CHAPTER SIX

LAND REFORMS

The term "land reform" has a variety of meanings. It may involve the restoration of land rights to previous owners, a process known as land restitution. This occurred in countries in transition when former private rights in land were restored. Land reform may involve the redistribution of land rights from one sector to another-for example by taking land from the State or from individual owners of large estates and giving it to people who have no land. Land reform may also involve land consolidation in which all landowners within an area surrender their land and are allocated new parcels of comparable value but in a pattern that encourages the more efficient and productive use of the land. Land reform may also involve changes in the tenure of the land that is, in the manner in which rights are held. thus abolishing complex traditional and customary rights and introducing more simple and streamlined mechanisms of land transfer. The impact on the land may be preplanned. but it may also result from property tax reforms that alter the value of land and in consequence its use.

Land reform programmes normally affect selected areas such as agricultural land or urban centres. In rural areas the programmes may be designed to facilitate changes in the technology of agriculture, the type of crops, the manner of husbanding the land, the financing of development or the

marketing of products. In urban areas land reform programmes may involve major infrastructure development, the taxation of buildings as well as the land upon which they stand, or changes to the manner and use of land and properties.

Thus "land reform" covers a multitude of possible activities, not all of which may occur in any given reform programme.

Land reform in a broad technical sense means any process designed to change the arrangements by which land is held for the purpose of improving the social and economic position of those who actually use the land. It serves as an instrument for equitable distribution of resources and as a vehicle for restructuring the ownership and Land Use System, increasing productivity and brings about the desired improvement.

Land reform has been viewed from agrarian, political and social standpoints, but more generally, it should be taken to be the restructuring of the land tenure system usually in response to general social and economic discontent resulting from a tenure system that facilitate the subordination of the lives of the majority who do not own land to those of the minority who does.

The distribution of property rights among the citizens of a country is a form of the distribution of power over the use of land and resources and hence the distribution of wealth. In a free society, the government is as much responsible for protection of a citizen's property rights as it is for the imposition of controls over the use of that power. Government

controls take away rights of user from the owner of land interests. The degree of the deprivation varies between persons, the range of proprietary rights also differs in degree at any one time; one person may have superior control over the use of land occupied by another as with landlords and tenants.

Land reforms are movements making for the redistribution of property rights, either between government and the land owner or between a land owner and another land owner. Sometimes, an owner's property rights are shifted from one parcel of land to another to give him and his neighbours a more rational distribution of rights in land. In other reforms, the larger landowners must surrender land to less well endowed people or to the landless. Again, reform may not change the amount of land held by two or more parties but it may alter the sharing of the rights of property between them. Whatever direction a reform may take, at all stages, it is an intricate procedure involving the participants in losses and gains. Estate Surveyors and Valuers are required to advise governments on the aims of reforms and the practical consequences of them.

Land reform can take any or a combination of the following forms:

a. Tenancy Reforms

This is more of a palliative measure to the problems created by existing tenure system. The Land Use Decree of 1978 in Nigeria is an example of Tenancy reform. It only involves changing a few rules of land tenure without any further socio-economic involvement. Tenancy reforms consist of regulating

tenancy arrangement so that the tenant is given security of occupation and compensation for disturbance, and then the land owner is protected against bad husbandry, which would depreciate his property as well as impairing the land. This sort of tenancy regulation naturally requires a well-drafted Law, and efficient end experienced administration if it is to be effective.

(b) Redistribution of Land

This involves the acquisition, consolidation and redistribution of the consolidated land. This can be termed the Land reform "proper" and it entails the expropriation of large estates and their subsequent division into smaller parcels for the benefit of landless workers or owners of non-viable units either as individual holdings or under some form of co-operative or communal tenure, or by reserving the State the right to administer them. Taiwan, Ethiopia, Japan and Mexico are examples where the measures have been fairly successful.

(c) State Acquisition and Control

This is more relevant to the Socialist countries such as Cuba, Libya, China, North Korea and Vietnam. It involves the State taking over the land and giving it out to be used on her behalf.

(d) Co-operative Management of Land

This involves the government acquisition of land and its redistribution to farmers on co-operatives basis. Tanzania, Uganda, Sudan's Gezira scheme, Mexican Egido system, and Israel's Kibbutzim and Moshavim are notable examples.

The most obvious reasons, which call for reform in a land tenure system, are inequities or differences in land rights

and accessibility to land resources. This leads to some people having tremendous rights and control over land while others have fewer rights or even none at all. The causes of these differences may be density of population, differences in qualities of land, customs and traditions and/or political and economic status. Land reform serves as an instrument for removing the inequities found in the society and ipso facto reduce the disparity of opportunities and privileges enjoyed by landlords as compared with tenants and landless workers. It provides a better living condition.

CHAPTER SEVEN

COMPETENT ADMINISTRATION OF LAND USE

Land is a fundamental necessity of life. It is the most important resource base and valuable asset of the individual citizen and the Nation. Indeed, human life society cannot exist without land. It is the very foundation and framework on and within which social, political and economic activities of a nation function. The production and utilization of social and economic wealth cannot be attempted or achieved without land.

Land is the most essential item not only for major industrial and commercial development projects but also for the overall human survival in terms of the provision of shelter, agricultural production and other basic infrastructural facilities. It s the duty of any responsible and progressive government to ensure that this most valuable resource is carefully managed and utilized with maximum efficiency for the benefit of all generations.

In Nigeria, there are very large expanses of unused land all over the country even though their sizes vary from place to place depending on population density. In fact, flying over Nigeria, one gets the impression that less than ten percent (10%) of the country's available land space is so far utilized. The main problem therefore is not that of land availability but that of accessibility, ownership and rational use.

The competent administration of land is an issue that concerns all and sundry since all productive activities revolve round the use of land as a factor of production.

Land Cadastre: Prerequisite for Urban Development

The lack of adequate information about urban land-who owns it, how it is used, who should be paying rates on it is being recognized increasingly as a serious obstacle to social and economic development of cities in Nigeria such as Ibadan, Ilorin, Onitsha, Aba, Kano, Kaduna, Enugu, Akure, etc. It creates a range of problems -from limiting a city's ability to generate revenues to constricting the urban land market and causing delays in urban development projects.

Creating an up-to-date and efficient cadastre (land data) can do much to alleviate these problems. A Cadastre is an official register of the location, boundaries, ownership, value and other attributes of land. It must systematically cover all parcels within the defined area and be regularly updated. A cadastral survey is the demarcation of parcel boundaries; it may involve ground surveys, aerial photography and data from existing maps. A Cadastral map is based on the survey findings. There are three basic types of cadastres: Fiscal, Legal and Multipurpose.

a. **Fiscal Cadastre:** A record of the information necessary for levying property taxes, including parcel location and value. Often, the information is not as precise as that required for a legal cadastre. Frequently, the occupant of the parcel is identified for tax purposes and no effort is made to determine the legal owners.

b. **Legal Cadastre:** A register identifying the legal owner and precise boundaries of each land parcel. Establishing a

legal cadastre requires both fixing parcel boundaries through surveying and mapping, and fixing legal rights, which may involve negotiations among involved parties and a judicial determination of ownership.

c. **Multipurpose Cadastre:** A relatively new development that incorporates, in one source, the legal and fiscal cadastre data plus information on land use, infrastructure, buildings, soil, and other factors. Each parcel must be assigned a unique identifier, so that all the information can be related to the same plot.

The quantity, breadth and detail of the data to be included in a cadastre can thus vary depending on its uses. Whatever the system adopted, public authorities will have to make a commitment to a continuous effort, involving investment in staff and other resources.

BENEFITS OF A LAND CADASTRE (LAND DATA)

1. **Increased generation of revenue from property taxes:** A cadastre, which lists the boundaries and market value of land parcels and identifies the individuals who own them, and have an obligation to pay taxes on them, is a prerequisite for the assessment and collection of property taxes. Especially now that the local governments in the country are faced with increasing fiscal constraints, increased generation of revenue at the local government level can help offset reduction of financial resources coming from the federal government. Of course, establishing a fiscal Cadastre is not in itself sufficient, what is

also needed is the political will to undertake the collection of property taxes and to provide sufficient manpower to update records and assessments.

2. **Smother Functioning of Urban Land Markets**: Systematic identification of the boundaries and legal ownership of land parcels is critical to the smooth functioning of urban land markets. The absence of such information produces long and unnecessary delay in the transfer of land parcels. This effectively removes a large percentage of urban land from the market, thus producing an upward surge in land prices.

3. **More Rapid Assembly of Land for Development Project:** A cadastral system is also necessary in order for public authorities to carry out urban development projects. Inadequacies in the land registration System make it very difficult, time consuming, and costly to assemble land for infrastructure, shelter, industry and roads. Such delays raise project costs and can affect the choice of the project site.

4. **Improved Housing for the Poor:** Secure title encourages the urban poor to mobilize resources that would otherwise not have been tapped for the improvement of their shelter.

5. **Access to Credit:** Since loans are usually extended on the basis of security provided by property, a cadastral system can widen and increase access to credit.

6. **Facilitation of Land Reform:** Land redistribution, land consolidation and land assembly for development can be expedited through the ready availability of information on who currently owns what rights in what land.

7. Management of State Lands: The state is often the major land owner in a country. The development of a cadastral system and in particular, the creation of cadastral maps in a systematic manner will benefit the state in the administration of its own land, often giving rise to improved revenue collection from the land which it leases. In addition, the public acquisition of land through compulsory purchase prior to redevelopment can be expedited.

8. Improvements in Physical Planning: The cadastral system may be used to support physical planning in both the urban and rural sectors. Better land administration should lead to greater efficiency in local government. Many development programmes have failed or been unnecessarily expensive through lack of knowledge of existing land rights. The cadastre also provides a basis for restricting certain uses of the land, which might, for example, give rise to pollution.

9. Supporting Environmental Management: Cadastral records, in the multipurpose form, can be used as a tool in assessing the impact of development, in helping in the preparation of environmental impact assessments and in monitoring environmental change.

The introduction of a uniform system of compulsory land registration by title in Nigeria within the framework of a national land information system as contained in the 1991 National Housing Policy of Nigeria will make the realization of the benefits of a land cadastre possible.

THE LAND USE DECREE OF 1978

Until the promulgation of the Land Use Decree in 1978, there was no attempt to provide a uniform measure to regulate the use and ownership of land in the country. In spite of the Decree, there are still major obstacles to the provision of land for housing programmes. The defects in the Land Use Decree and the absence of up-to-date cadastral and topographical maps contribute to the problems. Land policy is one of the cornerstones of housing delivery. Unless we take proper measures in Nigeria, land, rather than money, men or materials may soon become the most serious obstacles to the achievement of our housing goal and objectives.

The Land Use Decree is intended to facilitate availability of urban and rural land for development. The Decree is a bold step aimed at:

a. Protecting and preserving the rights of all Nigerians as beneficiaries, to hold, use and enjoy land in Nigeria.

b. Reforming and harmonizing various land tenure systems in existence in the country before 1978.

c. Regulating and controlling the use of land.

d. Facilitating the process of land acquisition by individuals, corporate bodies, institutions and governments, and

e. Eliminating land speculations.

It is an obvious fact that despite the purported ban on the sale of land by any person by the Land Use Decree that sites ripe for development are never obtained free of charge anywhere in Nigeria.

CONSTRAINTS OF THE LAND USE DECREE

The noble objectives of the Land Use Decree are yet to be realized as a result of the following constraints:

a. Lack of follow up action promulgating supplementary legislation for effective implementation of the Decree.

b. Failure of the Land Use Decree to spell out rights and powers of the federal government as trustees of land seriously hampers Federal Government efforts to acquire suitable land in the states.

c. Cumbersome procedures for obtaining certificates of occupancy and letter of consent.

d. Failure of the Decree to set up realistic yardstick for determining compensation payable by government for improvements on acquired lands.

e. Delay and non-payment of compensation for improvements on acquired land.

POWERS OF THE LOCAL GOVERNMENT UNDER THE LAND USE DECREE OF 1978

The land, which comes under the control and management of the local government, is that which has not been declared as "urban land" by the state governor. It is upon this land that the local government, in which area the land lies, exercises the powers given to it by the Decree. To help the local government in exercising its powers under the Decree, a body is to be appointed by the state governor, in consultation with the local government. The body is to be known as "the Land Allocation

and Advisory Committee." and its function is to advise the local government on all matters related to the control and management of the land in its jurisdiction. The powers of the local government under the Decree are:

1. To grant a customary right of occupancy to any person or organization for the use of land for residential, agricultural and other purposes.
2. To enter upon, use and occupy for public purposes any land within the area of its jurisdiction which is not:

   (a) Land within an area declared to be an urban area pursuant to the Decree.

