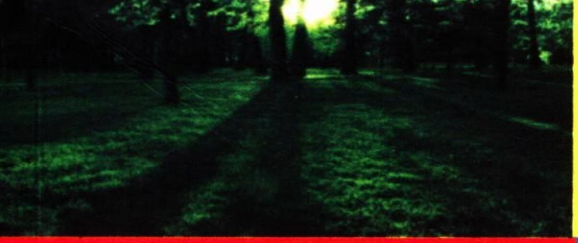

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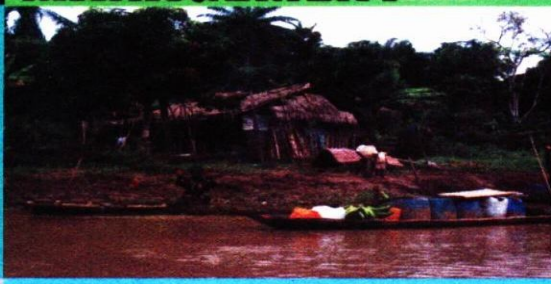
LAND

ADMINISTRATION AND MANAGEMENT



Fidelis I. Emoh,
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LAND ADMINISTRATION AND MANAGEMENT

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LAND ADMINISTRATION AND MANAGEMENT

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DEDICATION

To the Almighty God
(In the Name of our Lord Jesus Christ)
Who has given us victories on all sides.

FOREWORD

I am delighted and particularly happy to be requested by the authors to write a foreword to their book, Land Administration and Management. The book is a pioneering text on the all-important aspect of the curriculum of Estate Management education covering aspects of land administration systems, land policy and reforms, and land information management.

The sustainable management of land has been at the very core of the academic pursuit and practice of every professional in the built environment. The way and manner land is administered and managed is therefore very important in any organized society.

The continued paucity of both indigenous and foreign textbooks in the specialized field of Land Economy has been a source of concern and worry to many academics, practitioners and students alike. This book will easily fill the gap and satisfy the yearnings for a standard text on land administration and management.

The book derives from the vast experience of the two authors, who are distinguished academics and thorough-bred professionals that have been involved in teaching and research in various aspects of land administration and management.

I commend the efforts of the authors and highly recommend the book to undergraduate and postgraduate students, lecturers, land administrators, policy makers, governments at all levels, professionals in the built environment and all those who derive their livelihoods and source of sustenance from the land.

Charles C. Egolum,
Professor of Estate Management
Nnamdi Azikiwe University,
Awka.
March, 2016

PREFACE

The demand by our undergraduate and postgraduate students for a standard textbook on Land Administration and Management necessitated the production of this book.

In Land Administration and Management, we would like to introduce professionals and students to essential concepts of land administration systems, land management paradigm, global land administration issues, land ownership and proprietary structure, land policy uses, reforms and public measures for directing land use and development.

The objective of this book is to contribute to the understanding of the whole land administration and management processes/procedures and to raise the standard of knowledge in the applicability of the tools and approaches to sustainable land administration and management.

We are highly indebted to our students and learned academic and professional colleagues for providing the necessary stimulus for writing this book. We are grateful to all those persons whose writings and works have helped in the preparation of this book. We remain thankful to Professor Charles C. Egolum for writing the foreword to the book.

We shall feel amply rewarded if the book proves helpful to every seeker of knowledge and researcher in the field of Land Administration and Management.

Fidelis I. Emoh,
Chinedu C. Nwachukwu
March 7, 2016.

CONTENTS Page

CHAPTER ONE

UNDERSTANDING LAND ADMINISTRATION AND MANAGEMENT

INTRODUCTION

Land means different things to different people. To the economists, land is a factor of production as well as capital. Lawyers on the other hand, view land as property; in this respect land is construed in terms of areas over which individuals, groups or sovereigns exercise right of ownership.

Land provides people with living space, with raw materials necessary for filling material needs and with opportunities for satisfactions dear to the heart of man. People look to land for their physical environment, for the food they eat, for fibres and other materials needed to clothe their bodies and to provide housing and manufactured goods, for building sites, for recreation opportunities and or scenery and space. There is scarcely any economic activity that does not require the use of land. The mode in which land is held, utilized and managed in any society will therefore have a considerable influence in the development of that society.

CONCEPTS OF LAND

For a proper understanding of land use administration, there is a need for us to appreciate the various concepts of land. Appreciation of these concepts will prevent lopsided land use

administration and save us from a situation where our land administration may be based on the economic concept at the detriment of other concepts of land. There are basically seven concepts of land, which are as follows: Physical, Economic, Legal, Socio-political, Spiritual, Abstract and Statutory.

The Physical Concept: This concept sees land as the earth's solid crust and go further to include the physical soil, plants, buildings, natural stream, fish ponds, minerals and the airspace above the land.

The Economic Concept: This concept sees land as a factor of production and personification of the wealth of the society. In most parts of Nigeria, land is equated with wealth, and a source of economic power, particularly in areas where land is traditionally regarded as the most valuable assets.

The Legal Concept: This is the juridical view and looks at the various interests and estates subsisting on the physical land and their distribution among various owners. The law can also create new estates in land, abolish or condition old ones in response to the socio-political and economic circumstances of the society.

The Socio-Political Concept: This concept views land as a people, a nation, a political division, a town or community, constituting a socio-political entity. We therefore hear people talk about the land of the Yoruba, Igbo or Hausa land, the land

of the Jews, Nigerian land, etc, which all refer to the people rather than the physical land.

The Spiritual or Religious Concept: This concept sees land as a deity and sacred. It has a religious connotation and sentimental attachment. The traditional concept here is that society derives from land, and that there is a deity in land acting as the guardian of earth and society. In its widest sense, this deity resides in all land, but in its narrower sense, the deity finds a home in particular shrines in land. would appear that the popular belief is that while there are deities of the river, the sea, the sky, thunder, etc. all acting as guardians of different aspects of society; the deity of land is the guardian of society as a whole. Land is seen as the giver of food and by inference, life.

Handy (1935) observes the existence of certain spiritual and emotional values, and socially integrating factors in man's relationship to the earth. He went further to state that without these values and factors, rural man suffers spiritual starvation.

The Abstract Concept: The abstract concept is so called because; it is not only a conception but an abstraction from the other concepts. It derives wholly from the other concepts especially the legal. It revolves clearly in the interplay between legal and economic. The abstract concept sees land in terms of rights and interests over land. These rights and interests sanction management decision over the use and exploitation of land and land resources. In other words, the abstract, permits the economic to operate on the physical.

The Statutory Concept: In this concept, land is given the meaning that has been ascribed to it by statute. Compulsory acquisition clearly comes under statutory concept of land. Compulsory acquisition powers always derive from legislation, and land for the purposes of compulsory acquisition can only have the meaning as defined by the Act. Land for the purposes of compulsory acquisition may therefore be regarded as "STATUTORY LAND."

The essence of land use administration is to strike a balance between the various land uses and concepts with a view to achieving maximum efficiency to the satisfaction of the greater majority of humanity. From the various concepts of land examined so far, it can be seen that the term land, even though would tend superficially to mean land in its physical state or soil, it also suggests different things and different meanings to different people depending on their look and their interest at the material time.

DEFINITIONS OF LAND ADMINISTRATION AND MANAGEMENT

Land Administration is simply defined as the direction or supervision of interest in landed property to achieve maximum returns in terms of financial, social or political or some other goals or group of goals. Land administration as a discipline is concerned with the judicious use, development and management of real estate. Since real estate accounts for a very large percentage of total national resources, it is correct to say

that a well conceived programme of land administration in any country has very much to offer to that country's national and economic development. Land Administration involves the processes of determining, recording, and disseminating information about tenure, value, and use of land when implementing land management policies. Land administration is a basic tool that supports land management and operates within the framework established by land policy and the legal, social, and environmental background of a particular jurisdiction.

The term "land administration" is also used to refer to the processes of recording and disseminating information about the ownership, value and use of land and its associated resources. Such processes include the determination (sometimes known as the "adjudication") of rights and other attributes of the land, the survey and description of these, their detailed documentation and the provision of relevant information in support of land markets. Land administration is concerned with three commodities-the ownership, value and use of the land-within the overall context of land resource management.

Land Management on the other hand has been defined as the proper up-keep of land and building, the provision and maintenance of capital works, full and proper use of estate resources to preserve, conserve, exploit and restore them for the good of the estate and of all those who may derive profit, pleasure, enjoyment from them. Land Management is also simply defined as the application of skill in caring for the

property, its surrounding and amenities and in the development of a sound relationship between landlord and tenant in order that the estate may give the fullest value to both the landlord and tenant. Land Management is viewed as the activities associated with the management of land as a resource, from both an environmental and economic perspective, towards sustainable development.

Land Management is concerned with the use, management and development of land and other natural resources and with the economic, legal, sociological and technological factors which affect the ownership of proprietary interest therein.

From the above discuss on the definitions of Land Administration and Land Management one can safely say that the meaning of Land administration is subsumed in the definition of Land Management.

As land managers become more subject to private land market pressures and opportunities, but also increasingly responsible for planning, implementing, regulating and evaluation of societal values in land, the institutions of land administration must also change. The institutional transformation of land management has been significant, through programmes of privatization, individualization and (in some cases) internationalization of land tenure. This evolution of land management calls for the redefinition of the land administration functions of public agencies to respond to the new needs of private and public managers of land.

The developing countries need the creation of new or reconfigured institutions to effectively administer the private and public interests in land in a market economy context.

The challenges to land management and administration are thus rapidly growing. Awareness of these challenges in the context of market-led economies has made land management and land administration a much broader and complex locus of endeavour than ever before, where legal institutions, political agendas, economic development planning, environmental management techniques and information technology intersect, often uneasily.

THE LAND MANAGEMENT PARADIGM

Land management underpins distribution and management of a key asset of any society namely its land. For western democracies, with their highly geared economies, land management is a key activity of both government and the private sector. Land management, and especially the central land administration component, aim to deliver efficient land markets and effective management of the use of the land in support of economic, social, and environmental sustainability.

The land management paradigm allows everyone to understand the role of the land administration functions (land tenure, land value, land use, and land development) and how land administration institutions relate to the historical circumstances of a country and its policy decisions. Importantly, the paradigm provides a framework to facilitate the processes of integrating new needs into traditionally organized systems without disturbing the fundamental security these systems provide.

Sound land management requires operational processes to implement land policies in comprehensive and sustainable ways. Many countries, however, tend to separate land tenure rights from land use opportunities, undermining their capacity to link planning and land use controls with land values and the operation of the land market. These problems are often compounded by poor administrative and management procedures that fail to deliver and solving a much deeper problem: the failure to treat land and its resources as a coherent whole.

Land management is the process by which the resources of land are put to good effect. It covers all activities concerned with the management of land as a resource both from an environmental and from an economic perspective. It can include farming, mineral extraction, property and estate management, and the physical planning of towns and the countryside. It embraces such matters as:

-Property conveyancing, including decisions on mortgages and investment;

-Property assessment and valuation;

-The development and management of utilities and services;

-The management of land resources such as forestry, soils, or agriculture;

-The formation and implementation of land-use policies;

-Environmental impact assessment; and

-The monitoring of all activities on land that affect the best use of that land.

LAND ADMINISTRATION SYSTEMS

In most countries, land accounts for between half and three-quarters of national wealth. Land is a fundamental input into agriculture production and is directly linked to food security and livelihood. Land is also a primary source of collateral for obtaining credit from institutional and informal providers, and security of tenure provides a foundation for economic development. Fees and taxes on land are often a significant source of government revenue, particularly at the local level. Formal recognition of rights is often vital in ensuring that indigenous and other vulnerable groups have access to land.

