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<b>Title:</b> The Quest for Transparency and adoption of Environmental Sustainability Guidelines in Land Administration in Nigeria: An Evaluation of the National Land Use Act and its implications on Inclusion, Climate Change and Biodiversity Conservation.	
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## Abstract:

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The Land Use Act of Nigeria, first enacted in 1978 by the military government (and amended in 2004 under a democratic government) was intended to simplify and standardise land administration systems across the country. It vested the authority to plan, assign and approve certificates of land ownership as well as to manage all urban tracts of land within the 36 states in the state governors, and all non-urban land in the 774 local governments. However, the Act failed to establish the standards of designating a location as “urban” or “rural”. Secondly, while the Act focused more on allocating land for commercial activities and associated interests, it failed to establish and incorporate the framework and mandate for biodiversity conservation and environmental standards of tracts of land.

While there is an ever-increasing demand for investments in land, curiously but disappointingly, many state and local government officials desperate to attract investments, now explore and allocate hitherto environmentally-protected and conservation areas in blatant disregard to established principles of sustainable biodiversity and environmental management in the terrestrial habitats.

Therefore, using desk reviews of previous studies, this research aimed to analyse the causative factors of not just corruption but also the ineffective strategies in land-resource management especially in agricultural production with a view to harnessing the huge potentials of land-based investments in the country – and by extension – the continent.

This research indicated the potential benefits of instituting modern reforms across the continent that would mitigate corrupt practices and ensure efficiency, in land administration and tenure governance using frameworks such as the World Bank’s *Land Governance Assessment Framework* (LGAF) and the Food and Agricultural Organisation’s (FAO) *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security* (VGGT) which incorporates sustainable environmental and climate-sensitive practices in land administration with appropriate peer-review mechanism.

## **Introduction**

The Nigerian Land Use Act of 1978 is the prime piece of legislation that regulates contemporary land tenure in Nigeria. Upon its promulgation, it was hoped that the law would provide radical, if not revolutionary, changes to the prior land tenure systems in the country. Among others, the act was aimed at reducing unequal access to land and land resources, a major cause of unqualified distress to many citizens and investors alike. In a country that is hugely agrarian and natural resource-dependent, unfettered access to land and associated resources by the citizens could stimulate the needed economic growth.

The Land Use Act was equally targeted at reducing the high cost of land required for industrial estates and mechanized agriculture. For these reasons, the law appeared to nationalize land when it placed it in the hands of the government as a custodian, to hold in trust and administer for the use and common benefit of all Nigerians.

### **Land Tenure in Nigeria Prior to the Land Use Act: An overview**

All of Nigeria's 36 states and a Federal Capital Territory could broadly be classified within the colonial-era Northern or Southern regions which at that time operated different land tenure systems.

When the British Colonized the northern part of the country with the Proclamation of 1900 by which all the land in the territory was annexed by the British Government, it set up the Northern Nigeria Lands Committee in 1908 to recommend an appropriate land tenure system for the region based on which the Land and Native Rights Proclamation of 1910 was enacted but later replaced by the Lands and Native Rights Ordinance of 1916. Post-independence, the Northern Nigerian Legislature enacted the Land Tenure Law, 1962, which was the enforceable legislation at the time the Land Use Act was enacted in 1978.

The tenure systems formulated by these two statutes are considered to be similar in many respects in that they both vested all land in the territory in the government which then made it available to the citizens by granting *rights of occupancy* and *certificates of occupancy* issued as evidence of these rights

while the alienation of a right of occupancy was only permitted upon the consent of the regional governor.

There was no such uniform tenure system in the Southern region as the various communities, tribes and nations which populated the region operated different tenure systems - which endured and survived colonialism - was in many ways anchored on the principle of private ownership of land. Land was owned absolutely by private individuals, families or communities and was hardly subject to superior control and the government only exercised direct proprietary over relatively small areas which it had acquired for its use.

### **Objectives of the Land Use Act**

While it is understood that the principal objective of the Land Use Act was to enhance the effective management and control of land in Nigeria particularly in a manner that gives government sufficient powers over the acquisition, transfer or otherwise assignment of land and land resources, other objectives of the Act were to curb land speculation, which accounted for the astronomical rise in the prices of land especially in urban and semi-rural areas believing that once ownership of land was vested in the government, speculators would be forced out of business and the value of land could then be stabilized within the fair economic reach of citizens as well as to harmonize the tenure systems throughout the country especially in the southern part of the country which lacked a coordinated and formalized tenure arrangement as was the case in the North under the Land Tenure Law 1962. Undoubtedly, the situation in the South gave rise to multiple and endless litigations which often hampered economic development especially as it concerned the location of industries, the siting of infrastructural projects and investments in mechanized agricultural production activities.