   (b) Land which is the subject of a statutory right of occupancy.

   (c) Land within the area compulsorily acquired by any of the governments of Nigeria; and

   (d) Land subject to any law relating to minerals or mineral oils.

3. To determine compensation payable for an unexhausted improvement to a holder whose land has been acquired by the governor. The powers on the Local Government over land are subject to general limitations imposed by the Decree.

First, the powers must be exercised subject to the provisions of the Decree. Secondly, the Local Government cannot grant a customary right of occupancy to any person or organisation in respect of an area of land in excess of 500 hectares if granted

for agricultural purposes or 5,000 hectares if granted for grazing purposes until the consent of the Governor is obtained.

PUBLIC PURPOSES UNDER THE LAND USE DECREE INCLUDE

a. For exclusive government use or for general public use;

b. For use by anybody corporate directly established by law or by anybody corporate registered under the Companies Decree 1968 as respects, which government owns shares, stocks or debentures;

c. For or in connection with sanitary improvements of any kind;

d. For obtaining control over land contiguous to any part or over land, the value of which will be enhanced by the construction of any railway, road or other public work or convenience about to be undertaken or provided by the government.

e. For obtaining control over land required for or in connection with development of telecommunications or provisions of electricity.

f. For obtaining control over land required for or in connection with mining purposes.

g. For obtaining control over land required for or in connection with planned urban or rural development or settlement;

h. For obtaining control over land required for or in connection with economic, industrial or agricultural development;

i. For education and other social services.

MANAGEMENT AND MAINTENANCE OF LAND RESOURCES

Land resources in this context mean all the rights, interest and privileges in land i.e. in both natural and man-made resources. Investments in land resources account for almost three quarter of the wealth of the country. Land resource problems should be the greatest concern of all especially the governments, which according to the Land Use Decree of 1978, "is holding the land in trust for the common benefit of all Nigerians."

Land management is the use and direction of land resources in order to achieve the maximum return. It is directed towards a multitude of aims and is subject to policy changes from time to time. Land ownership right in Nigeria is vested in the state governor while the citizens only have the right of use and occupation. The ownership, use and disposal of land involve a responsibility not only to the tenant or landlord but to the community as a whole. Land is a relatively sacred asset, and in Nigeria, it is now recognized as a matter of national interest that its use, enjoyment, etc. should be controlled to achieve the maximum benefit.

One of the greatest problems facing Nigeria is the general absence of maintenance and upkeep of landed property. Little or no attention is given to property maintenance and upkeep generally, with the result that improvements depreciate at a fast rate. With proper maintenance, all our public and private resources would still maintain their status and prestige as the day they were commissioned.

Maintenance is an integral part of development process, but in Nigeria, this is the reverse. The fact that maintenance is not considered as part of building process leads to deterioration even at the design stage of construction work. In this country, we believe that government property is no man's property and could be left to rot away. This explains why any stadia, secretariat buildings, and post offices are in a deplorable state crying for maintenance.

Buildings are man-made assets, which require regular maintenance if the buildings must fulfill their functions. This is essential since the conditions and quality of buildings reflect pride and serves as a measure of the level of development and social values in any given environment. Indeed, property is a scarce resource and the effective management of it can lead to maximizing of returns from it. It is therefore clear that if the existing stock of real estate are effectively managed, it will lead to increase both in quantity and quality of landed properties and thus to a better development of the nation.

When the use of land is not controlled, the usual result when urban centers grow by accretion is a disorderly pattern of mixed land use, congestion and uneconomic use of public facilities and utilities. Control of urban land use, including planning and the promulgation of effective regulation is therefore imperative. To promote balanced regional development and growth and achieve a stable and qualitative environment, federal, state and local governments should ensure the preparation of master-plans for all cities and major settlements.

The type and level of community participation in the design of urban projects depend on the nature of each project. Sites and services projects involve communities in the building of community services and in some cases in self-help housing construction.

The improvement of existing communities usually involves direct participation of neighbourhood groups in various aspects of project design and implementation while community involvement can delay and complicate decisions; the drawbacks have being outweighed by the valuable inputs provided by the community.

The infrastructural problems of unplanned old areas and new areas require careful analysis, design of systems and implementation; site specific infrastructures cannot be addressed in isolation, they must be integrated with an effective city-wide system and accommodated within the absorptive capacity. There is a need for a dynamic integration of the various systems from planning, through implementation to maintenance. Access to land by all income groups should and must be an integral component of urban development strategies, so that all sectors can make maximum contribution to economic and social; developments. Land resource problems should be the greatest concern of all. Posterity will not forgive us if this scarce resource is poorly administered.

CHAPTER EIGHT

COMPULSORY LAND ACQUISITION

Compulsory acquisition is the power of government to acquire private rights in land without the willing consent of its owner or occupant in order to benefit society. It is a power possessed in one form or another by governments of all modern nations. This power is often necessary for social and economic development and the protection of the natural environment. Land must be provided for investments such as roads, railways, harbours and airports; for hospitals and schools; for electricity, water and sewage facilities; and for the protection against flooding and the protection of water courses and environmentally fragile areas. A government cannot rely on land markets alone to ensure that land is acquired when and where it is needed. However, a number of countries require that the government should attempt to buy the required land in good faith before it uses its power of compulsory acquisition.

Compulsory acquisition requires finding the balance between the public need for land on the one hand, and the provision of land tenure security and the protection of private property rights on the other hand. In seeking this balance, countries should apply principles that ensure that the use of this power is limited, i.e. it is used for the benefit of society for public use, public purpose, or in the public interest. Legislation should define the basis of compensation for the land, and

guarantee the procedural rights of people who are affected, including the right of notice, the right to be heard, and the right to appeal. It should provide for fair and transparent procedures and equivalent compensation.

Compulsory acquisition is inherently disruptive. Even when compensation is generous and procedures are generally fair and efficient; the displacement of people from established homes, businesses and communities will still entail significant human costs. Where the process is designed or implemented poorly, the economic, social and political costs may be enormous.

PRINCIPLES FOR LEGISLATION ON COMPULSORY ACQUISITION

Principles for legislation on compulsory acquisition should include:

- Protection of due process and fair procedure. Rules that place reasonable constraints on the power of the government to compulsorily acquire land strengthen the confidence of people in the justice system, empower people to protect their land rights, and increase the perception of tenure security. Rules should provide for appropriate advance consultation, participatory planning and accessible mechanisms for appeals, and should limit the discretion of officials.
- Good governance. Agencies that compulsorily acquire land should be accountable for the good faith

implementation of the legislation. Laws that are not observed by local officials undermine the legitimacy of compulsory acquisition. Good governance reduces the abuse of power and opportunities for corruption.

- Equivalent compensation. Claimants should be paid compensation which is no more or no less than the loss resulting from the compulsory acquisition of their land. Laws should ensure that affected owners and occupants receive equivalent compensation. Whether in money or alternative land. Regulations should set out clear and consistent valuation bases for achieving this.

Problems may arise when compulsory acquisition is not done well:

- Reduced tenure security: Policies and legislation that strengthen land rights or individuals and communities may be eroded through compulsory acquisition. People may believe they lack tenure security if the government can acquire rights in private land without following defined procedures, and/or without offering adequate compensation.
- Reduced investments in the economy: Insecure tenure, with the threat of the arbitrary loss of land and associated income, discourages domestic and foreign investment.
- Weakened land markets: Threats to tenure security discourage land transactions, reduce the acceptability of

land as collateral, discourage people from investing or maintaining their property, and depress land values.

- Opportunities created for corruption and the abuse of power. The lack of protection and transparency can result in injustices which anger citizens and undermine the legitimacy of government.
- Delayed projects: Appeals against unfair procedures may hold up the acquisition of land, and thus block projects and increase costs.
- Inadequate compensation paid to owners and occupants: Financial awards may be inadequate to allow people to enjoy sustainable livelihoods after their land is acquired. People may feel that they are not compensated for the loss of cultural, religious or emotional aspects of the land.

SOURCES OF THE POWER OF COMPULSORY ACQUISITION

The constitutions of many countries provide for both the protection of private property rights and the power of the government to acquire land without the willing consent of the owner. There is, however, great variation. Some countries have broadly defined provisions for compulsory acquisition, while those of other countries are more specific.

Constitutional frameworks that have broadly defined provisions concentrate on basic principles and often simply assert the power to compulsorily acquire land as the single exception to

fully protected private property rights. For example, the constitution of the United States of America mandates that: "No person...shall be deprived of...property, without due process of law; nor shall private property be taken for public use without just compensation" (Article V). Similarly, Rwanda's constitution states: "Private property, whether individual or collective, shall be inviolable. No infringement shall take place except for the reason of public utility, in the cases and manner established by the law, and in return for fair and prior compensation". (Title II, Article 23). Such constitutions leave the details of compulsory acquisition to other legislations and, in some instances, to the interpretation of the courts.

Other constitutional frameworks specify in detail the mechanisms by which the government can compulsorily acquire land. They tend to include a specific list of the purposes for which land may be acquired. For example, Ghana's constitution includes provisions detailing exactly what kinds of projects allow the government to use its power of compulsory acquisition, and specifies that displaced inhabitants should be resettled on suitable alternative land (Chapter Five, Article 20). Chile's constitution identifies the purposes for which land may be compulsorily acquired, the right of property holders to contest the action in court, a framework for the calculation of compensation, the mechanisms by which the state must pay people who are deprived of their property, and the timing and sequence of possession (Chapter III, Article 19,24).

Most countries supplement the constitutional basis for compulsory acquisition, whether broadly or specifically defined, with extensive laws and regulations. National or sub-national laws usually describe in detail the purposes for which compulsorily acquisition can be used, the agencies and officials with the power to compulsorily acquire land, the procedures to be followed, the methods for determining compensation, the rights of affected owners or occupants and how grievances are to be addressed. The regulations that accompany these laws may be particularly important as they often provide the acquiring agency with instructions on how to carry out compulsory acquisition during all phases of the process.

The laws governing compulsory acquisition are part property law and part administrative law which dictates governance procedures. Principles of administrative justice and good governance often require that such powers are bound by legal rules which allow for hearings and appeals, and are subject to judicial review.

THE LIMITS OF THE POWER

A balanced approach to compulsory acquisition requires a respect for the human rights of owners and occupants of the land to be acquired. Various international laws reflect the concern for protection of land rights and the payment of compensation when people are displaced. Multilateral financial institutions link funding for large scale development projects to compliance with principles that protect people who may be

displaced as a result of projects that they support. Governments should review national legislation and amend it to comply with human rights principles.

The acquisition of the land of indigenous communities is particularly sensitive. Protection of indigenous peoples' rights in relation to land is specifically expressed within a human rights frame-work.

HUMAN RIGHTS LAW AND COMPULSORY ACQUISITION

The Universal Declaration of Human Rights (Article 17) provides that "everyone has the right to own property alone as well as in association with others" and that "no one shall be arbitrarily deprived of his property".

Several regional conventions on human rights also protect rights to property, including:

- The American Convention on Human Rights, adopted at the Inter-American Specialized conference on Human Rights, San Jose, Costa Rica, 1969, (Article 21 Right to Property): " 1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law".
- The African Charter on Human and Peoples' Rights, 1986: "Article 14. The right to property shall be

guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws". "Article 21. 1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation".

- The European Convention on Human Rights and Fundamental Freedoms, 1950, (Article 8, First Protocol): "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. This right is expanded by Article 1, First Protocol: Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general

principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

INDIGENOUS LAND RIGHTS

Secure rights to land and other natural resources are essential for the livelihoods of indigenous peoples. These rights are the basis of their economy and are often the foundation of their spiritual, cultural and social identity. Despite this, the natural resource base and livelihoods of indigenous peoples have been undermined by development projects, urban expansion, establishment of national parks, mineral exploration, and logging of forests and the growth of large agribusinesses.