There are many demands on land resources: agriculture, pasture, forestry, industry, infrastructure and urbanization, as well as claims by indigenous groups and those campaigning for ecological and environmental protection. Not surprisingly, most societies cannot balance these often-conflicting demands. Land has therefore frequently been the cause of social upheaval, and much effort has been devoted to developing systems to administer land rights. **land administration systems**. A land administration system may include processes to manage public land, record and register private interests in land, assess land value and determine tax, define land use, and support the process of development application and approval. It is a system implemented by the state to record and manage rights in land. A land administration system may include the following major aspects:

1. Management of public land;
2. Recording and registration of private rights in land;
3. Recording, registration and publicizing of the grants or transfers of those rights in land through, for example, sale, gift, encumbrance, subdivision, consolidation, and so on;
4. Management of the fiscal aspects related to rights in land, including land tax, historical sales data, valuation for a range of purposes, including the assessment of fees and taxes, and compensation for state acquisition of private rights in land, and so forth; and control of the use of land, including land-use zoning and support for the development application/approval process.

All countries have to deal with the management of land. They have to deal with the four functions of land tenure, land value, land use, and land development in some way or another. National capacity may be advanced and combine the activities in one conceptual framework supported by sophisticated ICT models. Different countries will also put varying emphasis on each of the four functions, depending on their cultural basis and level of economic development.

Today the accepted theoretical framework for all land administration systems is delivery of sustainable development – the triple bottom line of economic, social, and environmental development, together with the fourth requirement of good governance. Land Administration Systems are the basis for conceptualizing rights, restrictions and responsibilities related to people, policies and places.

Property rights are normally concerned with ownership and tenure whereas restrictions usually control use and activities on land. Responsibilities relate more to a social, ethical commitment or attitude to environmental sustainability and good husbandry.

Land Administration Systems (LAS) are important infrastructure, which facilitate the implementation of land policies in both developed and developing countries. LAS are concerned with the social, legal, economic and technical framework within which land managers and administrators must operate. These systems support efficient land markets and are, at the same time, concerned with the administration of land as a natural resource to ensure its sustainable development.

The four land administration functions (land tenure, land value, land use, land development) are different in their professional focus, and are normally undertaken by a mix of professions, including surveyors, engineers, lawyers, valuers, land economists, planners, and developers.

Land tenure: the processes and institutions related to securing access to land and inventing commodities in land, and their allocation, recording and security; cadastral mapping and legal surveys to determine parcel boundaries; creating new properties or altering existing properties; the transfer of property or use from one party to another through sale, lease or credit security; and the management and adjudication of doubts and disputes regarding land rights and parcel boundaries.

- **Land value:** the processes and institutions related to assessment of the value of land and properties; the calculation and gathering of revenues through taxation; and the management and adjudication of land valuation and taxation disputes.

- **Land use:** the processes and institutions related to control of land use through adoption of planning policies and land use regulations at national, regional and local levels; the enforcement of land use regulations; and the management and adjudication of land use conflicts.

- **Land development:** the processes and institutions related to building of new physical infrastructure and utilities; the implementation of construction planning; public acquisition of land; expropriation; change of land use through granting of planning permissions, and building and land use permits; and the distribution of development costs.

Inevitably, all the functions are interrelated. The interrelations appear through the fact that the actual conceptual, economic and physical uses of land and properties influence land values. Land values are also influenced by the possible future use of land determined through zoning, land use planning regulations, and permit granting processes. And the land use planning and policies will, of course, determine and regulate future land development.

Numerous projects to improve land administration systems have been undertaken in many countries, primarily to provide formal recognition of rights in land and to facilitate the trading of these rights. Typical project objectives include one or more of the following: reforming and strengthening policy, legal, and institutional frameworks; introducing formal land-titling systems or other forms of secure tenure; improving registration practices; upgrading survey and record keeping technologies; capacity building—all in an attempt to develop more efficient and effective land administration services.

Project outcomes have also been mixed. Projects to strengthen land administration are often long-term and usually require significant resources and funding. These characteristics are a disincentive for governments to clarify rights in land. Despite the significant resources invested by governments and the donor community in modernizing land administration infrastructure, there is little systematic discussion of what constitutes effectiveness in land administration within the varying socioeconomic, cultural, and temporal contexts.

Typically, a land administration system is comprised of textual records that define rights and/or information, and spatial records that define the extent over which these rights and/or information apply. In most jurisdictions, land administration has evolved from separate systems to manage private rights in land and manage public land.

In countries with a colonial background there is often a dual land administration system; imported systems based on

western models operate in urban areas and areas formerly occupied by colonial land-holders, and customary systems operate elsewhere. There are a number of legal sources for colonial systems: English common law, usually based on law prior to the major changes introduced in England in 1925, and the Civil Codes of France, Spain and Holland. Some countries (including Thailand, the Philippines, Kenya, and Uganda) have introduced later innovations, including systems based on the Torrens title system introduced in Australia from 1858. Other countries have a mixed colonial legacy which is reflected in their land administration systems; the Philippines, for example, has a Spanish and American colonial history, and a judicially-based Torrens system imported in 1901 from the state of Massachusetts. Post-independence, many former colonies have tried to unify their systems; Indonesia, for example, took 12 years from 1948 to draft and promulgate the Basic Agrarian Law in an attempt to unify land law.

There is varied recognition of customary tenure in land administration systems throughout the world. With some, there is an explicit recognition of customary rights, as in the Philippines and Bolivia, but these administrative systems operate in a very complex and conflicting policy, legal, and institutional environment, and as a result offer limited security of tenure. In other instances, there is a unified legal system based on customary law; for example, Uganda and Mozambique. Other jurisdictions do not formally recognize customary rights; Thailand, for example. In other countries,

there are religious tenure systems, for example the Islamic systems which administer Waqf land in the Middle East. Land law reform activities in support of modern land administration systems are becoming increasingly necessary to keep up with the trend toward market liberalization and the demand for stronger private property rights in land.

Land classification plays a major role in land administration, particularly in Asia, where it was introduced early in some countries (in 1913 in the Philippines), and more recently in others (the 1960s in Thailand). In most Asian countries, private rights are recognized only over non forest land, and lack of clarity of forest boundaries is often a key factor in tenure insecurity. With increasing pressure on land resources, many countries have set aside land for national parks and wildlife reserves, but this has often resulted in conflict with 'customary use.' (A good example is the forced removal of the Masai from the Serengeti in Africa.) However, governments in many countries either lack the political will or the ability to enforce land classification or the preservation of national parks and wildlife reserves. As a result, a significant proportion of the population has the legal status of 'informal settlers,' or squatters. Furthermore, the rapid urbanization that has occurred since the mid-twentieth century has resulted in informal settlements in urban areas that most governments have found difficult to address.

In many jurisdictions, the core land administration functions of surveying and mapping and registration operate

separately, often in different Ministries, while in others they are brought together. In much of Europe and Latin America, registry offices and cadastral offices are separated, with the former usually linked to local courts or administrative districts. Separate registries and cadastral offices in the developing world frequently lead to problems with inconsistent and duplicated records. In some jurisdictions the registry operates without a reliable survey/map base, which creates difficulties with the definition of the parcel over which a registered right might apply, leading to problems with overlapping and duplicate rights. Notaries, lawyers, private surveyors, and other intermediaries play a significant role in many land administration systems, while in others this is not the case. In Thailand, there is a very small private survey industry, with virtually all the legal work associated with registration, including the preparation of contracts, undertaken by the staff of the Department of Lands.

In most jurisdictions, there are agencies that administer both renewable and nonrenewable resources (agriculture, forestry, fisheries, mining and so on) and national parks and wildlife reserves. Sometimes these are linked to a common land administration framework, but in other cases, they operate with varying degrees of coordination.

Land administration systems vary from single, centralized systems in some jurisdictions (most of the states in Australia, for example) to decentralized systems in most Asian countries. In Thailand, for example, the title register is split

among 76 Province and 272 Branch Provincial offices, each office maintaining the land administration system within its jurisdiction. Centralized systems as in Australia operate successfully because of established links through intermediaries such as lawyers, surveyors and financial institutions. There are also well-established systems of data brokers and electronic access to the registers and services offered by the registries. The decentralized systems in Asia facilitate direct access by the public.

In most jurisdictions, planning and development applications and approvals are managed separately from the land administration system, with local government often playing a significant role. Jurisdictions such as Ghana link the planning and registration function by insisting on compliance with planning regulations as a prerequisite for registration, but others, such as Vietnam, grant rights only for specific use. In many developing land administration systems, there is a distinction between urban and rural systems. This is typical of transition economies, where there are often separate projects, for example, an urban project linked to the privatization of apartments, and a rural project linked to the privatization of collective farms.

However, this distinction is not common in much of the developed world, where it is virtually impossible to obtain a breakdown of formal land market activity into urban and rural components.

Finally, the term 'land administration' can cover a much wider range of systems, from formal systems established by the state to record rights in land to informal community-administered systems. The World Bank's concept paper anticipated that a global analysis would need to address a wide range of systems when it specified the institutions covered: "*government versus private sector, central versus local institutions, formal versus customary*". This breadth of cover presented some challenges, particularly when the methodology set out in the objectives for the global analysis required '*systematically reviewing the characteristics, accessibility, costs, and sustainability of different land titling and registration options.*' Quantitative information on aspects such as characteristics, access, cost, and sustainability was often available for formal land administration systems, but was usually not available for customary land administration systems.

A number of lessons have been learnt from experience concerning land administration systems and they include the following:

- Land administration goes beyond the implementation of legal, cost-efficient cadastral and land registration systems to the set of services that make the land tenure system within a country relevant and operational;
- Records and recognition are the basis of land tenure security and are interdependent with the social, cultural, and economic conditions of the respective social groups. Over time, needs

evolve, and institutions, both customary and formal, must be adaptive;

- The legal, institutional, and technical elements needed to ensure that property rights are well defined, enforceable, and transferable at low cost vary substantially. From the donor perspective, documents formalizing land tenure arrangements have to be legally valid;
- Information on establishment and maintenance costs is extremely relevant with respect to the affordability and sustainability of registry systems.

Global Land Administration Issues

Although the outcomes desired from a system of land administration are frequently common across regions, the means of achieving those outcomes, and the critical issues encountered, differ according to the respective environments.

Arguably, issues relating to the institutional framework present the biggest challenge to successful land administration reform. All regions face the existence of multiple organizations, each with legislation empowering them to participate in the delivery of some part of the land administration cycle. The powers often overlap and add to bureaucratic red-tape, which allows agencies to remain self-serving, with scant regard to community needs and demands. Amidst this confusion there is ample opportunity for cronyism, patronage, informal fees, and other forms of corrupt practice that preclude the least able from participating in the formal land market and gaining security of tenure. Those

who benefit from chaos are reluctant to support change, which results in lack of confidence in the formal system of land administration and a concomitant growth in informality. In Latin America and much of Europe, the jurisdictional separation of registration and cadastre between the legal (Ministry of Justice) and surveying (land and/or surveying agencies) fraternities adds an ingredient of professional bias to the institutional mix.

Potential conflicts between customary and/or informal systems of land tenure and state-supported formal systems of land registration are an issue in all developing regions except the case studies in ECA. Africa presents a significant challenge because the traditional authorities (chiefs, clans, families and so forth) have significant authority over land in most countries. While not as prevalent in Asia, customary forms of tenure exist, such that care must be taken to protect these interests in formulating land policy. In the Latin American environment, customary ownership is recognized as having legitimacy in formalizing land administration in the region. The desired outcome is a marriage of the two systems and this presents particular challenges to the legal and policy framework of land administration.