### **The Impacts of the Land Use Act on Economic Development in Nigeria**

An objective appraisal of the legislation reveals inherent contradictions and defects demonstrated in the institutional weaknesses as well as the lack of political will in the country to secure an effective and fair implementation of the Act as envisioned to usher economic successes for Nigerians.

Divesting of citizens' freehold title to their land is nevertheless betrays their opportunities for economic prosperity as land ceased from being an article of commerce with the advent of the Act. The widespread ineffective management of land was further highlighted by the World Bank's key analyses of the Land Governance Assessment Framework –LGAF (2013) which suggested Nigeria's scores are low in comparison with other countries on the continent and some of those assessment are seen in the grids below;

## 1.1 Legal and institutional framework

### 1.1.1 Continuum of rights

Recognition of a Continuum of Rights						
LGI	#	Indicator	A	B	C	D
1	i	Land tenure rights recognition in rural areas	■			
1	ii	Land tenure rights recognition in urban areas	■			
1	iii	Rural group rights recognition			■	
1	iv	Urban group rights recognition in informal areas			■	
1	v	Opportunities for tenure individualization			■	

### 1.1.2 Enforcement of rights

Enforcement of Rights						
LGI	#	Indicator	A	B	C	D
2	i	Surveying/mapping and registration of claims on communal or indigenous land				■
2	ii	Registration of individually held properties in rural areas				■
2	iii	Registration of individually held properties in urban areas				■
2	iv	Women's rights are recognized in practice by the formal system (urban/rural)				■
2	v	Condominium regime that provides for appropriate management of common property			■	
2	vi	Compensation due to land use changes			■	

### 1.1.3 Equity and nondiscrimination

Equity and Non-Discrimination in the Decision-Making Process						
LGI	#	Indicator	A	B	C	D
3	i	Clear land policy developed in a participatory manner			■	
3	ii	Meaningful incorporation of equity goals			■	

3	iii	Cost of implementing policy is estimated, matched with benefits, and adequately resourced				
3	iv	Regular public reports indicating progress in policy implementation				

#### 1.1.4 Efficiency in the planning process

Efficiency of Land Use Planning						
LGI	#	Indicator	A	B	C	D
4	i	Process for planned urban development in the largest city				
4	ii	Process for planned urban development in the next 4 largest cities				
4	iii	Ability of urban planning to cope with urban growth				
4	iv	Plot size adherence				
4	v	Use plans for specific land classes (forest, pastures, etc.) are in line with use				

#### 1.1.5 Transparency of valuations

Transparency of Valuation						
LGI	#	Indicator	A	B	C	D
5	i	Clear process of property valuation				
5	ii	Public availability of valuation rolls				

## 2.1 Management of Public Land

### 2.1.1 Identification of public land

Identification of Public Land						
LGI	#	Indicator	A	B	C	D
6	i	Public land ownership is justified and implemented at the appropriate level of government				
6	ii	Complete recording of publicly held land				
6	iii	Assignment of management responsibility for public land				
6	iv	Resources available to comply with responsibilities				
6	v	Inventory of public land is accessible to the public				
6	vi	Key information on land concessions is accessible to the public				

### 2.1.2 Transparency of expropriation procedures

#### Transparency of Procedures

LGI	#	Indicator	A	B	C	D
7	i	Compensation for expropriation of ownership			■	
7	ii	Compensation for expropriation of all rights			■	
7	iii	Promptness of compensation				■
7	iv	Independent and accessible avenues for appeal against expropriation				■
7	v	Appealing expropriation is time-bounded			■	

### 3.1 Public provision of land information

#### 3.1.1 Completeness

Completeness of Registry Information						
LGI	#	Indicator	A	B	C	D
8	i	Mapping of registry records				■
8	ii	Relevant private encumbrances	■			
8	iii	Relevant public restrictions			■	
8	iv	Searchability of the registry	■			
8	v	Accessibility of registry records		■		
8	vi	Timely response to requests			■	

#### 3.1.2 Reliability

Reliability of Registry Records						
LGI	#	Indicator	A	B	C	D
9	i	Registry focus on client satisfaction				■
9	ii	Cadastral/registry info up-to-date				■

#### 3.1.2 Cost-effectiveness, accessibility, and sustainability

Cost Effectiveness, Accessibility, and Sustainability						
LGI	#	Indicator	A	B	C	D
10	i	Cost of registering a property transfer				■
10	ii	Financial sustainability of registry				■
10	iii	Capital investment in the system to record rights				■

#### 3.1.4 Transparency of service costs

Transparency of Service Costs						
LGI	#	Indicator	A	B	C	D
11	i	Schedule of fees for services is public			■	
11	ii	Informal payments discouraged		■		