Numerous international statements and declarations recognize the rights of indigenous peoples to their lands. The Habitat Agenda, reaffirmed by the Istanbul Declaration on Human Settlements (1996), commits to the following objectives: "Protecting, within the national context, the legal traditional rights of indigenous people to land and other resources, as well as strengthening of land management... (and) protecting and maintaining the historical, cultural and natural heritage, including traditional shelter and, settlement patterns, as appropriate, of indigenous and other people. ." (paragraph 40 (m), (r), (s).

The International Labour Organisation's Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) sets out in article 14(1) that: "The rights of ownership and possession of (indigenous people) over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them but to which they have traditionally had access for their subsistence and traditional activities".

PURPOSES THE POWER MAY BE USED

Many constitutions and laws refer to compulsory acquisition being used for public purposes, for public uses and/or in the public interest. In practice these terms are often not clearly distinguished and they tend to be used interchangeably.

A broad survey of both developed and developing countries reveals the following among the commonly accepted purposes for compulsory acquisition:

- Transportation uses including roads, canals, highways, railways, bridges, wharves and airports;
- Public buildings including schools, libraries, hospitals, factories, religious institutions and public housing;
- Public utilities for water, sewage, electricity, gas, communication, irrigation and drainage, dams and reservoirs;

- Public parks, playgrounds, gardens, sports facilities and cemeteries;
- Defence purposes.

An exercise in compulsory acquisition is more likely to be regarded as legitimate if land is taken for a purpose clearly identified in legislation. An exclusive list of purposes reduces ambiguity by providing a comprehensive, non-negotiable inventory beyond which the government may not compulsorily acquire land. Yet exclusive lists may be too inflexible to provide for the full range of public needs: the government may one day need to acquire land for a public purpose that was not considered when the law was written.

Inclusive lists contain, along with the list of permissible purposes, an open-ended clause that allows for flexibility. Poland's relevant law identifies specific purposes for which land may be acquired and then adds as a final item: "Other obvious public goals" (Expropriation Law of 1991, Article 46.1). Such provisions provide the flexibility to expand the eligible purposes when required. At the same time, the scope for expansion is limited: the list of purposes identified provides guidelines for the judiciary when adjudicating challenges to the legitimacy of compulsory acquisition for a purpose that is not defined in the list.

The rationale for compulsory acquisition may be straightforward when land is acquired by the government for

use by a public entity, for example for a public school or hospital, or for a new public road or airport. The rationale for acquiring land for a public purpose or in the public interest may be also clear where the land will be held by a private entity but used for a public purpose. For example, in countries where the generation and transmission of electricity is privatized, the government may support private electricity companies to acquire land for the infrastructure needed to ensure service to their customers.

More controversial are cases where private land is acquired by government and then transferred to private developers and large businesses on the justification that the change in ownership and use will benefit the public. In a number of countries, compulsory acquisition has been used as a tool to help assemble land in order to promote urban renewal and attract commercial investment in areas where buildings and infrastructure have deteriorated substantially. It has been used also on behalf of developers (both private and public-private ventures) in order to change the land use of an area, for example, from residential to commercial use. In such cases, it is argued that the development benefits the wider public by creating economic growth and jobs, and by increasing the tax base which in turn allows the government to improve its delivery of public services. Proposals to use compulsory acquisition of land for private development should undergo a public scrutiny that ensures that the balance between the public

need for land and the protection of private property rights is properly considered, and that the compensation reflects the profit potential of the land to be acquired.

In countries where policies of redistributive land reform have been adopted, these are usually considered as being in the public interest, even if the reform transfers land from one private owner to another. Such land reforms are often part of government programmes to address social injustices and to promote agricultural and rural development. In challenges to a land reform, the government may have to prove that the redistribution of land from one citizen to another is for a purpose that is beneficial to the community. Clear intent in legislation can help to diminish the potential for conflicting court decisions in such challenges. Where such redistributive land reforms are addressed using powers of compulsory acquisition, governments have sometimes adopted a policy where full compensation is not provided for land that is compulsorily acquired. Such policy decisions can be controversial but it is beyond the scope of this guide to address them.

WHO HAS THE POWER TO COMPULSORILY ACQUIRE LAND?

Each country has its own set of agencies, ministries and officials who have the power to compulsorily acquire land. The national level of government is usually granted authority for compulsory acquisition by the constitution, and relevant laws

often designate the head of government or a specific minister as the person empowered to authorize the functions associated with compulsory acquisition. In some countries, power is assigned only to the national government while in other countries it may be also vested at the regional level. It may be possible for local government and parastatal organizations to compulsorily acquire land for public works, although usually with the permission of higher levels of government. Relevant laws and regulations should clearly identify the authorized government bodies in order to reduce opportunities for abuse of power.

The centralization of the power of compulsory acquisition may enhance uniformity of standards, achieve a coherent national land policy and establish a body of core expertise. However, centralization may also lead to delays in the acquisition of land, and does not guarantee that processes will be implemented fairly. There is a strong case for adopting a mid-way position: the use of checks and balances that allow lower levels of government to compulsorily acquire land but only with the authorization and supervision from higher levels of government.

EXAMPLES OF AGENCIES WITH THE POWER TO COMPULSORILY ACQUIRE LAND

The power of compulsory acquisition may be granted to agencies such as the following:

- Government departments, ministries and agencies at the national and regional levels;

- Local governments;
- Public bodies with statutory obligations, e.g. companies responsible for energy and water services;
- Private bodies regulated by government, e.g. airport authorities, forest enterprises, energy companies, railways, and telecommunications companies;
- Other miscellaneous bodies,

Each agency authorized to compulsorily acquire land may have its own regulatory guidelines on what acquisitions are permitted and how to carry out the processes defined in national legislation.

WHAT IS CONSIDERED TO BE COMPULSORY ACQUISITION AND WHAT RIGHTS SHOULD BE COMPENSATED

When does compulsory acquisition occur? This question is usually easy to answer, but on occasion it can be more difficult than it appears at first glance. The extent of loss of land rights by owners and occupants may vary considerably, both in terms of the amount of land involved and the types of right that are affected. This has implications for the extent to which a particular government action is governed by the principles of compulsory acquisition. It also has implications regarding the rights and remedies of people affected by that action.

Compulsory acquisition is commonly associated with the transfer of ownership of a land parcel in its entirety. This may occur in large scale projects (e.g. of hospitals or schools). However, compulsory acquisition may be also used to acquire

part of a parcel, e.g. for the construction of road. In some cases, in fact the remainder may be large enough for continued use by the owner or occupant despite its reduced value; or it may be so small that the person can no longer use it to maintain a living. In other cases, a new road may cut through the middle of the parcel, leaving the remainder divided into several unconnected pieces, some of which may be without access routes. In some countries, the governing legislation may allow the landowner to require the acquiring agency to acquire the whole parcel.

The use of specific portions of a land parcel may be acquired for easements or servitudes to provide for the passage of pipelines and cables,. Rights acquired usually include the right to enter the parcel to make repairs. The rights acquired may be granted temporarily or permanently, and may be transferable to others.

People may be deprived of some enjoyment of their land even if it is not acquired. For example, the construction of a highway may cause the value of neighbouring parcels to decrease because of the increased noise. Traditionally such losses have not been regarded as being eligible for compensation but legislation is increasingly providing for at least some compensation in such circumstances. A project may also increase the values of neighbouring parcels. Some equivalence may be provided through changed tax burdens: people whose land declined in value may pay less property

taxation while others may find their tax bill has increased to affect the higher land values.

People may also suffer a loss when governments impose new and significant restrictions on the uses to which land may be put. Such zoning or land use controls may substantially reduce the usefulness or value of particular parcels. The payment of compensation for such losses where the land has not changed hands is not widely adopted. However, some countries do provide for compensation in such cases. The actions (known as "regulatory takings" or "planning compensation") are complex and their treatment is beyond the scope of this treatise.

THE PROCESS OF COMPULSORY ACQUISITION

Compulsory acquisition is a power of government, but it is also the process by which that power is exercised. Attention to the procedures of compulsory acquisition is critical if a government's exercise of this power is to be efficient, fair and legitimate. Processes for the compulsory acquisition of land for project-base, planned development are usually different from processes for acquiring land during emergencies or for land reforms. Yet other processes may exist for electricity companies and others to acquire easements or servitudes. In general, a well designed compulsory acquisition process for a development project should include the following steps:

1. Planning: Determining the different land options available for meeting the public need in a participatory

fashion. The exact location and size of the land to be acquired is identified. Relevant data are collected. The impact of the project is assessed with the participation of the affected people.

2. Publicity: Notice is published to inform owners and occupants in the designated area that the government intends to acquire their land. People are requested to submit claims for compensation for land to be acquired. The notice describes the purpose and process, including important deadlines and the procedural rights of people. Public meetings provide people with an opportunity to learn more about the project, and to express their opinions and needs for compensation.
3. Valuation and submission of claims: Equivalent compensation for the land to be acquired is determined at the stated date of valuation. Owners and occupants submit their claims. The land is valued by the acquiring agency or another government body. The acquiring agency considers the submitted claim, and offers what it believes to be appropriate compensation. Negotiations may follow.
4. Payment of compensation: The government pays people for their land or resettles them on alternate land.
5. Possession: The government takes ownership and physical possession of the land for the intended purpose.
6. Appeals: owners and occupants are given the chance to contest the compulsory acquisition, including the

decision to acquire the land, the process by which the land was acquired, and the amount of compensation offered.

7. Restitution: Opportunity for restitution of land if the purpose for which the land was used is no longer relevant.

PRINCIPLES THAT SHOULD GUIDE THE PROCESS FOR COMPULSORY ACQUISITION

Processes should be based on the following principles:

- The land and land rights to be acquired should be kept to a minimum. For example, if the creation of an easement or servitude can serve the purpose of the project, there is no need to acquire ownership of the land parcel.
- Participatory planning processes should involve all affected parties, including owners and occupants, government and non-governmental organizations.
- Due process should be defined in law with specified time limits so that people can understand and meet important deadlines.
- Procedures should be transparent and flexible, and undertaken in good faith.
- Notice should be clear in written and oral form, translated into appropriate languages, with procedures clearly explained and advice about where to get help.

- Assistance should be provided so owners and occupants can participate effectively in negotiations on valuation and compensation.
- The process should be supervised and monitored to ensure that the acquiring agency is accountable for its actions, and personal discretion is limited.
- The government should take possession of the land after owners and occupants have been paid at least partial compensation, accompanied by clearly defined compensation guarantees.

There is a danger that acquisition processes can last for many years, creating long-term insecurity and uncertainty for owners and occupants. Legislation should provide that the acquisition will be regarded as abandoned if the process is not completed within a specified period as a result of delays by the acquiring agency.

PLANNING AND PUBLICITY

The preparatory steps required for compulsory acquisition, include the initial planning, notice and public meetings.

PLANNING

The planning phase of a major public investment project should include the identification of any lands to be acquired for the project. Options should be analysed and presented to the public for their understanding and consultation in order to choose the

site that presents the fewest obstacles and the best outcomes, having regard to all impacts, including those on any owners and occupants. In accordance with human rights law, evictions should occur only in exceptional circumstances. The acquiring agency should obtain necessary permissions, if any, for the compulsory acquisition of the land identified for the project.

An impact assessment is a common requirement of the planning phase. Such assessments should ensure that the acquiring agency considers the social, economic, and environmental impacts before deciding whether and how to proceed with the project, and determines ways to minimize any negative aspects. Impact assessments should involve a variety of stakeholders in research and discussion about the project. Affected communities should be included in the planning process and, if necessary, they should be provided with the support needed to enable them to participate effectively. Their inclusion from the start will help the acquiring agency to consider fully the culture, social and environmental concerns of local communities, and to identify measures to prevent or mitigate negative aspects of the project.

Decisions, assessment of options, and appeals processes should be based on the collection and analysis of data such as who live on the land to be acquired, what land rights they enjoy; what natural resources and other assets they depend on for their livelihood; and what community resources, public spaces, burial grounds or religious sites exist within the project area.

The acquiring agency should establish a clear definition of which owners and occupants will be entitled to

compensation in the context of the relevant legislation. It should define the date for establishing eligibility to be considered an owner or occupant. An inventory of affected owners and occupants should be prepared. The total compensation costs should be estimated and the necessary budget secured by the acquiring agency.