The *legal framework* is almost universally characterized by a multiplicity of overlapping land-related laws, compiled over decades with little attempt to rationalize the ambiguity resulting from successive legislation. Essentially, there seems to be the relative ease of creating new laws, compared to the

effort required to improve existing legislation with the legal framework both aiding and abetting the institutional chaos referred to above. The frequent reliance on a litigious approach in dealing with land disputes—rather than administrative processes—extends the time and cost of resolution to the point where justice is very difficult, if not impossible, to achieve, and usually precludes all but the very wealthy.

An issue affecting the administrative processes is the level of fees and charges that can be reasonably imposed to ensure the land administration system is at least self-funding. Care must be exercised to ensure that the revenue objectives are balanced by the capacity of those participating in the market to pay. In the initial stages, this usually means a period of subsidization until the critical mass of parcels needed to sustain a land market are registered, and the land administration system has the confidence and support of the community.

Low skill levels and an acute shortage of resources are *technical issues* common to all regions studied. Despite this, there is a tendency to justify investment at the high technology–high accuracy end of the technical spectrum, based on the benefits of the multipurpose application of the spatial data arising from the cadastre. Concepts such as the National Spatial Data Infrastructure have evolved to provide a vehicle for downstream integration of information. While such concepts are ultimately necessary, they can be confusing to countries struggling to introduce the basic elements of a land administration framework, and are often a distraction from the

fundamentals. Uganda, which is planning to introduce spatial data infrastructure prior to land registration, is a possible example of this as the cost-effectiveness is unclear.

To explain the evolution of land administration in society, the following model, based loosely on Maslow's Hierarchy of Human Needs (Maslow 1987), sets out a hierarchy of tenurial concerns, where higher tenure concerns will only be addressed when the lower concerns are satisfied. Spatial Data Infrastructure (SDI), a valid concern in many countries with well-developed land administration systems, addresses the high level concern of integrating land administration into society. In most developing countries, much work is required to address lower level concerns before focusing on spatial data infrastructure. This is not to suggest that initiatives to improve land administration systems need not recognize the long-term objectives of SDI, but SDI objectives should not obscure the efforts to address lower-level tenurial concerns.

In all regions, the sustainability of the formal system is dependent to a large extent on the level of community trust in the formal system of land administration and the affordability of participation. These factors govern the level of registration of subsequent transactions in land rights after initial registration. Without the registration of all derivative transactions the accuracy of records will rapidly erode to the point where confidence disappears, informality grows, and uncertainty reigns.

Essentially, the formal land administration system needs to adapt to the procedures and costs in the informal system, and the community needs education and awareness programs to extend beyond project public relations campaigns.

In ECA there was an urgent need to rapidly distribute land, or affect the reinstitution rights in land, and establish means by which rights could be protected. This was needed to meet immediate demand during the 1990s, following the collapse of the communist regimes. The long-term implementation of sound land administration systems is now beginning to be given the attention it merits.

All the issues above largely contribute to *effective maintenance* of the land administration system. Without simple, secure forms of tenure, service-conscious institutions, unambiguous laws, enforceable regulations, and smooth, inexpensive administrative processes, the climate of transparency and openness conducive to an effective land market will not exist.

Critical Issues in Africa

Over the last decade, more than 13 countries in SubSaharan Africa have adopted new land policies, laws which are pro-poor and gender sensitive, or both. However, the main challenge has been to implement these policies in a general environment of constrained resources and limited funding. Despite numerous initiatives during the last decade to implement new land administration systems in Sub-Saharan Africa or to modernize existing ones, limited results have been achieved.

Where it exists, formal land administration consists of the conventional approach, based predominantly on deeds and title registration. However, the vast majority of the urban and rural populations in African countries live under customary systems of land administration. Further, due to the complex nature of the cadastre and property rights, colonial land administration laws and regulations remain entrenched in many countries.

Like many developing regions, Africa is experiencing rapid urbanization, with an urban population doubling almost every 20 years, the majority living in slums. With a strong emphasis on realizing the Habitat Agenda and endorsing policy options with political support, the African Ministers Conference on Housing and Urban Development (AMCHUD) was established in 2005. Biennial meetings were used as a consultative mechanism on the promotion of sustainable development of human settlements in Africa, where land plays a central role in housing strategies. As it supports pro-poor and innovative solutions to land and house problems, support for the systematic titling option is fading.

Land Tenure. Many parcels in the land registration systems are uncertain and hold ambiguous information, despite attempts to create land registration systems with certain, highly accurate spatial information.

In many instances, customary tenure and informal land administration systems are sufficiently secure to make large-scale titling programs unnecessary. Indeed, the formal land

registration system in most countries is often not neutral, and where titling is implemented, people with customary tenure may, in fact, lose their rights.

Women and overlapping rights holders are very vulnerable in these circumstances. It is because of this situation that African countries are introducing new forms of land tenure which are more appropriate.

Institutional Framework: There are major problems surrounding the flow of spatial information for land administration purposes within government, between departments at national level, between national and lower level tiers of government, and between government and the private sector and users. Coordination is therefore a critical issue. There are few comprehensive national spatial systems operating that contain reliable information for land administration purposes. Where they do exist, they only include that part of the country covered by the cadastre, typically formal urban areas.

For a range of reasons, many of which are related to governance issues, it is extremely difficult to implement large-scale national land-titling programs, or to enforce land-use controls. Hence the extent of land titles in much of Africa is largely confined to the major cities and areas where cash crops have been/or are being grown.

Legal Framework: In common with other regions, a central issue in Africa is the proliferation of conflicting and overlapping laws. Many countries have begun legal reform to address the issues and to introduce new approaches, including,

among other things, new forms of evidence. For example, Tanzania passed two new land laws in 1999, a Land Act and a Village Land Act, to provide a framework for the formal recognition of land rights throughout mainland Tanzania. Other countries have also passed recent land laws, including Uganda and Mozambique, which are included in the country case studies. However, the scale and comprehensiveness of change needed is huge and has not yet reached full implementation. Systematic titling for much of Africa is not considered an option for a range of reasons, largely related to the experience from the mid–1950s in Kenya, where systematic land titling led to a range of problems, including 'land grabbing' by the urban elite.

In many countries, many existing titles are of doubtful veracity, and require complex legal processes rather than simpler administrative methods to effect transfer. As a result legal titles frequently do not reflect changes in legal rights resulting from events such as succession or transfer or more broadly the customary rights recognized in the community and these differences add to the complexity of dispute resolution.

Technical Arrangements: There is a general lack of financial, technical, and human capacity, indeed of all resources throughout Africa. Because the systems are under-resourced, many of them are out of date, expensive to maintain, and inefficient. Most countries also retain colonial forms of legal evidence, requiring a high standard of professional input. For

example, there are few registered professional surveyors in many countries.

Administrative Processes: Even if no dispute occurs, land registration in most countries takes 15 to 18 months on average, while realistically, two to seven years is not uncommon. This lengthy and costly procedure means that tens of thousands of land titles are usually pending and becoming obsolete as time passes.

Land Market Information. Land markets exist all over Africa, both in rural and urban areas. They are not a recent phenomenon. However, they are not free land markets, and the sale of land is often limited to relatives (by blood or marriage), ethnic, national, or religious groups, and men. Many of these sales take place outside of the formal land administration system.

Africa Country Case Studies

The country case studies highlight the vastly different historical influences on the present day political, economic, judicial, social, and cultural environments for the various land administration systems. The prominent country characteristics are summarized below.

Ghana. Ghana is a West African country which gained independence from the British in 1957, the first Sub-Saharan country to do so. Ruled by successive military dictatorships and democratic systems, in 1992, with the introduction of the 4th Republic Constitution, democracy was re-established. Ghana

has a total land area of about 230,000 square kilometres, approximately 95% of which is cultivable. The country's population was estimated at 17 million in 2000. It is rapidly urbanizing and continually expanding due to high fertility and low infant mortality rates. Ghana's economy and labour force remain dependent on agriculture.

In West Africa generally, land belongs to a community respecting both a physical and spiritual relationship with the dead, living, and unborn. With the advent of colonialism, strains have appeared in the hitherto stable traditional land-holding regime. Transition from traditional land ownership structures to align them with modern economic and social conditions has not been smooth. About 80% of Ghana is administered under customary tenure regimes.

An Urban V Project was planned for 2001–06 to include photo-mapping at 1:2,500 scale over 25 larger towns. This was to be followed in the second phase by registration and issue of title. A second major project is the World Bank-funded Land Administration Project, which seeks to achieve fundamental re-structuring of land administration in the country.

Mozambique. Notwithstanding considerable recent political and economic change, Mozambique is one of the poorest countries not only in Africa, but the world.

Present-day land tenure was heavily influenced by the adoption of a socialist policy following independence in 1975 from Portugal. During the socialist period (1975-90) the focus of land administration was on the allocation of land-use rights, and

although the new 1990 Constitution now allows all forms of private property, land remains in state ownership and cannot be sold, alienated, or mortgaged.

Mozambique has a strong system of customary tenure, which accounts about 90 percent of land in the country. This causes a set of land administration problems common in African countries. Customary land tenure regimes differ markedly from location to location, depending on population density, kinship organization, inheritance patterns, land quality, markets, and historical experience. This background is also the framework for the vast majority of everyday land-related transactions, and was given formal recognition in the 1997 Land Law.

Law administration reform aimed at introducing new forms of evidence and approaches was undertaken, but implementation will require significant effort.

Namibia. As a former German colony, subsequently administered by South Africa, it was not until 1988, when the South-West Africa People's Organization (SWAPO) guerrilla group launched a war of independence, that the country gained independence. Independence was formalized in 1990 in accordance with a UN peace plan for the entire region. The 825,418 square kilometres of land on Africa's southwest coast are largely desert and high plateau.

The majority of the population of about 1.8 million people lives in the north under customary tenure. The majority of the rest of the land in the country is registered in full

ownership (freehold) in a deeds registry system that is too expensive for the poor to access. An inferior colonial–apartheid relic system termed Permission to Occupy also exists in the north of the country, where it is the only tenure available other than customary tenure. The current delay in township proclamation (the process of urban formalization) is about three years. The government is attempting to address the system's limitations through the Flexible Land Tenure System, while at the same time not displacing the existing system.

The total number of families living in informal settlements without secure tenure is estimated at 30,000 (1994), mostly in towns in the north. Approximately 10 percent of the Namibian population live in urban areas, on land to which they have no formal legal rights.

South Africa. At the southern tip of the continent, a semi-arid climate and 1.2 million square kilometres of land is host to a population of over 44 million people. The Union of South Africa operated as a British colony under a policy of apartheid from 1902 to the 1990s. The 1990s brought an end to apartheid politically and ushered in black majority rule. The apartheid policies skewed South Africa's tenure systems and land distribution. Blacks could only own 13 percent of the land and even then, this was held under inferior title, not full ownership (freehold), which was held by whites.

The upgrading of inferior titles, such as Permissions to Occupy, Customary Tenure (which occurs in less than 13 percent of the country in the former homelands), and informal settlement tenures (gained through adverse possession after 5 years) is still ongoing.

The conventional land administration system operates under a deeds registration system under Roman-Dutch law, with a Deeds registry where the state has no liability. There are nearly 7 million registered parcels, about 8 million surveyed parcels, about 1.25 million registered transactions per year, and about 0.38 million registered transfers a year. A modern mortgage system is in place, and the registry deals with 40,000 requests for information daily through a digital medium.

While about 80 to 90 percent of the national land surface is covered by registered rights and up-to-date cadastral data, about 25 to 30 percent of the country's population live in about 10 percent of the land in the former homelands, on rural land often held under customary tenure.