### 4.1 Dispute resolution and conflict management

#### 4.1.1 Assignment of Responsibility for Dispute Resolution

Assignment of Responsibility for Dispute Resolution						
LGI	#	Indicator	A	B	C	D
12	i	Accessibility of conflict resolution mechanisms		■		
12	ii	Informal or community based dispute resolution	■			
12	iii	Forum shopping		■		
12	iv	Possibility of appeals			■	

### 5.1 Large-Scale Land Acquisitions

Large-scale Acquisition of Land Rights						
LGI	#	Indicator	A	B	C	D
PLI	1	Most forest land is mapped and rights are registered				■
PLI	2	Conflicts generated by land acquisition and how these are addressed				■
PLI	3	Land use restrictions on rural land parcels generally identifiable				■
PLI	4	Public institutions in land acquisition operate in a clear and consistent manner				■
PLI	5	Incentives for investors are clear, transparent, and consistent			■	
PLI	6	Benefit sharing mechanisms for investments in agriculture			■	
PLI	7	Direct and transparent negotiations between right holders and investors			■	
PLI	8	Information required from investors to assess projects on public/community land			■	
PLI	9	Information provided for cases of land acquisition on public/community land			■	
PLI	10	Contractual provisions on benefits and risks sharing regarding acquisition of land				■
PLI	11	Duration of procedure to obtain approval for a project		■		
PLI	12	Social requirements for large scale investments in agriculture				■
PLI	13	Environmental requirements for large scale investments in agriculture				■
PLI	14	Procedures for economically, environmentally, and socially beneficial investments			■	
PLI	15	Compliance with safeguards related to investment in agriculture				■
PLI	16	Procedures to complain if agricultural investors do not comply with requirements				■



Against the reality that a great number of Nigerians have no other source of income and livelihood except such derived from land by way of subsistence agriculture or associated commercial activity, the appropriation of land by the government plunged the majority of Nigerians into poverty, adversely impacting GDP and per capita income and personal savings rather than prosperity.

The assertion by World Bank (2014a) that land tenure security is of utmost necessity for every citizen's empowerment and even more so for women as it is seen as a prerequisite for building secure and resilient communities cannot be more truthful, but the reality often points at tenure being affected by many complicated but contradictory sets of rules, laws, customs, traditions, and perceptions and for most rural women, with access and ownership often layered with barriers present in their daily realities such as discriminatory social dynamics and strata, unresponsive legal systems, lack of economic opportunities, unrepresented and under-represented voice in decision making. Yet most policy reform, land management, and development programs disregard these realities in their interventions, which ultimately increases land tenure insecurity for rural women especially.

The predicament of the landowner as argued by Edigin (2010) is further compounded by section 28 of the Land Use Act that empowers the Governor to revoke for overriding public interest any right of occupancy he had earlier granted. Overriding public interest includes when the Government requires the land for public purposes, projects or infrastructure. Sadly, the circumstances under which the Governor can exercise his power of revocation which is undefined but broad in scope - include where the occupier or holder of a right of occupancy assigns, mortgages, transfers possession, subleases or otherwise deals adversely with his right of occupancy or part thereof contrary to the provisions of the Act, limiting the choices that a landowner may possibly have over his property except the one dictated by the government. Although, section 29(1) of the Act provides for the payment of compensation on the event of revocation by the Governor of a right of occupancy, such payment is to be made only *for the value at the date of revocation of their unexhausted improvements*.

The challenge to this assertion is “what then happens to the commodity of the land itself as a store of value? A rural subsistence farmer or urban poor who depends on his land for sustenance loses out completely since there may not be *unexhausted improvements* on the land. Moreover, compensation is not payable in the event of a revocation by the Governor where the holder of a right of occupancy has assigned, mortgaged, transferred possession, subleased (as seen in many rural agricultural production localities where land is often sub-leased).

While section 15 of the Act provides that “during the term of a statutory right of occupancy, the holder shall have the sole right to and absolute possession of all the improvements on the land”, such right and possession only relates to improvements that the holder still cannot transfer, assign or mortgage without the prior consent of the Governor. This clearly creates a problem of security of title because while it is conventional in Nigeria to grant a certificate of occupancy for a period of ninety-nine years, there is no guarantee in the Act that prevents the Governor from granting a certificate of a lesser period. This therefore amounts to an obvious economic risk hindering massive agricultural investments or improvements because of the atmosphere of uncertainty induced by the Act. More so, (unless stated on the title document) the Land Use Act itself does not contain a renewal provision that grants the holder some certainty for long-term agricultural or economic investments (NASS, 2010).