NOTICE

The provision of notice of the intention to compulsorily acquire land protects the rights of affected people. Notice should be given as early as possible to allow people to object to the acquisition of their land, to submit compensation claims, or to appeal against incorrect implementation of procedures. The timing of notice varies: a period of three to six months is common in many countries; some countries require that owners and occupants are given at least one year's notice. Legislation should ensure that the timing is not so short that it erodes the effectiveness of safeguards for due process.

Notice should be served to all owners, occupants and other affected people. It is often difficult to identify and contract all those who may hold rights to the land to be acquired. For example, the owner of a land parcel may have died and the heirs may not have registered the transfer of ownership. Difficulties also exist when rights are not clearly defined, e.g. informal settlements or land held under customary tenure.

To ensure that all affected people are aware of the project, notice should be publicized as widely as possible. Printed information should be sent or delivered to affected households and displayed in public areas and prominently on the land to be acquired. Information should be disseminated through popular publications, and radio and television programmes. The information should be comprehensible: a legal notice does not mean genuine notice if people cannot understand what is being said. The information and the communication process should be sensitive to gender differences. Information should be presented in local languages. Oral communication will be important in areas of high rates of illiteracy.

The information should explain the purpose of the acquisition; identify the land to be acquired and provide a clear description of the procedures. It should describe the rights of owners and occupants, including the rights of appeal, and should reassure people of their rights, including in respect of compensation and when it is payable. The information should include the various time limits, e.g. for submission of claims for compensation. The dates, times and venues of public meetings should be stated, along with the dates on which the project's valuers will enter the land to determine its value, and the final date on which the land will be acquired. Information should be provided on where people can get help with the process.

PUBLIC MEETINGS AND REVIEW

Public meetings provide an opportunity for people to learn more about the project, to receive answers to their question about the process and its procedures, and to voice their concerns. The meetings illustrate accountability and

transparency when the government has to justify its proposal to compulsorily acquire land. Open discussion at public meetings should help the government to improve its understanding of the needs and concerns of affected communities, and to prepare responses that reduce the number of challenges to the compulsory acquisition. Ongoing, open communication about the project can be crucial to its success: when people are not given sufficient opportunity to express dissent as part of the normal process, they may engage in other forms of protest that block the project.

Meetings should be held at times and places that are convenient for all affected people, both men and women, and should be planned and designed with local communities to ensure that all are heard, especially the vulnerable. Local languages should be used in presentations and discussions.

The period for public comment begins with preparation of documents that describe the main features of the project. The information should be displayed in a location that is easily accessible to the public, people should have the opportunity to review the documents and submit written or oral objections to the project. The government should response to these objections in writing. The body overseeing the public review should recommend whether or not to alter the original plan as a result of the objections received. Based on the report received, the decision of the relevant government official is final unless any appeal is received.

Once notice has been given and the public review process is concluded, people should submit claims for compensation of losses that will result from the compulsory acquisition of their land.

CHAPTER NINE

LAND ACQUISITION AND COMPENSATION IN NIGERIA

Compulsory acquisition of land is essentially the coercive taking of private land (individual or communal) and interests in those lands for public purposes. It has a redistributive effect on the land ownership pattern in a country. In most cases, this redistribution results in the increase in the quantity of state lands at the expense of private lands.

To promote technological advance, facilitate land reforms, satisfy the objectives of political philosophies, improve upon land use planning, urbanization, industrialization, general social and economic development and for other reasons, governments in the modern age have had to resort to the compulsory sale to them of the individual citizens and private institution estates. If such transactions were voluntary, in the sense that the owner was at liberty to sell the land to the government or to withhold it, the transaction would be caught up in the normal processes of the land market. The Law defines principles by which the purchase price or compensation is to be calculated. Expert Estate Surveyors and Valuers are required who understand both the law and its interpretation and the land market and land values resulting from it.

In some countries, compensation is claimable by the owners of interests in land, the value of which has been

diminished by public action (such as building an airport, road, dam etc) although no land or interests therein has been acquired from them. Assessment of compensation due to land owners from the arbitrary intervention of the state in this way is another service rendered by the estate surveyor and valuer. It is the duty of the estate surveyor and valuer to ensure that land required for urban or regional planning is not only quickly assembled but to correctly advise the governments or acquiring authorities concerned, the amount of fair compensation to be paid as stipulated by the Law. The planner cannot work in isolation, the Land to be planned, whether vacant or occupied, has to be acquired or "set aside" before effective urban planning can be carried out.

a. If real property were something belonging to no one, it will be valueless in the economic sense and there would be no question of compulsory acquisition and compensation.

b. Again, if all lands belong to the state, there would be no need for compulsory acquisition and compensation; the state would simply divert land from one line of use to another without compulsory acquisition and its attendant compensation. Only the opportunity cost to itself (the state) of the switchover in use would be considered by an authority, if it were acting rationally and prudently. It follows that the existence of a system of private ownership-individual and or communal principles is a fundamental presupposition to any compulsory acquisition and compensation by the state. The state can obtain private land

and interests in them needed for public purposes through gifts, operation or a general enactment or purchase in the open market.

Compulsory acquisition of land has strong social and economic justification. Since the purpose for which this power can legitimately be exercised in Nigeria is a public one, it is presumed that the social cost of not taking the land may quite outweigh the private benefit of keeping ownership. And since the individual will not normally take into account the social cost of not taking his land vis a-vis the private benefit of keeping ownership, the power of compulsory acquisition is used to divest him of ownership for public benefit.

The rationale for compulsory acquisition of land in Nigeria is the inherent incompetence or inadequacy of the land market to make available the land needed for public purposes in adequate quantities at the required location and at the appropriate time. The need for compulsory acquisition in Nigeria will increase with increasing urbanization, social, economic development and growth.

In many Nigerian communities, compulsory acquisition of land traces its origin back to primeval times long before the advent of British imperialism and colonialism. Pre-colonial compulsory acquisitions were used for the acquisition of land needed for public open spaces and playing grounds, especially of public institutions like market squares, sacred groves and for such important traditional village features as sacrificial grounds

and bad bush *(ajo-ofia)* in all cases where suitable communal land belonging to the competent socio-political authority was not available. The use of compulsory acquisition as part of the machinery for traditional justice was operative in some localities in Nigeria where oath deities acquired the lands and other assets of the culprits.

In pre-colonial days, the two compulsory acquiring authorities were:

(a) The appropriate socio-political authority, and

(b) Special types of super naturals or deities.

The appropriate socio-political authorities included the town, the village, the patrillineal or matrilineal groups (the type depending on the community) which performed functions similar to those of a modern state (or its agency) at different levels and therefore needed lands for their respective public duties and services. In parts of Nigeria, certain types of super-naturals or sacred cults acquired land compulsorily as occasion warranted. The classic example being certain deities, who were involved in oath-taking and which acquired the land of the culprits they killed.

Not all ancient compulsory acquisitions in Nigeria carried any easily recognizable compensation. In some cases, there did not appear to be any compensation as such. The protection of the socio-political group, which the individual enjoyed and the gain (actual or fictitious) which the land owner was deemed to share in the public purpose for which the land was compulsorily taken, were deemed enough compensation

for loss or ownership. In the case of compulsory acquisition by the oath deity, the question of compensation does not arise at all; for one thing the compulsory acquisition of the culprit's land is a punishment suffered or penalty which he has paid for falsehood and traditional perjury.

Where compensation as such was paid, it was common traditional practice to do so by offer of an alternative piece (or pieces) of land. The alternative land so offered may or may not be comparable with the land taken. There does not seem to be any clear definition as to the precise nature and quantum of compensation generally payable for compulsory acquisitions of land in Nigeria in pre-colonial days. Each case was treated on its own merit and as conditioned by prevalent or particular circumstances. One important feature of pre-colonial compulsory acquisition and compensation was the virtual absence of disputes or disagreement between the acquiring authority and the land owners.

The inception of British imperialism and colonialism did not automatically spell the end of the ancient traditional mode of compulsory acquisition and compensation in Nigeria. Traditional practice steadily diminished in currency and significance until the present time when it has become largely obsolete and inoperative and therefore, insignificant in most Nigerian communities.

Four objectives have been claimed for the enactment of the Nigerian Land Use Decree of 1978, and these are:

(a) To remove the bitter controversies resulting at times in loss of lives and limbs, which land is known to be generating;

(b) To streamline and simplify the management and ownership of land in the country;

(c) To assist the citizenry, irrespective of his social status, to realize his ambition and aspiration of owning the place where he and his family will live a secure and peaceful life.

(d) To enable the government to bring under control the use to which land can be put in all parts of the country and thus facilitate planning and zoning programmes for particular uses.

Thus, the Decree was expected to curb speculation in land which largely accounted for the astronomical rise in land values especially in urban areas. It was believed that once government was vested with the ownership and disposition of land, speculators would find alternative outlets for their capital and entrepreneurial ability and this would contribute to the stabilization of land values. Such stabilization, it was further thought, would contribute to the stabilization of the cost of government projects especially in urban areas of the country. Again, the difficulties which government experienced in acquiring land were thought capable of solution through the promulgation of the Decree. For if ownership and allocation of land became vested in the government, then government should find no difficulties whatsoever in making use of whatever piece of land it deemed fit for public purposes.

Thirdly, despite the series of land reform legislations already discussed, the southern part of the country was marked by lack of coordinated and formalized tenurial arrangements. In most parts of the South, there was evidence that this situation gave rise to endless litigations which (though beneficial to the legal profession) constituted a drag on economic development, and aborted plans for the location of industries, the sighting of infrastructural projects etc. These problems were expected to be drastically reduced if not totally eliminated once a systematic arrangement regarding ownership and distribution of land could be put into effect.

Also, tenurial arrangements imposed impediments on agricultural modernization in many respects. For instance, the absence of well-defined titles especially in the rural areas effectively prevented the use of land as collaterals for bank loans for agricultural investments.

Moreover, because of the communal nature of land ownership, the erection of permanent structures was not universally welcomed. This also largely discouraged the cultivation of economic trees with long gestation period such as oil palm, cocoa, kola nut and coffee, since absolute ownership to land was vested rather in a community and not in the individual.

It is true that over the years, the dynamics of economic developments have tended to reduce some of the negative aspects outline above, but it is equally true that the pace modification was too slow to accommodate the demands of rapid modernization in a highly complex economy such as ours.

It was therefore no wonder that the military administration promulgated the Decree, which it hoped would remove, once and for all, the shackles to economic development imposed by essentially archaic tenurial arrangements.

The power of compulsory acquisition is described in various terms in different countries, for example in the United States it is called power of eminent domain. In Australia, it is called resumption and in United Kingdom, it is called compulsory purchase. The power vested in the public or quasi-public authorities to compulsorily acquire private estate owner's interest in any parcel of land required for public purposes greatly curtail the absolute right of the private estate owners.

GROUNDS FOR COMPULSORY ACQUISITION OF LAND IN NIGERIA

Section 28, subsection 2 and 3 of the Land Use Decree of 1978 provides that a right of occupancy can be revoked (i.e. compulsorily acquired) by the Military Governor for over-riding public interest.

Over-riding public interest in the case of a Statutory Right of Occupancy (i.e. a right of occupancy granted by the Military Governor under this Decree) means:

(a) The alienation by the occupier by assignment, mortgage, transfer of possession, sublease or otherwise of any right of occupancy or part thereof contrary to the provisions of this Decree or any regulations made hereunder;

(b) The requirement of the land by the government of the State or by a local government in the State, in either case for

public purposes within the State, or the requirement of the land by the government of the Federation for public purposes of the Federation.

(c) The requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.

Over-riding public interest in the case of a customary right of occupancy (i.e. 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 this decree) means:

(a) The requirement of the land by the government of the state or by a local government in the state in either case for public purposes within the State, or the requirement of the land by the government of the Federation for public purposes of the Federation;

(b) The requirement of the land for mining purposes, or oil pipelines or for any purpose connected therewith;

(c) The requirement of the land for extraction of building materials;

(d) The alienation by the occupier by sale, assignment, mortgage, transfer or possession, sublease, bequest or otherwise of the right of occupancy without the requisite consent or approval.

The Decree goes further to explain in Section 50 that "public purposes" includes:

(a) for exclusive government use or for general public use.

(b) for use by anybody corporate directly established by law or by anybody corporate registered under the companies decree 1968 as respects, which the government owns shares, stocks or debentures;

(c) for or in connection with sanitary improvements of any kind;

(d) for obtaining control over land contiguous to any part or over land the value of which will be enhanced by the construction of any railway, road, or other public work or convenience about to be undertaken or provided by the government.