Uganda. Uganda is an East African country of 236,040 square kilometres sharing its water boundaries on Lake Victoria with its Kenyan and Tanzanian neighbours. The population of over 28 million has a high growth rate of 3.3 percent.

Independence from British colonial administration was achieved in 1962. Mixed ethnic grouping and varying political systems and cultures—a result of boundary demarcations during colonization—made it difficult to achieve peace and working political structures. Since 1986, however, there has been some stability and a period of economic growth.

There is a predominance of customary tenure, involving about 62 percent of the land and about 68 percent of the population. This accounts for approximately 8 million customary landholders throughout Uganda. Freehold and

leasehold exist, including a local form of freehold called *mailo*, and that system covers about 12 to 15 percent of the country with about 700,000 titles (about 40 percent of which are current).

Perhaps only 5 or 6 percent of the country has current titles, mostly concentrated in urban areas and in Buganda (*mailo*). The conventional titling system has not been modernized and the regulatory framework is largely a colonial relic. There is a serious lack of financial and human resource capacity in the central state to implement even a scaled down version of a titling system. The Land Act of 1998 is still being piloted and a technical process being developed. Under the Act, land is vested in the people and not the government. The Act provides for a Land Fund facility and Communal Land Associations, and sets out processes to decentralize land administration and land disputes resolution functions. The Act also provides for the formalization of customary tenure through certification of customary rights.

The benefits of a good land administration system

The modern cadastre is not primarily concerned with generalized data but rather with detailed information at the individual land parcel level. As such it should service the needs both of the individual and of the community at large. Benefits arise through its application to: asset management; conveyancing; credit security; demographic analysis; development control; emergency planning and management; environmental impact assessment; housing transactions and land market analysis; land and property ownership; land and

property taxation; land reform; monitoring statistical data; physical planning; property portfolio management; public communication; site location; site management and protection. Although land records are expensive to compile and to keep up to date, a good land administration system should produce benefits, many of which cannot in practice be quantified in cash terms. These benefits are outlined below.

1. Guarantee of ownership and security of tenure

The compilation of land records and the judicial processes that must be gone through in order to bring land information onto the registers should provide formal identification and, in some systems, legal proof of ownership. The public registers should contain all essential juridical information allowing anyone viewing the system to identify thirdparty rights as well as the name of the landowner.

In some systems, such as the English registration of title to land, the State then guarantees the details recorded in the register, so that if a mistake were to occur, compensation would be paid. In others, the registers are treated as primary evidence rather than definitive proof. The Netherlands is an example of the latter, although any enquirer is protected against inaccurate or incomplete information either contained in deeds entered in the public registers or caused by errors, omissions, delays or other irregularities. Thus, although there is technically no guarantee of ownership per se, the integrity of the system is sufficiently high for landowners to have full confidence in their rights.

2. Support for land and property taxation

Good land records will improve efficiency and effectiveness in collecting land and property taxes by identifying landowners and providing better information on the performance of the land market, for example by identifying the current prices being paid for property and the volume of sales. Since the cadastre should provide full cover of the land, all properties can be included and none should be omitted.

While not all countries seek to impose taxes on land or property, such fiscal measures are regarded by many as fair and just since they are perceived in effect as taxes upon wealth. They are relatively easy to collect in contrast for example to personal income taxes where earnings can be hidden. It is not possible to hide a piece of land or building although it is possible to conceal the records of such a property.

3. Provide security for credit

Certainty of ownership and knowledge of all the rights that exist in the land should provide confidence for banks and financial organizations to provide funds so that landowners can invest in their land. Mortgaging land is one way to acquire capital for investing in improvements. Landowners can then construct or improve buildings and infrastructure or improve their methods and management of the land, for example by introducing new farming techniques and technologies.

4. Develop and monitor land markets

The introduction of a cheap and secure way of transferring land rights means that those who wish to deal in land can do so with

speed and certainty. Those who do not wish to sell their land can be protected-no persons need be dispossessed of land unless they so wish since their rights should be guaranteed.

The registers should be public so that at any time a landowner can confirm his or her rights. Those who wish to buy land can do so with confidence, knowing that the person who is trying to sell the land is the legally guaranteed owner. Those whose properties are subject to compulsory purchase-for instance where a new highway is to be built across their land-can be treated with fairness since the registers should provide information on current land prices, thus allowing better estimates of the market value of land to be made.

5. Protect State lands

In many countries the land that is held by the State for the benefit of the community is poorly documented. This is not a problem in countries where the State owns all land, but where there is private land ownership, that which remains in the possession of the State must be properly managed. In all societies the State is a major landowner and its property must be protected for example from encroachment by farmers onto land beside roads or from attempts by squatters to settle on vacant land that is being held for future use. The State needs to manage its property assets and to ensure their efficient use and upkeep every bit as much as does the private citizen. A system of registration of title to land will facilitate this.

6. Reduce land disputes

In many countries disputes over land and its boundaries give rise to expensive litigation and all too often lead to a breakdown in law and order. Much time is taken up by the courts in resolving these matters, leading to delays in other parts of the judicial system.

Land often cannot be put onto the market or put to better use without resolution of the disputes, since no potential investor is likely to wish to be committed to developing land where a lawsuit may be pending. The process of registering rights should prevent such disputes arising in the future, since at the time of first registration formal procedures should be followed that will resolve uncertainties.

7. Facilitate rural land reform

The distribution of land to the landless, and the consolidation and redistribution of land for more efficient use all require detailed records of the present ownership and use of the land. Compensation may need to be paid to those who lose out in such a process, or money may be taken from those who make special gains. The design of new patterns of land ownership to provide greater productivity from the land can be effective only if the existing pattern is well documented.

8. Improve urban planning and infrastructure development

As with rural land reform so urban centres need redevelopment and effective land-use planning and control. In many countries the control of development and the issuing of building permits are the responsibility of the local municipal authority.

A good land administration system should permit the integration of records of land ownership, land value and land use with sociological, economic and environmental data in support of physical planning. The availability of up-to-date large-scale cadastral plans of urban areas provides the basic framework within which development schemes can be planned and assessed and acceptable designs implemented.

9. Support environmental management

Multi-purpose cadastral records can be used to record conservation areas and give details of archaeological sites and other areas of scientific or cultural interest that may need to be protected. The cadastre can be used in the preparation of environmental impact assessments and in monitoring the consequences of development and construction projects. In the Netherlands, for example, there is a register of presently polluted sites and of formerly polluted sites that have been decontaminated.

10. Produce statistical data

By monitoring the ownership, value and use of the land, data can be assembled for those concerned on the one hand with resource allocation and on the other with measuring the performance of development programmes. Both long-term strategic planning and short term operational management require data in support of decision-making

CHAPTER TWO

LAND OWNERSHIP

THE PROPRIETARY LAND UNIT

The subject of estate management is concerned with the ownership of land resources and the distribution of piece of land in the society, the valuation of land/building and other land resources for various purposes, the rating and taxation of land/building at local and national levels, the development and planning of land uses and of rural and urban environments and the carrying out of feasibility and viability appraisal of planned developments, and development/redevelopment of projects and schemes affecting land/buildings, structures and other land resources.

The discipline of estate management is concerned with the use and exploitation of land resources both natural and man-made with the aim of achieving certain objectives. In practice, it is the process by which decisions are made and implemented by individuals, groups or corporate bodies who possess property rights in units of land.

Property in its simplest form means anything that is capable of ownership. There are two kinds of property in the legal context namely: PERSONAL PROPERTY and REAL PROPERTY. Personal property refers to moveable belongings for example chattels, while Real property is defined as the interest, benefits and rights inherent in the ownership of the

physical estate. It is the bundle of rights with which the ownership of real estate is endowed, for instance land and buildings.

ESTATE: The word "Estate" has a very precise legal meaning in the context of land law. In the context of Estate Management, it has two aspects:

1. The physical unit of land consisting of the surface, the soil and any resources within the substrata and any structure on the land which is managed as a single unit.
2. Legal: In its legal aspect, Estate refers to character and duration for a person's property. It can be talked of as any interest in land which gives some power of control over it.

In the context of Estate Management, these two aspects are brought together when we speak of an estate we generally refer to the piece of land and the property rights that are held by a person or a group with respect to that particular land. Therefore, more than one Estate may exist in one particular piece of land. Both the agents, individuals and groups are owners of the piece of land. This concurrency of Estate (running of property rights) has led Prof. D.R. Denman to promulgate the theory of "The Proprietary Land Unit".

It will however be noted that there are three most significant property rights (also known as proprietary rights) that can beheld in land by private individuals or organizations namely:

i) Right of use and enjoyment in land.
ii) Right to income arising from land.
iii) The right to alienate or transfer land.

The individual rights in land is not absolute since there are certain rights reserved for the state through the operations of law. The rights a state has over private property include:

i. Right to tax income from private property.
ii. Right to take private property for public use.
iii. Right to control the development and use of private property
iv. Escheat (from French "escheoir", to devolve)- reversion of a property to the State if the owner dies intestate without any heirs.

The concept of proprietary land unit was conceived by Professor D.R. Denman and is clearly stated out in his book, Land Use: An Introduction to Proprietary Land Use Analysis. The learned professor cautioned that the study of proprietary land unit is the analysis of character and function of the decision making unit within which positive decisions are taken about the use of land and such a unit may be held by a private citizen, by trustees, by an institution of any kind or by the department of central/local government. Because a person cannot carry land to show ownership, he/she has to do something as to show his/her ownership. What is then important here is the right which ownership bestows over land and which set limit to what an owner can do or not do.

The concept: Modern economic theory tells a great deal about the firm. The firm has been identified as the unit of organized capital, the marshalling ground in which the agents

of production are grouped and set about their business of generating income. Simply it is the production unit of modern economies. All firms need land for factories, warehouses, communications, dwelling. They become proprietors of land and of interest in land.

Land owned by a railway company in the vicinity if not actively engaged in the railway enterprise is available to hoteliers, shops and other uses. When a railway company runs a hotel in this instance, the hotel is another firm quite distinct from the railway. The railway and the hotel stand on land owned by the railway company ie. there is an affinity in the land, proprietary unit and the railway and the hotel lie in the same proprietary land unit. This simple illustration is used to draw the fundamental distinction between the production unit (i.e. the firm) and the proprietary land unit.

Definition: The proprietary land unit is defined as an area of land which is managed or used as a single entity and coextensive in its physical dimensions with vested rights of user, disposition and alienation. The proprietary land unit (P.L.U) can be viewed as a piece of land upon which legal owner or occupier can exercise proprietary rights.
It has both physical and abstract attributes; the land itself and the property rights in it. Land in this context is the lawyer's definition not the economists. Physical attribute of a proprietary land unit are inclusive of the natural soil, buildings,

structures and fixtures to the surface of the land and all similar things subjacent and superjacent.

The abstract attribute determines the degree of land owner autonomy, a bundle of rights reduced from the absolute by private and public restrictions. A proprietary land unit is fashioned from the physical and the abstract at any one point/moment in time. The momentary form however is a single facet of an entity which extends backwards into the past and forward into the future. There is in other words a further characteristic-the attribute of duration. A particular land unit may have existed down to many ancestors each having taken land from others. In similar manner it may project forward into a future prescribed by law. There are both space and time dimension.

In addition to these attributes a proprietary land unit may have lateral attribute and in the constitutional nature of its owner/owners have a distinctive proprietary character of its own.

