Such decisions by these political leaders are often made in an arbitrary manner. Furthermore, an ineffective land registration system is another weakness. A report by Adeniyi (2013) noted that the government has taken only a few steps to improve the land registration system. In consequence, the costs and requirements of the registration process discourage land users from formalizing their land rights.

Using Ondo State for example, there exists governance challenges for public and private sector service providers in land administration. As reported by Birner and Okumo (2011), there are problems related to compensation payments and the lack of standard procedures or avenues to lodge complaints within the land use implementing institutions. The report indicated local government's limited role in land registration.

Again, the shortage of trained personnel is also noted as a significant factor hampering effective implementation of the LUA and Nigeria's land management system (Fabiyi 1984). In part because of an absence of sufficiently trained staff, securing a certificate of occupancy is inconvenient and complicated, pushing citizens into informal means or even to backdate the date of ownership to before promulgation of the LUA. The lack of specific information about the land renewal certificate coupled with questions about the duration of the rights of the landholder undermines the effectiveness of Nigeria's LUA (Gheru et al. 2014).

Concluding Remarks

This paper established a link between the Land Use Act and neo-colonial imperialism delving into history of land use in the pre-colonial, colonial and post-colonial Nigeria. The study discovered for example that the Land Use Act of 1978 was a modification of the Northern Nigeria Land Tenure Law of 1962, which was crafted from the Land and Native Right Act of 1916. Besides, the Land Use Act of 1978 was merely the nationalization of the land policy in that the Northern Nigeria Land Tenure Law of 1962 was modified into the Land Use Act of 1978, which governs the land regime for the entire country. The above deduction sprung from

the fact that the then government of the north in 1962 enacted the new Northern Nigeria Land Tenure Law to replace the colonial era Native Lands Acquisition Ordinance. All of these were attempts to usurp and alienate the people from the once communally-owned lands. Even the pretension of the government that the Land Use Act of 1978 was aimed at making land accessible to the people has not achieved the so-called perceived purpose as it has ended up alienating majority of the Nigerian people from their land. In fact, the Land Use Act is fraught with the following weaknesses all to the chagrin of the masses and communities alike. The weaknesses ranged from the challenge of the excessive power given to local governments and governors poor system, high cost and rigorous process of land registration thereby discouraging land users from formalizing their land rights; problems related to compensation payments and the lack of standard procedures or avenues to lodge complaints within the land use implementing institutions; and shortage of trained staff, among others.

Overall, the findings of this study demonstrate that despite Nigeria undertaking a range of land policy reforms over the past decade or so, failure to address such issues of the poor knowledge and awareness of its citizens on land administration processes as well as failure to address gaps in institutional capacity has continued to undermine any possible positive economic and social outcomes of such land administration reforms. This is due mainly because the inherited colonial land policy is alien to Nigerian cultural heritage as well as imperialistic in nature. Hence, there is need to fashion a land policy that can properly and effectively accommodate the people's native and cultural heritage that is free from arbitrary administrative processes as witnessed in the so-called neo-colonial land reform.

References

- Ade -Ajayi, J. F. (1962). *Milestones in Nigerian History*. Ibadan: Ibadan University Press.
- Adeniyi, P. (2013). Improving Land Sector, Governance in Nigeria -Implementation of the Land Governance Assessment Framework, *Synthesis Report*, Lagos, Nigeria, Available at http://siteresources.worldbank.org/INTLGA/Resources/LGAF_Nigeria_Final_Report-Xovember2011.pdf. (Accessed 20/08/19).
- Anene, J.C. (1966). *Essays in African History*. Ibadan: Onibonoje Publishers.
- Aniyom, D. A. (1983). An Appraisal of the Land Use Decree and its Effects in its First Five Years (29th March, 1978 to 29th March, 1983). *The Map Maker*. 9(1): pp. 17-26.