(e) for obtaining control over land required for or in connection with development of telecommunications or provisions of electricity;

(f) for obtaining control over land required for or in connection with mining purposes;

(g) for obtaining control over land required for or in connection with planned urban or rural development or settlement;

(h) for obtaining control over land required for or in connection with economic, industrial, or agricultural development;

i) for educational and other social services;

By S.28(6), the revocation of a right of occupancy is signified under the hand of a public officer duly authorized in that behalf by the governor and notice thereof shall be given to the holder. The title of the holder of a right of occupancy is extinguished in receipt by him of such a notice or on such later

date as may be stated in the notice. There is therefore, no revocation by implication.

COMPENSATION

The provisions on compensation are contained in S.29. The provisions for compensation under the Land Use Decree can be broadly put into four groups namely:

1. Where revocation has been made because the holder whether of statutory right of occupancy is in breach of the provisions of the Decree or of the provisions contained in a certificate of occupancy e.g. where he alienates a right of occupancy without the consent of the Governor.
2. Where subsections 5 and 6 of Section 34 apply. These subsections provide in the main that the total area of undeveloped land within an urban area which may be held by an individual is to be limited to half hectare and that where any person prior to the Decree held more than half a hectare of such land, he must after the commencement of the Decree forfeit the excess to the State.
3. Where revocation is for public purposes;
4. Where revocation is because the land is required for mining purposes or oil pipelines. The first two cases (1) and (2) above can be called cases of confiscation rather than compensation because no compensation is made for the loss to the owner since it is a case of forfeiture of the individual's interest.

As regards group 3 above, it is provided in S. 29(1) that where revocation is for public purposes, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements. The Decree further makes the following provisions as to how this is to be assessed.

In Section 29(4), it provides that compensation under Subsection (1) of this Section shall be as respects:

(a) The Land, for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked.

(b) Buildings, installation or improvements thereon, for the amount of the replacement cost of the building, installation or improvement that is to say, such cost as may be assessed on the basis of the prescribed method of assessment as determined by the appropriate officer less any depreciation together with interest at the bank rate for delayed payment of compensation and in respect of any improvement in the nature of reclamation works, being such cost thereof as may be substantiated by documentary evidence and proof to the satisfaction of the appropriate officer.

(c) Crops on land apart from any building, installation or improvement therein, for an amount equal to the value as prescribed and determined by the appropriate officer.

Section 29(7) defines "installation" to mean any mechanical apparatus set up or put in position for use or materials set up in or on land or other equipment, but excludes any fixture in or on any building.

Section 50(i) defines "improvements" or "unexhausted" improvements to mean anything of any quality permanently attached to the Land, directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf, and increasing the productive capacity, the utility, or the amenity thereof and includes buildings, plantations of long lived crops or trees, fencing walls, roads and irrigation or reclamation works, but does not include the result of ordinary cultivation other than growing produce.

Where the land in respect of which a right of occupancy has been revoked forms part of a larger area, the compensation payable shall be computed as specified in S.29 (4) (a) above, less a proportionate amount calculated in relation to that part of the area not affected by the revocation but of which the portion revoked forms a part and any interest payable shall be assessed and computed in like manner. Where there is any building, installation or improvement or crops on such a land, compensation shall be computed in like manner as specified in S.29 4(b) and (c).

Where a right of occupancy is revoked because the land is required for mining purposes or oil pipelines or for any purpose connected therewith, the holder and the occupier shall be entitled to compensation under the appropriate provisions of the Minerals Act or the Mineral Oils Act or any legislation replacing the same.

Where the holder or occupier entitled to compensation is a community, the Military Governor may direct that any compensation payable to it shall be paid to the community or to the chief or leader of the community to be disposed of by him

for the benefit of the community in accordance with the applicable customary law or into some fund specified by the Governor for the purpose of being utilized or applied for the benefit of the community.

Where there arises any dispute as to the amount of compensation calculated in accordance with the provisions of section 29, such dispute shall be referred to the appropriate Land Use and Allocation Committee.

The provisions of the Public Lands Acquisition (Miscellaneous Provisions) Decree 33 of 1976, shall not apply in respect of any land vested in or taken over by the Military Governor or any local government pursuant to this Decree or the right of occupancy to which is revoked under the provisions of this Decree but shall continue to apply in respect of land compulsorily acquired through commencement of this Decree.

Where a right of occupancy in respect of any development land on which a residential building has been erected, is revoked under this Decree, the Military Governor or the Local Government as the case may be, may, in his or its discretion, offer in lieu of compensation payable in accordance with the provisions of this Decree resettlement in any other place or area by way of a reasonable alternative accommodation (if appropriate in the circumstances).

Where the value of any alternative accommodation as determined by the appropriate officer of the Land Use and Allocation Committee is higher than the compensation payable under this Decree, the parties concerned may by agreement

require that the excess in value in relation to the property concerned shall be treated as a loan which the person affected shall refund or repay to the Government in the prescribed manner.

Where a person accepts an alternative accommodation, his right to compensation shall be deemed to have been duly satisfied and no further compensation shall be payable to such a person. Compulsory acquisition of private land by government for public purposes and the payment of compensation thereof is a form of land reform measure in that it strives to expropriate land owners of lands required for public purposes and redistributes ownership rights.

Public acquisition should be effected well in advance of the Land being needed and should, whenever possible, cover as large vacant tracts as possible to be held until needed and then made available for development according to comprehensive regional plans and detailed master plans or town planning schemes. Portions of the land can later be sold or leased at the higher price than the purchase price so as to finance infrastructural development on the remaining land.

In order to reduce a country's immediate expenditure, it is suggested that only a fraction of the compensation be paid in cash in conjunction with the purchase, and the remaining portion to be invested in Government bonds or stocks, whose value should be geared to stated rises in cost of living or general land price indices. The land, once assembled and under public ownership, could either be leased or sold to public

agencies, non-profit making organizations, contractors or individuals at rents or prices reflecting the level of income of the families to be served or at prices appropriate to the use to be made of the land.

Since the objective of the land policy should be to expand the supply of moderate priced land, limited economic resources should be used to purchase large plots of cheap land in advance of urbanization rather than on high priced central property. When however, the necessity of acquiring central land for a specific activity will arise, efforts should be made to work out exchanges of land or other solutions not requiring the payment of large amounts of cash.

If funds are very limited, purchase may have to be limited to special zones designated for early construction or the public right of pre-emption of sites slated for early development may have to be exercised. To counteract the high land cost in central urban areas, the pressure of expected urban population growth should be decreased by a planned programme of decentralization designed to divert land demand away from congested urban centres.

COMPENSATION PROVISIONS UNDER THE ACT

"The word compensation almost of itself, carried the corollary that the loss to the seller must be completely made up to him on the grounds that unless he received a price that is fully equivalent to the compulsory sacrifice."

This chapter will trace very briefly, the various statutes, which have dealt with issue of compensation for land in Nigeria before the Land Use Act came into effect, analyse the main provisions of the Act on the subject and conclude with a suggestion for review.

For our purpose, it will be sufficient to start the history with the Public Lands Acquisition Act. Section 15 of that Act provides:

"In estimating the compensation to be given for any Land or any estate or interest therein, or for any means of profits thereof, the court shall act on the following principles:

a. no allowance shall be made on account of the acquisition being compulsory;

b. the value of the land, estate, interest or profits shall, subject as hereinafter provided, be taken to be the amount which such lands, estate, interest or profits if sold in the open market by a willing seller might be expected to realize.

The Constitution of the Federal Republic of Nigeria, 1973 makes similar provisions in Section 31 as follows:

"No property, movable or immovable, shall be taken possession of, compulsorily, and no right over or interest in any such property, shall be acquired compulsorily in any part of Nigeria, except by or under the provisions of a law, that:

a. requires the payment of adequate compensation therefore, and

b. gives to any person claiming such compensation, a right of access, for the determination of his interest in the property and the amount of compensation to the High Court having jurisdiction in that part of Nigeria."

These two provisions appear to be in line with the principle laid down in Horn Vs Sunderland by Lord Scott, which was quoted at the beginning of this chapter. Thus, up to 1976, the principles of assessment of compensation for land which was compulsorily acquired, was based on the full market value of the land. But this point has not been freed from debate. The argument was as to the true meaning of adequate compensation as used by the Constitution. It was also argued that the Public Lands Acquisition Act provided for open market value, and the question was whether this was equivalent to fair market value. There appears to be no point in continuing this debate because of the promulgation of the Public Lands Acquisition (Miscellaneous Provisions) Act No. 33 of 1976. This Act provides in Section (1) as follows:

"Compensation payable in respect of land compulsorily acquired under the Public Lands Acquisition Act, the State Lands Act or any other enactment or law permitting the acquisition of land compulsorily for the public purposes of the Federation or of a State, shall be assessed and computed in accordance with the provisions of this Act, notwithstanding anything to the contrary in the Constitution of the Federation or in any other enactment or law or rule of law.

Section 2 of the Act stipulates the maximum compensation payable in respect of the computation. The scales of the compensation payable are set out in schedule to the Act. The whole land in the country is zoned in to A, B, C & D. Zone A is the Metropolitan Lagos, where the maximum payable for an hectare is fixed at ₦7,500, Zone B is Lagos State other than Zone A, and is fixed for ₦3,750 per hectare. This scale also applies to State Capitals and Industrial or Urban Centres. Zone C, which covers other urban and semi-urban centres attracts ₦1,500. Finally, Zone D takes care of all other areas and is fixed at ₦1,250 per hectare.

Section 3 provides as follows:

"Any claim in respect of compensation payable by virtue of the Public Lands Acquisition Act or the State Lands Act or any other enactment or law, shall be determined in accordance with the provisions of the Act, and any dispute arising from such claim shall be referable by any party to the dispute for adjudication by a lands tribunal established under Section 12 below."

Further detailed provisions are made in Section 4 relating to computation of compensation. For example, sub-section 2 of the Section provides that where land is underdeveloped, compensation payable shall be limited to the actual cost of the land together with interest at the bank rate calculated from the date of the purchase of the land to the date of publication of notice of acquisition. But this cannot exceed the maximum fixed by the Act for the area where the land is located. Sub-

section 4 deals with the case where land is developed and provides as thus:

"Where land is a developed land, compensation:

a. in respect of the land, shall be assessed on the same principles as in sub-section (2) of this Section; and

b. in respect of the building or structure on the land, shall be limited to the current replacement cost of the building or structure."

This Act not only provides for future guidance on compensation but also states that even with respect to acquisition made before its coming into effect, compensation must be paid in accordance with its provisions where such compensation has not been paid before its commencement.

Section 1, sub-section 2 provides as follows:

"Without prejudice to sub-section (1) of this Section, where before the commencement of this Act, any land has been compulsorily acquired by the Government or notice for the acquisition of any land has been given in accordance with the provisions of the Public Lands Acquisition Act, or any other applicable law and compensation in respect of such acquisition, has not been paid, the compensation payable shall be determined in accordance with the provisions of this Act, notwithstanding anything to the contrary or in the Constitution of the Federation or in any other enactment or law or rule of law."

section 4 deals with the case where land is developed and provides as thus:

"Where land is a developed land, compensation:

a. in respect of the land, shall be assessed on the same principles as in sub-section (2) of this Section; and

b. in respect of the building or structure on the land, shall be limited to the current replacement cost of the building or structure."

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The Land Use Act provides that the 1976 Act is still to govern all acquisitions made before it came into force. It provides, however, that the 1976 Act shall no longer apply in the case of any acquisition subsequent to 29th March, 1978, when it came into effect. As from the day, therefore, the only provisions which will govern payment of compensation are those contained in the Land Use Act. Section 31 of the Act provides:

"The provisions of the Public Lands Acquisition (Miscellaneous Provisions) Act 1976, shall not apply in respect of any land vested in, or taken over by the Governor or any local government pursuant to this Act or the right of occupancy to which is revoked under the provisions of this Act but shall continue to apply in respect of land compulsorily acquired before the commencement of this Act."