Features of a Proprietary Land Unit

A proprietary land unit has basically two characteristic features:

a) Attributes

b) Proprietary Character Form

(a) Attributes:

This feature has in turn two aspects:

1) Physical Attributes

2) Abstract Attributes

(1) **Physical Attributes:**

Like land no one proprietary land unit can by definition and nature be like another, but general features are discernible. The primary physical attributes are the given things of nature; the feature of the natural order i.e. natural waters, vegetation, subsoil, soil etc and these will include buildings, excavations, erections etc. the physical attribute of a P.L.U. puts a stand upon its outward form i.e. you can know a proprietary land structure by dominant feature. There are 2 subgroups here:-

i. Homogeneous
ii. Heterogeneous

Homogenous: Homogeneity does not mean a single type of a feature occupying the unit definition to the exclusive of all others, rather is a complimentarily of function and form that displays a unity for example the unit Nnamdi Azikiwe University, Awka has offices, residence, roads which however serve a common function in purpose with others. There is homogeneity about the general physical form and attributes and we can speak of the unit as an Education proprietary land unit. Homogenous unit can be classified by the use of appropriate adjective e.g. agricultural, commercial, upland etc.

Heterogeneous: are of 2 types, one has a high degree of variation patent in all or in the majority of its attributes, the

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Heterogeneous: are of 2 types, one has a high degree of variation patent in all or in the majority of its attributes, the

other is not multi featured but has more than one outstanding attribute challenging each other for dominance:

i. Simple Heterogeneous
ii. Multi Heterogeneous

The simple heterogeneous requires the identification of dominance in the physical attribute; usually area is a good index for measuring dominance. Also monetary value can be used. For the simple heterogeneous one use can outshine the other.

For multi heterogeneous uses may rival other and if the area text is ability, dominance may be different from the result from value test.

(2) **Abstract Attributes:** The abstract attribute of the P.L.U. are those characteristics of the general form which are conceptual and cannot be discerned without some form of descriptive explanation.

There are 3 types of Abstract attributes:

1. Size and shape
2. Duration
3. A bundle of rights.

Size and shape: Boundary markers, example a hedge, a wall etc do not form a boundary of a P.L.U. rather the boundaries of a "P.L.U. are set by the reach of property rights over the land. Thus the size and shape of a P.L.U. cannot be known unless the reach of property rights of

which the unit is part composed in explained and pointed out with reference to the physical conformity of the land. Where a person has two or more land holdings or estates a question arises whether he has one scatted proprietary land unit or a number of intact separate units. This problem of shape is best solved by applying the test of managerial coincidence. All proprietary land units are subject in some degree to management; the holder of the property rights in them must take decisions about the use of the rights. Therefore for size and shape a P.L.U may be intact or scattered.

Intact: When the areas over which administrative decisions are taken and managerial area coincidence with the property area, the land over which run the rights of property vesting in the holder of unit, we can speak of there being only one unit. Each P.L.U. then has managerial and proprietary coincidence. Such a P.L.U. is intact.

Scattered; This is where the unit do not subscribe to only one proprietorship and managerial coincidence. Here the land may lie in scattered parcels.

2. **Duration:** A proprietary land unit has a time as well as a space dimension. The time dimension of a P.L.U. runs from any one moment in time backwards into the past and forwards into the future. The property rights which pertain to P.L.U. will determine at that moment the life space. The right may be indeterminate (for ever) or the right may be determinate.

Duration has to do with the time or period within which and owner or occupier can exercise his right in a proprietary land unit. For instance leasehold is a terminable interest while freehold is a perpetual interest. Duration is important on the amount of capital that can be invested to improve the P.L.U e.g a short leaseholder may find it difficult to recoup invested capital at the expiration of lease.

3. **A Bundle of Rights:** Property rights pertaining to a P.L.U. can be seen as a bundle of rights. The bundle may be plump or lean i.e freehold and lease respectively. The larger the bundle the greater the degree of power and of sanction in the hands of the holder of the P.L.U (sanction means to forbid from using). Under bundle of rights we have:-

i. Non-derivative interest:- Freehold
ii. Derivative interest created from non-derivative interest-leasehold.

(b) Proprietary Character Form

The physical and abstract attributes of P.L.U are important because they have an immediate bearing upon what can and what cannot be done within the unit they are however not the only factors that determine the policy. The constitutional form of the holder of property rights also determines policy. This form is called the proprietary character form of the P.L.U. This is the nature or the characteristics of the holder of the property within the P.L.U.

There are subgroups here:-

1. Simple
2. Fictitious
3. Fiduciary

Simple: denotes the single and uncomplicated. Here rights are held by a full adult person competent under the law to hold property rights in land and to exercise the rights of use and dispositions.

Fictitious: This is where property rights in respect of a land unit is vested on a corporate body like a company or what is termed in law as corporate sole, for example the Catholic Bishop of Awka. These institutions are continuing institution and this continuity has an influence on the unit, for example the Nsugbe community owns this land, this means there is continuity on the land even though people come and die.

Fiduciary: This is the beneficial form. He who owns the property rights exercise them for the benefit of others or another, for example, Trusteeship. It involves 2 parties each of whom holds a proprietary land unit in the same parcel of land: one as a beneficiary enjoying the benefits of the land and the other as responsible to see that such enjoyment is facilitated.

THE LAND PROPERIETARY STRUCTURE IN NIGERIA

The land proprietary structure of an area tends to answer the question who owns the land. Therefore land proprietary structure in Nigeria is about the ownership structure in Nigeria. This is different from land system which is the manner in which land is owned and possessed.

Proprietary land structure defines the pattern of land holding in a society. It has to do with vertical pattern of arrangement of interest that can be held simultaneously in the same parcel of land i.e. from superior interest to all the subordinate interests. Proprietary land structure is based on the principle that every land is owned by somebody. In other hands, there is no land without and owner.

The three basic requirements for analysis of proprietary land structure are:

i. Identification of who owns the land.
ii. Identification of principle governing land holding.
iii. Identification of trends in land ownership.

For the proprietary land structure in Nigeria before the Land Use Act of 1978 we are forced to break Nigeria into North and South.

Structure in the South: In traditional system land is owned by communities and individuals. The town-village-patrilineal/Matrilineal groups-extended Family-Basic/Nuclear Family.

In the modern times (from 1900) the state intervened because the government needed land. With this intervention the state acquired power of eminent domain. Then emerged the modern structure state-municipal government/charitable organizations, firms, companies etc. Structure in the North Before the Land use Act: Before 1804 the structure in northern Nigeria was this: The Town-Village-Patrilineal/Matrilineal groups-Extended Family-basic/nuclear Family. But in 1804

there was a movement known as the Jihad. The result of this jihad was that they toppled the Habe and altered the land proprietary structure in the north. As a result of the Jihad the absolute interest in Northern Nigeria came to be vested in the Sultan of Sokoto who appointed lieutenants known as Emirs to govern provinces in his name. The Emirs were just administrators subject to the Sultan of Sokoto who owns all the land (Sokoto Caliphate). Not all-land in the northern Nigeria however came under the Sokoto caliphate. The land structure of these areas namely Plateau and middle Belts were not altered so it has remained like the land structure of the southern Nigeria.

In 1900, the British Government took formal possession of area they termed northern protectorate. Because they have hear stories of the Sultan of Sokoto, Lord Lugard approached him and informed him that since they have conquered northern Nigeria militarily just as the Sultan of Sokoto conquered the Hausas and dispossessed their land so also has the British Government dispossessed the Sultan of Sokoto and passed their land into the Nigeria government. The British Government applied the system of indirect rule instead of ruling directly form the North.

In 1910, a law was enacted making the government the absolute owner of lands in the Northern Nigeria. This is similar to the Land Use Decree of 1978. The Land tenure Act of 1962 in the North re-emphasized government land ownership. The rights obtainable under the land Tenure Act of 1962 in the North were customary and statutory rights of occupancy which are similar to what we have today under the Land Use Act of 1978.

The customary right of occupancy was recognized on the basis of the traditional structure. The statutory right of occupancy was recognizable in the urban areas where the government granted leases to individuals, to firms, companies, organization and other quasi-government institutions.

Note: In the traditional structure certain groups of people do not qualify for full participation in ownership. These groups include women, children, invalids and slaves (ordinary and ritual slaves). The land owning community can grant interest to strangers (leases) and they could give out land freely to strangers as far as the elder agree. They can also colonize virgin land and have absolute interest and under such colonization. Absolute interest could pass to individuals. In the urban centres the chief derivative interest are leases and even before there was no freehold granted on Government land.

The Land Proprietary Structure under the Land Use Act of 1978:

The Land Use Act, 1978 otherwise known as Decree No. 6 of 1978, came into force on 29th march, 1978. An attempt to see to it that "the rights of all Nigerians to the land of Nigeria be asserted and preserved" by law" and the "the rights of Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity to enable them provide for the sustenance of themselves and their families should be assured, protected and preserved", Led to the promulgation of Decree Act. No. 6 by the then Federal military Government of General Obasanjo. The Act "nationalized" land and abolished the right

of individuals to own land, vested all land in the state on the governor and laid out guidelines as to the formation of the various bodies charged with the control and management of land both in the urban as well as in the non-urban areas in each state.

The highest interest in land that can be held under the Land Use Decree is the absolute ownership of land, which is perpetual in nature. It can be attributed to the free-simple estate in English land laws. The ownership of land within the territory of each state is vested on the governor of each state individual private ownership was extinguished. Private individual can only hold rights lesser than allodial ownership held by the governor. However, the Federal Government and its agencies are also capable of ownership of land vested in them before the commencement of the Act. Section 49 of the Act provides exemption of land vested in Federal Government and its agencies from that vested on the governor. Section 49 state that "nothing in this Act shall affect any title to land whether developed or undeveloped held by Federal Government at the commencement of this Decree". Furthermore, Section 50 (2) provides that the powers of a governor under the Act "Shall in respect of land comprised in the Federal capital or any land held or vested in the Federal government in an state be exercised by the president or the Minister designated by him in that behalf.

The subordinate interests private individuals can hold under the Land Use Act are:

i. Statutory right of occupancy.

ii. Customary right of occupancy.

The statutory right of occupancy granted by the governor to private individuals or group is a proprietary right in land that can be held for definite period of time. Section 14 of the Act gave the holder of a statutory right of occupancy exclusive right of possession of land against all persons other than the governor. It does not mean that the governor has exclusive right of possession on the land together with the holder of statutory right of occupancy.

The governor could only enter for the purpose to exercise his powers and that an unjustified entry by him is an actionable trespass. Statutory right of occupancy is transmissible from the holder to the heirs. The right is also alienable. The holder of the statutory right of occupancy can transfer it by way of sublease assignment or mortgage but with the consent of the governor. The Governor has the power to revoke statutory right of occupancy for public interest. Compensation is payable in respect of revocation that emanates from public acquisition of land for public uses and mineral exploration. But revocation for breach of provision and conditions contained in the certificate of occupancy does not attract any compensation. Certificate of occupancy is the legal title that the governor issues to the person that he grants statutory right of occupancy. Customary right of occupancy is the right of occupancy granted by the local government for individuals or group of individuals for a definite period of time. Customary right of occupancy is a weaker proprietary right to statutory right of occupancy as the Governor can automatically revoke the customary right of occupancy by granting statutory right of occupancy on the same land. The local government can also revoke customary rights of occupancy for public purpose. The holder of customary right of occupancy can alienate the right subject to the consent of the local government.

CHAPTER THREE

PUBLIC MEASURES FOR DIRECTING LAND USE AND DEVELOPMENT IN NIGERIA.

The measures adopted in controlling land use and developments in Nigeria include: **(i.)** Police power measures. **(ii.)** Fiscal measures. **(iii.)** Eminent domain.

i. POLICE POWER MEASURES: These are the measures used to monitor the development and use of land and property by the government. The aim of applying the measures is to promote public safety, health, morals and general welfare. The major policy measures in police power are – Zoning and subdivision regulations, planning permissions and development control measures, building byelaws and housing codes, sanitary ordinances and rent control.