While the World Bank, (2014b) indicates an ever-increasing demand for investments in land, curiously but disappointingly, many state and local government officials desperate to attract investments, now explore and allocate hitherto environmentally-protected and conservation areas in blatant disregard to established principles of sustainable biodiversity and environmental management in the terrestrial habitats to the dismay of many conservation groups such as the Nigerian Conservation Foundation that have consistently championed sustainable land use practices. Due to such obvious weaknesses and poor governance in land administration, the cost of land continues to rise just as land speculation has become even more entrenched than previously thought and further complicated by the politicization of almost all public affairs and institutions in the country, resulting in situations where

sitting Governors revoke the certificates of occupancy of political adversaries or refuse to grant it to those who do not share their political ideology.

Incidentally, while the number of land titles issued across the country between 1999 and 2017 more than tripled the preceding 3 decades due to expansions into protected areas, the poverty index has furthered worsened with more than double the number of citizens against the figures obtained between 1980 - 2018 (in excess of 80 million) now considered to be living below a dollar a day with numerous species of flora and fauna facing the threat of local extinction due to exposure to poachers, expanding desertification and aridity. The National Adaptation Strategy and Plan of Action for Climate Change in Nigeria (NASPA-CCN 2011) even revealed that in the absence of terrestrial adaptation action plans, climate change could result in the loss of between 2-11% of Nigeria's GDP by 2020, rising to between 6-30% by the year 2050.

The particular demand for expansion in agricultural production with the non-commensurable high incidence of poverty therefore does not justify the arbitrary and continuous opening of vast acreages of land presumably for agricultural production which remains not just a case isolated to Nigeria, but across most of West Africa and indeed the continent!

It is no wonder then that, after more than three decades of operating the Land Use Act, few of its set objectives could be said to be accomplished as the Act has neither generated the anticipated economic prosperity and equality of access to land for Nigerian nor the desired economic development that it was hoped to usher in.

## **Recommendations**

The intentions and objectives of the Land Use Act are no doubt lofty but current realities have demonstrated its defects. However, the desire for economic development through effective, fair and equitable utilization of land and land resources could be attained if the law is holistically amended to overturn some unrealistic provisions. Among others, sections 8 and 22 of the Act should be amended to make the grant of a statutory or customary right of occupancy, permanent. This would guarantee

the security and stability of economic interests and improvements on land, the subject matter of a right of occupancy.

As the experience in operating the law has shown, when a certificate of occupancy is issued for a short duration of time, it amounts to economic risk to invest on the land. Eliminating the requirement of obtaining the consent of the Governor before a holder can alienate his right whether by assignment, mortgage, transfer of possession, sublease or otherwise, would also put the Act in line with modern realities. Furthermore, section 28 of the Act should be amended to limit the grounds upon which the Governor can exercise his power to revoke a right of occupancy for overriding public interest. Such grounds specifically should not include alienation by a landowner of his interest in the land.

Similarly, section 29 should be streamlined to make compensation payable not only for unexhausted improvements on the land, but also for loss of the land itself as a store of value together with the improvements. Compensation should also be commensurate with the market value of the land and the improvements therein. The government should muster the requisite political will to implement the law effectively, fairly and equitably.

Finally, incorporating safe-guards such as modern reforms (not just in the country but the continent as a whole) that would mitigate corrupt practices and ensure efficiency in land administration and tenure governance using frameworks such as the World Bank's LGAF as well as FAO's VGGT which incorporates sustainable environmental and climate-sensitive practices in land administration and governance are therefore strongly recommended together with appropriate regional peer-review mechanisms as practiced particularly in the European Union (FAO, 2012).

## **Conclusion**

Unfortunately, in admitting to the unparalleled optimism that heralded the Act but which has over time faded into disillusionment, the Supreme Court of Nigeria captured the despondence most Nigerians feel when it held in *Ogunleye vs. Oni*, that: *The Land Use Act has departed from the magic wand it has been portrayed to become a destructive monster that at once swallowed all rights on land so that the*

Governor or local government with mere issuance of a piece of paper, could divest families of their homes and agricultural lands overnight with a rich holder of certificate of occupancy driving them out with bulldozers and cranes. In mitigation, the argument by Edigin (2010) and Nwaocha (2016) that certain unfair provisions of the Act such as sections 5, 6, 22, 28 and 29 be amended to restore certainty and enhance equitable access to land in the country, remain unblemished.

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I undersigned, Michael Iyaji, accept the invitation to present at the CLPA-2019, 25-29 November 2019 in Abidjan, Côte d'Ivoire.

I confirm that I will be able to submit the paper by July 25th, 2019 and the draft PowerPoint presentation by September 30th, 2019.

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