The next step therefore is to examine in details, the main provisions of the Land Use Act, which today is the all-important law on this subject. The provisions on compensation are contained in Section 29. However, this section makes frequent references to Section 28 of the Public Lands Acquisition (Miscellaneous Provisions) Act. Hitherto, it was customary to talk of compensation upon acquisition. Under the Land Use Act, we would now talk of compensation upon revocation. In practice, this should mean the same thing, that is, the taking over of private interest in land for overriding public interest or for public purpose and the making up of the loss resulting there from to its private owner.

date as may be stated in the notice. There is therefore, no revocation by implication.

COMPENSATION

The provisions on compensation are contained in S.29. The provisions for compensation under the Land Use Decree can be broadly put into four groups namely:

1. Where revocation has been made because the holder whether of statutory right of occupancy is in breach of the provisions of the Decree or of the provisions contained in a certificate of occupancy e.g. where he alienates a right of occupancy without the consent of the Governor.
2. Where subsections 5 and 6 of Section 34 apply. These subsections provide in the main that the total area of undeveloped land within an urban area which may be held by an individual is to be limited to half hectare and that where any person prior to the Decree held more than half a hectare of such land, he must after the commencement of the Decree forfeit the excess to the State.
3. Where revocation is for public purposes;
4. Where revocation is because the land is required for mining purposes or oil pipelines. The first two cases (1) and (2) above can be called cases of confiscation rather than compensation because no compensation is made for the loss to the owner since it is a case of forfeiture of the individual's interest.

As regards group 3 above, it is provided in S. 29(1) that where revocation is for public purposes, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements. The Decree further makes the following provisions as to how this is to be assessed.

In Section 29(4), it provides that compensation under Subsection (1) of this Section shall be as respects:

(a) The Land, for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked.

(b) Buildings, installation or improvements thereon, for the amount of the replacement cost of the building, installation or improvement that is to say, such cost as may be assessed on the basis of the prescribed method of assessment as determined by the appropriate officer less any depreciation together with interest at the bank rate for delayed payment of compensation and in respect of any improvement in the nature of reclamation works, being such cost thereof as may be substantiated by documentary evidence and proof to the satisfaction of the appropriate officer.

(c) Crops on land apart from any building, installation or improvement therein, for an amount equal to the value as prescribed and determined by the appropriate officer.

Section 29(7) defines "installation" to mean any mechanical apparatus set up or put in position for use or materials set up in or on land or other equipment, but excludes any fixture in or on any building.

Section 50(i) defines "improvements" or "unexhausted" improvements to mean anything of any quality permanently attached to the Land, directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf, and increasing the productive capacity, the utility, or the amenity thereof and includes buildings, plantations of long lived crops or trees, fencing walls, roads and irrigation or reclamation works, but does not include the result of ordinary cultivation other than growing produce.

Where the land in respect of which a right of occupancy has been revoked forms part of a larger area, the compensation payable shall be computed as specified in S.29 (4) (a) above, less a proportionate amount calculated in relation to that part of the area not affected by the revocation but of which the portion revoked forms a part and any interest payable shall be assessed and computed in like manner. Where there is any building, installation or improvement or crops on such a land, compensation shall be computed in like manner as specified in S.29 4(b) and (c).

Where a right of occupancy is revoked because the land is required for mining purposes or oil pipelines or for any purpose connected therewith, the holder and the occupier shall be entitled to compensation under the appropriate provisions of the Minerals Act or the Mineral Oils Act or any legislation replacing the same.

Where the holder or occupier entitled to compensation is a community, the Military Governor may direct that any compensation payable to it shall be paid to the community or to the chief or leader of the community to be disposed of by him

for the benefit of the community in accordance with the applicable customary law or into some fund specified by the Governor for the purpose of being utilized or applied for the benefit of the community.

Where there arises any dispute as to the amount of compensation calculated in accordance with the provisions of section 29, such dispute shall be referred to the appropriate Land Use and Allocation Committee.

The provisions of the Public Lands Acquisition (Miscellaneous Provisions) Decree 33 of 1976, shall not apply in respect of any land vested in or taken over by the Military Governor or any local government pursuant to this Decree or the right of occupancy to which is revoked under the provisions of this Decree but shall continue to apply in respect of land compulsorily acquired through commencement of this Decree.

Where a right of occupancy in respect of any development land on which a residential building has been erected, is revoked under this Decree, the Military Governor or the Local Government as the case may be, may, in his or its discretion, offer in lieu of compensation payable in accordance with the provisions of this Decree resettlement in any other place or area by way of a reasonable alternative accommodation (if appropriate in the circumstances).

Where the value of any alternative accommodation as determined by the appropriate officer of the Land Use and Allocation Committee is higher than the compensation payable under this Decree, the parties concerned may by agreement

require that the excess in value in relation to the property concerned shall be treated as a loan which the person affected shall refund or repay to the Government in the prescribed manner.

Where a person accepts an alternative accommodation, his right to compensation shall be deemed to have been duly satisfied and no further compensation shall be payable to such a person. Compulsory acquisition of private land by government for public purposes and the payment of compensation thereof is a form of land reform measure in that it strives to expropriate land owners of lands required for public purposes and redistributes ownership rights.

Public acquisition should be effected well in advance of the Land being needed and should, whenever possible, cover as large vacant tracts as possible to be held until needed and then made available for development according to comprehensive regional plans and detailed master plans or town planning schemes. Portions of the land can later be sold or leased at the higher price than the purchase price so as to finance infrastructural development on the remaining land.

In order to reduce a country's immediate expenditure, it is suggested that only a fraction of the compensation be paid in cash in conjunction with the purchase, and the remaining portion to be invested in Government bonds or stocks, whose value should be geared to stated rises in cost of living or general land price indices. The land, once assembled and under public ownership, could either be leased or sold to public

agencies, non-profit making organizations, contractors or individuals at rents or prices reflecting the level of income of the families to be served or at prices appropriate to the use to be made of the land.

Since the objective of the land policy should be to expand the supply of moderate priced land, limited economic resources should be used to purchase large plots of cheap land in advance of urbanization rather than on high priced central property. When however, the necessity of acquiring central land for a specific activity will arise, efforts should be made to work out exchanges of land or other solutions not requiring the payment of large amounts of cash.

If funds are very limited, purchase may have to be limited to special zones designated for early construction or the public right of pre-emption of sites slated for early development may have to be exercised. To counteract the high land cost in central urban areas, the pressure of expected urban population growth should be decreased by a planned programme of decentralization designed to divert land demand away from congested urban centres.

COMPENSATION PROVISIONS UNDER THE ACT

"The word compensation almost of itself, carried the corollary that the loss to the seller must be completely made up to him on the grounds that unless he received a price that is fully equivalent to the compulsory sacrifice."

This chapter will trace very briefly, the various statutes, which have dealt with issue of compensation for land in Nigeria before the Land Use Act came into effect, analyse the main provisions of the Act on the subject and conclude with a suggestion for review.

For our purpose, it will be sufficient to start the history with the Public Lands Acquisition Act. Section 15 of that Act provides:

"In estimating the compensation to be given for any Land or any estate or interest therein, or for any means of profits thereof, the court shall act on the following principles:

a. no allowance shall be made on account of the acquisition being compulsory;

b. the value of the land, estate, interest or profits shall, subject as hereinafter provided, be taken to be the amount which such lands, estate, interest or profits if sold in the open market by a willing seller might be expected to realize.

The Constitution of the Federal Republic of Nigeria, 1973 makes similar provisions in Section 31 as follows:

"No property, movable or immovable, shall be taken possession of, compulsorily, and no right over or interest in any such property, shall be acquired compulsorily in any part of Nigeria, except by or under the provisions of a law, that:

a. requires the payment of adequate compensation therefore, and

b. gives to any person claiming such compensation, a right of access, for the determination of his interest in the property and the amount of compensation to the High Court having jurisdiction in that part of Nigeria."

These two provisions appear to be in line with the principle laid down in Horn Vs Sunderland by Lord Scott, which was quoted at the beginning of this chapter. Thus, up to 1976, the principles of assessment of compensation for land which was compulsorily acquired, was based on the full market value of the land. But this point has not been freed from debate. The argument was as to the true meaning of adequate compensation as used by the Constitution. It was also argued that the Public Lands Acquisition Act provided for open market value, and the question was whether this was equivalent to fair market value. There appears to be no point in continuing this debate because of the promulgation of the Public Lands Acquisition (Miscellaneous Provisions) Act No. 33 of 1976. This Act provides in Section (1) as follows:

"Compensation payable in respect of land compulsorily acquired under the Public Lands Acquisition Act, the State Lands Act or any other enactment or law permitting the acquisition of land compulsorily for the public purposes of the Federation or of a State, shall be assessed and computed in accordance with the provisions of this Act, notwithstanding anything to the contrary in the Constitution of the Federation or in any other enactment or law or rule of law.

Section 2 of the Act stipulates the maximum compensation payable in respect of the computation. The scales of the compensation payable are set out in schedule to the Act. The whole land in the country is zoned in to A, B, C & D. Zone A is the Metropolitan Lagos, where the maximum payable for an hectare is fixed at ₦7,500, Zone B is Lagos State other than Zone A, and is fixed for ₦3,750 per hectare. This scale also applies to State Capitals and Industrial or Urban Centres. Zone C, which covers other urban and semi-urban centres attracts ₦1,500. Finally, Zone D takes care of all other areas and is fixed at ₦1,250 per hectare.

Section 3 provides as follows:

"Any claim in respect of compensation payable by virtue of the Public Lands Acquisition Act or the State Lands Act or any other enactment or law, shall be determined in accordance with the provisions of the Act, and any dispute arising from such claim shall be referable by any party to the dispute for adjudication by a lands tribunal established under Section 12 below."

Further detailed provisions are made in Section 4 relating to computation of compensation. For example, sub-section 2 of the Section provides that where land is underdeveloped, compensation payable shall be limited to the actual cost of the land together with interest at the bank rate calculated from the date of the purchase of the land to the date of publication of notice of acquisition. But this cannot exceed the maximum fixed by the Act for the area where the land is located. Sub-

section 4 deals with the case where land is developed and provides as thus:

"Where land is a developed land, compensation:

a. in respect of the land, shall be assessed on the same principles as in sub-section (2) of this Section; and

b. in respect of the building or structure on the land, shall be limited to the current replacement cost of the building or structure."

This Act not only provides for future guidance on compensation but also states that even with respect to acquisition made before its coming into effect, compensation must be paid in accordance with its provisions where such compensation has not been paid before its commencement.

Section 1, sub-section 2 provides as follows:

"Without prejudice to sub-section (1) of this Section, where before the commencement of this Act, any land has been compulsorily acquired by the Government or notice for the acquisition of any land has been given in accordance with the provisions of the Public Lands Acquisition Act, or any other applicable law and compensation in respect of such acquisition, has not been paid, the compensation payable shall be determined in accordance with the provisions of this Act, notwithstanding anything to the contrary or in the Constitution of the Federation or in any other enactment or law or rule of law."

The Land Use Act provides that the 1976 Act is still to govern all acquisitions made before it came into force. It provides, however, that the 1976 Act shall no longer apply in the case of any acquisition subsequent to 29th March, 1978, when it came into effect. As from the day, therefore, the only provisions which will govern payment of compensation are those contained in the Land Use Act. Section 31 of the Act provides:

"The provisions of the Public Lands Acquisition (Miscellaneous Provisions) Act 1976, shall not apply in respect of any land vested in, or taken over by the Governor or any local government pursuant to this Act or the right of occupancy to which is revoked under the provisions of this Act but shall continue to apply in respect of land compulsorily acquired before the commencement of this Act."

The next step therefore is to examine in details, the main provisions of the Land Use Act, which today is the all-important law on this subject. The provisions on compensation are contained in Section 29. However, this section makes frequent references to Section 28 of the Public Lands Acquisition (Miscellaneous Provisions) Act. Hitherto, it was customary to talk of compensation upon acquisition. Under the Land Use Act, we would now talk of compensation upon revocation. In practice, this should mean the same thing, that is, the taking over of private interest in land for overriding public interest or for public purpose and the making up of the loss resulting there from to its private owner.

The provisions for compensation under the Land Use Act can be broadly put into four groups. The first of these groups are those where revocation has been made because the holder, whether of statutory right or of Customary Right of Occupancy is in breach of the provisions contained in a Certificate of Occupancy, for example, where he alienates a right of occupancy without the consent of the Governor. The second is where sub-section 5 and 6 of Section 34 apply. These sub-sections provided in the main that the total area of undeveloped land within an urban area which may be held by an individual, is to be limited to half an hectare and that where any person prior to the Act held more than half an hectare of such land, he must, after the commencement of the Act, forfeit the excess to the State. The cases just discussed can be called cases of confiscation rather than compensation. That is in both cases, no compensation is made for the loss to the owner since it is a case of forfeiture of the individual's interest.