Most of these measures are under planning regulations in Nigeria as they are provided for in the existing planning laws. The two planning laws that have general applicability to the whole country are:

a). The Nigerian Town and Country Planning Ordinance of 1946: Due to the Federal nature of this country, the 1946 ordinance was adopted as planning edicts by the regions and subsequently by the states when the regions were further divided into states.

b). The Nigerian Urban and Regional Planning Decree No. 88 of 1992: Is the most recent planning law in Nigeria. The Decree made provision for responsibilities in respect of planning matters for each of the three tiers of government in

Nigeria. The body responsible for the implementation of the Decree are:

1. National Urban and Regional Planning Commission at the federal level.
2. State Urban and Regional Planning Board at the state level.
3. Local Planning Authority at the local level.

The major Police power measures include:

1. **Zoning:** Zoning applies to the general structure of the whole city or a region and it is usually the least detailed covering large expanse of land.
   This involves division of a town, city or region into different use zones such as residential, industrial, commercial and other uses. There are no comprehensive zoning systems for most Nigerian cities, only Federal Capital city of Abuja has comprehensive zoning system.

   Zoning approach is adopted in planning schemes or master plan of an area particularly public authority development.

2. **Subdivision regulation:** Subdivision covers the immediate relationships between contiguous plots in great details. In subdivision, each of the use zones (residential, commercial, industrial, etc) is subdivided into high density, medium density, and low-density plots. Access roads, public open spaces, drainage system are also provided for.

   For example, Lagos State's Town and Country Planning (Building plan) Regulation of 1986 classified residential zones into low density, medium density and high density

residential zones. The zones are differentiated by the sizes of plots. Plot sizes decrease from low density to high-density area.

3. **Building regulation:** To regulate development on each of the plots: planning laws prescribe plot/building size ratio area, building line and general setback, provision for drainage and waste disposal and ventilation requirement.

a) **Plot/building size ratio:** Planning bylaws in every state of the federation has provision for maximum area of plot that can be occupied by building. The plot/building size ratio may vary in respect of type of use and the planning scheme that is involved.

Lagos State Town and Regional Planning (Building Plan Regulation 1986 Section 18 stipulated the maximum of 40% building plot coverage in respect of building plots in Victoria Island, Ikoyi, the GRA's in Apapa, Ikeja, Maroko and Ogudu, Ogba, Omole, Magodo Scheme, Lekki Peninsular and other Government Residential Scheme including Lagos State Development and Property Company (LSDPC) Schemes; 50% plot/building size ratio was stipulated for other areas; 70% for commercial and industrial buildings and 30% for petrol station.

b) **Building line and general set back:** Building line and set back is used to prescribe the distance between the centre of a road to the building line for the building

butting a road or access way. This distance varies with the category of road involved. This is to curb the property developers from encroaching on the roads and streets in our urban centres.

Building Line Regulations of 1936 impose 15 metres setback and is applicable to all the states of the Federation.

There are also regulations as to permissible air space between buildings in planning laws. For instance, in Lagos State, the Town and Country Planning (Building Plan) Regulations of 1986 fixed the air space permissible between building in the front at a distance not less than six metres and in case of commercial or industrial buildings at a distance of not less than nine and ten metres on the sides and rear.

c) **Drainage and Waste disposal:** Laws stipulating the provision of toilet, bathroom with septic tanks and soak away pit are public health laws and planning laws.

The main objective of these laws is to prevent waste and effluent discharge into open spaces, as they are harmful to human beings. The provision of these conveniences in building is taken into consideration in respect of building plan approved by Planning Authorities.

d) **Ventilation:** Ventilation is important for the comfort and health of the occupants of any building. Public Health Law Cap 111 Laws of Lagos State 1973 and Town and Country Planning (Building Plan) Regulations of 1986 stipulated that every dwelling must have window

opening directly to the external air and doors for natural ventilation and natural lighting.

4. **Enforcement of planning regulations:** Section 27 (1) of the Nigerian Urban and Regional Planning Decree of 1992 provides the establishment of Development control Departments by the Commission, the Board and the Authority at Federal, State and Local Government levels respectively.

   Section 28 (1) stipulated that approval of Development Control Department shall be required for any land development and Section 28 (2) stipulated that developers should submit development plans to the department.
   Section 31 of the Decree stipulated the grounds for rejection of a development application and section 34 (1) empowers the Department to reject or approve development permission.

   Apart from giving approval to development plans, the Development Control Departments have inspectors who supervise building and other development during construction to see that they are developed according to plan. Deviation of actual development from approved plan is a contravention of planning regulations, which may attract penalty of demolition.

   On completion, there is provision for issuance of certificate of completion in most Planning laws and

Public Health laws. The completion to the required standard will make the Development Control Department to issue certificate of completion.

5. **Control of use through environmental laws:** Apart from planning laws which are mainly meant to control development of land, environmental laws are directly adopted to regulate the use of land for different purposes, to control waste and industrial effluents that may be detrimental to human health.

At national level, Federal Environment Protection Agency Decree No. 58 of 1988 is the most recent law for protecting Nigerian environment from abuse by land users. The agency is to establish standards for water quality, effluent limitations; air quality and atmospheric protection; ozone protection and discharge of hazardous substances and related offences. There are also State Environmental Protection Agency at the state level charged with the responsibility for enforcement of proper disposal of wastes, refuse and sewage; air pollution control by abating incidence of such pollution and ensuring the provision of safe and portable water supply by controlling the incidence of water pollution.

ii. **FISCAL MEASURES-CONTROL OF ESTATE BY FISCAL MEANS:** The control of estate by fiscal means involves property taxation and varieties of financial inducement available to individual estates.

1. **Taxation:** Taxes that are used to exercise control over estates are optional taxes. They are optional on the fact that if estate owner conforms to certain requirements of law, he would not pay the tax. The two types of taxation in this category are:

   a) The capital transfer tax: introduced in 1978 was aimed to achieve socio-political objectives. The objectives to be achieved through the tax among others are:

   i) The government wants to use the taxation as a means of helping the government achieve her objective to redistribute wealth.

   ii) It was stated that the tax was expected to help pass the management of properties to better hands. How this tax is to achieve the objective has been hotly debated.

   This tax can be used to redistribute large estate holding since the effect of the tax will not be much if the properties are given out as gifts than holding the property intact till the time of death when it will attract high tax rate.

   b) Capital Gains Tax: The capital gains tax introduced through Decree 44 of 1977 is a tax on gains or windfall which speculators or other property dealers realize when selling real estate or landed properties. Capital gains tax rate is 20% (now reduced to 10%) of the gains on the disposal of an asset.

This is intended to be used to dampen the speculative property market and to release land for immediate and profitable uses.

2. **Financial Inducements:** Financial inducements available to individual estate include:

a. Tax concession and allowances: Tax concession represents total or partial exemption from tax and is used to favour certain classes of tax payer, to help certain kinds of industry or to simulate economic activity in a depressed area; for instance, to stimulate property development in 1992, the Federal Government removed import duties on cement manufacturing industry.

Tax allowances are tax-free and deductions made from taxable incomes which are available to great number of taxpayers. For example, mortgage allowances which is deducted from taxable income to reduce tax rate is aimed at encouraging owner occupied houses. This may encourage people to take mortgage loans to build their own houses for occupation.

b. Loans and Loan Guarantee: Property development involves large sum of capital which can hardly be financed through income of individuals. Therefore, the development and formation of estate depends on availability of credit facilities. Public loans and loan guarantee are designed to help the developers to raise finance for development. For instance, housing

development finance has received much attention in this respect since 1992 by establishing National Housing Fund through the National Housing Fund Decree No. 3 of 1992 with the Federal Mortgage Bank of Nigeria as the operator and manager of the Fund.

c. **Grants:** Grant is a lump sum given to property owners at once to undertake improvements on their estate assets or to relieve hardship brought about by public project, or natural, social and economic disasters.

Subsidies: Subsidies are periodic payments made from public funds to achieve social welfare objectives or to achieve economic growth objectives. Housing is one of the basic needs of man but only few people can afford to own it or rent a decent house. Because of this reason, residential properties have always been subsidized for the poor in order to promote their welfare.

g. Public investments: Public authorities investments in landed property is so substantial that it can be channeled in such a way to influence accessibility and other factors that have important effect on economic and social values of a region, neighbourhood and individual estates.

iii. EMINENT DOMAIN:

CONTROL OF ESTATE THROUGH THE EXERCISE OF POWER OF EMINENT DOMAIN

Eminent domain commonly referred to as compulsory acquisition power, is the power of public authority to compulsorily acquire ownership of private properties with or without owner's consent for public purposes.

Compulsory acquisition power can be used to ease government and individual access to land for development purposes, to control private transfer of property rights, and other controls such as the type and size of development on a site.

Nigeria Land Use Act of 1978 has provision for the above-mentioned control of private land through the power of compulsory acquisition vested on governor of each state. Part V Section 28 sub-sections (2) and (3) contain provision for public control of private transfer of rights of occupancy.

The governor of a state has the right to revoke right of occupancy in event of alienation through sale, assignment, mortgage, etc without the consent of the governor. Section 28 (2)(b) and (3)(a) empowers the governor of a state to revoke the rights of occupancy of private individual on land to make the land available for use by the federal, state, or local governments. This provision is meant to ease government access to land for development purposes. The cumbersome tenurial system in the country before Land Use Act was making land acquisition very difficult for public development.

Part V Section 28 Sub-section 5(a) and (b) empowers the state governor to revoke right of occupancy held by individuals on breach of provision, term and special contract contained in the certificate of occupancy. This provision can be used to control the type of development on the site, the condition and term of development.

Certificates of occupancy on government estates used to contain provisions as to the time that the property should be developed, the type and height of fence and density of development. Private holders of certificate of occupancy who do not comply with the provision will face the threat of revocation of their rights of occupancy.

CHAPTER FOUR

DEVELOPMENT OF LAND ADMINISTRATION IN NIGERIA

In appraising the important role of land administration, a critical look has to be taken of the two important components of land administration namely the human element and the physical element. The physical element is the land component while the human element is the entrepreneurial and managerial resources. The physical component, land, is relatively static and only changes in quality or size if acted upon by an outside force. The human element, entrepreneurial and managerial resources, is a dynamic factor which acts to bring about change. It is the factor that acts to bring about development in the general land resources scene. It is therefore the more important component of land administration. It exists to conceptualize, plan, prosecute and control development in the land resources scene. The role of land administration in national development will largely depend on the extent to which its entrepreneurial and managerial component is able to discharge its legitimate duties.