AKU: AN AFRICAN JOURNAL OF CONTEMPORARY RESEARCH

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A Publication of the Association for the Promotion of African Studies

- Atilola, O. (2010). Land Administration Reform in Nigeria: Issues and Prospects. FIG Congress 2010, INV 4 - Land Policies in Africa Facing the Challenges - Building the Capacity, Sydney, Australia, 11-16 April 2010
- Bardi, M. C. (1998). Geographic Information System as a Tool-for Successful Implementation of the Land Use Decree. *The Quantity Surveyor*. 29 (1): 17-22.
- Birner, R., and A. Okumo. (2011). *Challenges of Land Governance in Nigeria: Insights from a Case Study in Ondo State*. Nigeria Strategy Support Program (NSSP) Working Paper 22. Abuja: International Food Policy Research Institute.
- Denman, D. R. (1978). *The Place of Property*. Berkhamstead: Geographical Publications Ltd.
- Denman, D. R. and Prodan, S. (1972). *Land Use: An Introduction to Proprietary Land Use Analysis*. London: Allen and Unwin.
- Dike, K.O. (1960). *Hundred Years of British Rule in Nigeria*. Lagos: Federal Ministry of Information.
- Dosumu, O. A. (1977). Land Tenure System in Nigeria and its Effects on Land Administration. *The Map Maker*. 4(1) pp.23-25.
- Elias, T. O. (1971). *Nigerian Land Law*. London: Sweet and Maxwell.
- Encyclopedia.com. (2019). Hausa, Available at <https://www.encyclopedia.com/social-sciences-and-law/anthropology-and-archaeology/people/hausa> (Accessed 20/08/19).
- Fabiyi, Y.L. (1984). Land administration in Nigeria: Case studies of the implementation of the Land Use Decree (Act) in Ogun; Ondo and Oyo States of Nigeria, *Agricultural Administration* 17(1): 21-31.
- Francis, P. (1984). "For the Use and Common Benefit of All Nigerians": Consequences of the 1978 Land Nationalization, Africa: *Journal of the International African Institute* 54 (3), 5-28.
- Gheru, H., and Okumo, A. (2016). *Land Administration Service Delivery and Its Challenges in Case Study of Eight States, Nigeria Strategy Support Program (NSSP) Working Paper 39*. Abuja: International Food Policy Research Institute.
- Gheru, H., H. Edeh, D. Ali, K. Deininger, A. Okumo, and S. Woldeyohannes. (2014). *Tenure and Demand for Land Tenure Regularization in Nigeria*. Nigeria Strategy Support Program (NSSP) Working Paper 25. Abuja: International Food Policy Research Institute.
- LUA Land Use Act). (1990). Land Use Act 1978, chapter 202 laws of the Federation of Nigeria. Abuja: Federal Republic of Nigeria. Available at <http://www.nigeria-law.org/Land%20Use%20Act.htm> (Accessed 20/08/19).

AKU: AN AFRICAN JOURNAL OF CONTEMPORARY RESEARCH

ISSN: 26814-0761 (Print) 2814-0753 (e). Vol. 3 No. 1. 2022

A Publication of the Association for the Promotion of African Studies

- Mamman, A.B. (2004). Land Use Policies . Since 1960. Available at <http://www.onlinenigeria.com/land/?blurb=529> (Accessed 16/08/19).
- Mabogunje, A. (1992). Integrated Rural Development, Proceedings of a Conference: Social Transformation for Self Reliance, Directorate for Social Mobilization (MAMSER).
- Mabogunje, A.L. and Oguntoyinbo J.S (1978). *Geographical Perspective on Nigerian Development*. Geography of Nigerian Development. Heinemann Educational Books (Nig) Ltd.
- Omuojine, E.O. (1999). The Land Use Act and the English Doctrine of Estate. *Journal of the Nigerian Institution of Estate Surveyors and Valuers*. 22(3): 54-56.
- Onwubiko, K. B.C. (1976). *History of West Africa: 1800-Present Day (Book Two)*. Aba: Africana Educational Publishers Company.
- Oshio, P.E. (1990). The Indigenous Land Tenure and Nationalization of Land in Nigeria, *Boston College Third World Journal*, 10 (1), pp.43-60.
- Otubu, T. (2010). Land reforms and the future of the land Use Act in Nigeria, *Nigerian Current Law Review (NIALS) 2007-2010*.
- Oyebola, A. and Oyelami, A. (1967). *A Textbook of Government for West Africa*. Ibadan: Educational Research Institute.
- Uchendu, V.C. (1979). State Land and Society in Nigeria. A Critical Assessment of Land Use Decree of 1978, *Journal of African Studies* 6 (71).
- Udoekanem, N.B., Adoga, D. O., and Onwumere, V.O. (2014). Land Ownership in Nigeria: Historical Development, Current, Current Issues and Future Expectations, *Journal of Environment Science*, 4, (21), pp.182-188.
- Udo, G.O. (2003) *Model Building in Property Valuation*. Enugu: Institute for Development Studies, University of Nigeria.
- Yakubu, M.G. (1985). *Nigerian Land Law*. London: Macmillan.