Next, we have two other groups. The first of these is where revocation is for public purposes and the other case is where revocation is because the land is required for mining purposes or oil pipelines. One would have thought that Group 2 is covered by group 1 since mining or oil pipelines can be regarded as public purposes. Section 50(1) of the Act, which defines public purposes, however, does not permit this conclusion having deliberately excluded mining and oil pipelines from the definition. It is possible, that the view is that mining could be done by private people for private purpose.

But in view of the fact that the whole mining activities are now subject to state control with the state taking over mining rights, and sometimes without compensation, it is difficult to see the basis for distinction.

Also in laying down the principle for the assessment of compensation, the Land Use Act makes different provisions for the two groups. As regards the first case, it provides in Section 29(1) that where the revocation is for public purpose, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements. The Act further makes the following provisions as to how this is to be assessed. In Section 29(4), it provides:

"Compensation under sub-section (1) of this Section shall be, as respects:

a. the land, for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked.

b. building, installation or improvements thereon, for the amount of the replacement cost of the building, installation or improvement, that is to say, such cost as may be assessed on the basis of the prescribed method of assessment as determined by the appropriate officer less any depreciation, together with interest at the bank rate for delayed payment of compensation and in respect of any improvement in the nature of reclamation works, being such cost thereof as may be substantiated by documentary

evidence and proof to the satisfaction of the appropriate officer.

c. crops on land apart from any building, installation or improvement thereon, for an amount equal to the value as prescribed and determined by the appropriate officer.

The first conclusion to be made is that the Land Use Act makes no provisions for compensation for land taken over for any cause as such and the only compensation payable is for contribution to the land by way of rent or development or other improvements done on the land.

However, one is happy to note the generous interpretations given to improvements by the Act.

Section 50(1) provides:

"Improvements or unexhausted improvements means anything of any quality permanently attached to the land directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf, and increasing the productive capacity: the utility or the amenity thereof and includes buildings, plantations of long-lived crops or trees, fencing walls, roads and irrigation or reclamation works, but does not include the result of ordinary cultivation other than growing produce."

"Developed land is also defined in the same generous manner under Section 50(1) as follows: developed land means land where there exists any physical improvement in the nature of road development services, water, electricity, drainage,

building, structure or such improvement that may enhance the value of the land for industrial, agricultural or residential purposes."

The Act further provides that where a right of occupancy to any developed land on which a residential building has been erected is revoked, and the revoking authority makes an offer of resettlement, which has been accepted, the right to compensation of the person accepting such an offer shall be deemed to have been duly satisfied and no further compensation shall be payable to such person.

Again, the Act provides in section 30 that where there arises any dispute as to the amount of compensation calculated in accordance with the provisions of section 29, such dispute shall be referred to the appropriate Land Use and Allocation committee. If this is so, then the provision is not only retrograde but also conflicts with the fundamental principle of natural justice, which requires that a person shall not be a judge in his own cause. The Act must, in making this provision, have proceeded on the basis that the committee is a distinct body quite different from the Governor or the Local Government. It is submitted however, that it will be difficult to persuade the public that this is so since the members of the committee are all appointed by the Governor.

Returning to the second case, that is, the case where revocation is prompted by the land being required for mining or oil pipelines, the Act provided that here, compensation shall be in accordance with the provisions of the Minerals Act or the

Mineral Oils Act or any legislation replacing the same. It seems that in giving mining purposes a different treatment from those which apply to public purposes, the Act is merely following and applying to the core, the provisions of the Land Tenure Law.

It must be noted immediately that since the Land tenure Law, the Petroleum Decree has been promulgated and this has repealed the Mineral Oil Act. It is therefore surprising that the Land Use Act promulgated almost ten years after the petroleum Decree still refers to the Minerals Oils Act. This may be due to the general copy of the Land Tenure Law, which has been resorted to in a bid to produce something in a hurry.

The Mineral Act defines in section 2, minerals as excluding minerals oil and the, Petroleum Decree defines petroleum to mean mineral oil. The two laws are therefore mutually exclusive. Section 77 of the Mineral Act makes provision for compensation for land required for prospecting for minerals and also provides for compensation for disturbance under section 78 of the Act. The amount of compensation is to be by agreement and in default by the Divisional or District Officer, and again in default by the Governor who may remit the case to an arbitrator.

It is presumed that the decision of this tribunal is final. The Petroleum Decree, however, makes no provision for compensation for land required for oil purposes. Section 1 of the Decree vests the entire ownership and control of all petroleum in, under and upon any land within the country or

beneath its waters, in the State and no compensation is provided for the take-over of such interests. An interesting point may arise here. The Land Use Act provides for compensation where land is required for mining purposes. We have seen that in the case of revocation for mineral oil, the law is the Petroleum Decree. This law makes no provision for land but merely takes over the entire ownership and control of all petroleum in the land, and this is without compensation to the owner. On the face of it therefore, there appears to be a gap in the law as to the right to compensation for the land itself as opposed to the mineral oil as contained therein. It should be noted that the Mineral Act, which excludes mineral oils, makes provision for the take-over of land acquired for mining for minerals. Although, Section 2 of the Petroleum Decree empowers the commissioner to grant licenses to explore or to explore for oil or to grant lease to be known as oil mining lease, it is submitted that this can only be an answer to an action for trespass and the question whether the owner of the land can claim compensation for the oil still remains unanswered. This raises the question of the rationale for having different treatment in compensation matters, depending on the purpose for which the land was required.

CONCLUSION

It has been asserted that the provisions of the Land Use Act regarding compensation, which contradicts the previous legislations on the issue, including the constitution, and which by Section 47, are supposed to supersede them, will run into conflict with our present constitution. Section 40 of this

constitution repeats Section 31 of the Old Constitution as follows:

"No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things:

a. requires the prompt payment of compensation therefore, and

b. gives to any person claiming such compensation a right to access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria."

This section substitutes the words "prompt compensation" for "adequate compensation," which were used in the old constitution and which as noted above, has already generated a lot of debate. It may be said that our present constitution is a reflection of the view of the makers that it is in the national interest that such a debate be stopped. But it seems we are left with nothing as a guide as to what the basis of compensation must be. However, the assertion that the Land Use Act may conflict with Section 40 of the Constitution of the Federal Republic of Nigeria 1979, can no longer be maintained in view of the insertion of section 274(5) in the Constitution, which is meant to uphold the Act in its entirety. The sub-section provides, inter alia, that nothing in the Constitution shall invalidate the Land Use Act 1978. It is further provided in the

sub-section that the Act shall not be altered or repealed except in accordance with the provisions of section 9(2) of the Constitution, which requires that the proposal to amend or repeal must be supported by two-third majority of all the members of the National Assembly and approved by resolution of the House of Assembly of not less than two-thirds of all the states in the federation.

It is submitted that this is a rather strange procedure for amending a statute that touches on the daily life of all citizens, a statute that was hurriedly prepared and containing a host of absurd provisions, which appear unworkable. Meanwhile, the society is faced with an impasse and nobody knows when this will end. It would seem, however, that although the possibility of amending or repealing the Act looks rather remote, one should not be deterred in making suggestions for its review. It is suggested that the Act should be amended to restore the original provision in the constitution, which requires prompt payment of compensation. In this regard, there ought to be no distinction between a case where the land is required for public or mining purpose.

Secondly, the provision making the Land Use Allocation Committee the final judge on the issue of what compensation is payable, should be reconsidered. Again, the provision as for forfeiture in Section 34(5) & (6) should be reviewed to enable the landowner to claim compensation for land taken from him. There ought to be a review of the basis for compensation contained in Section 29(4) so that compensation is based on the

loss suffered by the owner or the land on the valuation principle as suggested by Lord Holt and expressed in the 1963 Constitution.

Furthermore, the concept of replacement cost adopted in the Act for a building taken over by the state appears cumbersome and may lead to confusion in many cases. For example, where a building was completed some twenty years ago and is now taken over by the state, doubt exists as to whether this shall mean the cost of replacing an old building with a new one. It is thought that the trend during the Military administration in Nigeria has been to disregard what used to be the sacred principle that no man shall be dispossessed of what belongs to him unless he is to be fully compensated for his loss. Some have argued that land belongs to no one since it is a gift of God and for that reason ought not to attract any compensation. But the danger in this mode of reasoning is that the same argument can be advanced in respect of every other thing that is capable of ownership. There is no point in giving land a different treatment from other things which we own today. The government, on this reasoning, should be entitled to take over everything that we now claim on the ground that they are all gifts of God, and there will be no reason to compensate anyone. This may be something more than communism.

CHAPTER TEN

ESSAY ON THE LAND USE ACT 1978

Four objectives have been claimed for the enactment of the Land Use Act. These are:

a) To remove the bitter controversies, resulting at times in loss of lives and limbs, which land is known to be generating.

b) To streamline and simplify the management and ownership of land in the country.

c) To assist the citizenry, irrespective of his social status, to realize his ambition and aspiration of owning the place where he and his family will live a secure and peaceful life.

d) To enable the government to bring under control the use to which land can be put in all parts of the country and thus which land facilitate planning and zoning programmes for particular uses.

In this work, effort will be made to examine the first two of the stated objectives as they affect the question of security of title to land. In addition, some other issues will be examined. These are the effects of the Act on customary system of holding land, the nature of the right of occupancy introduced by the Act, the requirement of consent to alienation of a right of occupancy and finally the compensation provisions of the Act.

There can be no doubt that the most intriguing question in Nigeria now is how title to land can be made secure or indefeasible. Previous efforts made by the Legislatures to tackle insecurity of title have not resolved this problem. In these efforts resorts have been had to registrations.

First, we have the Land Registration Act 1924. This Act requires all documents, by which an interest in land is transferred or charged to be registered. The Act deals only with registration of instrument of transfers and not registration of the interest itself. It is not intended to consider the detailed provisions of the Act here. References, however, must be made to section 25 which provides that "Registration shall not cure any defect in any instrument or confer upon it any effect or validity which it would not otherwise have had". In view of this provision one would wonder why the Act was passed. The Supreme Court however explained its functions in two cases reported many years ago. First in Folashade V. Durosola. Ademola C. J. F. put the view of the court thus:

"It seems to me appropriate here to reiterate what was said by this court in the cases of Omosanya v. Anifowoshe, 4 F. S. C. 94 that the Land Registration Act (Cap. 99) deals with registration of instruments, with non-admissibility of unregistered instruments, as evidence, with priorities of registered instruments and the like but makes no provisions that registration of a deed is to be regarded as notice of what the deed contains or conveys nor does it provide that registration shall cure any defect in the deed."

Then in Rebecca Amankra V. LateyZankley the court said: "Clearly although the ordinance or, as it should here be called, the Act does not relate to registration of title, but to instruments, it is plainly intended to give some protection against fraud. When two persons claim the transfer of a legal estate he who did not register his conveyance cannot plead it or give it in evidence, if they both registered their deeds each takes effect as against the other from the data of registration, which means that the one executed earlier losses its priority if it was registered later,"

The operation of the Act in practice as respects priority can be further demonstrated by the following examples.

A: Y buys Jijo-land from B in 1977. The land was conveyed to him in the same year and Y immediately registered his conveyance. In January, 1979, B again sold and conveyed Jijo-land to Z who also registered his conveyance in the same month. Priority of the two conveyances would be based on the date of registration and Y's conveyance would be preferred.

B: Y buys Jijo-land from B in 1977. The land was conveyed to him in the same year but Y did not bother to register his conveyance. B subsequently in January 1978 sold and conveyed Jijo-land to Z who moved immediately to register his conveyance. Z's conveyance would be preferred although it was later in time than Y's conveyance.

C: Y buys Jijo-land from B in 1977. The land was conveyed to him in the same year by B and the conveyance was registered. Subsequent to this transaction, K sold and conveyed Jijo-land to Z. the conveyance has just been registered and it has been discovered that B has no title to Jijo-land and that K is the true owner of the land. Z's conveyance will be preferred although registered later than Y's conveyance.