The management and control of land in Nigeria have passed through so many phases. In the pre-colonial days the management, control and, therefore, ownership of land have been customarily and traditionally based. For a long time, land has been in the hands of the community, family and individual. This trend gave rise to multiplicity of interests in land, inefficient allocation of resources, fragmentation of holdings

and inalienably of land. These deficiencies of our customary system, of ownership and control worked against modernization practice in land development, and led to past efforts by Governments to redress the problem.

a. The power to compulsorily acquire and manage land in Nigeria was first introduced via the Town and Improvements Schemes Ordinance which applied to Lagos in 1863. The Ordinance empowered the governor of Lagos Territory to pull down buildings and erections for road widening and construction purposes and to pay compensation.

b. The Swamp Improvement Ordinance was enacted in the same year and was amended in 1877. It empowered the Governor to take over or sell to the public by auction any unkempt swamp in Lagos.

c. The Public Land Ordinance of 1876: Introduced the first general powers to acquire and manage land in Lagos and was modified to apply to other parts of Southern Nigerian in 1906.

d. The Ordinance was further modified and re-enacted as Public Land Acquisition Act of 1917 to apply to the whole country except the designated native lands under Land and Native Rights Ordinance of 1916. It expressed the obligation to serve Notice of Intention to acquire land which should state a period not less than six weeks within which the land owner must yield possession.

e. In Northern Nigeria, Land Tenure Law of 1962 which evolved from Land and Native Rights Ordinance of 1916 vested all land in the government and gave the Minister of lands the power to acquire, manage and control all land compulsorily by revoking customary rights of occupancy for various purposes including meeting up with the various land requirements of Local, State or Federal Government for public purposes.

f. Public Lands Acquisition Act (Cap. 167)

g. Public Lands Acquisition (Miscellaneous Provision) Act 1976

h. The Land Use Act No. 6 of 1978

Land Management Functions

It is worthy of note that the most official and vital document controlling or regulating land administration in Nigeria is the Land Use Act of 1978 (Cap. 202 Laws of the Federation of Nigeria of 1990). The Land Use Act vests all lands (except land vested in the Federal Government or its agencies) solely in the Governor of the state who will hold and administer such land for the use and common benefit of all Nigerians. This control and management function is limited to lands in urban areas of each state, all other land, according to Section 2(a) of the Act shall be under the control and management of the local government within the area of jurisdiction of which the land is situate. Other lands held by the Federal government or its agencies according to section 49, shall be controlled and managed by them.

Management of Federal Government Lands:

(a) The Principles of Federal Land Management

Before the promulgation of the Land Use Act in 1978, Federal Government lands were administered under the State Lands Act Cap 45 of the Laws of the Federation of Nigeria and Lagos 1958. Under both Acts, the power of administration is exercised by the President or Head of State through a Minister or other officer of the Federation delegated in that behalf. Lands in the Federal Capital Territory are administered by the Minister of Federal Capital Territory except lands under the direct control of Federal Ministry of Housing and Urban Development and its parastatals. Lands under the control of the Ministry and its parastatals throughout the country are administered by the Minister of Housing and Urban Development (now Minister of Power, Works and Housing).

Section 50(2) of the Land Use Act states as follows: "the power of a Military Governor (now Executive Governor) under this Decree shall in respect of land comprised within the Federal Capital Territory or any land held or vested in the Federal Government in any state be exercisable by the Head of Federal Military government (now president) or any Federal Commissioner (now Minister) designated by him in that behalf and references in this Decree to Military governor shall be construed accordingly."

Generally, the principles and regulations concerning the management of Federal Government lands could be summarized as follows:

i) Federal lands are not affected by the operations of section 1 of the Land Use Act and accordingly their ownership, control and management are not within the jurisdiction of State Governors.

ii) Federal lands may not be sold without the approval of the Federal Executive Council, but the government acting through the Minister of Housing and Urban Development and who is responsible for land matters may grant leases or other interests on land to private individuals, companies or bodies on various terms.

iii) A Federal Government lesee shall not assign, sublease or otherwise part with the possession of the land comprised in his lease or part thereof without the consent in writing of the Minister of Housing and Urban Development.

(b) Machinery For Federal Land Management:

The Minister of Housing and Urban Development functions through the following:

i) The Land Use and Allocation Committee (LUAC). A body set up under section 2(2) of Land Use Act to advise the Minister on all land matters.

ii) The Land Allocation and Advisory Committee: set up under section 2(5) of the Land Use Act to advise the Minister through the Land Use and allocation Committee on Management of Federal lands in the states.

iii) Lands Department: A professional division within the Ministry that carries out routine estate management functions. The Lands Department has principal officers within the above two committees and works in conjunction with them.

The Land Use and Allocation Committee and the Land Allocation advisory Committee are presently responsible for the advice on allocation of lands on large scale in government layouts, particularly under the Ministry's sites and services schemes.

The routine management of Federal lands is the statutory responsibility of the Lands/Housing Department. It is headed by an Estate Surveyor and Valuer of a Director status. The Department is charged with the management, control and maintenance of Federal Government landed properties, valuations for all purposes, acquisition of land, preparation and issuance of title documents, monitoring and enforcement of lease conditions, formulation of policy on land matters. The Department is divided into branches, each headed by Deputy Director/Assistant Director. They are Land Administration, Records and Computerization, Acquisition North, Acquisition South, Valuation and Special Duties all which report to the Director.

The Land Administration and the Records and Computerisation branches are more directly involved in the management of lands. The Land Administration branch carries out the inspection, processing of leases, lease renewals, Easements, enforcement of lease conditions, rent reviews, revenue collection, etc. The Records and Computerisation section is responsible for monitoring of lands, maintenance of lands revenue register, investigation of titles, documentation and storage (computerisation) of land data and documents etc.

Land Administration At The States Level

The various state governors, who are vested with the powers to hold land in trust for the people, carry out the administration and management of land in each state through the Ministries of Lands, Survey and Urban planning in some states.

This Ministry is normally made up of 3 Departments namely: the Lands Department, Survey Department and Town Planning Department.

The Lands Department is particularly subdivided into various sections/units as listed below:

a) **Land Use and Management Section:**

The bulk of routine matters in Land administration comes under this sub-head. It includes applications for issuance of Certificates of Occupancy on State and non-state lands, Assignments, Sub-leases, Renewals, Mortgages, sub-divisions, Powers of Attorney, etc. Certificates of Occupancy

on State lands are issued when the applicant completes the payment of necessary fees, including premia. Applicants for Certificates of Occupancy on non-state lands must have been cleared on the survey requirements, planning use clause and the Lands Department on location outside acquired State land before the Certificate of Occupancy can be issued on completion of payment of Statutory fees. Allocations of lands to Federal and State Government Agencies/Institutions are best done by Exchange of Letters. Assignments and Sub-leases require valuations based on open market values, as consent fee is based on the consideration contained in the Deed of assignment or Value obtained after valuation, whichever is higher. On the other hand, renewals also require valuations; but the Contractor's Method is used in order to find out if the applicant for renewal has complied with the provision of a clause in the Lease/Certificate of occupancy to erect buildings/structure to a certain minimum value within 3 (three) years of the execution of the Lease or Certificate of Occupancy. Sub-division applications arise out of applicants wanting to divide the original plot into two or more parcels of land with separate Certificate of Occupancy. This, therefore, involves the surrender of extant lease and taking up of two or more separate Certificates of Occupancy. Hence, Deed of Surrender of previous title document is first prepared before the new Certificates of Occupancy are prepared. Mortgages are mere transactions between the bank and the mortgagors who must obtain the consent of the Governor, as required by law.

The mortgagor's interest is encumbered by the mortgage, unless the debt is liquidated and property duly discharged by Deed of Release. The bank reserves the right to foreclose the property and sell to third party if the mortgagor is unable to liquidate the debt.

b) Valuation Section:

Few of the functions of the Valuation Schedules/Sections in the States are identified below:-

i) Property Valuations For all Purposes: This includes valuations for Assignments, Sub-leases, Mortgages, Renewal of Leases, Compensations, Determination of Premia, Ground Rents, etc.

ii) Representations: The Valuation schedules/Sections represent Federal, state and local Governments and Government-owned Institutions in all property deals involving valuation. Similarly, they represent the above bodies in Courts in matters connected with disputed valuations.

iii) Inspection Report: The section carries out the field inspection of buildings for valuation purposes and writes the Report on which the Valuation is based

iv) Crop Enumeration/Valuation: - It organizes crop enumeration/valuation exercises in cases of determination of values for damages/injurious affection arising from compulsory acquisitions.

v) Market Survey:- This involves the field collection of property market situation data necessary for valuation; namely rents, sales, cost of buildings and building materials, labour, etc.

vi) Determination of Valuation Data:- This involves the analysis of market surveys to determine the rates for outgoings, construction of buildings, etc,

vii) Laws and Edicts on Properties:- The Valuation Schedule/Section is involved in the analysis, formulation, interpretation and implementation of government Laws and Edicts on property matters, including values – Rent Edict, Land Use Act,

C) **Deeds Registry Section:**

In most cases, the last port of call of all land transactions is the Lands Registry. The Lands Registries are primarily concerned with the registration of all Instruments affecting lands within the respective states in the Federation. A land instrument is simply a written document embodying land transaction as defined under section 2 of the Lands Instruments Registration Law CAP 72 (1963 Edition) – Laws of Eastern Nigeria; the above definition is true of other States in the Federation. The implication of the above definition is that the document purporting to be an instrument must be made between at least two distinct persons or parties.

The Functions and Duties of the Deeds Registries include:

i) The Registration of Instruments: The Instruments could be classified as follows:- Statutory Certificates of Occupancy, Customary Rights of Occupancy, Tenancy Agreements, Railway Lease, Powers of Attorney and Mining leases.. The criteria for registration are provided under section 9 CAP 72 Laws of Eastern Nigeria (1963 Edition). The Land Use Decree No. 6 of 1978 (now the Land Use Act of 1978) also provides some guidelines. As required by Law, a copy of a registered Instrument usually refered to as the "Registry Copy" is preserved in the Registry Strong Room. The Registry Copy is as good as the Original Copy. The importance of preserving these documents which play a very vital role in both the economic and social life of the States cannot be over-emphasized.

ii) Filling of Instruments: This can be classified as follows: Exchange of Letters, Judgment of Land Cases, Oil Pipe Line Licence and Mineral Prospecting Licence.

iii) Searches: Members of the public are allowed at reasonable period during office working hours to conduct searches in the Deeds Registry on payment of appropriate search fees. The conduct of searches enables solicitors or members of the public to ascertain true ownership and detect any encumbrance on any particular property/instrument.

iv) Supply of Certified True Copies of Instruments on a Written Request: Certified True copies of instruments are supplied when such requests are necessitated by loss of original instruments or need to file cases in Courts.

v) Court Attendance: The Deeds registry is often required to attend Court sessions to tender documents. These documents are the Certified Copies of Instruments (Land Documents) preserved in the Registry and is often used for adjudication on Land Matters by the High Court. This happens whenever the Deeds Registry is served a subpoena. The Court Session must be attended to prevent Bench Warrant.

vi) Caution/Caveat: Any person interested in a registered Land Instrument may lodge a Caveat against further deal on the property especially where he feels that his interest may be jeopardized. The effect of this is that no entry or subsequent deal on the property is entered into the Property Card until Notice has been given to the Cautioner. The Notice given to the Cautioner requires him to make his objections within a reasonable time, say 21 (Twenty-one) days.

D) **Estate Management Records Section:**

The Estate Management Records section is the repository of all records required for taking policy decisions relating to land administration in the state. The functions of the Estate Management Records section include:

i Keeping of all maps, sketches and plans relating to all government acquired layouts.

ii. Collection and collation of all government publications (including Federal and State Gazettes) and publications relating to policy issues in respect of land.

iii. Keeping of records of all Laws and Edicts enacted by governments affecting land.

iv. Charting of survey plans on private lands to ensure that they do not fall within government acquired land or layouts.

The development in technology has called for the use of modern techniques in keeping land records. The Land Information System (L.I.S) together with its analytical tool of Geographical Information System (G.I.S.) are very useful tools in this regard. Land Information System (L.I.S) is defined as a computer-based system capable of assembling, storing, manipulating and displaying geographically referenced information i.e. data identified according to their locations. A prominent computer-based tool developed to utilize the Land Information System is the Geographic Information System (G.I.S) which enables mapping and analysis of things that exist and events that happen on earth to be accomplished.

The objectives of GIS/LIS in Land Administration include:

(i) To covert the analogue land records into digital records

(ii) To provide productive operational usage of the digital land records.

(iii) To provide a once – off conversion to computerized lands records.

(iv) To stimulate improved management of land resources.