It is clear from the third example above that the Land Registration Act is helpless once the claimants derived title from different transferors. This disability is due to the provision contained in section 25 of the Act which as we have seen provides that the Act will not cure any defect in the title of the transferee even where he was the first to register. It follows therefore that the Act is defective in solving the problems of insecurity of title.

In 1935, another Act was passed known as the Registration of Titles Act. As its name implies, the Act makes provision for the registration of titles to land as distinct from registration of instruments affecting land which has just been considered. The basic principle of the Act makes it that once any person is registered as the owner of a piece of land, he is to be regarded as the owner, even if it is proved that his title is defective, until the register is rectified against him and his name is removed from the register. The Act however, distinguishes between two cases. First is the case of the first registered owner

who is said not to be protected at all. The other is the second or sub-sequent registered owners who seem to enjoy some protection. Lately, however, even with regard to the latter it seems the protection has been rendered illusory.

In the state of things before the Land Use Act, there appeared to be no satisfactory law dealing with security of title to land. It has however, been asserted that this Act will solve the problem of insecurity of title. The truth of this assertion will be examined in the next chapter.

CHAPTER ELEVEN

CERTAINTY OF TITLE UNDER THE LAND USE ACT 1978

The first step taken by the Land Use Act is the conversion of the old forms of estate into a right of occupancy as far as the citizens are concerned, having vested the absolute ownership in land in the Government. Then in section 5(1) the Governor is empowered to grant statutory right of occupancy to any person for all purposes. Sub-section 2 of this section provides:

"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".

The true effect of this sub-section is still to be seen especially with reference to two other sections of the Act. These are sections 34 and 36. Section 34 provides that in respect of land in an urban area which was vested in any person immediately before the commencement of Act, where the land is developed, the whole land shall continue to be held by: (1) the person in whom it was vested immediately before the commencement of the Act as if the holder of the land was the holder of a right of occupancy granted by the Governor under the Act; and (2) where the land is undeveloped then only a

portion of the land not exceeding half a hectare shall be so held by the person in whom the land was so vested and the right to any excess in the undeveloped land is to be extinguished and the same is to be taken over by the Governor. In short the excess is confiscated by the state.

It is clear that the Act intends by this provision, that the rights of citizens to hold land shall be preserved after the Act where the right has been acquired before the Act. The only limitation is in the case of the quantum of the land which can be retained in its undeveloped state. Of course, the nature of this right has in most cases been altered. If this view is right, then there is apparent conflict between the provisions in section 5(2) and section 34 of the Act. The natural inference which can be drawn from the former is that once a statutory right of occupancy is granted by the Governor in respect of a particular land, this right of occupancy will override any other right previously held by other persons in the same land. That is, suppose A was the owner of Bada-land in fee simple prior to the Act , the same land is after the Act granted to B by the Governor of the state where the land is situated, it would appear from section 5(2) that the title of A to the said land would be extinguished upon the grant of a statutory right of occupancy over the land to B.

Section 34 however provides generally that land in urban area vested in any person immediately before the

commencement of the Act shall continue to be held by the person in whom it was vested as if the holder was a holder of a statutory right of occupancy granted to him by the Governor. Section 39 of the Act further provides that the High Court shall have exclusive original jurisdiction in respect of proceedings relating to any land the subject of a statutory right of occupancy granted by the Governor or deemed to be granted by him under the Act; and for this purpose proceedings include proceedings for a declaration of title to a statutory right of occupancy. It would seem from section 39 that the question as to the validity of a statutory right of occupancy whether granted by the Governor or deemed to granted by him must be left to the Court to decide.

However, section 47 provides inter alia that no court shall enquire into any question concerning or pertaining to the right of the Governor to grant a statutory right of occupancy in accordance with the provisions of the Decree. This section could be interpreted to mean that once the governor has granted a statutory right of occupancy to a person that right is not capable of being challenged even when the effect is to take away existing right of another person. Our view is that this is not the right interpretation of section 47. The section will only apply where the governor made the grant in accordance with the provisions of the Land Use Act. This must mean that the existing right which is sought to be extinguished under section 5(2) is by virtue of section 34 converted to a statutory right of

occupancy and since this is earlier in time than the new grant by the governor, it must prevail over the latter. It has been suggested that the new grant is to be treated as revocation of the right arising under section 34. It is submitted that this cannot be so. Under section 28 of the Act revocation of a right of occupancy can only be made for overriding public interest and revocation of an existing right of occupancy held by a citizen so as to make a new grant of the same land to another, does not come within the definition of overriding public interest in this section. In the circumstance and in spite of the provision of section 5(2) the court may have to rule under section 39 that the grant to B under section 5(1) is invalid.

In Garba S. Ibe V. Alhaji Yau Makera the Zaria Local Authority upon discovering that the land which it granted to A belonged to B under Native Law and Custom, revoked A's grant and restored the land to B. This revocation was made under the Land Tenure Law which makes similar provision for local authority in respect of customary right of occupancy. The decision of the authority was affirmed by the Court although, the view, expressed by Bello S. R. J. in the case, is, it is submitted totally inapplicable to cases under the Land Use Act. The judge said at page 139 of the report:

"A local authority has power under the Land Tenure Law and the regulations made thereunder to revoke customary right of occupancy over a parcel of land belonging to a person and to

grant a statutory right of occupancy over the same land to another person. In other words, it has power to confiscate customary right of occupancy of a person for the purpose of granting statutory right of occupancy to another. A local authority has no power to confiscate customary right of occupancy of a person for the purpose of granting customary right to another person".

Under the Land Use Act, the provisions governing revocation of a right of occupancy are to be found in section 28 and there is nothing in that section providing for the confiscation of any right belonging to one person for the purpose of granting another right over the same land to another person. The only purpose for which a right of occupancy be it statutory or customary, can be revoked is public purpose such as the purpose of government, or oil pipelines or the like. Secondly, under the Land Use Act only the Governor can revoke a right of occupancy even where such right is customary right of occupancy and is granted by the Local Government. Thirdly, the local government under the Land Use Act has no power to grant a statutory right of occupancy. The conclusion therefore, is that a Governor cannot under section 5(1) grant a statutory right of occupancy which will override a statutory right of occupancy that is deemed granted under section 34 or a customary right of occupancy which is deemed granted under section 36 of the Act, where the grant under section 5(1) is made in favour of another person and is not for public purpose.

Another point is that, it seems there can be no revocation by implication so that a mere inconsistent grant under section 5(1) will not amount to a revocation of a right that is deemed

grant a statutory right of occupancy over the same land to another person. In other words, it has power to confiscate customary right of occupancy of a person for the purpose of granting statutory right of occupancy to another. A local authority has no power to confiscate customary right of occupancy of a person for the purpose of granting customary right to another person".

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Another point is that, it seems there can be no revocation by implication so that a mere inconsistent grant under section 5(1) will not amount to a revocation of a right that is deemed

granted under section 34 or 36. The reason is that there is special procedure laid down for revocation in section 28(6) of the Act and this requires that notice of revocation be given to the holder. The same will apply to two conflicting grants by the same Governor, or by two different Governors over the same land. If section 5(2) is to be given strict interpretation, the latter grant will supersede the first grant which will be an existing interest under the subsection. It is difficult to see how the court under section 39 can allow this to happen since it will vest in the Governor the power to blow hot and cold.

If the above contention is correct, as it seems to be, then there can always be doubt as to the person entitled to the right of occupancy in a given property even in spite of a grant by the Governor. If this is so, then the assertion that the Land Use Act has solved all our problems regarding insecurity of titles cannot be justified. In practice things can work out in the following way:

A. purchases a small portion of land from a strong member of Ajaiye family in Lagos. This member is not the head of Ajaiye family. **B.** subsequently purchased the same land from the true representatives of Ajaiye family including the head. Upon the promulgation of the Land Use Act, **A** applies for certificate of occupancy from the Governor and the same is issued to him, which means recognition of his title to the land by the Governor. If **B** should protest to the Governor, the Governor must cancel A's certificate and if the Governor should refuse to do so, then B must apply for a declaration of the court under

section 39. Again, **B.** may be the only one who has bought the land from Ajaiye family before the commencement of the Act but **A.** who was unaware of this fact applies for a grant of Statutory Right of Occupancy over the land and the same is granted to him under section 5(1) of the Act. **B.** Should still succeed in getting the grant to **A.** set aside either by the Governor or by the court and this should be so in spite of the provisions of section 5(2).

The Governor of course may have problem even in revoking A's grant since there appears to be no room under section 28 for revocation on grounds of mistake. It seems therefore that B would need to ask for a court declaration that A's grant is invalid as it is inconsistent with the existing right of B. Fortunately, section 47, which is the only provision in the Act making the act of the Governor in the grant of customary right of occupancy unchallengeable, applies only when such grant is in accordance with the Act and a grant that is in conflict with either the provisions of section 34 or 36 cannot be in accordance with the provisions of the Act.

It would seem therefore that the uncertainty as to title to land is still with us. In an effort to avoid the result suggested above, both in Oyo and Ogun States and probably in Lagos State resort has been had to advertisement. Under this practice the names of applicants for certificates of occupancy are advertised so as to invite objection. It is not clear whether it is intended to hold in these States that anyone who failed to object cannot be heard to complain upon the issuance of certificates to

the respective persons. It is submitted that this course is questionable if it is to be used to stop rightful owners since there is no provision in the Act justifying this and in any case the approach will not meet the case of a grant which is inconsistent with existing right over the same land.

CHAPTER TWELVE

THE LAND USE ACT AND CUSTOMARY SYSTEM OF TENURE

One area of the law which has contributed greatly to uncertainty of title is the rules regulating interest in land which derive from customary law. These rules are so unscientific and sometimes illogical and vague that they defy clear ascertainment. Because of this inherent uncertainty, it is almost impossible to state them with confidence. It is therefore necessary to see to what extent the Land Use Act has modified these rules or abolished them. For the purpose of title to land, only three areas of customary tenure will appear important. These are the rules governing communal ownership, family ownership and the institution of customary tenancy. If the Land Use Act is to ensure certainty of title it must really start with these forms of tenure.

The claim can be made that the Act has merely introduced another form of communal or family ownership of land in the country. By section 1 of the Act, all land in the country is to be held by the Governors for all of us. These Governors could be said to have stepped into the shoes of the heads of the communities or heads of families and the rule that their consent must be obtained to most transfers is similar to the customary law rule requiring the consent of the chiefs or heads

of a family to any alienation of communal or family land. Also the concept of trusteeship adopted by the Act seems to follow the position of the chief or head of family under customary law. On the contrary, the assertion has also been made that the Act has in fact abolished the customary system of land holding. The truth is that the Land Use Act makes no special provisions regarding customary law. To this extent, there can be no talk of abolition or confirmation or even modification. But it is clear that in view of the general provisions of the Act, the position of customary holding needs re-examining. Section 1 of the Act takes away absolute ownership of land from the citizens and vests it in the Governor. Under sections 34 and 36 the former absolute ownership are converted into rights of occupancy. The first point therefore to note is that even if customary methods of holding land survive the Act, it will now be in the enjoyment of rights of occupancy.

COMMUNAL AND FAMILY OWNERSHIP

In some parts of the Land Use Act references to Communal and Family forms of tenure are made in a manner which suggests that the Act assumes the existence of such institutions and intends them to continue.

For example, section 29 dealing with compensation upon revocation of a right of occupancy provides in subsection 3: "If the holder or the occupier entitled to compensation under this section is a community the Governor may direct that any compensation payable to it shall be paid:

(a) To the community; or

(b) To the chief or leader of the community to be disposed of by him for the benefit of the community in accordance with the applicable customary law; or

(c) Into some fund specified by the Governor for the purpose of being utilized or applied for the benefit of the community.

This provision indicates that the Act accepts that land shall still be capable of being held by the community even though this may mean holding a right of occupancy in the land and not the ownership of the Land. Whatever name is given to the right, it will not appear to matter in so far as the same incident can attach to it under Customary Law.

Then in section 50, the definition section, Customary Right of Occupancy is defined as the right of a person or community lawfully using or occupying land in accordance with customary law. The emphasis here must be on two things:

(a) The declaration by the Act that the community could hold customary right of occupancy and **(b)** that such right of occupancy is to be enjoyed in accordance with customary law. An occupier is similarly defined as any person lawfully occupying land under customary law and using the same in accordance therewith. The full support of the above provisions is that the sole law which must govern the enjoyment of customary right of occupancy must be the Customary Law of