(v) To move with the modern land related information technology.

(vi) To foster sustainable land information management system.

(vii) To promote economic development.

G.I.S. records location (what exists at a particular location) – land officer may want to know the type of titles in a certain parcel; condition-shows a particular space that satisfies the needed condition (the best location for a market); *trends* (knowing who has transferred right to another); *spatial analysis* (determining the effects of land prices of parcels); *modeling* (to determine the consequences of certain actions if taken).

The functions of the Lands Department can therefore be summarized as follows:-

1. Acquisition of land for various purposes of the government
2. Allocation of land to individuals and companies for development purposes.
3. Processing of instruments on land for governor's consent and signature.
4. Land administration including collection and revision of ground rent, payment of penal rents, amendment of purpose clauses etc
5. Issuance and processing of temporary occupation licenses on all government lands

6. Revocations of rights of occupancy for overriding public interest in accordance with the Land Use Act, 1978.
7. Assessment of compensation for displaced owners.
8. Renewals of expired Certificates of Occupancy.
9. Registration of deeds/documents affecting land.
10. Storage of land information mainly for referential purposes.
11. Storage and charting of site plans to ensure strict compliance with statutory regulations/policies.
12. Valuation of interest in land for various purposes such as Assignment, subleases, mortgages, transfers etc.
13. Crop enumeration.
14. Market Surveys.
15. Analysis of Deeds.
16. Renting/Leasing of Properties.
17. Laws and Edicts on Properties.
18. Vetting of all valuations done at the zonal land offices

In all cases each of the departments charged with land administration has the same core functional problems, which are:

- Outdated manual processes that reflect methods and requirements from pre-independence days;
- Outdated legislation that has not kept up-to-date with modern methods of land administration;
- Inefficient collection of fees that do not reflect the current cost of processing or the value of transactions;

- Fees generated for land transactions are assigned to the general fund and not the individual departments;
- Many of the land recording processes are optional and not mandatory;
- Financial disincentives to record land, i.e. high transfer taxes;
- Lack of co-ordination and integration amongst the different agencies managing land resulting in a lack of information available for each department to complete its task effectively;
- Lack of funding for staffing, training, core data set development and maintenance and equipment modernization.

In order to realize effective land administration, the current administration needs to address the following:

- Reform and modernize into a rational, single integrated structure the departments currently dealing with land,
- Modernize legislation related to land;
- Move from a deeds named-based registry to a title registry;
- Reform land use policy and develop a comprehensive national land use plan and policy;
- Provide for equitable Property Taxation and Accurate Valuation;

- Create a national Spatial Data Infrastructure and multipurpose cadastre that will underpin the title registry, land use and property taxation.

The results of these activities will lay the foundation for economic planning in that the relationship of land parcels, the use to which the land is put and the proprietary interests residing in that land provide a means of achieving a sound fiscal base to meet social and community needs. Furthermore, they will establish an effective decision-making frame work in relation to decisions that concern the natural environment and the impact of development on that environment.

GOVERNMENT CONTROL MEASURES ON PROPERTY DEVELOPMENT IN FEDERAL CAPITAL CITY (FCC)

Various forms of controls and restraints affect the development and use of land. Most of these are justified by one reason or another ranging from land ownership, prevailing economic situations and or the physical characteristic of the land. Private land use activities in the Federal Capital City are controlled by the government through FCT Decree No. 6 of 1976, the Land Use Decree No. 6 of 1978 and the Nigerian Urban and Regional Planning Law (amended Decree no. 88 of 1992).

1. FEDERAL CAPTIAL TERRITORY DECREE NO 6 OF 1976.

This Decree establishes for Nigeria a Federal Capital and Federal Capital Development Authority (FCDA) to execute projects connected therewith.

Objective: The objective of the Decree is to attain a balance harmonious growth, suitable environmental quality, prevention of over loading of infrastructure, protection of rights of individual and the establishment of acceptable and constantly improving standard of living..

SCOPE: Sections 1, 2 (1), 3, and 7 of the Decree are relevant for the purposes of this discourse.

Section 1 deals with the creation, designation and demarcation of the F.C.T. The establishment of FCDA, site selection, preparation of the mast plan with respect to Town and Country planning are contained in section 2.

Section 3 empowers FCDA to establish infrastructural services in accordance with the FCT Master Plan.

Section 7 deals with development control, as nobody or person within the FCT will carry out any form of development without approval of the Authority. Subsection (2) empowers the Authority to remove, reinstate land, or building where applicable in the condition in which it was before the commencement of work.

Section 7 (3) defines development as "means of carrying out of any building, engineering, mining or other operations in, on over or under land or water or the making of any material change in the use of any land or building thereof or of any stretch of water whatsoever".

From the objective and scope of this Decree, government has restricted the activities and powers of individuals and

corporate bodies in property development in the Federal Capital City.

2. THE LAND USE DECREE NO. 6 OF 1978.

Objective: The objectives and justification of the decree state "that it is in the public interest that the rights of all Nigerians to the land of Nigeria be asserted and preserved by law" and "that the right of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity to enable them provide for sustenance of themselves and their families should be assured, protected and preserved".

Scope: The scope with respect to this discourse does not go beyond section 2, the control and management of land, section 5, the power of the Governor to grant Right of Occupancy, and section 28 the power of the governor to revoke the right of occupancy.

Firstly, by the establishment of the Decree, all land in the Federal Capital City came under the control and management of the Minister of FCT while other lands are under the control and management of the Local Government councils.

Secondly, all Certificates of Occupancy issued in the FCT by the minister state terms and conditions for the development of the properties and anything to the contrary will attract penalties.

3. NIGERIAN URBAN AND REGIONAL PLANNING LAW (AMENDED DECREE NO. 88 OF 1992)

The application of the 1946 Town and Country Planning Ordinance is obsolete and irrelevant as it gave no specific responsibilities to the federal government than making maps. Although the law contains far-reaching provisions affecting the ownership of land and rights of the owner to use the property as he likes, it prohibits the carrying out of development without the consent of the Planning Authority.

When FCT was established in 1976 and for property development to effectively commence some rules and regulations from the 1946 Town and Country Planning Ordiance were used to guide property development. Although much was not achieved by the Law, hence planners in 1992 called for a review of the obsolete sections. This gave birth to the Nigerian Urban and Regional Planning Law (amended Decree No. 88 of 1992).

Objective: The objective provides among other things for a new Urban and Regional Planning enactment for Nigeria with the establishment of Federal, State and Local Government Authorities to over-see the implementation of a more realistic and purposeful planning policy for the country.

Scope: Invariably, part 2,3, and 4 of this Decree are relevant as the deal with the establishment of the Authority and her regulation enforcement.

The FCDA was established in 1976 to oversee the production of Abuja Master plan, provision of infrastructure, allocation of plots and development in Federal Capital City. In order to standardize the development requirement in conformity with the NURPL (amended Decree 88 of 1992) the development control unit was created. This unit produced a property development guide known as "Rules and Regulations to Development in FCT".

This development guide indicates the purpose of plots, districts and Neighbourhood densities (low, medium and high) criteria for submission, processing and approval of building plans, setbacks, building coverage and height, accommodation details, types of materials to be used etc. To enforce these rules and regulations, the development control guide specified that officials of the development control unit should carry out regular inspections to sites and enforce the following:

a) Right of the development Control Authority.
b) Building permit/setting out approval requirements.
c) Approval of plans and issuance of Building permit.
d) Issuance of Certificate of completion.
e) Contravention.
f) Obstruction, Remedies and Penalties.
g) Revocation of an approved building plan.

The development control unit has not achieved much as developers do not observe the rules and regulations thereof. For instance, blocks of flats approved for part of high and medium densities of Garki and Wuse are now developed at Maitama and Asokoro instead of duplexes and bungalows

CHAPTER FIVE

LAND POLICY ISSUES

Land policy consists of government actions designed to modify existing land tenure institutions in the interest of national development objectives in general, and particularly as an instrument for achieving greater equity and social justice. Policy may be viewed as a set of measures which aims to achieve the goals formulated by the public authorities.

Most debates about land policies are driven by three overlapping and sometimes conflicting objectives:

- The creation of a more vibrant land market, with the aim of increasing productivity and investment, through secure, documented and transparent title to land.
- The elimination of poverty, through equitable access to land and other natural resources and the provision of security of tenure to poor households, allowing them to transform their land assets into sustainable livelihoods.
- The conservation of the natural environment and improvement of the built environment, through land use planning and environmental regulations.

The challenge for the developing countries is to find the legal, institutional and policy measures to balance these three overlapping objectives.

Urban land policies are generally formulated to ensure that the use to which a land is being put brings optimum

productivity, through the market forces in the property market, and to make land readily available to all concerned with the use of land. The objectives can be summarized as follows:

(a) To ensure an appropriate supply of urbanized land for dwellings, for community and recreational activities, and for productive activities including the provision of basic urban services.

(b) To ensure harmonious urban spatial patterns that minimized the use of resources relative to economic and social benefits.

(c) To ensure greater equity in wealth and income, including access by low-income families to adequate shelter.

(d) To ensure a spatial distribution of population and activities at regional and national levels consistent with general national priorities.

The critical issues identified in land policies include:

1. Unofficial land tenure systems are as significant as the legal land tenure systems.
2. Land administration systems lag behind the rapid development of land markets.
3. Land information systems are needed to provide a comprehensive assessment of the situation.
4. Land Policy should be built on the public perception of social equity in access to land.
5. Environment and sustainable land uses are also critical factors.

The goal of land policy is to promote sustainable and equitable economic growth by enabling land to play its role optimally as a factor of production of goods and services. The land-related outcomes that are associated with the goal are:

- Efficiency, via increased tenure security, investment and dynamic land markets;
- Equity, via access to resources by disadvantaged groups; and
- Sustainability, via efforts at land protection.

How does one achieve these outcomes? Through improved functioning of land markets. The principal indicators of effective land markets are:

- Increased volume of land transactions,
- Increased value of land,
- Reduced transactions costs, and
- Improved access to credit.

Land transactions should transfer land to people who are likely to use it better. Increased land values should be a signal to owners that they should use it more productively. Reduced costs (in both money and time) will facilitate transactions. Improved access to credit will facilitate investment. How does one encourage these processes? The standard model argues that the principal contributor to the process is improving security of tenure: more secure property rights for owners and users of land.

Land policy must therefore address the issue of security of tenure head-on. There are a broad variety of tools available to improve security and stimulate the land market, some of which are:

- Cadastral surveys,
- Land titling,
- Land registration,
- Land law development,
- Land funds,
- Land purchase/sale programs,
- Credit guarantee schemes,
- Land taxation,
- Land use planning,
- Land consolidation, and
- Land market regulation.

All of these programmes can influence the degree of security, both objective and subjective, that land owners and users have in reference to property which they possess. Some of them can also have direct impacts on the way land markets work: for example, credit schemes directly influence the ability of land owners to borrow funds against collateral, and land purchase/sale schemes directly affect the volume of transactions.

Interventions such as the eleven listed above should promote efficiency, equity and sustainability simultaneously.

FACTORS THAT INFLUENCE LAND MARKET OPERATION

- Overall economic and political environment,
- Physical characteristics of land,
- Availability and cost of market information,
- Operation of other rural factor markets and output markets.

- The macro-economy can play a significant role in determining the viability of land markets.
- Land characteristics
- Information is crucial to the operation of all markets.
- Economists increasingly focus on the inter-relationships amongst markets for factors of production, especially in rural areas.

FACTORS THAT INFLUENCE SUSTAINABLE PRODUCTIVITY OF LAND

- Overall economic and political environment,
- Family income level and changes
- Availability of labour,
- Availability of credit.